

NORTH CAROLINA REGISTER

VOLUME 22 • ISSUE 08 • Pages 498 - 758

October 15, 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.

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Reuben Young reuben.young@ncmail.net
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Legislative Process Concerning Rule-making

Joint Legislative Administrative Procedure Oversight Committee
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300 North Salisbury Street
Raleigh, North Carolina 27611
(919) 733-2578
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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
Raleigh, North Carolina 27603
(919) 715-2893

contact: Jim Blackburn jim.blackburn@ncacc.org
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215 North Dawson Street
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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 th 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
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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.



MICHAEL F. EASLEY
GOVERNOR

EXECUTIVE ORDER NO. 124
REPLACING EXECUTIVE ORDER NO. 86,
STATEWIDE FLEXIBLE BENEFITS PROGRAM

WHEREAS, State employees are an important resource to State government; and

WHEREAS, the State needs to provide a uniform competitive compensation package that includes an up-to-date benefits program in order to maintain its competitive edge with businesses and other states in its region; and

WHEREAS, the State needs to provide the same tax-advantaged benefits to all State employees, regardless of the agency, department, university or community college where they work; and

WHEREAS, the reasonable cost of administering an efficiently designed flexible benefits program could be recovered by the savings associated with such a program;

NOW, THEREFORE, by the power vested in me as Governor by the Constitution and laws of the State of North Carolina, **IT IS ORDERED**:

Section 1. Policy.

A statewide employee flexible benefits coordination effort is hereby formalized for the purpose of administering these benefits to employees and to promote the development and maintenance of a competitive compensation package for all State employees in conjunction with the provisions of G.S. § 126-95.

Section 2. Administration.

There is created within the Office of State Personnel a Statewide Employee Flexible Benefits Program (SEFBP). The State Personnel Director shall be responsible for central flexible benefits coordination for all State employees. The administration of the statewide flexible benefits plan shall become the responsibility of SEFBP. This program shall begin the process of assessing the flexible benefits plan design, administrative procedures, administrative capabilities, and communications needs for the implementation of a comprehensive statewide flexible benefits plan. These responsibilities include, but are not limited to the following:

- a. implementing the Statewide Flexible Benefits Plan;
- b. administering contracts for supplemental insurance carriers and third party administrators for spending accounts and premium conversion plans participating in the SEFBP;
- c. coordinating administration of spending accounts;
- d. coordinating enrollment and communication efforts concerning the SEFBP and other benefit programs;
- e. coordinating the Statewide Flexible Benefits Advisory Committee; and
- f. speaking on behalf of State government flexible benefits in the Legislature.

Section 3. Statewide Flexible Benefits Advisory Committee.

There is hereby established a Statewide Flexible Benefits Advisory Committee (FBAC) for the purpose of assisting the State in developing and maintaining an effective flexible benefits plan for State employees. The FBAC shall make recommendations to the State Personnel Director concerning the administration of the Flexible Benefits Plan and the components of the flexible benefits package for State employees.

Section 4. Duties of the FBAC.

The FBAC shall be responsible for the following:

- a. assisting the SEFBP in developing administrative functions;

- b. reviewing existing flexible benefit programs in State government;
- c. recommending pre-tax benefits to be included in the SEFBP;
- d. assisting in reviewing contracts and administering spending accounts; and
- e. undertaking other functions as necessary.

Section 5. Membership.

The membership of the FBAC shall consist of 14 members and three ex-officio members.

Members shall be appointed to a three-year staggered term. Members are as follows:

- a. a representative from the State Controller's Office;
- b. a representative from the State Treasurer's Office;
- c. a representative from the State Budget Office;
- d. a representative from the Attorney General's Office;
- e. a representative from the State Health Benefits Office;
- f. a representative from the Administrative Office of the Courts;
- g. a representative from the Department of Environment and Natural Resources;
- h. a representative from the University of North Carolina System;
- i. a representative from the State Employees Association;
- j. a representative from the Department of Health and Human Services;
- k. a representative from the Department of Transportation
- l. a representative from the Department of Correction; and
- m. two representatives of the private sector.

One representative each from the Department of Public Instruction and one from the Community College System shall serve as ex officio members. The SEFBP Manager shall serve as a voting ex officio member and provide support staff as required.

The Director of the Office of State Personnel shall appoint a Chair from among the membership for a one-year term.

This Executive Order is effective immediately and shall remain in effect until rescinded by the Governor.

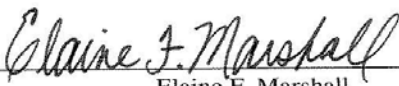
IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this seventh day of September in the year of our Lord two thousand and seven, and of the Independence of the United States of America the two hundred and thirty-second.





Michael F. Easley
Governor

ATTEST:



Elaine F. Marshall
Secretary of State

State of North Carolina



MICHAEL F. EASLEY
GOVERNOR

EXECUTIVE ORDER NO. 125
EXTENDING EXECUTIVE ORDER NO. 84,
NORTH CAROLINA EMERGENCY RESPONSE COMMISSION

By the power vested in me as Governor by the Constitution and laws of the State of North Carolina, **IT IS ORDERED:**

Executive Order No. 84, regarding the North Carolina Emergency Response Commission is hereby extended.

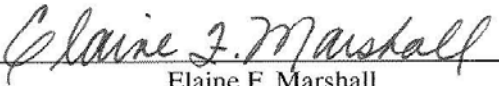
This order is effective immediately.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this seventh day of September in the year of our Lord two thousand and seven, and of the Independence of the United States of America the two hundred and thirty-second.




Michael F. Easley
Governor

ATTEST:


Elaine F. Marshall
Secretary of State

State of North Carolina



MICHAEL F. EASLEY
GOVERNOR

**EXECUTIVE ORDER NO. 126
EXTENDING EXECUTIVE ORDER NO. 89,
FOOD SAFETY AND DEFENSE TASK FORCE**

By the power vested in me as Governor by the Constitution and laws of the State of North Carolina, **IT IS ORDERED:**

Executive Order No. 89, regarding the Food Safety and Defense Task Force is hereby extended until September 11, 2009.

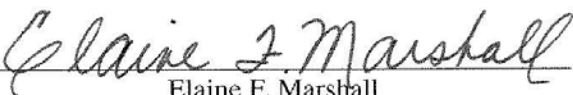
This order is effective immediately.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this seventh day of September in the year of our Lord two thousand and seven, and of the Independence of the United States of America the two hundred and thirty-second.




Michael F. Easley
Governor

ATTEST:


Elaine F. Marshall
Secretary of State

State of North Carolina



MICHAEL F. EASLEY
GOVERNOR

**EXECUTIVE ORDER NO. 127
EXTENDING EXECUTIVE ORDER NO. 91,
GOVERNOR'S TASK FORCE FOR HEALTHY CAROLINIANS**

By the power vested in me as Governor by the Constitution and laws of the State of North Carolina, **IT IS ORDERED:**

Executive Order No. 91, regarding the Governor's Task Force for Healthy Carolinians is hereby extended until September 26, 2009.

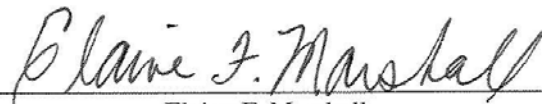
This order is effective immediately.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this seventh day of September in the year of our Lord two thousand and seven, and of the Independence of the United States of America the two hundred and thirty-second.




Michael F. Easley
Governor

ATTEST:


Elaine F. Marshall
Secretary of State

State of North Carolina



MICHAEL F. EASLEY
GOVERNOR

EXECUTIVE ORDER NO. 128
GOVERNOR'S ADVISORY COUNCIL ON HISPANIC/LATINO AFFAIRS

WHEREAS, the Hispanic/Latino community plays a vital role in the economy of North Carolina; and

WHEREAS, North Carolina has experienced a tremendous increase of Hispanic/Latino residents into the state; and

WHEREAS, the Hispanic/Latino community is contributing to the economic development and progress of the state by working in different sectors of the labor market and by participating in civic affairs; and

WHEREAS, many unique challenges confront the Hispanic/Latino community as they attempt to access housing, health care, and employment services; and

WHEREAS, the state should promote and encourage collaboration and collaborative planning and delivery of services among state agencies that serve the Hispanic/Latino community.

NOW, THEREFORE, pursuant to the authority vested in me as Governor by the Constitution and laws of the State of North Carolina, **IT IS ORDERED**:

Section 1. Membership Composition

The Governor's Advisory Council on Hispanic/Latino Affairs is hereby established. It shall be composed of 15 voting members who shall serve at the pleasure of the Governor. In addition to the 15 appointed members, the following or their designees shall serve as ex-officio, non-voting members:

- a. The Secretary of the Department of Administration
- b. The Secretary of the Department of Commerce
- c. The Secretary of the Department of Health and Human Services;

- d. The Secretary of the Department of Crime Control and Public Safety;
- e. The Secretary of the Department of Revenue;
- f. The Governor's Legal Counsel;
- g. The Commissioner of the Division of Motor Vehicles; and
- h. The Chairman of the Employment Security Commission.

The following individuals, or their designees, are invited to serve as ex-officio, non-voting members of the Advisory Council:

- a. The Commissioner of the North Carolina Department of Agriculture and Consumer Services;
- b. The Commissioner of Labor;
- c. The Attorney General,
- d. The Superintendent of Public Instruction; and
- e. The Honorary Consul of Mexico.

Section 2. Meetings

The Advisory Council shall meet quarterly or at the call of the chair. The chair shall set the agenda for the Advisory Council's meetings. The Advisory Council may establish such committees or other working groups as are necessary to assist in performing its duties.

Section 3. Duties

The Advisory Council shall have the following duties:

- a. Advise the Governor on issues relating to the Hispanic/Latino community in North Carolina;
- b. Support state efforts toward the improvement of race and ethnic relations;
- c. Provide a forum for the discussion of issues concerning the Hispanic/Latino community in North Carolina;
- d. Promote cooperation and understanding between the Hispanic/Latino community, the general public, the state, federal, and local governments; and
- e. Perform other duties as directed by the Governor.

Section 4. Administration

Support staff for the Advisory Council shall be provided by the Governor's Office and other cabinet departments as directed by the Governor. Members shall serve without

compensation, but may receive reimbursement, contingent upon the availability of funds, for travel and subsistence in accordance with North Carolina General Statutes §§ 138-5, 138-6, and 120-3.1

This executive order shall be effective immediately and shall remain in effect until rescinded.

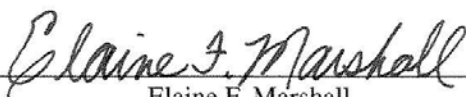
IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this seventh day of September in the year of our Lord two thousand and seven, and of the Independence of the United States of America the two hundred and thirty-second.





Michael F. Easley
Governor

ATTEST:



Elaine F. Marshall
Secretary of State

State of North Carolina



MICHAEL F. EASLEY
GOVERNOR

**EXECUTIVE ORDER NO. 129
EXTENDING EXECUTIVE ORDER NO. 123
EMERGENCY RELIEF FOR DAMAGE CAUSED BY DROUGHT**

By the power vested in me as Governor by the Constitution and laws of the State of North Carolina, **IT IS ORDERED THAT:**

Executive Order No. 123, regarding emergency relief for damage caused by the drought, is hereby extended until December 31, 2007, based on a review of current market and weather conditions and on the recommendation of the Commissioner of the North Carolina Department of Agriculture and Consumer Services.

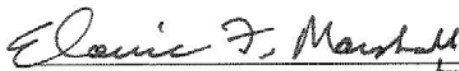
This order is effective immediately.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this twentieth day of September in the year of our Lord two thousand and seven, and of the Independence of the United States of America the two hundred and thirty-second.




Michael F. Easley
Governor

ATTEST:


Elaine F. Marshall *by R. Marshall*
Secretary of State

State of North Carolina



MICHAEL F. EASLEY
GOVERNOR

EXECUTIVE ORDER NO. 130 PROCLAMATION OF STATE DISASTER FOR THE TOWN OF SPRUCE PINE

WHEREAS, I have determined that a State of Disaster, as defined in N.C.G.S. § 166A-4(1), exists in the State of North Carolina, specifically in the Town of Spruce Pine, Mitchell County, as a result of a fire which destroyed or damaged numerous businesses, residences, and a church in the downtown area on August 4-5, 2007.

WHEREAS, on August 5, 2007, the Town of Spruce Pine proclaimed a local State of Emergency; and

WHEREAS, pursuant to N.C.G.S. § 166A-6, the criteria for a Type I disaster are met including the following: (1) receipt of the preliminary damage assessment from the Secretary of Crime Control and Public Safety; (2) the Town of Spruce Pine, Mitchell County, declared a local state of emergency pursuant to N.C.G.S. § 166A-8 and forwarded a written copy of the declaration to the Governor; (3) the preliminary damage assessment meets or exceeds the criteria established for the Small Business Disaster Loan Program pursuant to 13 C.F.R. Part 123 or meets or exceeds the State infrastructure criteria set out in N.C.G.S. § 166A-6.01(b)(2)a; and (4) a major disaster declaration by the President of the United States pursuant to the Stafford Act has not been declared; and

NOW, THEREFORE, pursuant to the authority vested in me as Governor by the Constitution and laws of the State of North Carolina, **IT IS ORDERED:**

Section 1. Pursuant to N.C.G.S. § 166A-6, a State of Disaster is hereby declared for the Town of Spruce Pine.

Section 2. All state and local government entities and agencies are hereby ordered to cooperate in the implementation of the provisions of this proclamation and the provisions of the North Carolina Emergency Operations Plan.

Section 3. Bryan E. Beatty, Secretary of Crime Control and Public Safety, and/or his designee, is hereby delegated all power and authority granted to me and required of me by Chapter 166A of the General Statutes for the purpose of implementing the said Emergency

Operations Plan and to take such further action as is necessary to promote and secure the safety and protection of the populace in the above-referenced town.

Section 4. Further, Bryan E. Beatty, Secretary of Crime Control and Public Safety, as chief coordinating officer for the State of North Carolina, shall exercise the powers prescribed in N.C.G.S. § 143B-476.

Section 5. I authorize this proclamation: (a) to be distributed to the news media and other organizations calculated to bring its contents to the attention of the general public; (b) unless the circumstances of the state of disaster prevent or impede, to be promptly filed with the Secretary of Crime Control and Public Safety, the Secretary of State, and the clerks of superior court in the counties to which it applies; and, (c) to be distributed to others as necessary to assure proper implementation of this proclamation.

Section 6. The Type I disaster declaration shall expire 30 days after the issuance of the state of disaster and Type I disaster proclamation for the Town of Spruce Pine unless renewed by the Governor or the General Assembly. Such renewals may be made in increments of 30 days each, not to exceed a total of 120 days from the date for first issuance. The Joint Legislative Commission on Governmental Operations shall be notified prior to the issuance of any renewal of a Type I disaster declaration.

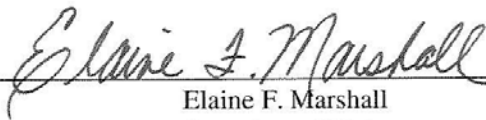
IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this twenty-fifth day of September in the year of our Lord two thousand and seven, and of the Independence of the United States of America the two hundred and thirty-second.





Michael F. Easley
Governor

ATTEST:



Elaine F. Marshall
Secretary of State

<p><i>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.</i></p>

**SUMMARY OF NOTICE OF
INTENT TO REDEVELOP A BROWNFIELDS PROPERTY
John J. Huson, Prospective Developer**

Pursuant to N.C.G.S. § 130A-310.34, John J. Huson has filed with the North Carolina Department of Environment and Natural Resources ("DENR") a Notice of Intent to Redevelop a Brownfields Property ("Property") in Charlotte, Mecklenburg County, North Carolina. The Property consists of two parcels comprising a total of approximately 3.5 acres, 4928 Old Pineville Road (site of the former "Queen City Boiler" operation) and 629 Scholtz Road. Environmental contamination may exist on the Property in groundwater. The Notice of Intent to Redevelop a Brownfields Property includes: (1) a proposed Brownfields Agreement between DENR and John J. Huson, which in turn includes (a) a map showing the location of the Property, (b) a description of the contaminants involved and their concentrations in the media of the Property, (c) the above-stated description of the intended future use of the Property, and (d) proposed investigation and remediation; and (2) a proposed Notice of Brownfields Property prepared in accordance with G.S. 130A-310.35.

The full Notice of Intent to Redevelop a Brownfields Property may be reviewed at the Public Library of Charlotte & Mecklenburg County, 310 N. Tryon St., Charlotte, NC 28202 by contacting Allison Aiken at that address or at (704) 336-2725; or at NC 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, and/or requests for a public meeting, 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 John J. Huson, as he 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 he effects publication of this Summary in the North Carolina Register on the date he 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 October 16, 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

PUBLIC NOTICE
STATE OF NORTH CAROLINA
ENVIRONMENTAL MANAGEMENT COMMISSION/ NPDES PROGRAM
1617 MAIL SERVICE CENTER
RALEIGH, NC 27699-1617
NOTIFICATION OF INTENT TO REISSUE A NPDES WASTEWATER GENERAL PERMIT

On the basis of thorough staff review and application of NC General Statute 143.21, Public law 92-500 and other lawful standards and regulations, the North Carolina Environmental Management Commission proposes to reissue the National Pollutant Discharge Elimination System (NPDES) General Permit for point source discharges of wastewater associated with the following activities:

NPDES General Permit No. NCG520000 for discharge of treated wastewater resulting from in-stream sand mining, associated stormwater and similar wastewaters.

Written comments regarding the proposed general permit renewal will be accepted no later than November 2, 2007. All comments received within the comment period will be considered in the final determination regarding permit reissuance. The Director of the NC Division of Water Quality may decide to hold a public hearing for the proposed permit should the Division receive a significant degree of public interest.

Copies of the draft permit, Fact Sheet, and other supporting information used to determine conditions present in the draft permit are available upon request and payment of the costs of reproduction. Mail comments and/or requests for information to the NC Division of Water Quality at the above address, or contact Agyeman Adu-Poku with the Division's Point Source Branch at (919) 733-5083, extension 508, or email at Agyeman.adupoku@ncmail.net. Please include the NPDES permit number (NCG520000) in any communication. Interested persons may also visit the Division of Water Quality at 512 N. Salisbury Street, Raleigh, NC 27604-1148 between the hours of 8:00 a.m. and 5:00 p.m. Monday through Friday to review information on file.

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 01 – DEPARTMENT OF ADMINISTRATION

Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Administration intends to adopt the rules cited as 01 NCAC 44A .0101 - .0102, .0201 - .0208, .0301, .0401 - .0404, .0501 - .0502, .0601 - .0606.

Proposed Effective Date: February 1, 2008

Public Hearing:

Date: November 15, 2007

Time: 10:00 a.m.

Location: N.C. Department of Administration, Administration Building, 5th Floor, Commission Room 5034, 116 West Jones Street, Raleigh, North Carolina 27603

Reason for Proposed Action: The Secretary of Administration is adopting rules to comply with G.S. 143-48(d1) and 143-128.3(e1).

Procedure by which a person can object to the agency on a proposed rule: Written objections may be submitted to Bridget Wall, Assistant to the Secretary, North Carolina Department of Administration, Office for Historically Underutilized Businesses. Objections may be received by mail, delivery service, hand delivery or facsimile transmission. Objections may be directed to Bridget Wall, Assistant to the Secretary, 1336 Mail Service Center, Raleigh, NC 27699-1336. Fax: (919) 807-2335.

Comments may be submitted to: Bridget Wall, Assistant to the Secretary, N.C. Department of Administration, Office for Historically Underutilized Businesses, 1336 Mail Service Center, Raleigh, NC 27699-1336, phone (919) 807-2333, fax (919) 807-2335, email Bridget.Wall@ncmail.net

Comment period ends: December 14, 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 44 – OFFICE FOR HISTORICALLY UNDERUTILIZED BUSINESSES

SUBCHAPTER 44A - CERTIFICATION

SECTION .0100 – GENERAL PROVISIONS

01 NCAC 44A .0101 SCOPE

The rules in this Section are used to determine if a business is a minority business in accordance with G.S. 143-128.2.

Authority G.S. 143-48(d1); 143-128.3(e1).

01 NCAC 44A .0102 DEFINITIONS

As used in this section, the following terms shall have the following definitions:

- (1) "HUB" means Historically Underutilized Business.
- (2) "HUB Certification" means the determination of a vendor's eligibility as a HUB.
- (3) "HUB Office" means the Department of Administration's Office for Historically Underutilized Businesses.
- (4) "IRS" means the United States Internal Revenue Service.
- (5) "Person" means a natural person, and does not include a corporation or other business entity.

Authority G.S. 143-48(d1); 143-128.3(e1).

SECTION .0200 - HUB CERTIFICATION APPLICATION

01 NCAC 44A .0201 APPLICATION

A business shall complete the following steps to initiate an application for certification:

- (1) The business shall complete an application using the Vendor Link NC system <http://www.ips.state.nc.us/ips/Vendor/vndrtips.asp>:

- (2) The business shall complete, sign and attest to the information submitted online in the Vendor Link NC system; and
- (3) The application is not complete until an Affidavit for Certification is received by the HUB Office.

Authority G.S. 143-48(d1); 143-128.3(e1).

01 NCAC 44A .0202 DOCUMENTATION

- (a) HUB staff shall request documentation to establish the ownership, management, and control of daily business operations of the business pursuant to Rule .0301 of this Subchapter.
- (b) If the documentation provided by the business does not demonstrate ownership, management and control of daily business operations by the business, HUB Office staff shall conduct a site visit.
- (c) The HUB Office shall not consider organizational changes to the business during the eligibility determination process.

Authority G.S. 143-48(d1); 143-128.3(e1).

01 NCAC 44A .0203 APPROVAL

- (a) The HUB Office shall grant HUB Certification if the business meets the definition of minority business found at G.S. 143-48(d1) and 143-128.2(g).
- (b) The business shall log on to the Vendor Link system at least once during each 12 month period or be removed.

Authority G.S. 143-48(d1); 143-128.3(e1).

01 NCAC 44A .0204 DURATION

Certification shall remain in effect for two years unless there is a change in the business ownership, management or control of daily business operations that affects the HUB status.

Authority G.S. 143-48(d1); 143-128.3(e1).

01 NCAC 44A .0205 CHANGES IN OWNERSHIP OR MANAGEMENT AND CONTROL

HUB vendors shall notify the HUB Office in writing of any changes in the ownership or the management and control of daily business operations of their companies within 30 days of the changes.

Authority G.S. 143-48(d1); 143-128.3(e1).

01 NCAC 44A .0206 DENIAL

- (a) The HUB Office shall deny HUB Certification if the business does not meet the definition found at G.S. 143-48(d1) or 143-128.3(e1).
- (b) If the business wishes to submit a new request for HUB Certification it may do so after a period of 12 months from the date of denial.
- (c) Vendors who are denied HUB Certification shall have a right to review pursuant to Section .0600 of this Subchapter.

Authority G.S. 143-48(d1); 143-128.3(e1).

01 NCAC 44A .0207 RENEWAL

- (a) To renew HUB certification the HUB shall attest that there have been no changes in the ownership or the management and control of daily business operations of the business entity since the last certification or renewal.
- (b) If there has been a change in the ownership or the management and control of daily business operations of the business entity, the HUB shall submit documentation detailing the change(s) within 30 days of the change.
- (c) In the on-line Vendor Link system, HUB status is "Inactive" if the vendor fails to update or submit necessary documentation.

Authority G.S. 143-48(d1); 143-128.3(e1).

01 NCAC 44A .0208 INACTIVITY

If there has been no activity by the HUB vendor in the Vendor Link system within a twelve (12) month period, the vendor profile shall be removed from the system.

Authority G.S. 143-48(d1); 143-128.3(e1).

SECTION .0300 - DOCUMENTATION

01 NCAC 44A .0301 REQUIRED DOCUMENTATION

The Office for Historically Underutilized Businesses shall request the following documentation based on the business structure of the applicant, to determine that the applicant's ownership, management and control of daily business operations meet the requirements of G.S. 143-128.2(g):

- (1) Sole Proprietorship
 - (a) Bank signature card;
 - (b) Either:
 - (i) City Tax Records; or
 - (ii) County Tax Records;
 - (c) Company profile, including roles and responsibilities of officers and owners;
 - (d) Home state certification (out of state vendors);
 - (e) Professional License;
 - (f) Proof of ethnicity and gender of owner (drivers license, birth certificate, tribal enrollment documents or passport);
 - (g) Résumé of Principal Owner; and
 - (h) Either:
 - (i) Business Privilege License;
 - or
 - (ii) Certificate of Assumed Name (if other than the owner).
- (2) General Partnership
 - (a) Bank signature card;
 - (b) Either:
 - (i) City Tax Records; or
 - (ii) County Tax Records;

- (c) Company profile, including roles and responsibilities of officers and owners;
 - (d) Home state certification (out of state vendors);
 - (e) Partnership Agreement;
 - (f) Professional Licenses;
 - (g) Proof of ethnicity and gender of owners (drivers licenses, birth certificates, tribal enrollment documents or passport);
 - (h) Verification of start-up investment capital (example: cash investment, opening of business account, equipment bill of sale, bank statement);
 - (i) Résumés of Owners;
 - (j) Amendments to the Partnership Agreement; and
 - (k) Either:
 - (i) Business Privilege License;
 - or
 - (ii) Certificate of Assumed Name (if other than the owners).
- (3) Limited Partnership
- (a) Bank signature card;
 - (b) Business privilege license;
 - (c) Certificate of Assumed Name (if applicable);
 - (d) Certificate of Limited Partnership (filed with the NC Secretary of State);
 - (e) Either:
 - (i) City Tax Records; or
 - (ii) County Tax Records;
 - (f) Company profile, including roles and responsibilities of officers and owners;
 - (g) Home state certification (out of state vendors);
 - (h) Partnership Agreement;
 - (i) Professional Licenses;
 - (j) Proof of ethnicity and gender of owners (drivers licenses, birth certificates, tribal enrollment documents or passports);
 - (k) Verification of start-up investment capital (example: cash investment, opening of business account, equipment bill of sale, bank statement);
 - (l) Résumés of Owners;
 - (m) Annual Information Return (filed with the NC Secretary of State); and
 - (n) Either:
 - (i) Copy of IRS form SS4; or
 - (ii) Employer Identification Numbers (Federal and State).
- (4) Limited Liability Partnership
 - (a) Bank signature card;
 - (b) Business privilege license;
 - (c) Certificate of Assumed Name;
 - (d) Certificate of Limited Liability Partnership (filed with NC Secretary of State);
 - (e) Either:
 - (i) Copy of IRS form SS4; or
 - (ii) Employer Identification Numbers (Federal and State).
 - (f) Company profile, including roles and responsibilities of officers and owners;
 - (g) Home state certification (out of state vendors);
 - (h) Partnership Agreement;
 - (i) Professional Licenses;
 - (j) Proof of ethnicity and gender of owners (drivers licenses, birth certificates, tribal enrollment documents or passport);
 - (k) Verification of start-up investment capital (example: cash investment, opening of business account, equipment bill of sale, bank statement);
 - (l) Résumés of Owners;
 - (m) Annual Report (filed with the NC Secretary of State); or
 - (n) Either:
 - (i) Copy of IRS form SS4; or
 - (ii) Employer Identification Numbers (Federal and State).
 - (5) Limited Liability Corporation:
 - (a) Articles of Organization;
 - (b) Bank resolutions and signature card;
 - (c) Business privilege license;
 - (d) Certificate of Assumed Name (if applicable); and
 - (e) Either:
 - (i) Certificate of Limited Liability Corporation; or
 - (ii) Certificate for filing with the North Carolina Secretary of State as a Professional Limited Liability Company;
 - (f) Either:
 - (i) City Tax Records; or
 - (ii) County Tax Records;
 - (g) Company profile, including roles and responsibilities of officers and owners
 - (h) Home state certification (out of state vendors);
 - (i) Operating Agreement;
 - (j) Professional Licenses;

- (k) Proof of ethnicity and gender of owners (drivers licenses, birth certificates, tribal enrollment documents or passport);
- (l) Verification of start-up investment capital (example: cash investment, opening of business account, equipment bill of sale, bank statement);
- (m) Résumés of Owners;
- (n) Annual Report (filed with the NC Secretary of State); and
- (o) Either:
 - (i) Certificate of Assumed Name for Corporation; or
 - (ii) Employer Identification Numbers (Federal and State);
- (6) Corporation:
 - (a) Articles of Incorporation;
 - (b) Bank resolutions and signature card;
 - (c) Business privilege license;
 - (d) Certificate of Assumed Name (if other than the owners)
 - (e) Either:
 - (i) City or County Tax Records;
 - or
 - (ii) County Tax Records;
 - (f) Company profile, including roles and responsibilities of officers and stockholders;
 - (g) Copy of actual Stock Ledger;
 - (h) Copy of Stock certificate (no specimens);
 - (i) Corporate By-Laws;
 - (j) Home state certification (out of state vendors);
 - (k) Proof of ethnicity and gender of stockholders (drivers licenses, birth certificates, tribal enrollment documents or passport);
 - (l) Proof of Purchase if corporation was a buyout;
 - (m) Verification of start-up investment capital (example: cash investment, opening of business account, equipment bill of sale, bank statement);
 - (n) Professional Licenses;
 - (o) Minutes of most recent board meeting;
 - (p) Résumés of stockholders; and
 - (q) Two of the following:
 - (i) Annual Report (filed with the NC Secretary of State);
 - (ii) Certificate of Assumed Name for Corporation;

- (iii) Employer Identification Numbers (Federal and State);
- (iv) IRS Tax Form 1120;
- (v) IRS Schedule E; or
- (vi) IRS Schedule K-1

Authority G.S. 143-48(d1); 143-128.3(e1).

SECTION .0400 - THIRD PARTY CHALLENGE

01 NCAC 44A .0401 CHALLENGE INITIATION

A third party may challenge, by notarized affidavit, the HUB certification of any business. The challenge shall include detailed reasons or evidence for the challenge.

Authority G.S. 143-48(d1); 143-128.3(e1).

01 NCAC 44A .0402 HUB OFFICE INVESTIGATION

Once a challenge has been initiated, the HUB Office shall investigate by requesting additional data and conducting an on-site review at the business location.

Authority G.S. 143-48(d1); 143-128.3(e1).

01 NCAC 44A .0403 DETERMINATION

The HUB Office shall notify the challenger and HUB in writing of the outcome of the investigation.

Authority G.S. 143-48(d1); 143-128.3(e1).

01 NCAC 44A .0404 HUB STATUS DURING CHALLENGE

The HUB certification status shall remain in effect during the challenge process.

Authority G.S. 143-48(d1); 143-128.3(e1).

SECTION .0500 - REVOCATION OF HUB CERTIFICATION

01 NCAC 44A .0501 REASONS FOR REVOCATION

HUB Certification shall be revoked for any of the following reason(s):

- (1) The business makes changes the ownership or management and daily business operations of the company that render it no longer a HUB;
- (2) The HUB Office determines that the business is not a HUB.
- (3) The business is ineligible to contract with the State of North Carolina pursuant to G.S. 143-59.2, or
- (4) The business fails to notify the HUB Office within 30 days of any changes in ownership or management and control of daily business operations;

Authority G.S. 143-48(d1); 143-128.3(e1).

01 NCAC 44A .0502 NOTICE

(a) The HUB Office shall notify the business in writing by certified mail of the decision to revoke HUB Certification and shall state the reason(s) for revocation.

(b) The HUB Office shall advise the HUB of its right to a review and given 21 business days in which to exercise this right.

(d) If no review is requested, revocation of the HUB's status shall be enforced.

(e) The vendor may reapply for HUB certification 12 months from the date of the revocation notice.

Authority G.S. 143-48(d1); 143-128.3(e1).

SECTION .0600 - REVIEW

01 NCAC 44A .0601 REVIEW

To exercise a right of review, an review request shall be made in writing and addressed to the HUB Office Director within 21 business days of the date of the denial or revocation notice.

Authority G.S. 143-48(d1); 143-128.3(e1).

01 NCAC 44A .0602 CONTENTS

The review shall state the specific reason(s) why the denial or revocation was improper based on the HUB eligibility requirements and the documentation submitted.

Authority G.S. 143-48(d1); 143-128.3(e1).

01 NCAC 44A .0603 CRITERIA

The HUB Director shall consider and base the decision on the eligibility requirements.

Authority G.S. 143-48(d1); 143-128.3(e1).

01 NCAC 44A .0604 DECISION

The HUB Director shall render a written decision within 45 business days of receipt of the review.

Authority G.S. 143-128.3(e1).

01 NCAC 44A .0605 STATUS PENDING REVIEW

The HUB certification status remains in effect pending a review.

Authority G.S. 143-48(d1); 143-128.3(e1).

01 NCAC 44A .0606 APPEAL

The business may file a contested case with the Office of Administrative Hearings pursuant to G.S. 150B-23 if it is not satisfied with the decision of the Director.

Authority G.S. 143-48(d1); 143-128.3(e1).

Notice is hereby given in accordance with G.S. 150B-21.2 that the Social Services Commission intends to amend the rules cited as 10A NCAC 06R .0501 - .0503, .0508.

Proposed Effective Date: February 1, 2008

Public Hearing:

Date: November 19, 2007

Time: 10:00 a.m.

Location: Social Services Commission, Conference Room 832, (8th Floor, Albemarle Building), 325 N. Salisbury Street, Raleigh, NC

Reason for Proposed Action: In FY 99-2000, members of the North Carolina Adult Day Services Association, representing approximately 75% of North Carolina adult day service providers, approached the Division of Aging [and Adult Services] regarding updating and revising the North Carolina Adult Day Care and Day Health Services Standards for Certification. This manual is a compilation of administrative procedure act rules governing the certification and recertification of adult day care and adult day health care programs. Updates were made and approved by the Rules Review Commission in November, 2006. Discrepancies between changes made to 06R rules and the 06S rules were later discovered and rules were resubmitted for approval. Further changes and modifications were discovered during rule training and the attached rules represent these findings.

Procedure by which a person can object to the agency on a proposed rule: By phone or in writing to Glenda Artis, 2101 Mail Service Center, Raleigh, NC 27699-2101, (919) 733-0440, glenda.artis@ncmail.net.

Comments may be submitted to: Glenda Artis, 2101 Mail Service Center, Raleigh, NC 27699-2101, phone (919) 733-0440, fax (919) 715-0868, email glenda.artis@ncmail.net

Comment period ends: December 14, 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

TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

☐ Substantive (≥\$3,000,000)
☒ None

CHAPTER 06 – AGING: PROGRAM OPERATIONS

SUBCHAPTER 06R - ADULT DAY CARE STANDARDS FOR CERTIFICATION

SECTION .0500 - PROGRAM OPERATION

10A NCAC 06R .0501 PLANNING PROGRAM ACTIVITIES

(a) Enrollment Policies and Procedures

- (1) Each adult program shall have enrollment policies. Enrollment policies shall be in writing as a part of the program policies and shall define the population served. These policies serve as the basis for determining who shall be accepted into the program and for planning activities appropriate for the participants. The policies shall be specific to prevent enrolling people whose needs cannot be met by the planned activities and shall provide for discharge of participants whose needs can no longer be met or who can no longer be cared for safely. If a day care program serves semi-ambulatory or non-ambulatory persons, it shall be so stated in the admissions criteria.
- (2) Prior to enrollment, the applicant, family members or other ~~caretaker~~ caregiver shall have a minimum of one personal interview with a minimum of one program staff member. During the interview, the staff shall complete initial documentation identifying social and medical care needs, any designated spiritual, religious or cultural needs, and a determination of whether the program can meet the individual's expressed needs. The staff person doing the interviewing shall sign the determination of needs and the ~~responsible party-applicant, family member or other caregiver~~ shall sign the application for enrollment. These signed documents shall be obtained before the individual's first day of attendance as a participant in the program.
- (3) A medical examination report signed by a physician, nurse practitioner or physician's assistant, completed within the prior ~~six~~ three months, shall be obtained by the program within 30 days of enrollment. This report must be updated annually no later than the anniversary date of the initial report.
- (4) At enrollment, or in the initial interview, the program policies shall be discussed with the ~~each applicant and applicant~~ family member or other ~~caretaker, caregiver~~ and a copy of the program policies shall be provided.

(5) Documentation of receipt of and agreement to abide by the program policies by the ~~participant or responsible party-applicant, family member or other caregiver~~ shall be obtained by the program and kept in the participant's file.

(6) The program policies shall contain:

- (A) a discharge policy outlining the criteria for discharge and notification procedures for discharge, the timeframe and procedures for notifying ~~the family or responsible party applicant, family member or other caregiver~~ of discharge, and referral or follow-up procedures;
- (B) a medication policy as specified in Rule .0505 of this Section;
- (C) a description of participant's rights;
- (D) grievance policies and procedures for families;
- (E) advance directives policy;
- (F) non-discrimination policies;
- (G) procedure to maintain confidentiality;
- (H) policy on reporting suspected ~~elder~~ abuse or neglect;
- (I) description of the geographical area served by the program; and
- (J) inclement weather policies.

(b) Planning Services for Individual Participants

- (1) Within 30 days of enrollment of a new participant, the program shall perform a comprehensive assessment and written service plan for each individual. The assessment shall address the individual's ability to perform activities of daily living and instrumental activities of daily living while in the program. The mental, social, living environment, economic and physical health status of the individual shall also be assessed. The service plan shall be signed and dated by the program director or the director's designee. For adult day health participants the health component of the service plan shall be written and signed by a registered nurse.
- (2) In developing the written service plan, the program shall include input from the participant, family members, or ~~responsible party~~ other caregiver and other agency professionals with knowledge of the individual's needs. The service plan shall be based on strengths, needs and abilities identified in the assessment. The assessment and service plan shall be reviewed at regular intervals, and no less than once every six months. The service plan shall include:
 - (A) the needs and strengths of the participant;
 - (B) the interests of the participant;

- (C) the measurable service goals and objectives of care for the participant while in the day care program;
 - (D) the type of interventions to be provided by the program in order to reach desired outcomes;
 - (E) the services to be provided by the program to achieve the goals and objectives;
 - (F) the roles of participant, family, caregiver, volunteers and program staff; and
 - (G) the time limit for the plan, with provision for review and renewal.
 - (3) Progress notes in the participant's record shall be updated at least every three months.
 - (4) The participant, ~~caregiver~~ caregiver, and other service providers ~~shall have the opportunity to~~ may contribute to the development, implementation and evaluation of the service plan.
 - (5) Any unusual behavior, change in mood, change in attitude or need for help or services shall be reported ~~to by~~ the program. If the participant is a social services client, the report shall be made to the participant's family, caregiver, or responsible party and the department of social services worker or the social worker designated as consultant to the day care program by the department. If the participant is not a social services client, the report shall be made to the person's family, caregiver or responsible party. A note shall be made in the participant's record of action taken.
 - (6) The participant or the responsible party may choose the days and number of days the participant will attend, with the program director's approval.
 - (7) The reason for any unscheduled participant absence shall be determined by the program staff and documented on the day it occurs. The program shall attempt to contact the absent participant or the responsible party.
 - (8) The adult day care program ~~shall have responsibility~~ is responsible for the participant when a participant is registered in attendance. A participant leaving the program for part of a day shall sign out relieving the staff of further responsibility. If a participant has emotional or mental impairment which requires supervision and that person needs or wants to leave the program during the day, the social worker, family, caregiver, friend, or responsible party shall sign the person out.
- (c) Program Activities Plan
- (1) The day care center or home shall have a program activities plan which meets the following criteria:
 - (A) Overall planning of activities shall be based on elements of the individual service plans.
 - (B) The primary program mode shall be the group process, both large and small groups, with provision for individual activities and services as needed.
 - (C) Activities shall be adaptable and modifiable to allow for greater participation and to maintain participant's individual skill level.
 - (D) Activities shall be consistent with the stated program goals.
 - (E) Activities shall be planned jointly by staff and participants. Staff shall encourage participants to participate in the planning and operation of the program as much as they are able, and to use their skills, talent and knowledge in program planning and operation.
 - (F) All program activities shall be supervised by program staff.
 - (G) Participants ~~shall have the choice of refusing~~ may refuse to participate in any given activity.
 - (2) The activities schedule shall provide for the inclusion of cognitive activities to be available on a daily basis, and be designed to:
 - (A) stimulate thinking and creativity;
 - (B) provide opportunities for learning new ideas and skills;
 - (C) help maintain existing reasoning skills and knowledge base; and
 - (D) provide opportunities to utilize previously learned skills.
 - (3) The activities schedule shall provide for the inclusion of physical activities to be available on a daily basis, and be designed to:
 - (A) improve or maintain mobility and overall strength; and
 - (B) increase or maintain joint range of motion.
 - (4) The activities schedule shall provide for the inclusion of psychosocial activities to be available on a daily basis, and be designed to:
 - (A) provide opportunities for social interaction;
 - (B) develop a sense of belonging;
 - (C) promote goal-oriented use of time;
 - (D) create feelings of accomplishment;
 - (E) foster dignity and self-esteem;
 - (F) prompt self-expression; and
 - (G) provide fun and enjoyment.
 - (5) The activities schedule shall:
 - (A) be in writing, specifying the name of each activity to be provided, the days of the week each activity shall be

- conducted, and the approximate length of time of each activity;
- (B) indicate the length of time the schedule is to be followed; and
- (C) be posted weekly or monthly in a prominent place in the facility.

Authority G.S. 131D-6; 143B-153.

10A NCAC 06R .0502 NUTRITION

(a) ~~The adult day program shall provide a~~ midday meal ~~shall be provided to each participant in attendance.~~~~attendance at an adult day care program during mealtime.~~ The meal shall provide at least one-third of an adult's daily nutritional requirement as specified by the United States Department of Agriculture, Dietary Guidelines for Americans, which are incorporated by reference, including any subsequent amendments or additions to these guidelines. These guidelines may be viewed and downloaded from the Internet at <http://www.health.gov/dietaryguidelines/> at the following website: ~~(<http://www.healthierus.gov/dietaryguidelines/>)~~. The A registered or licensed dietitian or nutritionist shall approve the menu. ~~menu shall be approved by a registered or licensed dietitian or nutritionist.~~

(b) The adult day program shall offer ~~snacks~~ snacks and fluids ~~shall be offered to meet the participant's nutritional and fluid needs.~~ At a minimum, The adult day program shall offer a mid-morning and mid-afternoon snack shall be offered daily to participants. Snacks shall be planned to keep sugar, salt and cholesterol intake to a minimum.

(c) ~~The adult day program shall provide a~~ A therapeutic diet, ~~diet shall be provided,~~ if prescribed in writing by a physician, physician's assistant or nurse practitioner for any participant. If therapeutic diets are prepared by program staff, such staff shall have training in planning and preparing therapeutic diets or shall provide documentation of previous training and education sufficient to assure ability to prepare meals in accordance with a physician's prescription.

(d) A registered dietitian or certified nutritionist shall give consultation to the staff on basic and special nutritional needs and proper food handling techniques and the prevention of foodborne illness.

(e) An adult day care program shall neither admit nor continue to serve a participant whose dietary requirements cannot be accommodated by the program.

(f) ~~Meals-~~The adult day program shall ~~be stored, prepared and served~~ store, prepare and serve meals in a sanitary manner using safe food handling techniques such as those recommended by the United States Department of Agriculture, at the following website:

(http://www.fsis.usda.gov/Fact_Sheets/Safe_Food_Handling_Fact_Sheets/index.asp). The food service provider shall abide by the food safety and sanitation practices required by the Commission for ~~Health Services~~ Public Health rules applying to adult day care ~~facilities.~~ Facilities, including any subsequent amendments or additions, which are incorporated by reference. Copies of the rules may be found at the following website: (<http://www.deh.enr.state.nc.us/ehs/images/rules/t15a-18a.33.pdf>).

Authority G.S. 131D-6; 143B-153.

10A NCAC 06R .0503 TRANSPORTATION

(a) For programs providing or arranging for public transportation, the adult day care program shall have a transportation policy that includes routine and emergency ~~procedures.~~ procedures, with a copy of the relevant procedures located in all vehicles. Accidents, medical emergencies, weather emergencies and escort issues shall be addressed.

(b) When the adult day care program provides transportation, the following requirements shall be met to ensure the health and safety of the participants:

- (1) Each person transported shall have a seat in the vehicle.
- (2) Participants shall be transported no more than 30 minutes without being offered the opportunity to have a rest stop.
- (3) Vehicles used to transport participants shall be equipped with seatbelts. Participants shall be instructed to use seatbelts while being transported.
- (4) Vehicles shall be equipped with a first aid kit, consisting of the items listed in 10A NCAC 06S .0301(a), and a fire extinguisher.
- (5) A copy of the transportation policy shall be located in the vehicle used for transport.

Authority G.S. 131D-6; 143B-153.

10A NCAC 06R .0508 RECORDS

(a) Individual ~~Client~~ Participant Records. Each adult day care program shall maintain records to document the progress of each participant and to document program operation. Such records shall be kept in a locked file. An individual folder for each participant shall be established and maintained and include the following:

- (1) a signed application recording:
 - (A) ~~client's~~ participant's full name;
 - (B) address and telephone number;
 - (C) date of birth, marital status and living arrangement of ~~client,~~ participant;
 - (D) time of day ~~client~~ participant will arrive and time of day ~~client~~ participant will leave the program;
 - (E) travel arrangements to and from the program for the ~~client,~~ participant;
 - (F) name, address and telephone number of at least two family members or friends who are responsible for the ~~client~~ participant and can be contacted in emergencies;
 - (G) name, address and telephone number of a licensed medical service provider who will see the ~~client~~ participant on request; and
 - (H) personal concerns and knowledge of the caregiver that may have an impact on the ~~client's~~ participant's care plan.

- (2) copies of all current and former signed authorizations for the day care program to receive and give out confidential information on the participant. Such authorization shall include the name of the party from whom information is requested and to whom information is given. Such authorization shall be dated within the prior 12 months and obtained each time a request for ~~client~~ participant information is made.
 - (3) a signed authorization for the ~~client-participant~~ participant to receive emergency medical care from any licensed medical practitioner, if such emergency care is needed by the ~~client~~; participant;
 - (4) a medical examination report conducted within the past three months of enrollment and updated annually, signed by a licensed physician, physician's assistant or nurse practitioner. The report shall include information on:
 - (A) current diseases and chronic conditions and the degree to which these diseases and conditions require observation by day care staff, and restriction of normal activities by the ~~client-participant~~;
 - (B) presence and degree of psychiatric problems;
 - (C) amount of direct supervision the ~~client-participant~~ requires;
 - (D) any limitations on physical activities;
 - (E) listing of all medications with dosages and times medications are to be administered; and
 - (F) most recent date participant was seen by doctor.
 - (5) assessment forms as identified in Rule .0501(a)(2) and (b)(1) and (b)(2) of this Section.
 - (6) progress notes which are the written report of staff discussions, conferences, consultation with family or other interested parties, evaluation of a participant's progress and any other information regarding a participant's situation.
 - (7) service plans for the participant, including scheduled days of attendance, for the preceding 12 months.
 - (8) a signed authorization if the participant or his responsible party will permit photographs, video, audio recordings or slides of the participant to be made by the day care program, whether for medical documentation, publicity, or any other purpose. Such authorization shall specify how and where such photographs, videos, audio recordings or slides will be used, and ~~must~~ shall be obtained prior to taking any photographs, videos, audio recordings or slides of the participant.
 - (9) a statement signed by the participant, a family member or other responsible party (when applicable) acknowledging receipt of the program policies and agreeing to uphold program policies pertaining to the participant.
- (b) ~~The adult day program Records for Day Care Centers and Homes shall be kept~~ keep the following program records a minimum of three six years; years and shall contain:
- (1) copies of activity schedules;
 - (2) monthly records of expenses and income, including fees collected, and fees to be collected;
 - (3) all bills, receipts and other ~~pertinent~~ information which document expenses and income;
 - (4) a daily record of attendance of participants by name;
 - (5) accident reports;
 - (6) a record of staff absences, annual leave and sick leave, including dates and names of substitutes;
 - (7) reports on emergency and fire drills;
 - (8) individual personnel records on all staff members including:
 - (A) application for employment;
 - (B) evidence of a state criminal history check on each employee providing direct care;
 - (C) job description;
 - (D) medical certification of absence of a health condition that would pose a risk to others;
 - (E) written note or report on any personnel action taken with the employee;
 - (F) written report of annual employee review;
 - (G) CPR and first aid training documentation; and
 - (H) signed statement to keep all participant information confidential.
 - (9) a copy of all written policies, including:
 - (A) program policies;
 - (B) personnel policies;
 - (C) ~~agreements regarding shared space or space licensed by other Divisions; or contracts with other agencies or~~ individuals;
 - (D) plan for emergencies; and
 - (E) evacuation plan;
 - (10) program evaluation reports; and
 - (11) control file of ~~DSS-1360s~~ DSS-5027 (SIS Client Entry Form) for all participants for whom Social Services Block Grant (Title XX) reimbursement is claimed.

Authority G.S. 131D-6; 143B-153.

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

Proposed Effective Date: April 1, 2008

Public Hearing:

Date: December 3, 2007

Time: 10:00 a.m.

Location: Room 201 Council Building, NC Division of Health Service Regulation, Dorothea Dix Campus, 701 Barbour Drive, Raleigh, NC 27603

Reason for Proposed Action: *The proposed amendment will add a provision to the existing language for the Hospital Bill of Rights to provide for the equality of visiting privileges for patient designated visitors.*

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: Nadine Pfeiffer, 2701 Mail Service Center, Raleigh, NC 27699-2701, phone (919) 855-3758, fax (919) 733-2757, email Nadine.Pfeiffer@ncmail.net

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

SUBCHAPTER 13B – LICENSING OF HOSPITALS

SECTION .3300 - PATIENT'S BILL OF RIGHTS

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

- (a) A patient has the right to respectful care given by competent personnel.
- (b) A patient has the right, upon request, to be given the name of his attending physician, the names of all other physicians directly participating in his care, and the names and functions of other health care persons having direct contact with the patient.
- (c) A patient has the right to every consideration of his privacy concerning his own medical care program. Case discussion, consultation, examination, and treatment are considered confidential and shall be conducted discreetly.
- (d) A patient has the right to have all records pertaining to his medical care treated as confidential except as otherwise provided by law or third party contractual arrangements.
- (e) A patient has the right to know what facility rules and regulations apply to his conduct as a patient.
- (f) The patient has the right to expect emergency procedures to be implemented without unnecessary delay.
- (g) The patient has the right to good quality care and high professional standards that are continually maintained and reviewed.
- (h) The patient has the right to full information in laymen's terms, concerning his diagnosis, treatment and prognosis, including information about alternative treatments and possible complications. When it is not possible or medically advisable to give such information to the patient, the information shall be given on his behalf to the patient's designee.
- (i) Except for emergencies, the physician must obtain the necessary informed consent prior to the start of any procedure or treatment, or both.
- (j) A patient has the right to be advised when a physician is considering the patient as a part of a medical care research program or donor program. Informed consent must be obtained prior to actual participation in such program and the patient or legally responsible party, may, at any time, refuse to continue in any such program to which he has previously given informed consent. An Institutional Review Board (IRB) may waive or alter the informed consent requirement if it reviews and approves a research study in accord with federal regulations for the protection of human research subjects including U.S. Department of Health and Human Services (HHS) regulations under 45 CFR Part 46 and U.S. Food and Drug Administration (FDA) regulations under 21 CFR Parts 50 and 56. For any research study proposed for conduct under an FDA "Exception from Informed Consent Requirements for Emergency Research" or an HHS "Emergency Research Consent Waiver" in which informed consent is waived but community consultation and public disclosure about the research are required, any facility proposing to be engaged in the research study also must verify that the proposed research study has been registered with the North Carolina Medical Care Commission. When the IRB reviewing the research study has authorized the start of the community consultation process required by the federal regulations for emergency research, but before the beginning of that process, notice of the proposed research study by the facility shall be provided to the North Carolina Medical Care Commission. The notice shall include:

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

The Medical Care Commission may publish all or part of the above information in the North Carolina Register, and may require the institution proposing to conduct the research study to attend a public meeting convened by a Medical Care Commission member in the community where the proposed research study is to take place to present and discuss the study or the community consultation process proposed.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(y) A patient has the right to designate visitors who shall receive the same visitation privileges as the patient's immediate family members, regardless of whether the visitors are legally related to the patient by blood or marriage.

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

Notice is hereby given in accordance with G.S. 150B-21.2 that the Division of Health Service Regulation (DSHR), NC Department of Health and Human Services intends to amend the rules cited as 10A NCAC 14C .2301 - .2305.

Proposed Effective Date: February 1, 2008

Public Hearing:

Date: December 5, 2007

Time: 10:00 a.m.

Location: Room 113 Council building, NC Division of Health Service Regulation, Dorothea Dix Campus, 701 Barbour Drive, Raleigh, NC 27603

Reason for Proposed Action: *The Certificate of Need rules are being amended to eliminate out of date or superfluous requirements for applicants for Computerized Tomography (CT) scanners that have been in the rules because the rules have not been amended since 1994.*

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: *Nadine Pfeiffer, 2701 Mail Service Center, Raleigh, NC 27699-2701, phone (919) 855-3758, fax (919) 733-2757, email Nadine.Pfeiffer@ncmail.net*

Comment period ends: December 14, 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 14 – DIRECTOR, DIVISION OF HEALTH
SERVICE REGULATION**

**SUBCHAPTER 14C – CERTIFICATE OF NEED
REGULATIONS**

**SECTION .2300 – CRITERIA AND STANDARDS FOR
COMPUTED TOMOGRAPHY EQUIPMENT**

10A NCAC 14C .2301 DEFINITIONS

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

- (1) "Approved computed tomography (CT) scanner" means a CT scanner which was not operational prior to the beginning of the review period but which had been issued a certificate of ~~need or had been acquired prior to March 18, 1993 in accordance with 1993 N.C. Sess. Laws c. 7, s. 12. need.~~
- (2) "Computed tomography" means a technique whereby a sharply collimated X-ray beam is passed through the human body from a source which rotates around the body in a specific arc. As the beam passes through the body from its perimeter, its intensity is reduced. The transmitted intensity of the beam varies in accordance with the density of the tissue it passes through and is measured by sensitive detectors and, from this information, two-dimensional cross-sectional pictures or other images may be generated. A computer is used to generate the image from the measurements of X-ray beam intensity. Tissue images can be done with or without contrast agents. Computed tomography services are rendered by CT scanners.
- (3) "Computed tomography (CT) scanner" means an imaging machine which combines the information generated by a scanning X-ray source and detector system with a computer to reconstruct a cross-sectional image of the full body, including the head.
- (4) "Computed tomography (CT) service area" means a geographical area defined by the ~~applicant, which has boundaries that are not farther than 40 road miles from the facility.~~ applicant.

- (5) "CT scan" means one discrete image of a patient produced by a CT scanner.
- (6) "Existing CT scanner" means a computed tomography scanner in operation prior to the beginning of the review period.
- (7) "Fixed CT scanner" means a CT ~~Scanner~~ scanner that is used at only one location or campus.
- (8) "HECT unit" means a unit that is equivalent to one CT scan which is derived by applying a weighted conversion factor to a CT scan in accordance with the Head Equivalent Computed Tomography studies formula developed by the National Electric Manufacturers, based on the "Leonard Methodology".
- (9) "Mobile CT scanner" means a CT scanner and transporting equipment which is moved to provide services at two or more host facilities.
- (10) "Related entity" means the parent company of the applicant, a subsidiary company of the applicant (i.e., the applicant owns 50% or more of another company), a joint venture in which the applicant is a member, or a company that shares common ownership with the applicant (i.e., the applicant and another company are owned by some of the same persons).

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

10A NCAC 14C .2302 INFORMATION REQUIRED OF APPLICANT

(a) An applicant proposing to acquire a CT scanner shall use the acute care facility/medical equipment application form.

(b) An applicant proposing to acquire a CT scanner shall provide the number of CT scans that have been performed on ~~its~~ each existing CT scanners-scanner which is owned by the applicant or a related entity and located in the proposed CT service area for each type of CT scan listed in this Paragraph for the previous 12 month period:

- (1) head scan without contrast;
- (2) head scan with contrast;
- (3) head scan without and with contrast;
- (4) body scan without contrast;
- (5) body scan with contrast;
- (6) body scan without contrast and with contrast;
- (7) biopsy in addition to body scan with or without contrast; and
- (8) abscess drainage in addition to body scan with or without contrast.

(c) The applicant shall project the number of CT scans to be performed on the ~~new-proposed~~ new CT scanner for each type of CT scan listed in this Paragraph for ~~each of the first 12 quarters~~ three years the new CT scanner is proposed to be operated:

- (1) head scan without contrast;
- (2) head scan with contrast;
- (3) head scan without and with contrast;
- (4) body scan without contrast;

- (5) body scan with contrast; (8) abscess drainage in addition to body scan with or without contrast.
- (6) body scan without contrast and with contrast;
- (7) biopsy in addition to body scan with or without contrast; and (d) The applicant shall convert the historical and projected number of CT scans to HECT units as follows:

	Type of CT Scan	No. of Scans		Conversion Factor		HECT Units
1	Head without contrast		X	1.00	=	
2	Head with contrast		X	1.25	=	
3	Head without and with contrast		X	1.75	=	
4	Body without contrast		X	1.50	=	
5	Body with contrast		X	1.75	=	
6	Body without contrast and with contrast		X	2.75	=	
7	Biopsy in addition to body scan with or without contrast		X	2.75 plus body scan HECTs	=	
8	Abscess drainage in addition to body scan with or without contrast		X	4.00 plus body scan HECTs	=	

(e) An applicant proposing to acquire a mobile CT scanner shall provide the information requested in Paragraphs (b), (c), and (d) of this Rule for each proposed host facility.

(f) The applicant shall provide all projected direct and indirect operating costs and all projected revenues for the provision of CT services for each of the first 12 quarters three years the new CT scanner is proposed to be operated.

(g) The applicant shall provide ~~projected costs and projected charges by CPT code for each of the 20 most frequent CT scans to be performed for each of the first 12 quarters three years the new CT scanner is proposed to be operated.~~

(h) If an applicant that has been utilizing a mobile CT scanner proposes to acquire a fixed CT scanner for its facility, the applicant shall demonstrate that its projected charge per CPT code shall not increase more than 10% over its current charge per CPT code on the mobile CT scanner.

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

(j) An applicant proposing to acquire a CT scanner shall demonstrate that it has a written commitment from ~~the radiology group of a hospital that it will accept CT readings from the applicant.~~ a radiologist, licensed to practice medicine in North Carolina, to provide professional interpretation services for the applicant.

(k) An applicant proposing to acquire a CT scanner shall demonstrate that the CT scanner shall be available and staffed for performing CT scan procedures at least 66 hours per week.

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

10A NCAC 14C .2303 PERFORMANCE STANDARDS

An applicant proposing to acquire a CT ~~Scanner-scanner~~ shall demonstrate each of the following:

- (1) each fixed or mobile CT ~~Scanner-scanner~~ to be acquired shall be projected to perform 5,100 HECT units annually in the third year of operation of the proposed equipment;
- (2) each existing fixed or mobile CT scanner which is owned by the applicant or a related

entity and is located in the applicant's CT service area shall have performed at least 5,100 HECT units in the 12 month period prior to submittal of the application; and

(3) each existing and approved fixed or mobile CT scanner which is owned by the applicant or a related entity and is located in the applicant's CT service area shall be projected to perform 5,100 HECT units annually in the third year of operation of the proposed equipment; equipment.

~~(4) each existing mobile CT scanner in the proposed CT service area performed at least an average of 20 HECT units per day per site in the CT scanner service area in the 12 months prior to submittal of the application; and~~

~~(5) each existing and approved mobile CT scanner shall perform at least an average of 20 HECT units per day per site in the CT scanner service area in the third year of operation of the proposed equipment.~~

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

10A NCAC 14C .2304 SUPPORT SERVICES

(a) ~~An~~ With the exception of applicants that currently provide CT services, an applicant proposing to acquire a CT scanner shall document the availability of the following diagnostic services:

- (1) diagnostic radiology services;
- (2) therapeutic radiology services;
- (3) nuclear medicine services; and
- (4) diagnostic ultrasound services.

~~(b) An applicant proposing to acquire a CT scanner shall document the availability of services through written affiliation or referral agreements to treat patients with the following conditions:~~

- ~~(1) neurological conditions;~~
- ~~(2) thoracic conditions;~~
- ~~(3) cardiac conditions;~~

- ~~(4) abdominal conditions;~~
- ~~(5) medical oncological conditions;~~
- ~~(6) radiological oncological conditions;~~
- ~~(7) gynecological conditions;~~
- ~~(8) neurosurgical conditions; and~~
- ~~(9) genitourinary and urogenital conditions.~~

~~(e)(b)~~ An applicant proposing to acquire a mobile CT scanner shall provide:

- (1) referral agreements between each host site and at least one other provider of CT services in the proposed CT service area to document the availability of CT services if patients require them when the mobile unit is not in service at that host site; and
- (2) documentation that each of the services listed in Paragraphs (a) and (b) of this Rule shall be available at each host facility or shall be available through written affiliation or referral agreements.

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

10A NCAC 14C .2305 STAFFING AND STAFF TRAINING

~~(a) An~~ With the exception of applicants that currently provide CT services, ~~an~~ applicant proposing to acquire a CT scanner shall demonstrate that it can meet the following staffing requirements:

- (1) one board certified radiologist who has had:
 - (A) training in computed tomography as an integral part of his or her residency training program; or
 - (B) six months of supervised CT experience under the direction of a qualified diagnostic radiologist; or
 - (C) at least six months of fellowship training, or its equivalent, in CT; or
 - (D) an appropriate combination of CT experience and fellowship training equivalent to Parts (a)(1) (A), (B), or (C) of this Rule;
- (2) at least one radiology technologist registered by the American Society of Radiologic Technologists shall be present during the hours of operation of the CT unit; and
- (3) a radiation physicist with training in medical physics shall be available for consultation for the calibration and maintenance of the equipment. The radiation physicist may be an employee or an independent contractor.

~~(b) The applicant shall provide documentation that the diagnostic radiologist has completed CT training in head, spine, body and musculoskeletal imaging.~~

~~(e)(b)~~ With the exception of applicants that currently provide CT services, ~~An~~ an applicant proposing to acquire a CT scanner shall demonstrate that the following staff training is provided:

- (1) certification in cardiopulmonary resuscitation (CPR) and basic cardiac life support; and

- (2) an organized program of staff education and training which is integral to the services program and ensures improvements in technique and the proper training of new personnel.

~~(d)(c)~~ An applicant proposing to acquire a mobile CT scanner shall document that the requirements in Paragraphs (a) and (b) of this Rule shall be met at each host facility.

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

Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Health and Human Services – DMH/DD/SAS intends to amend the rules cited as 10A NCAC 26C .0101 - .0105 and repeal the rule cited as 10A NCAC 29D .0101.

Proposed Effective Date: *March 1, 2008*

Instructions on How to Demand a Public Hearing: *(must be requested in writing within 15 days of notice): A person may demand a public hearing on the proposed rules by submitting a request in writing to W. Denise Baker, 3018 Mail Service Center, Raleigh, NC 27699-3018.*

Reason for Proposed Action:

10A NCAC 26C .0101 - .0105 – *The proposed amendments are necessary to update and provide accurate information concerning designating facilities for the custody and treatment of involuntary clients.*

10A NCAC 29D .0101 – *Carolina Alternatives, a mental health managed care program ended in March 1999.*

Procedure by which a person can object to the agency on a proposed rule: *The objection, reasons for the objection and the clearly identified portion of the rule to which the objection pertains, may be submitted in writing to W. Denise Baker, 3018 mail Service Center, Raleigh, NC 27699-3018.*

Comments may be submitted to: *W. Denise Baker, 3018 Mail Service Center, Raleigh, NC 27699-3018, phone (919) 715-2780, (919) 733-1221, email denise.w.baker@ncmail.net*

Comment period ends: *December 14, 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 26 – MENTAL HEALTH: GENERAL

SUBCHAPTER 26C – OTHER GENERAL RULES

SECTION .0100 – DESIGNATION OF FACILITIES FOR THE CUSTODY AND TREATMENT OF INVOLUNTARY CLIENTS

10A NCAC 26C .0101 SCOPE

(a) The purpose of Rules .0101 through .0105 of this Section is to establish procedures by which 24-hour facilities may be designated as facilities for the custody and treatment of involuntary clients, pursuant to G.S. 122C-252.

(b) Rules .0101 through .0105 of this Section apply to all those state facilities, 24-hour facilities licensed under Chapter 122C of the General Statutes of North Carolina, and hospitals licensed under Chapter 131E of the General Statutes of North Carolina that wish to provide custody and treatment of those individuals involuntarily committed under Article 5, Parts 7 and 8 of Chapter 122C of the General Statutes.

(c) Facilities that are licensed in accordance with G.S. 122C requirements in the following categories shall be eligible to apply for a designation to care for and treat individuals under petitions of involuntary commitment:

- (1) 10A NCAC 27G .3100 Nonhospital Medical Detoxification for Individuals who are Substance Abusers;
- (2) 10A NCAC 27G .3200 Social Setting Detoxification for Substance Abuse;
- (3) 10A NCAC 27G .3400 Residential Treatment or Rehabilitation for Individuals with Substance Abuse Disorders
- (4) 10A NCAC 27G .5000 Facility Based Crisis for Individuals of all Disability Groups; and
- (5) 10A NCAC 27G .6000 Inpatient Hospital Treatment for Individuals who have Mental Illness or Substance Abuse Disorders.

(d)(e) Clients affected shall include those persons who are mentally ill, mentally retarded with individuals with mental retardation or developmental disabilities and accompanying behavior disorders, and substance abusers as defined in G.S. 122C-3 who require custody and treatment before a district court hearing or after commitment.

Authority G.S. 122C-252.

10A NCAC 26C .0102 APPLICATION

(a) Application—A request for designation shall be made to the appropriate regional office of the Division of Mental Health, Developmental Disabilities and Substance Abuse

Services (DMH/DD/SAS). The address and phone number of the appropriate regional office may be obtained from the Division at 3001 Mail Service Center, Raleigh, North Carolina 27699 3001.

(b) The application for designation shall be in letter form addressed to the Regional Director and shall include the following:

Each request shall include the following:

- (1) name and address of applicant;
- (2) type of facility to be designated and type of service for which designation is requested;
- (3) location of the facility;
- (4) name of the administrator;
- (5) status of license; and
- (6) name and principal business address of holder of license.

Authority G.S. 122C-252.

10A NCAC 26C .0103 REVIEW PROCESS

(a) Upon receipt of the request, the DMH/DD/SAS application, the Regional Director shall review the following regarding the facility prior to granting designation:

- (1) status of licensure by the Division of Facility Services;
- (2) Status of accreditation by an accrediting body, the Joint Commission on Accreditation of Healthcare Organizations, where applicable, and review of a the most recent survey report;
- (3) adequacy of treatment program provided clients;
- (4) consistency of staff coverage with proposed services;
- (5) existence and adequacy of staff capability to manage the more dangerous and violent involuntary client as well as procedures for transfer to a more secure facility, where applicable;
- (6) existence and adequacy of security procedures, including elopement and suicide prevention procedures;
- (7) existence and adequacy of seclusion and restraint capabilities, policies and procedures;
- (8) adequacy of staff training as to North Carolina laws pertaining to the involuntary committed client; and
- (9) existence and adequacy of clients' rights policies and procedures.

(b) The facility shall make information specified in Paragraph (a) of this Rule available to the DMH/DD/SAS Regional Director and such other information as the DMH/DD/SAS Regional Director shall request.

Authority G.S. 122C-252.

10A NCAC 26C .0104 DESIGNATION

(a) The DMH/DD/SAS Regional Director shall designate as facilities for the custody and treatment of involuntary clients those facilities that demonstrate both treatment capability and

the capability to assure the safety of the client and the general public.

(b) The ~~DMH/DD/SAS~~~~Regional Director~~ shall notify the ~~applying~~ facility in writing of its designation status.

(c) ~~The DMH/DD/SAS~~ Each Regional Director shall notify the Clerks of Superior Court in that region of those facilities designated with copies to be sent to the ~~area programs~~. local management entities. For purposes of this Rule, local management entity shall have the same definition as set forth in G.S. 122C-3(20b).

(d) A list of designated facilities may be obtained from the ~~DMH/DD/SAS~~~~Division at 3001 Mail Service Center, Raleigh, North Carolina 27699-3001~~ at a cost to cover printing and ~~postage~~. postage or may be downloaded from the DMH/DD/SAS website at <http://www.dhhs.state.nc.us/ivc>.

(e) A facility granted designation shall notify the DMH/DD/SAS of any changes in operation concerning any of the information submitted with the original request.

~~(f)(e)~~ Designation may be terminated by the ~~DMH/DD/SAS~~~~Regional Director~~ or his designee upon finding that the facility no longer meets the qualifications for designation and is no longer able to provide ~~appropriate~~ treatment.

Authority G.S. 122C-252.

10A NCAC 26C .0105 APPEAL

(a) Any facility denied designation or whose designation has been terminated under this Section shall have the right of appeal ~~before the Division Director, pursuant to G.S. 150B-23, and the rules on contested cases codified in 10A NCAC 26A .0200, the~~ contested case process set forth in G.S. 150B, Article 3.

(b) ~~The Division Director shall make the final agency decision in such appeals.~~

(c) ~~Copies of the rules may be inspected at the Division at 3001 Mail Service Center, Raleigh, North Carolina 27699-3001. Copies may be obtained at a cost to cover printing and postage.~~

Authority G.S. 122C-252; 150B.

SUBCHAPTER 29D - MISCELLANEOUS

SECTION .0100 – CAROLINA ALTERNATIVES

10A NCAC 29D .0101 CAROLINA ALTERNATIVES

(a) ~~The Division may contract with area programs to implement a managed care program for mental health and substance abuse services for children pursuant to a waiver granted by the Secretary of the United States Department of Health and Human Services in accordance with Title XIX of the Social Security Act, known as the Carolina Alternatives program.~~

(b) ~~Funding shall be made available through monthly capitation payments received from the Division of Medical Assistance.~~

(c) ~~Funds shall be awarded and settled based on the provisions in the contract between the Division and the area program.~~

(d) ~~Enrollees shall have the right to appeal adverse decisions by a contracting area program, which are defined as:~~

- (1) ~~denial of a request for first time service or a service other than the current service;~~

- (2) ~~reduction of a current service;~~
- (3) ~~suspension of a current service; or~~
- (4) ~~termination of a current service.~~

(e) ~~The Division shall comply, and shall insure that contracting area programs comply, with the following appeals procedures:~~

- (1) ~~Notification letter:~~

(A) ~~The area program shall send, via regular mail or pass by hand, a notification letter at the time of service authorization or at another time not later than 10 working days before the date of the action (reduction, suspension or termination).~~

(B) ~~The area program shall mail the notification letter the same day as the date of the letter in order to provide the recipient with the legal time period in which to appeal.~~

(C) ~~When hand delivered, documentation that the individual was given notice shall be represented by the date in the notification letter.~~

(D) ~~A denial of requested services requires a notification, but is an exception to the 10 day advanced notification requirement.~~

- (2) ~~The notification letter shall contain the following information:~~

(A) ~~specific information (the identification of the area program and type of service under review);~~

(B) ~~reasons for the decision;~~

(C) ~~Medicaid regulations that support the decision;~~

(D) ~~the right to a State informal and formal hearing on the decision;~~

(E) ~~the right to a hearing when State or Federal law requires a change in service;~~

(F) ~~circumstances in which an expedited appeal may be requested;~~

(G) ~~steps required to start an appeal;~~

(H) ~~circumstances in which Medicaid is continued until a hearing decision. If an individual appeals to the State DMH/DD/SAS or to the Office of Administrative Hearings (OAH) before the effective date of the proposed service reduction, termination, or suspension, noted in the letter, authorization for payment of the individual's current services will continue until a decision is issued; and~~

(I) ~~that if an individual abandons or loses an appeal, the State has the legal right to recover the cost of the disputed treatment, and that such costs are~~

accumulated from the beginning of the date of the service reduction, termination or suspension.

(3) ~~The notification letter also shall contain treatment continuation information as follows:~~

(A) ~~the area program may offer other treatment services when it denies a person's request for a specific treatment.~~

(B) ~~the individual may receive the treatment specifically requested by paying for it.~~

(C) ~~when and if the individual's medical condition changes, the area program will re-evaluate the request for a specific treatment.~~

(4) ~~Exceptions to 10 day notification requirement. Notice shall be given no later than the date of the service reduction, termination or suspension where:~~

(A) ~~recipient's treating physician changes the service (e.g., discharge from a short term or crisis hospitalization);~~

(B) ~~agency has factual information confirming the death of the enrollee;~~

(C) ~~agency receives a written statement signed by an enrollee that services are no longer desired; or gives information that requires termination or reduction of services and understands that this must be the result of supplying that information;~~

(D) ~~enrollee has been admitted to a service that is not included in the approved service network; and~~

(E) ~~location of the enrollee is unknown as certified by the post office.~~

(f) ~~Requesting a State Informal Hearing:~~

(1) ~~Medicaid recipients have a right to an informal hearing by an impartial hearing officer at the Division of Mental Health, Developmental Disabilities and Substance Abuse Services (DMH/DD/SAS).~~

(2) ~~This right shall be secured by returning the appeal form (included with the notification letter) to the State DMH/DD/SAS.~~

(3) ~~The form may be sent by mail, facsimile, or hand-delivered.~~

(4) ~~Upon receipt of an informal appeal request, the DMH/DD/SAS shall contact the enrollee and schedule a hearing before a hearing officer within 30 days from receipt of the written request.~~

(5) ~~The DMH/DD/SAS shall inform the enrollee in writing of the hearing date, the hearing procedures, and of their legal rights during the hearing.~~

(6) ~~The DMH/DD/SAS promptly shall inform the area program of the appeal. With the~~

~~enrollee's permission, the area program shall contact the enrollee within three working days of notification from DMH/DD/SAS to begin its impartial dispute resolution process:~~

(A) ~~Each area program shall have an informal dispute resolution process that is approved in writing by DMH/DD/SAS. Each area program shall submit its local review process and the Division shall review based on whether the recipient has an impartial review process by persons not involved with the original decision; and~~

(B) ~~The process shall include both impartial dispute resolution and impartial clinical/medical review.~~

(7) ~~Informal hearing procedure:~~

(A) ~~The enrollee has the right to an in-person hearing. Before the hearing, the enrollee has the right to review the case file and all records that will be used at the hearing.~~

(B) ~~The enrollee shall not be denied access to review these documents.~~

(C) ~~All written material that the enrollee or his representative want presented at the hearing must be received by the Division hearing office at least five days before the scheduled hearing.~~

(D) ~~If the enrollee or his representative fails to appear at the scheduled hearing, without good cause, the hearing still shall be held. "Good cause" means circumstances beyond the control of the enrollee or his representative.~~

(E) ~~If at any time during the process the enrollee's medical condition worsens and the enrollee is re-evaluated for authorization for the current or higher service, the informal appeal shall be concluded in favor of the enrollee.~~

(F) ~~The hearing officer shall give appropriate consideration to all matters and documents presented either by the enrollee or by the area program. Witnesses shall not be required to take an oath before making a statement.~~

(G) ~~Neither the North Carolina Rules of Evidence, the Federal Rules of Evidence, the North Carolina Rules of Civil Procedure, nor the Federal Rules of Civil Procedure shall govern the hearing procedures.~~

(H) ~~The hearing officer shall insure that the hearing is conducted in a fair,~~

- impartial, and non adversarial manner.
- (I) ~~The hearing officer shall issue a written decision of his findings and conclusions, and shall send a copy to the enrollee and to the area program. The written decision shall notify the enrollee of the right to appeal an adverse decision to the Office of Administrative Hearings (OAH) and the time period within which such appeal must be filed. The written decision shall include a Petition for Contested Case Hearing appropriate for filing at OAH.~~
- (8) ~~State Formal Hearing:~~
- (A) ~~The enrollee has the right to appeal an adverse decision by an area program directly to the OAH for a formal, evidentiary hearing.~~
- (B) ~~The enrollee also may appeal a DMH/DD/SAS hearing officer's adverse decision to OAH.~~
- (C) ~~Either appeal must be filed in accordance with G.S. 150B.~~
- (D) ~~If an enrollee appeals an area program adverse decision directly to OAH before the effective date of the proposed reduction, termination, or suspension, authorization for the current service shall continue until a Recommended Decision is issued by OAH.~~
- (E) ~~If an enrollee appeals an area program adverse decision after the effective date of the proposed reduction, termination, or suspension, the area program is not required to continue authorization for the current service.~~
- (F) ~~If an enrollee appeals the DMH/DD/SAS hearing officer's decision to OAH, the area program is required to continue or reinstate authorization for the current service until a final decision is issued by the Department.~~
- (G) ~~If an enrollee appeals an area program adverse decision after the effective date of the proposed reduction, termination, or suspension, the area program is not required to continue authorization for the current service.~~
- (9) ~~Recovery Procedures: If an enrollee abandons an appeal, or if after an appeal through OAH, the DMH/DD/SAS Final Agency Decision upholds the area program's adverse decision, the State may commence to recover the~~

financial costs of any unauthorized services furnished to the enrollee as the result of taking the appeal. Financial costs accumulate from the area program's proposed date of service reduction, termination or suspension.

(10) ~~Expedited Appeals:~~

- (A) ~~Emergency appeals may be initiated by oral or written communication to the area program or to the DMH/DD/SAS. To start an emergency appeal the enrollee or his legally responsible person must attest that services are urgently needed and the failure to provide them promptly or to continue them might reasonably cause deterioration, or impair improvement, in the enrollee's medical condition.~~
- (B) ~~The area program shall conduct an expedited review within 24 hours of receipt of the request, and if its review upholds the adverse decision, the area program shall directly forward its decision and a copy of all relevant medical records to the DMH/DD/SAS.~~
- (C) ~~The DMH/DD/SAS shall issue its decision within two working days of the enrollee's request for expedited review.~~
- (D) ~~The area program is required to continue authorization for the current service through an expedited appeal until the appeal is abandoned or the Department issues a final decision.~~

Authority G.S. 122C-112; 122C-143.1; 122C-143.2; 122C-147; 122C-147.1; 122C-147.2; 42 C.F.R. 431; Social Security Act, Waiver under Sections 1915(b(1)) and (b)(4).

Notice is hereby given in accordance with G.S. 150B-21.2 that the Commission for MH/DD/SAS intends to repeal the rules cited as 10A NCAC 29D .0401 - .0403, .0601 - .0611.

Proposed Effective Date: March 1, 2008

Instructions on How to Demand a Public Hearing: (must be requested in writing within 15 days of notice): A person may demand a public hearing on the proposed rules by submitting a request in writing to W. Denise Baker, 3018 Mail Service Center, Raleigh, NC 27699-3018.

Reason for Proposed Action:

10A NCAC 29D .0401 - .0403 – The proposed repeals of these rules are necessary to update rules to reflect current practices. Behavioral mental health treatment services for children and adolescents that are provided in private residences are licensed

in accordance with G.S. 131D requirements and the administrative rules governing foster care home.

10A NCAC 29D .0601 - .0611 – The proposed repeals are necessary to update rules to reflect current practices. The current rules pursuant to DWI Services are codified in 10A NCAC 27G .3801 - .3817.

Procedure by which a person can object to the agency on a proposed rule: The objection, reasons for the objection and the clearly identified portion of the rule to which the objection pertains, may be submitted in writing to W. Denise Baker, 3018 Mail Service Center, Raleigh, NC 27699-3018.

Comments may be submitted to: W. Denise Baker, 3018 Mail Service Center, Raleigh, NC 27699-3018, phone (919) 715-2780, (919) 733-1221, email denise.w.baker@ncmail.net

Comment period ends: December 14, 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

SUBCHAPTER 29D - MISCELLANEOUS

SECTION .0400 - THERAPEUTIC HOMES FOR CHILDREN AND ADOLESCENTS

10A NCAC 29D .0401 SCOPE

(a) ~~A therapeutic home is a 24-hour residential facility located in a private residence which provides professionally trained parent substitutes who work intensively with children and adolescents who are emotionally disturbed or have a substance problem, or both.~~

(b) ~~The parent substitute:~~

- (1) ~~provides for intensive living, social, therapeutic and skill learning needs; and~~
- (2) ~~receives close supervision and support from a qualified professional.~~

(c) ~~The facility may utilize services from a facility providing treatment services such as outpatient or day treatment.~~

Authority G.S. 122C-26; 143B-147.

10A NCAC 29D .0402 STAFF

(a) ~~Each client admitted to a facility shall receive services from a designated qualified mental health professional or qualified substance abuse professional, as appropriate, who has responsibility for the client's treatment, program or case management plan.~~

- (1) ~~Each facility shall have a qualified mental health professional or clinical consultation by a qualified mental health professional if a mental health client resides in the facility.~~
- (2) ~~A facility shall have a qualified alcoholism, drug abuse or substance abuse professional or clinical consultation provided by a qualified alcoholism, drug abuse or substance abuse professional at least once a week if a substance abuser resides in the facility.~~

(b) ~~A minimum of one therapeutic home parent shall be present with clients at all times unless the designated qualified professional has documented in the individual client certain clearly delineated instances in which that the client may be without supervision.~~

(c) ~~The individual identified as the therapeutic home parent shall receive training in treatment services which shall include, but not be limited to, the following:~~

- (1) ~~child and adolescent development;~~
- (2) ~~dynamics of emotionally disturbed and substance abusing youth and families;~~
- (3) ~~symptoms of substance abuse;~~
- (4) ~~needs of emotionally disturbed and substance abusing youth in residential settings;~~
- (5) ~~administration of medication;~~
- (6) ~~confidentiality;~~
- (7) ~~client rights; and~~
- (8) ~~development of the individual treatment plan.~~

Authority G.S. 122C-26; 143B-147.

10A NCAC 29D .0403 OPERATIONS

(a) ~~Each facility shall serve no more than two clients.~~

(b) ~~There shall be a written agreement with the therapeutic home parent, and the designated qualified professional or the child placement agency responsible for the client which includes, but is not limited to, the following:~~

- (1) ~~the responsibility of the provider;~~
- (2) ~~confidentiality requirements; and~~
- (3) ~~responsibility and procedures for securing emergency services.~~

(c) ~~Information regarding the client's specific needs or conditions shall be given to the provider prior to admission.~~

(d) ~~A copy of the agreement shall be given to the therapeutic home parents.~~

(e) ~~Each agency which provides services through contracts with the therapeutic home parents to serve clients in their home shall maintain an application file which includes identifying information.~~

Authority G.S. 122C-26; 143B-147.

**SECTION .0600 – SUBSTANCE ABUSE ASSESSMENTS
FOR INDIVIDUALS CHARGED WITH OR CONVICTED
OF DRIVING WHILE IMPAIRED (DWI)**

10A NCAC 29D .0601 PURPOSE AND SCOPE

- ~~(a) The purpose of the rules of this Section is to establish specific procedures for conducting and reporting DWI substance abuse assessments, Alcohol and Drug Education Traffic Schools (ADETS), and treatment of DWI offenders.~~
- ~~(b) Assessments may be sought either voluntarily on a pre-trial basis or by order of the presiding judge.~~
- ~~(c) These Rules apply to any facility that conducts DWI assessments.~~
- ~~(d) In order for a facility to perform DWI assessments, it shall:~~
 - ~~(1) be licensed by the State as an alcoholism and substance abuse treatment facility; or~~
 - ~~(2) provide substance abuse services, and be excluded from licensure under G.S. 122C-22.~~

Authority G.S. 20-179(e)(6) and (m).

10A NCAC 29D .0602 DEFINITIONS

For the purpose of the rules in this Section, the following terms shall have the meanings indicated:

- ~~(1) "American Society of Addiction Medicine (ASAM) Placement Criteria" means the Patient Placement Criteria for the Treatment of Psychoactive Substance Abuse Disorders, copyright 1991 by the National Association of Addiction Treatment Providers and the American Society of Addiction Medicine. For these Rules, the ASAM Level I, Outpatient Treatment, has been divided into I.A., Short-term and I.B., Longer-term Outpatient Treatment.~~
- ~~(2) "Certified ADETS Instructor" means an individual who is certified by the Division in accordance with 10 NCAC 18M .0906 Instructor Certification, contained in Division publication, Standards for Area Programs and Their Contract Agencies, APSM 35-1, and available at the current printing cost.~~
- ~~(3) "Clinical Interview" means the face-to-face interview with a substance abuse professional intended to gather information on the client, including, but not limited to the following: demographics, medical history, past and present driving offense record, alcohol concentration of current offense, social and family history, substance abuse history, vocational background and mental status.~~
- ~~(4) "Continuing Care" means an outpatient service designed to maximize the recovery experience begun in more intensive inpatient or outpatient treatment. As a continuation of the treatment experience this service is expected to begin~~

~~immediately upon the client's discharge from intensive treatment:~~

- ~~(a) When continuing care follows an inpatient treatment experience:~~
 - ~~(i) a total of 90 days, including the intensive inpatient treatment period, shall be provided;~~
 - ~~(ii) a minimum of 20 contact hours of service during a 30-day period shall be provided. Each week of the 30-day period shall have scheduled hours of service; and~~
 - ~~(iii) for any of the remaining 90 days of continuing care, a specific schedule for contact hours of service is not required.~~
- ~~(b) The services shall be provided according to a written continuing care plan which shall:~~
 - ~~(i) address the needs of the client; and~~
 - ~~(ii) utilize individual, family and group counseling as required to meet the needs of the client.~~
- ~~(5) "Division" means the same as defined in G.S. 122C-3; and is hereafter referred to as DMH/DD/SAS.~~
- ~~(6) "DMH Form 508 (DWI Services Certificate of Completion)" means the four-part form which is used in documenting the offenders completion of the DWI substance abuse assessment and treatment or ADETS.~~
- ~~(7) "Driving record" means a person's North Carolina driving history, as maintained by the North Carolina Driver's License Division's history file.~~
- ~~(8) "DSM" means the current edition of the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association.~~
- ~~(9) "DWI" means impaired driving as described in G.S. 20-138.1.~~
- ~~(10) "DWI categories of service" mean:~~
 - ~~(a) "Alcohol and Drug Education Traffic School (ADETS)" means an approved curriculum which shall:~~
 - ~~(i) include 10 to 13 contact hours in a classroom setting;~~
 - ~~(ii) be provided by area programs or their designated agencies with certified ADETS instructors; and~~
 - ~~(iii) be designed for persons:~~

- (A) ~~who have only one DWI conviction (lifetime);~~
 - (B) ~~whose assessment did not identify a "Substance Abuse Handicap"; and~~
 - (C) ~~whose alcohol concentration was .14 or less.~~
 - (b) ~~"Day treatment" means a structured, outpatient service. It may also be called intensive outpatient treatment, as defined in 10 NCAC 14N .0900 and applicable portions of 10 NCAC 14K .0300, which include ASAM Level II treatment criteria.~~
 - (c) ~~"Inpatient residential treatment services" means an array of services which may include detoxification and rehabilitation in a structured environment, as set forth in 10 NCAC 14N .0300, and contained in Licensure Rules as defined in Item (13) of this Rule. Such services will correspond with ASAM Level III and Level IV treatment criteria.~~
 - (d) ~~"Longer term outpatient treatment" means a structured program meeting the ASAM definition of Level I, Outpatient Treatment, and requiring a minimum of 40 contact hours scheduled to maintain the client in active treatment for a minimum period of 60 days, providing counseling and learning experiences which include the "Minimal Subject Content," as defined in Item (14) of this Rule. The facility must operate in compliance with Licensure Rules, 10 NCAC 14N .0700 and applicable portions of 10 NCAC 14K .0300.~~
 - (e) ~~"Short term outpatient treatment" means a structured program meeting the broad definition of "ASAM Level I, Outpatient Treatment," and requiring a minimum of 20 contact hours over a period of at least 30 days, including counseling and didactic experiences which include the minimal subject content. Facilities which are approved to provide this shall operate in compliance with Licensure Rules contained in 10 NCAC 14N .0700 and applicable portions of 10 NCAC 14K .0300.~~
 - (11) ~~"DWI Substance Abuse Assessment" means a service provided to persons charged with or convicted of DWI to determine the presence or absence of a substance abuse handicap. The assessment involves a clinical interview as well as the use of a standardized test.~~
 - (12) ~~"Facility" means the term as defined in G.S. 122C-3(14).~~
 - (13) ~~"Licensure rules" mean the rules contained in 10 NCAC 14K through 14O of the North Carolina Administrative Code and published in Division publication, Licensure Rules for MH/DD/SA Facilities, APSM 40-2.~~
 - (14) ~~"Minimal subject content" means the following list of subjects which shall be addressed in the educational portion of any treatment program serving DWI offenders:~~
 - (a) ~~Effects of Alcohol and Drugs on the Body/Brain;~~
 - (b) ~~The Nature of Denial;~~
 - (c) ~~Disease Concept of Chemical Dependency;~~
 - (d) ~~Progression of Disease and Recovery (Jellinek Chart);~~
 - (e) ~~Chemical Dependency and the Family;~~
 - (f) ~~Introduction to Self Help Groups/12 Step Recovery Programs;~~
 - (g) ~~Relapse Prevention and Strategies for Recovery; and~~
 - (h) ~~Safe Roads Act Penalties.~~
 - (15) ~~"Special service plan" means a plan for persons who exhibit unusual circumstances, such as severe hearing impairment; other physical disabilities; concurrent psychiatric illness; language and communication problems; intractable problems of distance, transportation and scheduling; and chronic offenders with multiple unsuccessful treatment experiences.~~
 - (16) ~~"Standardized Test" means an instrument approved by the Department of Human Resources, with documented reliability and validity, which serves to assist the assessment agency or individual in determining if the client has a substance abuse handicap. A current listing of the approved standardized tests may be obtained by writing the DWI/Criminal Justice Branch, Division of MH/DD/SAS, 325 N. Salisbury Street, Raleigh, NC 27603.~~
 - (17) ~~"Substance Abuse Handicap" means a degree of dysfunction directly related to the recurring use/abuse of an impairing substance.~~
- Authority G.S. 20-138.1; 20-179; 122C-3.*
- 10A NCAC 29D .0603 WRITTEN NOTICE OF INTENT**
A facility, not operated by or contracted with an area authority, wishing to provide DWI substance abuse assessments shall send a written notice of intent to both the area authority in that

particular catchment area and the Department of Human Resources at the following address: DWI/Criminal Justice Branch, DMH/DD/SAS, 325 N. Salisbury Street, Raleigh, NC 27603. The notice of intent shall be documented on agency letterhead and shall include at a minimum the following:

- (1) declaration of intent to provide DWI substance abuse assessments in accordance with State laws;
- (2) statement of agreement to follow rules for conducting such assessments as adopted by the Department of Human Resources;
- (3) a copy of the license issued by the Division of Facility Services, or by licensing boards as referenced in 122C-22;
- (4) signature of the administrator in charge; and
- (5) identification of a contact person to accept referrals and respond to inquiries.

Authority G.S. 20-179(m); 122C-22.

10A NCAC 29D .0604 DWI SUBSTANCE ABUSE ASSESSMENT ELEMENTS

(a) DWI substance abuse assessments shall only be provided by a facility licensed by the state as an alcoholism and substance abuse treatment facility as specified in 10 NCAC 14K .0365 or a facility which provides substance abuse services and is excluded from licensure under G.S. 122C-22.

(b) A clinical interview shall be conducted with the individual to collect information regarding the use of alcohol and other drugs.

(c) In addition to the clinical interview, the agency or individual performing the assessment shall administer to the individual, a standardized test and consider the driving record, as defined in Rule .0602 of this Section, and any alcohol concentration reading available in determining whether or not a substance abuse handicap exists.

(d) The agency or individual performing the assessment shall have the individual execute the appropriate release of information form per 42 CFR, Part 2 giving the assessing agency permission to communicate with and report its findings to the DMH/DD/SAS, the area authority, the Division of Motor Vehicles, the Court, the Department of Correction, and the agency providing the recommended treatment and education.

Authority G.S. 20-179(m); 122C-22.

10A NCAC 29D .0605 QUALIFICATIONS OF INDIVIDUALS PERFORMING ASSESSMENTS

Individuals performing DWI substance abuse assessments shall have at least one of the following qualifications:

- (1) certification as a certified alcoholism, drug abuse or substance abuse counselor by the North Carolina Substance Abuse Professional Certification Board;
- (2) graduation from high school or equivalent and three years of supervised experience in the profession of alcohol and drug abuse counseling, graduation from a four year college or university and two years of

supervised experience in the profession of alcohol and drug abuse counseling, or graduation from a masters degree level program and one year of supervised experience in the profession of alcohol and drug abuse counseling; or

- (3) licensure by the Board of Medical Examiners of the State of North Carolina or the North Carolina Psychology Board.

Authority G.S. 20-179(m).

10A NCAC 29D .0606 RESPONSIBILITIES OF ASSESSING AGENCY

(a) Following the completion of the assessment, the agency or individual performing the assessment shall inform the individual if treatment or ADETS is recommended.

(b) If treatment is recommended, the individual shall be informed of available treatment facilities, both private and public, which provide the level of recommended treatment.

(c) Any facility accepting a transferred case shall provide, at least, the level of intervention recommended by the assessor, unless there is a subsequent negotiated agreement between the assessor and the service provider.

(d) Private facilities shall refer any individual who is recommended for ADETS to the area authority, or its designated agency. A DMH 508 Form shall accompany the referral.

(e) The agency or individual performing the assessment shall inform the client of the possible consequences of failing to comply with recommended treatment or ADETS.

Authority G.S. 20-179(m).

10A NCAC 29D .0607 RESPONSIBILITIES OF TREATMENT OR ADETS PROVIDERS

(a) An individual shall be provided with documentation that outlines his or her obligation, resulting from the assessment recommendations.

(b) An individual who does not begin services within nine months of the date of the initial assessment shall be re-evaluated utilizing the results of the initial assessment.

(c) The facility providing the recommended treatment or ADETS shall have the individual execute the appropriate release of information giving that facility permission to report the client's progress to the:

- (1) DMH/DD/SAS;
- (2) Division of Motor Vehicles;
- (3) Court;
- (4) Department of Correction; and
- (5) assessing and treatment agencies, as appropriate.

(d) Identification of a substance abuse handicap shall be considered indicative of the need for treatment, when diagnostic criteria apply. In such instances, educationally oriented and support group services shall only be provided as a supplement to a more extensive treatment plan.

(e) If treatment is recommended and required per the court's judgment, such treatment shall be provided by a facility licensed

by the State for the provision of such services. In addition, a client record shall be opened for each client receiving treatment.

Authority G.S. 20-179(m); 122C-26.

10A NCAC 29D .0608 REPORTING REQUIREMENTS

(a) ~~The assessment portion of the DMH Form 508 shall be completed for each client who receives a DWI substance abuse assessment. An initial supply of this form may be obtained from the DWI/Criminal Justice Branch of the DMH/DD/SAS, 325 N. Salisbury Street, Raleigh, N.C. 27603.~~

(b) ~~The assessment portion of DMH Form 508 shall be signed by a certified alcoholism, drug abuse, or substance abuse counselor. The date of expiration of that professional's certification shall be indicated on the client's Certificate of Completion and no assessment shall be signed after the expiration date.~~

(c) ~~The facility providing the recommended treatment or education shall have the client sign the appropriate release of information, and progress reports shall be filed with the court or the Department of Correction at intervals not to exceed six months.~~

(d) ~~Upon completion of the recommended treatment or ADETS service, the agency shall:~~

- ~~(1) forward the top page of the completed DMH Form 508 to the DWI/Criminal Justice Branch, DMH/DD/SAS; and~~
- ~~(2) retain, for a period of at least five years, the appropriate page of the form, and distribute the remaining pages to the offender and the court as specified on the bottom of the form.~~

(e) ~~In the event that an assessment or treatment agency ceases to provide DWI-related services, the agency shall notify, in writing, the DWI Criminal Justice Branch to assure that all DMH Form 508s and other related documents specified in G.S. 20-179(m) are properly processed.~~

(f) ~~By February 15 of each year, all assessing agencies shall forward, in writing, to the DWI/Criminal Justice Branch of the Division the following information on the previous year's activities, which shall include but need not be limited to the number of:~~

- ~~(1) pre-trial assessments conducted;~~
- ~~(2) post trial assessments conducted;~~
- ~~(3) individuals referred to ADETS; and~~
- ~~(4) substance abuse handicaps identified and the recommended levels of treatment.~~

Authority G.S. 20-179(m).

10A NCAC 29D .0609 PRE-TRIAL ASSESSMENTS

~~A DMH Form 508 shall be completed on each individual who voluntarily refers himself or herself for a DWI assessment, under the provisions of G.S. 20-179(e)(6). However, the DMH Form 508 shall not be used to report the results of the pre-trial assessment to the court or attorney. The results shall be summarized in a concise, easy to interpret fashion on agency letterhead and signed by the individual who performed the assessment.~~

Authority G.S. 20-179(e)(6) and (m).

10A NCAC 29D .0610 PLACEMENT CRITERIA FOR ASSESSED DWI CLIENTS

~~(a) Clients who have undergone a DWI substance abuse assessment shall be placed in the appropriate DWI category of service.~~

~~(b) Placement of clients in a specific category shall be based on the assessment outcome, diagnosis, and level of care determined to be necessary for treatment.~~

~~(c) In addition to the terms defined in Rule .0602(10) of this Section for each of the following progressive categories, determination for placement shall be based on the criteria specified in this Paragraph.~~

~~(1) ADETS:~~

- ~~(A) the assessment did not identify a "Substance Abuse Handicap;~~
- ~~(B) the person has no previous DWI conviction; and~~
- ~~(C) the person had an alcohol concentration of 0.14% or less at the time of arrest.~~

~~(2) Short term Outpatient Treatment:~~

- ~~(A) the assessment outcome suggests diagnosis of psychoactive substance abuse only;~~
- ~~(B) the client does not fit all aspects of the diagnosis, but, under certain circumstances, the clinical picture provides reason to conclude that a treatment setting would be more appropriate than ADETS. Some of these circumstances include, but are not limited to:~~
 - ~~(i) alcohol concentration is .15 or higher;~~
 - ~~(ii) refusal of breath test at time of arrest;~~
 - ~~(iii) problems relating to family history;~~
 - ~~(iv) other problems which seem to be a contributing factor to DWI behavior, such as grief, loss, etc.; and~~
 - ~~(v) the client meets the criteria for Level I of the ASAM Placement Criteria.~~

~~(3) Longer-term Outpatient Treatment:~~

- ~~(A) when a client meets minimal conditions for the diagnosis of "psychoactive substance dependence;" and~~
- ~~(B) the criteria for Level I of the ASAM placement is met.~~

~~(4) Day Treatment:~~

- ~~(A) the assessment confirms a diagnosis of psychoactive substance dependence, moderate or severe;~~

- ~~(B) the ASAM placement criteria for Level II Outpatient Treatment is met;~~
- ~~(C) program:~~
 - ~~(i) includes an educational component which addresses at least the minimal subject content, as defined in Rule .0602 of this Section;~~
 - ~~(ii) offers additional continuing care, urging voluntary participation of the client and significant others; and~~
 - ~~(iii) requires a minimum of 90 contact hours and participation of the client over a period of at least 90 days, for any client referred under G.S. 20-179(m) or (e)(6); and~~
- ~~(D) program may be preceded by a brief inpatient stay for detoxification or stabilization of a medical or psychiatric condition.~~
- ~~(5) Inpatient Residential Treatment Services:~~
 - ~~(A) the level of care requires that the client meets the same diagnostic criteria as Day Treatment, as defined in this Rule, (dependence is moderate or severe);~~
 - ~~(B) outpatient treatment of other associated problems has not been successful;~~
 - ~~(C) the client meets the placement criteria for Levels III or IV (Inpatient) of the ASAM Placement Criteria with regard to the following six "patient problems areas" as set forth in ASAM Patient Placement Criteria, Adult Crosswalk:~~
 - ~~(i) withdrawal risk;~~
 - ~~(ii) need for medical monitoring;~~
 - ~~(iii) emotional and behavioral problems requiring a structured setting;~~
 - ~~(iv) high resistance to treatment;~~
 - ~~(v) inability to abstain; and~~
 - ~~(vi) lives in a negative and destructive environment; and~~
 - ~~(D) in order for the client to meet the required 90 day time frame for treatment, the client, upon discharge, shall enroll in an approved continuing care or other outpatient program.~~
- ~~(6) Special Service Plan:~~
 - ~~(A) documentation of the need for a special program to correspond with the recommendations of the DWI assessment;~~

- ~~(B) some of the conditions under which a Special Service Plan is implemented may include, but need not be limited to, the following:~~
 - ~~(i) severe hearing impairment;~~
 - ~~(ii) other physical disabilities;~~
 - ~~(iii) concurrent psychiatric illness;~~
 - ~~(iv) language and communication problems;~~
 - ~~(v) intractable problems of distance, transportation and scheduling; and~~
 - ~~(vi) chronic offenders with multiple unsuccessful treatment experiences.~~

Authority G.S. 20-179(e)(6) and (m).

10A NCAC 29D .0611 DOCUMENTATION REQUIREMENTS

- ~~(a) When conducting the assessment for an individual charged with, or convicted of, offenses related to Driving While Impaired (DWI), DMH Form 508 shall be completed.~~
- ~~(b) If treatment is recommended, client record documentation shall include, but not be limited to, the following minimum requirements for each "DWI category of service" defined in Rule .0602 of this Section, except for the ADETS category:~~
 - ~~(1) all items specified in the "clinical interview," as defined in Rule .0602 of this Section;~~
 - ~~(2) results of the administration of an approved "standardized test," as defined in Rule .0602 of this Section;~~
 - ~~(3) release of information as set forth in Rules .0604 and .0607 of this Section; and~~
 - ~~(4) release of information covering any collateral contacts, and documentation of the collateral information.~~
- ~~(c) Substance abuse treatment records shall comply with the requirements in 10 NCAC 14K .0315(a) through (g), (i), (k), and in 10 NCAC 14K .0317.~~

Authority G.S. 20-179(e)(6) and (m).

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 rules cited as 11 NCAC 06A .0101, .0304, .0402, .0404, .0412 - .0413, .0701 - .0705, .0801 - .0802, .0804 - .0805, .0807 - .0809, .0811, .0813 and repeal the rules cited as 11 NCAC 06A .0211, .0217, .0405, .0408, .0414, .0504, .0604.

Proposed Effective Date: February 1, 2008

Public Hearing:
Date: October 30, 2007

Time: 10:00 a.m.

Location: Third Floor Hearing Room, Dobbs Building, 430 N. Salisbury Street, Raleigh, NC

Reason for Proposed Action:

11 NCAC 06A .0101, .0211, .0217, .0304, .0402, .0404 - .0405, .0408, .0412 - .0414, .0504, .0604 - The amendments and the repeals have technical corrections and also reflect changes made in S.L. 2007-507.

11 NCAC 06A .0701 - .0705, .0801 - .0802, .0804 - .0805, .0807 - .0809, .0811, .0813 - The amendments contain technical corrections and also reflect changes made in S.L. 2007-507.

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 December 14, 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

Comment period ends: December 14, 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 06 - AGENT SERVICES DIVISION

SUBCHAPTER 06A - AGENT SERVICES DIVISION

SECTION .0100 - GENERAL PROVISIONS

11 NCAC 06A .0101 DEFINITIONS

(a) In this Chapter, unless the context otherwise requires:

- (1) "Adjusting company" means any insurance company, independent adjusting company, or public adjusting company adjusting claims in this State.

(1)(2) ~~"Agent Services Division" or "Division" shall mean~~ means the Agent Services Division of the North Carolina Department of Insurance, the Division responsible for the licensing, education and regulation of agents and other licensees.

(2) ~~"Company" shall mean any insurance company properly licensed to do business in this State and shall further be defined as in G.S. 58-1-5(3).~~

(3) ~~"Professional Testing Service" or "Service" shall mean~~ means the organization specializing in the development and administration of licensing examinations on a contract basis.

(4) ~~"State Licensing Examination" or "Examination" shall mean~~ means a collection of items designed to test the applicant's knowledge of the basic concepts, principles and laws relevant to the insurance profession to determine the competence to be licensed in North Carolina.

(5) ~~The singular shall include the plural and the masculine shall include the feminine wherever appropriate.~~

(b) The definitions contained in G.S. 58-33-10 are incorporated in this Chapter by reference.

Authority G.S. 58-2-40; 58-33-30(e)(h).

SECTION .0200 - DESCRIPTION OF FORMS

11 NCAC 06A .0211 N.C. NON-RESIDENT BROKER'S INSURANCE BOND

~~The "North Carolina Non Resident Broker's Insurance Bond" shall include the name of the principal, name of the surety, date and conditions of bond, bond number, amount of the bond, appropriate signatures and other pertinent information and must be accompanied by a power of attorney.~~

Authority G.S. 58-33-30(f)(1).

11 NCAC 06A .0217 NORTH CAROLINA NOTICE OF CANCELLATION

~~The "North Carolina Notice of Cancellation" shall include the name of the company, address of the company licensing office, name of the limited representative or adjuster, type of license to be cancelled, company number, signature of authorized company representative and other pertinent information.~~

Authority G.S. 58-33-55(a)(b).

SECTION .0300 - EXAMINATIONS

11 NCAC 06A .0304 RESPONSIBILITY OF APPLICANT AT EXAMINATION SITE

(a) Applicants who have not previously failed the same examination shall bring to the examination site the ~~Certificate of Course Completion/Examination Admission Ticket/Examination Admission Ticket/Certificate of Course Completion,~~ their

confirmation numbers obtained from the Service at time of registration, and two forms of proof of identity, one of which must be photo bearing.

(b) Applicants who have previously failed an examination may retake the examination and shall pay applicable fees for each administration.

~~(c) Examination fees may be paid by company check, certified check, cashier's check or money order, made payable to the Service.~~

~~(d)(c)~~ Applicants taking the life and health, Medicare supplement, long term care, personal lines, or property and liability examination Applicants taking the life, accident and health or sickness, Medicare supplement, long term care, personal lines, property, or casualty examination shall bring to the examination site a "Certificate of Course Completion/Examination Admission Ticket" Examination Admission Ticket/Certificate of Course Completion, validated by an approved preclicensing school or by the Division indicating that the applicant has successfully completed the mandatory preclicensing education requirements as specified in G.S. 58-33-30(d)(2). The "Certificate of Course Completion/Examination Admission Ticket" Examination Admission Ticket/Certificate of Course Completion is valid for three months-90 days from the date of course completion or a maximum of five examination sittings, whichever occurs first.

~~(e)(d)~~ No applications shall be supplied at the examination site for completion by applicants; nor shall required supplies be furnished to applicants.

~~(f)(e)~~ Applicants shall arrive at the examination site at the time specified in the current examination schedule.

(f) A person who applies for a license before January 1, 2008, shall receive the license in accordance with G.S. 58-33-26(c)(1) without being required to pay an additional registration fee if the license is issued on or after January 1, 2008.

Authority G.S. 58-2-40; 58-33-26(c)(1); 58-33-30(d)(2); 58-33-31; 58-33-30(e); 58-33-125.

SECTION .0400 - LICENSING PROCEDURES

11 NCAC 06A .0402 LICENSING OF RESIDENT AGENT, LTD REPRESENTATIVE AND ADJUSTER

~~(a) The definitions in G.S. 58-33-10 are incorporated into this Rule by reference.~~

~~(b)(a)~~ An applicant shall hold a life license before making application for a variable life and variable annuity product license. An agent licensed to sell variable life and variable annuity products shall be appointed by a company authorized to sell variable annuities and variable life insurance products in North Carolina. The company shall verify that the agent has met the NASD or Financial Industry Regulatory Authority (FINRA) requirement.

~~(c)(b)~~ A limited representative shall be licensed-appointed with each company for which he will solicit-business. business for the following kinds of insurance:

- (1) Dental services;
- (2) Limited line credit insurance;
- (3) Motor club;

(4) Prearrangement insurance, as defined in G.S. 58-60-35(a)(2), when offered or sold by a preneed sales licensee licensed under Article 13D of Chapter 90 of the General Statutes;

(5) Travel, accident and baggage; or

(6) Vehicle service agreements and mechanical breakdown insurance.

~~(d)(c)~~ Responsibility of insurance companies for forms:

~~(1) Companies shall make application for limited representatives and adjusters to be licensed. Only individuals may apply for limited representative and adjuster licenses.~~

(2) Companies shall have on file with the Division the address of one central licensing office and the individual within such office to which all correspondence, licenses, and invoices will be forwarded.

(3) Companies shall have on file with the Division the name of the individual responsible for all agent ~~appointments, appointments and~~ termination of agent appointments ~~and agent license applications~~ submitted by the company to the Division.

(4) A company shall verify the licensure of an agent before the company appoints the agent.

(5) Companies shall notify the Division within 10 days after any change of address of the central licensing office and of any change of the individual within such office to which all correspondence, licenses, and invoices will be forwarded.

~~(e)(d)~~ Responsibility of the ~~agent-agent, limited representative and adjuster:~~

(1) An applicant who must take the examination shall comply with Section .0300 of this Subchapter.

(2) A person, after surrender or termination of a license for such period of time that he is no longer eligible for waiver of the examination, shall meet all legal requirements for previously unlicensed persons.

~~(3) Any licensee licensed under Chapter 58, Article 33 of the North Carolina General Statutes shall notify the Division in writing of any change of residence or business address within 10 days after the change.~~

~~(4)(3)~~ Every licensee shall, upon demand from the Division, furnish in writing any information relating to the licensee's insurance business within 10 business days after the demand.

~~(f)(e)~~ An applicant for a resident license shall, if applicable, obtain an original letter of clearance from his former state of residency certifying the kinds of insurance for which the applicant was licensed, that all licenses held in that state have been canceled and that the applicant was in good standing in that state at the time of the cancellation of licenses. A letter of clearance shall be valid for no more than 90 days from date of issuance.

Authority G.S. 58-2-40; 58-2-69; 58-2-195(a); 58-33-26; 58-33-30; 58-33-66; 58-33-125.

11 NCAC 06A .0404 LICENSING OF BROKER

(a) An applicant ~~must~~ shall be a duly licensed agent in North Carolina for each kind of insurance to be brokered.

(b) A broker's license gives the holder authority to broker only those kinds of insurance for which he holds an agent's license. Brokering ~~must~~ shall be done through a licensed and appointed agent of the company with which the business is being placed. A broker's license does not confer binding authority; it only gives authority to share in commissions with a writing agent.

~~(c) In addition to all required forms, an applicant must submit a company check, certified check, cashier's check or money order, made payable to the N.C. Department of Insurance, in the amount set forth in G.S. 58-33-125(a).~~

~~(d)(c)~~ Each applicant shall file with his application a surety bond or cash, certificates of deposit, or securities as provided by statute. Any cash, certificate of deposit, or securities deposited in lieu of the surety bond shall be held in accordance with 11 NCAC 11B .0100.

Authority G.S. 58-2-40; 58-33-30(f),(h)(1).

11 NCAC 06A .0405 LICENSING OF NONRESIDENT BROKER

~~(a) In addition to all required forms, an applicant must submit a company check, certified check, cashier's check or money order made payable to the N.C. Department of Insurance, in the amount set forth under G.S. 58-33-125(a).~~

~~(b) A nonresident broker's license shall give the holder authority to broker only those kinds of insurance for which he holds a license as an agent in his state of residency.~~

~~(c) Each applicant shall file with his application a surety bond or cash, certificates of deposit, or securities as provided by statute. Any cash, certificate of deposit, or securities deposited in lieu of the surety bond shall be held in accordance with 11 NCAC 11B .0100.~~

~~(d) A nonresident broker must submit an original home state certification with his application stating the kinds of insurance for which he is licensed in his state of residency, and whether he is in good standing in his state of residency. A letter of certification shall be valid for no more than 60 days from date of issuance.~~

~~(e) A nonresident broker may not solicit directly or indirectly, but he may participate in commissions of brokered business. Brokering must be done through a licensed and appointed agent of the company with which the business is being placed.~~

Authority G.S. 58-2-40; 58-33-30(f),(h)(2); 58-33-125(a).

11 NCAC 06A .0408 LICENSING OF MOTOR VEHICLE DAMAGE APPRAISER

(a) The applicant must submit the appropriate forms along with a company check, certified check, cashier's check or money order in the proper amount to the Division. The applicant must meet all other relevant requirements of G.S. 58-33-30 and 58-33-10(e).

(b) In addition to all required forms and fees, an applicant for a nonresident motor vehicle damage appraiser license shall submit a home state certification stating that the applicant is duly licensed for the same kind of insurance for which he is applying. A letter of certification shall be valid for no more than 60 days from date of issuance.

Authority G.S. 58-2-40; 58-33-10(14); 58-33-30.

11 NCAC 06A .0412 APPOINTMENT OF AGENT OR ADJUSTER: RESPONSIBILITY OF COMPANY

Before appointing an agent or adjuster, an insurance company or adjusting company shall determine that:

- (1) The agent or adjuster holds the proper license for each kind of authority for which the agent will be appointed; and
- (2) The agent or adjuster has not committed any act that is a ground for probation, suspension, nonrenewal, or revocation set forth in G.S. 58-33-46.

Authority G.S. 58-2-40; 58-33-40; 58-33-46.

11 NCAC 06A .0413 LICENSING OF BUSINESS ENTITIES

~~(a) As used in this Rule, "business entity" has the same meaning as in G.S. 58-33-10(4).~~

~~(b) A business entity may submit application forms with a company check, certified check, cashier's check or money order.~~

~~(c)(a)~~ A business entity registered with the North Carolina Secretary of State applying for the first time shall provide the Division with proof of its business entity status by submitting a copy of the appropriate document Certificate of Authority, or successor form, issued and certified by the Secretary of State.

~~(d) A business entity shall file with the Division a list of all insurance companies with which it contracts along with the names and social security numbers of the agents representing each company.~~

~~(e)(b)~~ A business entity shall notify the Division of the addition or deletion of an agent or insurance company within 30 days after the change.

Authority G.S. 58-2-40; 58-33-31.

11 NCAC 06A .0414 ADJUSTER'S LEARNER'S PERMIT

~~A request for an adjuster's learner's permit shall be made in writing and accompanied by the "Uniform Adjuster/Appraiser Application". The request shall be made by an authorized insurer or independent adjusting firm. The applicant shall register to take the North Carolina adjuster's examination before applying for a learner's permit. The permit is valid for 90 days from the date of issuance. Only one permit shall be given to any individual.~~

Authority G.S. 58-2-40; 58-33-70.

SECTION .0500 - RENEWAL AND CANCELLATION OF LICENSES

**11 NCAC 06A .0504 NON-RENEWAL:
CANCELLATION/LICENSES ISSUED
DIRECTLY/INDIVIDUAL**

~~Failure to renew a license by the date specified by the Division will result in automatic cancellation of the license by the Division. This rule applies to all self-employed adjusters, brokers, and motor vehicle damage appraisers.~~

Authority G.S. 58-33-25(n).

SECTION .0600 - DENIAL OF LICENSE

11 NCAC 06A .0604 PERSONAL INTERVIEWS

~~Personal interviews may be required for purposes of clarification of information or for presentation of additional information. Such interviews may be initiated by any of the parties involved: the department, company, or the applicant. All requests for personal interviews shall be made in writing, shall include a brief explanation of the reason for the interview, and shall specify what information will be required, if any.~~

Authority G.S. 58-33-45.

SECTION .0700 - PRELICENSING EDUCATION

11 NCAC 06A .0701 GENERAL REQUIREMENTS

(a) This Section applies to individuals attempting to obtain a resident license to solicit life property and liability and health property, casualty, personal lines, life, accident and health, or sickness insurance in North Carolina except as specifically exempted by 11 NCAC 6A .0701(b) and (c). Paragraphs (b) and (c) of this Rule.

(b) Individuals who are exempt from the requirement for a written examination pursuant to G.S. 58-33-35 (3) and (4) G.S. 58-33-35(3), (4), (5) and (6) are exempt from prelicensing education requirements.

(c) Individuals who satisfy the following are exempt from prelicensing education requirements:

- (1) ~~Life and health:~~
 - (A) ~~Certified Employee Benefits Specialist (CEBS); or~~
 - (B) ~~Fraternal Insurance Counselor (FIC); or~~
 - (C) ~~Life Underwriter Training Council Graduate (LUTC Graduate); or~~
 - (D) ~~Certified Financial Planner (CFP).~~
- (2) ~~Property and liability:~~
 - (A) ~~Accredited Advisor in Insurance (AAI); or~~
 - (B) ~~Associate in Claims (AIC); or~~
 - (C) ~~Associate in Insurance Accounting and Finance (AIAF); or~~
 - (D) ~~Associate in Premium Auditing (APA); or~~
 - (E) ~~Associate in Risk Management (ARM); or~~
 - (F) ~~Associate in Underwriting (AU); or~~

- (G) ~~Certified Insurance Counselor (CIC); or~~
- (H) ~~Holder of Certificate in General Insurance (INS).~~
- (3) ~~Life and health, and property and liability:~~
 - (1) ~~Accident and health or sickness:~~
 - (A) ~~Registered Health Underwriter (RHU);~~
 - (B) ~~Certified Employee Benefits Specialist (CEBS);~~
 - (C) ~~Registered Employee Benefits Consultant (REBC); or~~
 - (D) ~~Health Insurance Associate (HIA).~~
 - (2) ~~Life:~~
 - (A) ~~Certified Insurance Counselor (CIC);~~
 - (B) ~~Certified Employee Benefits Specialist (CEBS); or~~
 - (C) ~~Certified Financial Planner (CFP).~~
 - (3) ~~Property:~~
 - (A) ~~Accredited Advisor in Insurance (AAI);~~
 - (B) ~~Associate in Risk Management (ARM); or~~
 - (C) ~~Certified Insurance Counselor (CIC).~~
 - (4) ~~Casualty:~~
 - (A) ~~Accredited Advisor in Insurance (AAI);~~
 - (B) ~~Associate in Risk Management (ARM); or~~
 - (C) ~~Certified Insurance Counselor (CIC).~~
 - (5) ~~Personal:~~
 - (A) ~~Accredited Advisor in Insurance (AAI);~~
 - (B) ~~Associate in Risk Management (ARM); or~~
 - (C) ~~Certified Insurance Counselor (CIC).~~
 - (6) ~~Property, casualty, personal lines, life, accident and health or sickness:~~
 - (A) ~~Holder of degree in insurance (associate or bachelors); or~~
 - (B) ~~An individual whose license in another state or jurisdiction for the same kind of insurance as that for which applied has been cancelled within 60 days of the Division's receipt of the letter of clearance and the individual's request for waiver of prelicensing education; or~~
 - (C) ~~An individual who is currently licensed in another state or jurisdiction for the same kind of insurance as that for which applied.~~

(d) If an applicant exempted from prelicensing education under the provisions of 11 NCAC 6A .0701(e) Paragraph (c) of this Rule fails the examination, the applicant must successfully meet North Carolina's mandatory prelicensing education requirement prior to retaking the examination.

(e) In this Section, unless otherwise noted the following definitions will apply:

- (1) "Classroom School" shall mean an entity that provides prelicensing education sponsored by a company, agency, association or educational institution by an instructor utilizing a teaching curriculum based on the outline.
- (2) "Correspondence Course" shall mean home, self, individual, Internet or correspondence study utilizing programmed text instructions.
- (3) "Correspondence School" shall mean an entity that provides prelicensing education sponsored by a company, agency, association or educational institution through completion of a correspondence course that has been approved by the Commissioner, with students individually supervised by an approved instructor.
- (4) "Instructional Hour" shall mean a 50-minute hour.
- (5) "Instructor" shall mean an individual ~~approved by the Commissioner who meets the qualifications required by Rule .0705 of this Section~~ to instruct in a classroom school who is responsible for preparation and presentation of lesson plans to assure that the outline is taught to that school's students and who prepares a final course examination; and in a correspondence school to assist and supervise students in the completion of an approved correspondence or Internet course.
- (6) "Outline" shall mean the instructor/examination content outlines prepared and published by the Department in the "State of North Carolina Insurance Licensure Examination Candidate Guide".
- (7) "Program Director" shall mean the individual associated with an approved classroom or correspondence school who is responsible for the administration of that school according to ~~11 NCAC 6A .0702(1). Rule .0702(1) of this Section.~~

Authority G.S. 58-2-40; 58-33-30(d); 58-33-35; 58-33-132.

11 NCAC 06A .0702 PRELICENSING EDUCATION SCHOOLS

- (a) This Rule applies to all classroom and correspondence schools offering a prelicensing course prescribed by G.S. 58-33-30. All schools desiring to conduct a prelicensing course shall be approved by the Commissioner before commencement of the courses.
- (b) A school seeking approval to conduct a prelicensing course shall make written application to the Commissioner.
- (c) The Division shall approve a school when:
 - (1) the school has submitted all information required by the Rules in this Section;
 - (2) the course to be conducted complies with ~~11 NCAC 06A .0704; Rule .0704 of this Section;~~

- (3) the program director has been approved by the Commissioner in accordance with ~~11 NCAC 6A .0703; Rule .0703 of this Section.~~
- (4) the school has ~~an approved a qualified~~ instructor to teach each kind of insurance for which they are seeking approval; and
- (5) ~~a school requesting approval to operate as a correspondence school has and maintains an approved active classroom schedule.~~

(d) The Commissioner shall deny, revoke, suspend, or terminate approval of any school upon finding that:

- (1) the school has refused or failed to comply with any of the provisions of ~~11 NCAC 06A .0702, .0703, .0704, or .0705; or of this Section;~~
- (2) any school official or instructor has obtained or used, or attempted to obtain or use, in any manner or form, licensing examination questions; ~~or~~
- (3) the school's students have a first-time licensing examination performance record that is below the average examination performance record of all first-time examination candidates; ~~or~~
- (4) the school has not conducted at least one prelicensing course during any 12-month period; or
- (5) the school has refused or failed to submit information or properly completed forms prescribed by the Commissioner.

(e) In all proceedings to deny, revoke, suspend, or terminate approval of a school, the provisions of Chapter 150B of the General Statutes shall be applicable.

(f) When a school's approval is discontinued, the procedure for reinstatement shall be to apply as a new school, with a statement of the reasons that the school is now eligible for reconsideration.

(g) If a school's approval has been suspended upon the Commissioner's finding that the school has not conducted at least one prelicensing course during any 12-month period that school may reapply after one year of suspension. At such time, the Commissioner shall give the school six months to conduct at least one prelicensing course.

(h) The following requirements shall apply for changes during any approved year:

- (1) A school shall notify the Commissioner of any change of course location or schedule information no fewer than five business days before the change. Notification of such changes shall be in writing.
- (2) An approved school that intends to terminate its prelicensing program, ~~other than during the annual renewal period,~~ program shall notify the Commissioner in writing.
- (3) A school shall notify the Commissioner in writing of a change of textbook.

(i) An approved school may use, for advertising or promotional purposes, examination performance data made available to the school by the Commissioner, provided that any data disclosed by the school shall be accurate, shall be presented in a manner that is not misleading, and shall:

- (1) be limited to the annual examination performance data for the particular school and for all examination candidates in the State; and
- (2) include the type of examination, the time period covered, the number of first-time candidates examined, and either the number or percentage of first-time candidates passing the examination; and examination.
- (3) ~~be reviewed and approved by the Commissioner in writing before publication.~~

(j) A classroom school's facilities and equipment shall have been found by appropriate local code inspectors to be in compliance with all applicable local, State and federal laws and regulations regarding safety, sanitation, and access by persons with disabilities.

(k) The school shall designate one person as the program director. The program director shall be responsible for administrative matters such as recruiting, evaluating and certifying the qualifications of instructors, developing programs, scheduling of classes, advertising, maintaining facilities and equipment, recordkeeping and supervising of the prelicensing program.

(l) A school shall publish and provide to all prelicensing students before enrollment a publication of that school that contains the following information:

- (1) name of school and publication date;
- (2) name of sponsor;
- (3) all associated costs; and
- (4) an outline or description of all prelicensing courses offered.

(m) With the exception of correspondence or Internet courses, a school shall file with the Commissioner information giving exact dates, times, locations, and instructor name for each scheduled prelicensing course. This information may be submitted either at the beginning of each quarter or semester or no later than one week before the first class meeting of each prelicensing course.

(n) Classroom schools shall retain the following material on file at one location for at least three years:

- (1) class schedules;
- (2) advertisements;
- (3) bulletins, catalogues, and other official publications;
- (4) grade reports, showing a numeric grade for each student;
- (5) attendance records;
- (6) master copy of each final course examination, indicating the answer key, the school name, course location, course dates and name of instructor;
- (7) list of student ~~names, social security numbers,~~ names and their license identifying numbers for each course, and the name of the ~~Instructor; instructor; and~~
- (8) student registration information.

All files shall be made available to the Commissioner upon request.

(o) Correspondence and ~~internet-Internet~~ schools shall retain the following material on file at one location for at least three years:

- (1) advertisements;

- (2) bulletins, catalogues and other official publications;
- (3) grade reports;
- (4) ~~a list of student names, with social security numbers, names and their license identifying numbers~~ for each course, and the name of the instructor; and
- (5) student registration information that ~~must shall~~ be obtained prior to the distribution of course ~~material.~~ material; and
- (6) student records to validate the integrity of the security measures utilized by the provider.

All files shall be made available to the Commissioner upon request.

(p) In the event of illness, injury or death of an instructor, the program director may use a ~~non-approved-qualified~~ instructor to complete a course. ~~The school shall thereafter suspend operation of that prelicensing course until an approved instructor is available.~~

Authority G.S. 58-2-40; 58-33-30(d); 58-33-130; 58-33-132.

11 NCAC 06A .0703 PROGRAM DIRECTORS

(a) All program directors shall be approved by the Commissioner in accordance with the provisions of this Section.

(b) A person desiring approval as a program director shall make written application to the Commissioner upon a form prescribed by the Commissioner.

(c) Applications must be endorsed by the president/chief operating officer of the sponsoring educational institution, company, agency or association. If the employing school is not currently approved by the Commissioner, an application for school approval shall be submitted along with the application for program director approval.

(d) The Commissioner shall approve an applicant as a program director upon finding that the applicant is recommended by the president/chief operating officer of the sponsoring educational institution, company, agency or association has submitted all information required by the Commissioner, possesses good character and reputation, and:

- (1) Holds a baccalaureate or higher degree and has at least two years of experience as an instructor of insurance or as an educational administrator; ~~or~~
- (2) Holds a baccalaureate or higher degree and has at least six years of experience in the insurance industry with a minimum of two years of experience in insurance management; ~~or~~
- (3) Is a full-time faculty member of a fully accredited senior level college or university who regularly teaches risk and insurance courses; or
- (3)(4) ~~Possesses qualifications that are found by the Commissioner to be substantially equivalent to those described.~~ Has education and experience that are found by the Commissioner to be equivalent to the qualifications described in Subparagraphs (d)(1) and (d)(2) of this Rule.

(e) Program director approval shall be valid for an indefinite period, subject to future changes in laws or regulations regarding approval of program directors.

(f) The Commissioner shall deny, revoke, or suspend the approval of any program director upon finding that:

- (1) The program director fails to meet the criteria for approval provided by these regulations; ~~or~~
- (2) The program director has failed to comply with any provisions ~~of 11 NCAC 6A .0700; or~~ of this Section;
- (3) The program director's employment has been terminated by any sponsoring educational institution/company; ~~or~~
- (4) The program director provided false information to the Commissioner when making application for approval; ~~or~~
- (5) The program director has at any time had an insurance license denied, suspended or revoked by this or any other insurance department, or has ever been required to return a license while under investigation; ~~or~~
- (6) The program director has obtained or used, or attempted to obtain or use, in any manner or form, examination questions; or
- (7) The program director has failed to utilize an acceptable level of performance in directing the insurance prelicensing program.

(g) In all proceedings to deny, revoke, or suspend approval, the provisions of Chapter 150B of the General Statutes shall be applicable.

(h) When a program director's approval is discontinued, the procedure for reinstatement shall be to apply as a new program director, with a statement of the reasons that he is now eligible for reconsideration. The Commissioner may require an investigation before new approval is granted.

(i) An approved program director shall inform the Commissioner of any change in program affiliation by filing an application for program director approval prior to directing a new program.

~~(j) Full time faculty of fully accredited senior level colleges and universities who regularly teach risk and insurance courses shall be deemed to meet the eligibility requirements of this Section.~~

~~(k)(i)~~ The program director is responsible for the actions of the approved school's instructors.

Authority G.S. 58-2-40; 58-33-30(d).

11 NCAC 06A .0704 COURSES

(a) This Rule establishes minimum standards for ~~life and health, property and liability, property, casualty, personal lines, life, accident and health or sickness and Medicare supplement, and long term care insurance~~ property, casualty, personal lines, life, accident and health or sickness and Medicare supplement, and long term care insurance prelicensing courses ~~prescribed by~~ required under G.S. 58-33-30.

(b) Insurance prelicensing programs shall ~~consist of any of the following courses; comprise courses in the following subjects:~~

- (1) ~~life and health insurance;~~
- (2) ~~property and liability insurance; and~~
- (3) ~~Medicare supplement and long term care insurance.~~

(1) Accident and health or sickness;

(2) Casualty;

(3) Life;

(4) Medicare supplement insurance and long-term care insurance;

(5) Personal lines; and

(6) Property.

(c) The maximum length of an approved prelicensing education course shall be at the discretion of the school. In no event shall a school A school shall not offer a life and health or property and liability property, casualty, personal lines, life, accident and health or sickness course of comprising fewer than 40 20 hours or a Medicare supplement and long term care course of comprising fewer than 10 hours.

(d) The following requirements are course standards:

(1) All courses shall consist of instruction in the subject areas ~~covered specified in G.S. 58-33-30(e)(3); described in G.S. 58-33-30(d)(2) and 58-33-30(d)(3).~~

(2) Courses may also include coverage of related subject areas not prescribed by the Commissioner; however, such courses must provide additional class time, above the minimum requirement stated in ~~Rule 0704(e) of this Section~~ Paragraph (c) of this Rule, for the coverage of such subject areas.

(3) Prelicensing courses are intended for instructional purposes only and not for promoting the interests of or recruiting employees for any particular insurance agency or company.

(4) Schools shall establish and enforce academic standards for course completion that ~~reasonably~~ adequate assure that students receiving a passing grade possess adequate knowledge and understanding of the subject areas prescribed for the course. In any course for which college credit is awarded, the passing grade for such course shall be the same as the grade that is considered passing under the school's uniform grading system.

(5) Schools shall conduct a final comprehensive course examination that covers all subject areas prescribed by the Commissioner for each course. Schools may allow a student to make up a missed examination or to retake a failed examination in accordance with policies adopted by the school. No final examination shall be given until a student has completed the instructional requirement.

(6) Students shall attend a minimum of ~~40-20~~ 20 hours of property, casualty, personal lines, life, accident and health or sickness instruction or a minimum of 10 hours of Medicare supplement and long term care instruction. Time set aside for breaks, pop-tests, quizzes, the final comprehensive course examination and other non-instructional activities shall not count toward the minimum instructional

requirement. If a ~~life and health or property and liability property, casualty, personal lines, life, accident and health or sickness~~ course is scheduled for ~~50~~ 25 or more instructional hours, a student shall attend at least 80 percent of the total hours offered by the course.

(e) The following requirements shall be met for scheduling purposes:

- (1) Class meetings or correspondence courses shall be limited to a maximum of eight hours of instruction in any given day.
- (2) Classroom courses shall have fixed beginning and ending dates and may not be conducted on an open-entry/open-exit basis.
- (3) Correspondence or Internet courses shall not have fixed beginning and ending dates and shall be conducted on an open-entry basis.

(f) The following shall apply to the use of text books:

- (1) Choice of classroom course text shall be at the discretion of each school.
- (2) Text books used in correspondence or internet Internet courses shall be approved by the Commissioner before use. No text book used in a correspondence course shall be approved unless it contains instruction in the subject areas ~~specified in G.S. 58-33-30(e)(3), described in G.S. 58-33-30(d)(2) and 58-33-30(d)(3).~~

(g) All prelicensing classroom school courses shall be taught by instructors who ~~have been approved by the Commissioner.~~ meet the qualifications described in Rule .0705 of this Section.

(h) All prelicensing correspondence courses shall be monitored by instructors who ~~have been approved by the Commissioner.~~ meet the qualifications described in Rule .0705 of this Section. An instructor shall be designated for each correspondence or Internet course student.

(i) The following certification of course completion procedures shall apply:

- (1) Schools shall validate each student who successfully completes a prelicensing course ~~an official certificate on a form prescribed by the Commissioner with an Examination Admission Ticket/Certificate of Course Completion. A certificate~~ The Examination Admission Ticket/Certificate of Course Completion shall not be validated for a student prior to completion of all course requirements and the passing of the course's comprehensive final examination.
- (2) ~~A Certificate of Course Completion/Examination Admission Ticket An Examination Admission Ticket/Certificate of Course Completion shall be validated for each course successfully completed by a student. A certificate~~ An Examination Admission Ticket/Certificate of Course Completion presented at the examination site that indicates completion of more than one course shall be invalid.

- (3) ~~A Certificate of Course Completion/Examination Admission Ticket An Examination Admission Ticket/Certificate of Course Completion shall be valid for access to the examination for three months~~ 90 days or a maximum of five examination attempts, whichever occurs first. If an applicant for a license does not successfully pass the examination within three months ~~90 days or five examination attempts in the 3 month period, he~~ 90-day period, the applicant shall again meet the prelicensing education requirement to be eligible for the examination.

Authority G.S. 58-2-40; 58-33-30(d); 58-33-132.

11 NCAC 06A .0705 INSTRUCTORS

~~(a) All instructors shall be approved by the Commissioner in accordance with the provisions of this Rule.~~

~~(b) A person desiring approval to teach prelicensing courses shall make written application to the Commissioner.~~

~~(c) The Commissioner shall approve an applicant as an instructor upon finding that the applicant has submitted all information required by the Commissioner and has the qualifications described in this Paragraph:~~

- ~~(1) Life and health:~~
 - ~~(A) Chartered Life Underwriter (CLU); or~~
 - ~~(B) Chartered Financial Consultant (ChFC); or~~
 - ~~(C) Fellow Life Management Institute (FLMI); or~~
 - ~~(D) Life Underwriter Training Council Fellow (LUTCF); or~~
 - ~~(E) Four years of experience as a full time employee or representative interpreting or explaining insurance policy contracts in the life and health industry and a designation as:~~
 - ~~(i) Certified Employee Benefits Specialist (CEBS); or~~
 - ~~(ii) Life Underwriter Training Council Graduate (LUTC Graduate); or~~
 - ~~(iii) Fraternal Insurance Counselor (FIC); or~~
 - ~~(iv) Certified Financial Planner (CFP); or~~
 - ~~(v) Holder of degree in insurance (associate or bachelors); or~~
 - ~~(F) Seven years of experience as a full time employee or representative interpreting or explaining insurance policy contracts in the life and health industry; or~~
 - ~~(G) A combination of training, experience and qualifications that are substantially equivalent to those listed among 11 NCAC 6A .0705(e)(1)(A)~~

- through (F) to satisfy the Commissioner that the applicant is qualified:
- (2) ~~Property and liability:~~
- (A) ~~Chartered Property and Casualty Underwriter (CPCU); or~~
- (B) ~~Four years of experience as a full-time employee or representative interpreting or explaining insurance policy contracts in the property and liability industry and a designation as:~~
- (i) ~~Associate in Underwriting (AU); or~~
- (ii) ~~Program in General Insurance (INS); or~~
- (iii) ~~Accredited Advisor in Insurance (AAI); or~~
- (iv) ~~Associate in Claims (AIC); or~~
- (v) ~~Associate in Risk Management (ARM); or~~
- (vi) ~~Certified Insurance Counselor (CIC); or~~
- (vii) ~~Associate in Premium Auditing (APA); or~~
- (viii) ~~Associate in Insurance Accounting and Finance (AIAF); or~~
- (ix) ~~Holder of degree in insurance (associate or bachelors); or~~
- (C) ~~Seven years of experience as a full-time employee or representative interpreting or explaining insurance policy contracts in the property and liability industry; or~~
- (D) ~~A combination of training, experience and qualifications that are substantially equivalent to those listed among 11 NCAC 6A .0705(e)(2)(A) through (C) to satisfy the Commissioner that the applicant is qualified.~~

(a) Each instructor shall have the following qualifications which shall be verified by the instructor's preclicensing education school:

- (1) Accident and health or sickness; Medicare supplement insurance and long-term care insurance:
- (A) RHU;
- (B) CEBS;
- (C) REBC;
- (D) HIA;
- (E) Four years of experience as a full-time employee or representative interpreting or explaining insurance policy contracts in the life and health industry and a designation a CEBS;

or holder of degree in insurance (associate or bachelors);

- (F) Seven years of experience as a full-time employee or representative interpreting or explaining insurance policy contracts in the accident and health or sickness industry; or
- (G) Has education and experience that are found by the Commissioner to be equivalent to the qualifications described in Rule .0703(d)(1) and (d)(2) of this Section.

(2) Life:

- (A) Chartered Life Underwriter (CLU);
- (B) Chartered Financial Consultant (ChFC);
- (C) Fellow Life Management Institute (FLMI);
- (D) Life Underwriter Training Council Fellow (LUTCF);
- (E) Four years of experience as a full-time employee or representative interpreting or explaining insurance policy contracts in the life and health industry and a designation as: CEBS; or Life Underwriter Training Council Graduate (LUTC Graduate); or Fraternal Insurance Counselor (FIC); or CFP; or holder of degree in insurance (associate or bachelors);
- (F) Seven years of experience as a full-time employee or representative interpreting or explaining insurance policy contracts in the life and health industry; or
- (G) Has education and experience that are found by the Commissioner to be equivalent to the qualifications described in Rule .0703(d)(1) and (d)(2) of this Section.

(3) Property, casualty and personal:

- (A) Chartered Property and Casualty Underwriter (CPCU);
- (B) Four years of experience as a full-time employee or representative interpreting or explaining insurance policy contracts in the property and liability industry and a designation as: Associate in Underwriting (AU); or Program in General Insurance (INS); or AAI; or Associate in Claims (AIC); ARM or CIC; Associate in Premium Auditing (APA); or Associate in Insurance Accounting and Finance (AIAF); or holder of degree in insurance (associate or bachelors);
- (C) Seven years of experience as a full-time employee or representative

interpreting or explaining insurance policy contracts in the property and liability industry; or

(D) Has education and experience that are found by the Commissioner to be equivalent to the qualifications described in Rule .0703(d)(1) and (d)(2) of this Section.

~~(d)(b)~~ An applicant for instructor shall be ~~approved~~ qualified by the prelicensing education school for each course taught in the prelicensing curriculum.

~~(e)(c)~~ The Commissioner shall deny, revoke, suspend, or terminate the approval of an instructor upon finding that:

- (1) The instructor fails to meet the criteria for approval provided by this Rule; ~~or~~
- (2) The instructor has failed to comply with ~~the Commissioner's statutes or rules~~ regarding prelicensing courses or schools; ~~or~~
- (3) The instructor's employment has been terminated by any approved school ~~approved by the Commissioner~~ on the grounds of incompetence or failure to comply with institutional policies and procedures; ~~or~~
- (4) The instructor provided false information to the ~~Commissioner on any form or application; or Commissioner;~~
- (5) The instructor has at any time had an insurance license denied, ~~suspended~~ suspended, revoked, or terminated, by ~~this or any other insurance department, the Commissioner or any other state insurance regulator,~~ or has ever been required to return a license while under investigation; ~~or~~
- (6) The instructor has obtained or used, or attempted to obtain or use, in any manner or form, examination questions; or
- ~~(7) The instructor has failed to employ acceptable instructional principles and methods; or~~
- ~~(8)(7)~~ The instructor's students have a first-time licensing examination performance record that is below the average examination performance record of all first-time examination candidates.

~~(f)(d)~~ In all proceedings to deny, revoke, suspend, or terminate approval of an instructor, the provisions of Chapter 150B of the General Statutes shall be applicable.

~~(g)(e)~~ When an instructor's approval is discontinued, the procedure for reinstatement shall be to apply as a new instructor, with a statement of reasons that he is now eligible for reconsideration. The Commissioner may require an investigation before new approval is granted.

~~(h) An individual who instructs for an approved school shall be responsible for verifying to that school's program director that he has been approved by the Commissioner as an instructor~~

~~(i)(f)~~ Additional instructor requirements shall be the same as those for instructors as provided in ~~11 NCAC 6A .0808(d) through (f).~~ 11 NCAC 06A .0808.

Authority G.S. 58-2-40; 58-33-30(d); 58-33-132.

SECTION .0800 - CONTINUING EDUCATION

11 NCAC 06A .0801 DEFINITIONS

As used in this Section:

- (1) "Biennial compliance period" means the 24-month period during which an agent or adjuster shall comply with continuing education requirements.
- ~~(1)(2)~~ "Cluster of courses" means a number of courses, each of which is less than 100 minutes in length, but altogether 100 minutes or more in length, that are offered within one state or national program or convention.
- (3) "Compliance year" means the second year of the biennial compliance period.
- (4) "Continuing Education Administrator" or "Administrator" means the entity with which the Commissioner contracts for continuing education administration, including the approval of providers and courses and the retention of ICEC records for licensees.
- ~~(2)(5)~~ "Course" means a continuing education course directly related to insurance principles and practices or a course designed and approved specifically for licensees; but does not mean a business course of a general nature or an insurance marketing or sales course.
- ~~(3)(6)~~ "Disinterested third party" means a person not concerned, with respect to possible gain or loss, in the result of a pending course final examination.
- ~~(4)(7)~~ "Distance learning" means an educational program in which the licensee and the instructor are in different physical locations and interact with each other through various methods of telecommunication.
- (8) "Ethics course" means a continuing education course that deals with usage and customs among members of the insurance profession involving their moral and professional duties toward one another, toward clients, toward insureds, and toward insurers.
- ~~(5)(9)~~ "Insurance continuing education credit or "ICEC"" means a value assigned to a course by the Commissioner after review and approval of a course information. This term means the same as "credit hour" as used in G.S. 58-33-130.
- ~~(6)(10)~~ "Instructor" means an individual who teaches, lectures, leads, or otherwise instructs a course.
- ~~(7)(11)~~ "Licensee" means ~~a duly licensed property and liability insurance or life and health insurance agent or broker who is required to comply with this Section.~~ a duly licensed adjuster or a duly licensed insurance agent or broker with any of the following lines of authority: property, casualty, personal lines, life and accident and health or sickness.

- (8)(12) "Supervised examination" means a timed, closed book examination that is monitored by a disinterested third party and graded by a nationally recognized insurance education program.
- (9)(13) "Supervised individual study" means learning through the use of audio tapes, video tapes, computer programs, programmed learning courses, and similar types of learning experiences other types of electronic media that are completed in the presence of an instructor.

Authority G.S. 58-2-40; 58-33-130.

11 NCAC 06A .0802 LICENSEE REQUIREMENTS

- ~~(a) Life and health licensees shall obtain 12 ICECs during each calendar year in approved life and health courses. Each person holding a life and health license shall complete a continuing education course on ethics within two years after January 1, 2008, and every two years thereafter. The course shall comprise three ICECs and shall be approved by the Commissioner.~~
- ~~(b) Property and liability licensees shall obtain 12 ICECs during each calendar year in approved property and liability courses. Each person holding a property and liability license shall complete a continuing education course on ethics within two years after January 1, 2008, and every two years thereafter. The course shall comprise three ICECs and shall be approved by the Commissioner.~~
- ~~(c) Any person holding more than one license to which this Section applies shall obtain 18 ICECs during each calendar year, including a minimum of six ICECs for each kind of license.~~
- (a) Each person holding a life, accident and health or sickness, property, casualty, personal lines, or adjuster license shall obtain 24 ICECs during each biennial compliance period. Each person holding one or more life, accident and health or sickness, property, casualty, personal lines, variable life and variable annuity products or adjuster license shall complete an ethics course or courses within two years after January 1, 2008, and every biennial compliance period thereafter as defined in this Section. The course or courses shall comprise three ICECs.
- (b) Each person holding one or more property, personal lines, or adjuster license, shall complete a continuing education course or courses on flood insurance and the National Flood Insurance Program within the first biennial compliance period after January 1, 2008, and every other biennial compliance period thereafter. The course or courses shall comprise three ICECs.
- (c) Each licensee shall, before the end of that licensee's biennial compliance year, furnish evidence as set forth in this Section that the continuing education requirements have been satisfied.
- (d) An instructor shall receive the maximum ICECs awarded to a student for the course.
- (e) Licensees shall not receive ICECs for the same course more often than one time in any three calendar year biennial compliance period.
- (f) Licensees do not have to obtain ICECs for the calendar year in which they are initially licensed.

- ~~(g)(f) Licensees shall receive ICECs for a course only for the calendar year biennial compliance period in which the course is completed. Any course requiring an examination shall not be considered completed until the licensee passes the examination.~~
- ~~(h)(g) Licensees shall maintain records of all ICECs for three years following the obtaining of such after obtaining those ICECs, which records shall be available for inspection upon the Commissioner's request by the Commissioner.~~
- (i)(h) Nonresident licensees who meet continuing education requirements in their home states meet the continuing education requirements of this Section. Nonresident licensees whose home states have no continuing education requirements shall meet the requirements of this Section. Nonresident adjusters who qualify for licensure by passing the North Carolina adjuster examination pursuant to G.S. 58-33-30(h)(2)(a) shall meet the same continuing education requirements as a resident adjuster including mandatory flood and ethics courses. Nonresident adjusters who qualify for licensure by passing an adjuster examination in another state pursuant to G.S. 58-33-30(h)(2)(b) and are in good standing in that state shall meet the same continuing education requirements as a resident adjuster including mandatory flood and ethics courses.
- (j)(i) Licensees are exempt from the requirements of this Section, other than ethics and flood courses as described in Paragraph (j) of this Rule, if they:
- (1) are age 65 or older; and
 - (2) have been continuously licensed in the line of insurance for at least 25 years; and
 - (A) either hold a nationally recognized professional designation for the line of insurance. Acceptable designations include those listed in ~~44 NCAC 6A Rule .0803(a) and (b) of this Section;~~ or
 - (B) certify to the Department Commissioner annually they are inactive agents who neither solicit applications for insurance nor take part in the day to day operation of an agency.
- ~~(k)(j) Any licensee holding more than one license to which this Section applies and who qualifies for exemption under Paragraph (j) Paragraph (i) of this Rule for one license type shall meet the ethics and flood courses as required in Paragraph (a) and (b) of this Rule and in Rule .0812 of this Section, obtain a minimum of six ICECs in each calendar year for the license type not exempted.~~
- (l)(k) Courses completed before the issue date of a new license do not meet the requirements of this Section for that new license.
- ~~(m)(l) No credit shall be given for courses taken before they have been approved by the Department Commissioner.~~
- ~~(n) Persons who hold adjuster licenses shall obtain 12 ICECs during each calendar year in approved property and liability courses. As used in this Section, "licensee" includes a person who holds an adjuster license and who is required to comply with this Section.~~
- (o) Each person holding a property and liability, personal lines, or adjuster license shall complete a continuing education course on flood insurance and the National Flood Insurance Program

~~within two years after January 1, 2008, and every four years thereafter. The course shall comprise three ICECs and shall be approved by the Commissioner.~~

(m) Each person with an even numbered birth year shall meet continuing education requirements in an even numbered compliance year. Each person with an odd numbered birth year shall meet continuing education requirements in an odd numbered compliance year. The licensee shall complete 24 hours of continuing education by the last day of the licensee's birth month in the compliance year.

(n) An existing licensee requiring continuing education is an individual who holds any of the following licenses on or before December 31, 2007: life, accident and health or sickness, property, casualty, personal lines, or adjuster. The licensee's birth year determines if an individual must satisfy continuing education requirements in an even-numbered or odd-numbered year. (Example: 1960 is an even-numbered year; 1961 is an odd-numbered year.) The licensee's birth month determines the month that continuing education is due. (Example: An

individual born in October would need to complete 24 hours of continuing education by the end of October in the licensee's compliance year.) The staggered system shall be prorated based on one ICEC per month, up to 24 months. This conversion shall be completed within four years. (Example: An individual with a birth date of February 16, 1960, would have the following two compliance periods during the continuing education conversion: 1st – two ICECs by the end of February 2008; the 2nd – 24 ICECs by the end of February 2010. An individual with a birth date of April 4, 1957, would have the following two compliance periods during the continuing education conversion: 1st – 16 ICECs by the end of April 2009; the 2nd – 24 ICECs by the end of April 2011.) The chart below reflects the number of hours an existing licensee requiring continuing education must have during the four-year conversion. Questions or concerns about this information should be directed to the Agent Services Division at 919-807-6800, or refer to the Department's website: www.ncdoi.com.

Compliance Year	EXISTING LICENSEE MONTH OF BIRTH EVEN/ODD YEAR OF BIRTH																							
	JAN		FEB		MAR		APR		MAY		JUN		JUL		AUG		SEPT		OCT		NOV		DEC	
	even	odd	even	odd	even	odd	even	odd	even	odd	even	odd	even	odd	even	odd	even	odd	even	odd	even	odd	even	odd
2008	1		2		3		4		5		6		7		8		9		10		11		12	
2009		13		14		15		16		17		18		19		20		21		22		23		24
2010	24		24		24		24		24		24		24		24		24		24		24		24	
2011		24		24		24		24		24		24		24		24		24		24		24		24

(o) A new licensee requiring continuing education is an individual who is issued any of the following licenses on or after January 1, 2008: life, accident and health or sickness, property, casualty, personal lines or adjuster. The licensee's birth year determines if an individual must satisfy continuing education requirements in an even-numbered or odd-numbered year. (Example: 1960 is an even-numbered year; 1961 is an odd-numbered year.) The licensee's birth month determines the month that continuing education is due. (Examples: An individual born in October would need to complete 24 hours of continuing education by the end of October in the licensee's compliance year. An individual with a birth date of December 1, 1960, licensed in 2008, is required to meet 24 hours of continuing education by December 31, 2010. An individual with a birth date of October 1, 1957, licensed in 2008, would be required to meet 24 hours of continuing education by October 31, 2011.) The chart below shows the first deadline by which a new licensee would be required to complete 24 hours of continuing education. Questions or concerns about this information should be directed to the Agent Services Division at 919-807-6800, or refer to the Department's website: www.ncdoi.com.

License Issue Year	NEW LICENSEE MONTH OF BIRTH EVEN/ODD YEAR OF BIRTH																							
	JAN		FEB		MAR		APR		MAY		JUN		JUL		AUG		SEPT		OCT		NOV		DEC	
	even	odd	even	odd	even	odd	even	odd	even	odd	even	odd	even	odd	even	odd	even	odd	even	odd	even	odd	even	odd
2008	2010	2011	2010	2011	2010	2011	2010	2011	2010	2011	2010	2011	2010	2011	2010	2011	2010	2011	2010	2011	2010	2011	2010	2011
2009	2012	2011	2012	2011	2012	2011	2012	2011	2012	2011	2012	2011	2012	2011	2012	2011	2012	2011	2012	2011	2012	2011	2012	2011
2010	2012	2013	2012	2013	2012	2013	2012	2013	2012	2013	2012	2013	2012	2013	2012	2013	2012	2013	2012	2013	2012	2013	2012	2013
2011	2014	2013	2014	2013	2014	2013	2014	2013	2014	2013	2014	2013	2014	2013	2014	2013	2014	2013	2014	2013	2014	2013	2014	2013

(p) In order for a member of a professional insurance association to receive ICECs based on membership, the professional insurance association shall be approved as a continuing education provider, shall have been in existence for at least five years, and shall have been formed for purposes other than providing continuing education. The professional insurance association shall:

- (1) Provide the Commissioner or the Administrator with the association's Articles of Incorporation on file with the N.C. Secretary of State;
- (2) Certify to the Commissioner or Administrator that the licensee's membership is active during the biennial compliance period;
- (3) Certify to the Commissioner or Administrator that the licensee attended 50% of the regular meetings;
- (4) Certify to the Commissioner or Administrator that the licensee attended a statewide or intrastate regional educational meeting on an annual basis, where the regional meeting covered an area of at least 25 counties of the State; and
- (5) Pay the one dollar (\$1.00) per ICEC to the Commissioner or Administrator.

Authority G.S. 58-2-40; 58-2-185; 58-2-195; 58-33-130; 58-33-133.

11 NCAC 06A .0804 CARRYOVER CREDIT

~~(a) No more than 75 percent of the ICECs required shall be carried forward from the previous year. Licensees holding one license shall carry over no more than nine ICECs. Licensees holding more than one license shall carry over no more than six ICECs for any one license.~~

~~(b) Only whole ICECs may be carried over. over from one biennial compliance period to the next biennial compliance period. There is no limit on the number of ICECs that can be carried over.~~

Authority G.S. 58-2-40; 58-33-130.

11 NCAC 06A .0805 CALCULATION OF ICECS

The following standards shall be used to evaluate courses submitted for continuing education approval:

- (1) Programs requiring meeting or classroom attendance:
 - (a) Courses or clusters of courses of less than 50 minutes shall not be evaluated for continuing education ICECs.
 - (b) Courses shall not be approved for less than one ICEC.
 - (c) One ICEC shall be awarded for each 50 minutes of instruction unless the Commissioner assigns fewer ICECs based upon the evaluation of the submitted course materials. Courses shall only be approved for whole ICECs.
 - (d) Course providers shall monitor participants for attendance and attention.
- (2) Independent study programs:
 - (a) Independent study programs qualify for continuing education only when there is a supervised examination. No examination administered or graded by insurance company personnel for its own employees shall be considered to be administered by a disinterested third party. The examination supervisor shall submit to the provider a sworn affidavit that certifies the authenticity of the examination. The provider shall retain the affidavit and examination records.
 - (b) Each course shall be assigned ICECs, which shall be awarded upon the passing of the supervised examination.
- (3) Distance Learning Programs:

- (a) Distance learning qualifies only when an instructor is available to respond to questions and to maintain attendance records.
- (b) Any organization sponsoring a teleconference shall have an on-site instructor.
- (4) Internet programs qualify only when there is a secure examination required at the end of the licensee's study of the course material and when periodic security measures have been used throughout the course material before the final examination.
- (5) Webinar courses qualify only when there is a method of monitoring attendance, by way of a random question and answer segment throughout the course, or a monitor at each location. Examinations are not required in Webinar courses.

Authority G.S. 58-2-40; 58-33-130.

11 NCAC 06A .0807 HARDSHIP

~~Licensees shall make appeals for extensions of time under G.S. 58-33-130(c) on or before January 30 of the year immediately following the calendar year in which the required ICECs were not obtained. A licensee may request an extension of time under G.S. 58-33-130(c) during or before the last month of the licensee's compliance year.~~

Authority G.S. 58-2-40; 58-33-130.

11 NCAC 06A .0808 INSTRUCTOR QUALIFICATION

- (a) ~~Instructor~~ Continuing education providers shall certify that continuing education instructors meet the qualification requirements, which shall be the same as those for instructors as provided in 11 NCAC 06A .0705(c), except that the Commissioner may approve instructors possessing specific areas of expertise to instruct courses comprising those areas of expertise.
- (b) Insurance company trainers as instructors ~~must~~ shall be full time salaried employees of the insurance company sponsoring the course and ~~must~~ shall have as part of their full time responsibilities the duty to provider insurance company training.
- (c) College and university instructors may be full time or adjunct faculty of the accredited college or university, ~~must~~ shall be teaching a curriculum course in his or her field of expertise, and ~~must~~ shall meet the requirements of the association that accredits the college or university.
- (d) The Commissioner shall require applicants and current instructors to submit to a personal interview, provide a video or audio tape, a written history of courses taught or any other documentation that will verify the applicant's qualifications to instruct approved insurance courses.
- (e) Temporary instructor authority shall be given to each qualified applicant. The instructor authority shall become permanent after six months unless otherwise denied, suspended, terminated or revoked by the Commissioner.

- (f) As a condition to continued instructor ~~approval~~, ~~instructors shall teach~~ qualification, providers shall insure that each instructor teaches one prelicensing or continuing education course each calendar ~~year beginning in 1996~~ year.

Authority G.S. 58-2-40; 58-33-130; 58-33-132.

11 NCAC 06A .0809 APPROVAL OF COURSES

- (a) Providers of all courses specifically approved under ~~44 NCAC 6A.0803 must file~~ Rule .0803 of this Section shall file with the Commissioner, or Administrator copies of program catalogs, course outlines, copies of advertising literature, and a nonrefundable, nontransferable filing fee of one hundred dollars (\$100.00) per course, course up to a two thousand five hundred dollar (\$2,500) per calendar year maximum, and any other documents or related materials that the Commissioner requests, prior to January 1, 1991, and within 30 days of any changes to such programs in the future.
- (b) All providers of courses not specifically approved under ~~44 NCAC 6A .0803 must~~ Rule .0803 of this Section shall do the following:
 - (1) Any individual, school, insurance company, insurance industry association, or other organization intending to provide classes, seminars, or other forms of instruction as approved courses shall apply on forms provided by the ~~Commissioner; Commissioner or Administrator;~~ pay a nonrefundable, nontransferable filing fee of one hundred dollars (\$100.00) per ~~course, course up to a two thousand five hundred dollars (\$2,500) per calendar year maximum~~ and provide the requested number of copies of detailed outlines of the subject matter to be covered, and copies of handouts to be ~~given~~ given, the qualifications of each instructor, and other information requested by the Commissioner to support the request for approval.
 - (2) Providers of supervised individual study programs ~~must~~ shall file the requested number of copies of the study ~~programs, programs and the examination, and Internet course security procedures.~~ Extra copies will be returned to a provider after course approval if a return fee is paid in advance.
 - (3) ~~Such applications and accompanying information must be received by the Commissioner at least 30 days prior to the intended beginning date of the course~~
 - (4)(3) The Commissioner shall ~~approve or deny the application; and shall indicate the number of ICECs that have been assigned to the course if approved that has been approved.~~ If a course is not approved or disapproved within 60 days after receipt of all required information, the course is deemed to be approved at the end of the 60-day period.

~~(5)(4)~~ If a course approval application is denied, a written explanation of the reason for such action shall be furnished with the denial.

(c) ~~Course approval applications must include all of the following forms and attached information in exactly the following order:~~ shall include the following:

~~(1) A cover letter with payment of the nonrefundable, nontransferable filing fee of one hundred dollars (\$100.00) per course attached with separate paragraphs for the following:~~

~~(A) a request that the course be evaluated;~~

~~(B) for whom the course is designed;~~

~~(C) the course objectives;~~

~~(D) the names and duties of all persons who will be affiliated in an official capacity with the course;~~

~~(E) the course provider's tuition and fee refund policy; and~~

~~(F) an outline that shall include a statement of the method used to determine whether there will be meaningful attainments of education by licensees to be certified upon their satisfactory completion of the course. Such method may be a written examination, a written report, certification of attendance only, or other methods approved by the Commissioner. The outline shall describe the method of presentation;~~

~~(2) The course content outline with instruction hours assigned to the major topics;~~

~~(3) Instructor approval application and instructor qualification documentation or resume;~~

~~(4) Schedule of dates, beginning and ending times and places the course will be offered, along with the names of instructors for each course session. Schedules shall be submitted at least 30 days in advance of any subsequent course offerings but it will not be necessary that courses be resubmitted unless there are substantial changes in content;~~

~~(5) A copy of the course completion certificate;~~

~~(6) A course rating form;~~

~~(7) A course bibliography.~~

~~(1) A statement for whom the course is designed;~~

~~(2) The course objectives;~~

~~(3) The names and duties of all persons who will be affiliated in an official capacity with the course;~~

~~(4) The course provider's tuition and fee refund policy;~~

~~(5) An outline that shall include:~~

~~(A) a statement of whether there will be a written examination, a written report, or a certification of attendance only;~~

~~(B) the method of presentation;~~

~~(C) a course content outline with instruction hours assigned to the major topics; and~~

~~(D) the schedule of dates, beginning and ending times and places the course will be offered, along with the names of instructors for each course session, submitted at least 30 days before any subsequent course offerings;~~

~~(6) A copy of the course completion certificate ;~~

~~(7) A course rating form;~~

~~(8) A course bibliography; and~~

~~(9) An electronic copy of the course content and course examination for Internet courses.~~

~~(d) The Commissioner may waive any part of this Section for programs offered by the University of North Carolina system schools or the North Carolina Department of Community Colleges. (e)(d) A provider may request that its materials be kept confidential if they are of a proprietary nature. The Commissioner will review and promptly return such extra copies of materials if a return fee is paid in advance.~~

~~(f)(e) Courses awarded more than six ICECs must have an Insurance Department approved exam for the student to get full credit; otherwise, the limitations of 11 NCAC 6A .0806(e) will apply. shall have an examination approved by the Commissioner in order for the licensee to get full credit.~~

~~(g)(f) Cancelled course schedules must shall be submitted five days before the scheduled course offering. All students scheduled to attend the cancelled course must shall be informed of the cancellation.~~

~~(h)(g) Course rosters shall be submitted within 15 business days after course completion in accordance with 11 NCAC 6A .0803(d). A provider shall submit course attendance records electronically within 15 business days after course completion.~~

~~(i) An error on the licensee's record that is caused by the provider in submitting the course attendance records shall be resolved by the provider within 15 days after the discovery of the error by the provider.~~

Authority G.S. 58-2-40; 58-33-130; 58-33-132.

11 NCAC 06A .0811 SANCTIONS FOR NONCOMPLIANCE

~~(a) This Rule establishes sanctions for licensees who fail to complete their annual continuing education requirements and for licensees, course providers, course provider personnel, course presenters, course presenter personnel, and course instructors who falsify any records or documents in connection with the continuing education program or who do not comply with G.S. 58-33-130, G.S. 58-33-132, or this Section.~~

~~(b)(a) If the license of any person lapses under G.S. 58-33-130(c), the license shall be reinstated. Commissioner shall reinstate the license when the person has completed the continuing education requirements. If the person does not satisfy the requirements for licensure reinstatement by July 1 of that year, within 120 days after the end of the person's previous compliance year, the person shall complete the appropriate prelicensing education requirement and pass the appropriate~~

licensing examination, at which time the Commissioner shall reinstate the person's license.

~~(e)(b)~~ The Commissioner may suspend, revoke, or refuse to renew a license for any of the following causes:

- (1) Failing to respond to Department inquiries, including continuing education audit requests, within seven calendar days after the receipt of the inquiry or request.
- (2) Requesting an extension or waiver under false pretenses.
- (3) Refusing to cooperate with Department employees in an investigation or inquiry.

~~(d)(c)~~ The Commissioner may suspend, revoke, or refuse to renew a course provider's, presenter's or instructor's authority to offer courses for any of the following causes:

- (1) Advertising that a course is approved before the Commissioner has granted such approval in writing.
- (2) Submitting a course outline with material inaccuracies, either in length, presentation time, or topic content.
- (3) Presenting or using unapproved material in providing an approved course.
- (4) Failing to conduct a course for the full time specified in the approval request submitted to the Commissioner.
- (5) Preparing and distributing certificates of attendance or completion before the course has been approved.
- (6) Issuing certificates of attendance or completion before the completion of the course.
- (7) Failing to issue certificates of attendance or completion to any licensee who satisfactorily completes a course.
- (8) Failing to notify the Commissioner in writing of suspected or known violations of the North Carolina General Statutes or Administrative Code within 30 days after suspecting or knowing about the violations.
- (9) Violating the North Carolina General Statutes or Administrative Code.
- (10) Failing to monitor attendance and attention of attendees.

~~(e)(d)~~ Course providers and presenters are responsible for the activities of persons conducting, supervising, instructing, proctoring, monitoring, moderating, facilitating, or in any way responsible for the conduct of any of the activities associated with the course.

~~(f)(e)~~ The Commissioner may require any one of the following upon a finding of a violation of this Section:

- (1) Refunding all course tuition and fees to licensees.
- (2) Providing licensees with a course to replace the course that was found in violation.
- (3) Withdrawal of approval of courses offered by the provider, presenter, or instructor.

~~(g)(f)~~ Each nonresident licensee's record shall be verified through the NAIC Producer Data Base to certify

to the Commissioner that the licensee has complied with the continuing education requirements in the licensee's home state and paid a recertification fee by March 1 of each year. If the license lapses under G.S. 58-33-125(e) and an extension of time is not sought, the Commissioner shall reinstate the license when the licensee has completed the home state continuing education requirements and paid a recertification fee. G.S. 58-33-32, the Commissioner shall cancel the license.

Authority G.S. 58-2-40; 58-33-125(a); 58-33-130; 58-33-132.

11 NCAC 06A .0813 ISSUANCE/CONTINUATION OF PROVIDER APPROVAL

(a) Any individual or entity intending to provide classes, seminars, or other forms of instruction as approved courses shall submit:

- (1) an application as approved by the Commissioner for provider approval; and
- (2) a course approval application in accordance with ~~11 NCAC 6A .0809~~ Rule .0809 of this Section.

(b) The Commissioner or the Administrator shall approve or deny the provider and course approval application.

(c) Any provider approval that is denied shall be furnished a written explanation for the denial in accordance with ~~11 NCAC 6A .0809(4)~~ Rule .0809(4) of this Section.

(d) Any provider receiving a provider approval denial shall have 15 business days to respond to the denial; previously submitted materials will be destroyed; and the one hundred dollar (\$100.00) nonrefundable, nontransferable course filing fee shall be forfeited if the applicant fails to respond within the required timeframe.

(e) As a condition to continued provider approval, providers shall conduct a minimum of one course within the State of North Carolina each calendar year.

(f) Providers shall retain continuing education records for three years and shall provide these records upon request to the Commissioner or to the Administrator.

Authority G.S. 58-2-40; 58-33-130; 58-33-132.

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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 12 .0604.

Proposed Effective Date: February 1, 2008

Public Hearing:

Date: October 30, 2007

Time: 10:00 a.m.

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

Reason for Proposed Action: *The amendment reflects a change that was made to the NAIC's Life Insurance & Annuities Replacement Model Regulation.*

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 December 14, 2007.*

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

Comment period ends: *December 14, 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 12 - LIFE AND HEALTH DIVISION

SECTION .0600 - REPLACEMENT REGULATIONS

11 NCAC 12 .0604 EXEMPTIONS

(a) Unless the statutes state otherwise, this Section shall not apply to transactions involving:

- (1) Credit life insurance;
- (2) Group life insurance or group annuities where there is no direct solicitation of individuals by an insurance producer. Direct solicitation shall not include any group meeting held by an insurance producer solely for the purpose of educating or enrolling individuals or, when initiated by an individual member of the group, assisting with the selection of investment options offered by a single insurer in connection with enrolling that individual. Group life insurance or group annuity certificates marketed through direct response solicitation shall be subject to the provisions of 11 NCAC 12 .0608;

- (3) Group life insurance and annuities used to fund prearranged funeral contracts;
 - (4) An application to the existing insurer that issued the existing policy or contract when a contractual change or a conversion privilege is being exercised; or, when the existing policy or contract is being replaced by the same insurer pursuant to a program filed with and approved by the Commissioner; or, when a term conversion privilege is exercised among corporate affiliates;
 - (5) Proposed life insurance that is to replace life insurance under a binding or conditional receipt issued by the same company;
 - (6) Policies or contracts used to fund:
 - (A) An employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA);
 - (B) A plan described by Sections 401(a), 401(k) or 403(b) of the Internal Revenue Code, where the plan, for purposes of ERISA, is established or maintained by an employer;
 - (C) A governmental or church plan defined in Section 414 of the Internal Revenue Code, a governmental or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under Section 457 of the Internal Revenue Code; or
 - (D) A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor.
 - (7) Where new coverage is provided under a life insurance policy or annuity contract and the cost is borne wholly by the insured's employer or by an association of which the insured is a member;
 - (8) Existing life insurance that is a non-convertible term life insurance policy that will expire in five years or less and cannot be renewed;
 - (9) Immediate annuities that are purchased with proceeds from an existing contract. Immediate annuities purchased with proceeds from an existing policy are not exempt from the rules in this Section; or
 - (10) Structured settlements.
- (b) Notwithstanding 11 NCAC 12 .0604(a)(6), the rules in this Section shall apply to policies or contracts used to fund any plan or arrangement that is funded solely by contributions an employee elects to make, whether on a pre-tax or after tax-basis, and where the insurer has been notified that plan participants may chose from among two or more insurers and there is a direct solicitation of an individual employee by an insurance producer for the purchase of a contract or policy. As used in this

Paragraph, direct solicitation shall not include any group meeting held by an insurance producer solely for the purpose of educating individuals about the plan or arrangement or enrolling individuals in the plan or arrangement, or when initiated by an individual employee, assisting with the selection of investment options offered by a single insurer in connection with enrolling that individual employee.

(c) Registered contracts shall be exempt from the requirements of 11 NCAC 12 .0606(2) and 12 .0612(a)(2) with respect to the provision of illustrations or policy summaries; however, premium or contract contribution amounts and identification of the appropriate prospectus or offering circular shall be required instead.

Authority G.S. 58-2-40; 58-3-115; 58-58-1; 58-58-40.

TITLE 12 – DEPARTMENT OF JUSTICE

Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. Alarm Systems Licensing Board intends to amend the rule cited as 12 NCAC 11 .0210.

Proposed Effective Date: February 1, 2008

Public Hearing:

Date: October 30, 2007

Time: 1:00 p.m.

Location: Bailey & Dixon Conference Room, 434 Fayetteville Street, Suite 2500, Raleigh, NC

Reason for Proposed Action: *The Board determined in 1995 that it was important for any firm, association, corporation, department, division, or branch office to employ an individual who holds an electrical license. The Board proposes to amend the rule to require that the electrical licensee be employed on a full time basis. However, companies that conduct only monitoring services are allowed to request an exemption from the rule.*

Procedure by which a person can object to the agency on a proposed rule: *Objections should be submitted in writing to Director Terry Wright, Alarm Systems Licensing Board, 1631 Midtown Place, Suite 104, Raleigh, NC 27609. All written comments should be submitted on or before the expiration of the public comment period.*

Comments may be submitted to: Terry Wright, 1631 Midtown Place, Suite 104, Raleigh, NC 27609

Comment period ends: December 14, 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 11 - NORTH CAROLINA ALARM SYSTEMS LICENSING BOARD

SECTION .0200 - PROVISIONS FOR LICENSEES

12 NCAC 11 .0210 ELECTRICAL CONTRACTING LICENSE REQUIREMENTS

Each firm, association, corporation, department, division, or branch office required to be licensed pursuant to G.S. 74D-2(a) must ~~maintain at all times employ on a full-time basis~~ a licensee or registered employee who holds a license for either a SP-LV, limited, intermediate or unlimited examination as administered by the North Carolina Board of Examiners of Electrical Contractors. Pursuant to 12 NCAC 11 .0206, each firm, association, corporation, department, division, or branch office must maintain in its records a copy of the licensee's or registered employee's Electrical Contractors License. In the event the licensee holding the electrical contractor's license ceases to perform his duties, the business entity shall notify the Board in writing within 10 working days. The business entity must obtain a substitute electrical contractor licensee within 30 days after the original electrical licensee ceases to serve. If a company provides only alarm systems monitoring services and submits a written request to the Board certifying that they provide only monitoring services, the Board may exempt the company from compliance with this Rule. If the company later elects to sale, install, service or respond to burglar alarms, then the company shall be required to fulfill the requirements of this Rule.

Authority G.S. 74D-2(a); 74D-5.

TITLE 14A – DEPARTMENT OF CRIME CONTROL AND PUBLIC SAFETY

Notice is hereby given in accordance with G.S. 150B-21.2 that the Crime Control and Public Safety- Alcohol Law Enforcement Division intends to adopt the rules cited as 14A NCAC 12 .0605, .0801 - .0811, and amend the rules cited as 14A NCAC 12 .0101 - .0103, .0201, .0301, .0401 - .0403, .0501 - .0504, .0601 - .0604, .0701.

Proposed Effective Date: February 1, 2008

Public Hearing:

Date: November 13, 2007

Time: 10:00 a.m.

Location: 430 North Salisbury Street, Room 2021, Raleigh, NC 27603

Reason for Proposed Action: *Mandate of Session Law 2007-490 and the need for adoption and revision of rules for live boxing, kickboxing, mixed martial arts matches, whether professional, amateur or sanctioned amateur, or toughman events.*

Procedure by which a person can object to the agency on a proposed rule: *Any person who objects to the amendment or adoption of a permanent rule may submit comments to Sheree W. Brown at 4704 Mail Service Center, Raleigh, NC 27699-4704.*

Comments may be submitted to: *Sheree W. Brown, 4704 Mail Service Center, Raleigh, NC 27699-4704, phone (919) 733-3925, fax (919) 715-7077, email sheree.brown@nccrimecontrol.org*

Comment period ends: December 14, 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

The Codifier of Rules has approved the recodification of the following rules. This published notice reference rules with the new citations. Rule .0104 recodified to .0501. Rule .0105 recodified to .0301. Rule .0106 recodified to .0502. Rule .0107 recodified to .0503. Rule .0108 recodified to .0504. Rule .0109 recodified to .0201. Rule .0110 recodified to .0401. Rule .0111 recodified to .0402. Rule .0112 recodified to .0403. Rule .0113 recodified to .0601. Rule .0114 recodified to .0602. Rule .0115 recodified to .0603. Rule .0116 recodified to .0604. Rule .0117 recodified to .0701.

**CHAPTER 12 – BOXING AUTHORITY SECTION OF
ALCOHOL LAW ENFORCEMENT DIVISION**

SECTION .0100 - PURPOSE

14A NCAC 12 .0101 SCOPE

The rules in this Chapter implement the provisions of G.S. 143, Article 68 of the North Carolina General Statutes, and establish the regulations and standards set forth by the Boxing Authority Section of the Alcohol Law Enforcement Division of the North Carolina Department of Crime Control and Public Safety relative to the conduct, promotion, and performances of ~~boxing and kickboxing~~, boxing, kickboxing, toughman or mixed martial arts matches held in North Carolina.

Authority G.S. 143-652.1; S.L. 2007 - 490.

14A NCAC 12 .0102 DEFINITIONS

The definitions contained in G.S. 143-651 apply to the rules in this Chapter ~~unless indicated otherwise.~~ in addition to the following:

- (1) "Brazilian jiu-jitsu" (also known as "Gracie Jiu-Jitsu"), means a martial art developed in Brazil by the Gracie family during the mid-20th century. Originally based on the Japanese martial art of judo as it existed before WW II, it has since developed into an independent system with a major emphasis on ground fighting and grappling, these techniques may be used in mixed martial arts events.
- (2) "Cage" means a fenced enclosure in which some promotional organizations hold mixed martial arts competition.
- (3) "Choke" means a submission technique which restricts blood flow in the carotid arteries, resulting in a competitor either tapping-out or losing consciousness. Some of the most frequently employed chokes are the guillotine choke, rear-naked choke, leg triangle choke, and the arm triangle choke.
- (4) "Fish-hooking" means the action of hooking (grasping) and pulling the inside of an opponent's cheek so as to control his head movement.
- (5) "Freestyle wrestling" means an Olympic grappling sport which permits contestants to attack their opponent above and below the waist, these techniques may be used in mixed martial arts events.
- (6) "Gi" means the traditional uniform worn when practicing aikido, jujitsu, judo, and karate, may not be worn in mixed martial arts events
- (7) "Grappling" means the techniques of throwing, locking, holding, and wrestling, as opposed to kicking and punching, these techniques may be used in mixed martial arts events.
- (8) "Greco Roman wrestling" means an Olympic grappling sport in which all holds are applied

- above the waist in an attempt to throw the opponent, these techniques may be used in mixed martial arts events.
- (9) "Guard" means a basic position in which one competitor lies on his back with their knees bent and legs open. If their opponent is between their legs, the opponent is in their guard. Depending upon the leg position of the fighter on their back, the guard is refereed to as being an open, closed, half, butterfly, spider, or rubber-band guard.
- (10) "Hammer-fist" means a strike with the small finger side of the fist, as if holding a hammer.
- (11) "Judo" means gentle way, it is a grappling art created by Jigoro Kano. Based on the techniques of jujitsu, these techniques may be used in mixed martial arts events.
- (12) "Judoka" means Judo practitioners.
- (13) "Jiu-Jitsu" (also written as jujitsu, ju-jitsu, and jujutsu) means gentle art, a traditional Japanese self-defense that includes kicking, striking, kneeling, throwing, choking and joint locks, and these techniques may be used in mixed martial arts events.
- (14) "Kickboxing" (adapted from Muay Thai) means a striking sport which permits punches, kicks, and knees, these techniques may be used in mixed martial arts events.
- (15) "Mixed martial arts" means a form of sporting martial arts that uses a variety of mixed martial arts techniques to deliver blows with the hands, elbows, and any part of the leg below the hip, including the knee and foot, and also uses boxing, wrestling, and grappling techniques.
- (16) "Mount" means a basic position in which a competitor gains top position and controls their opponent by sitting on top of them in the full mount position, or from the side of the opponent in the side mount.
- (17) "Muay Thai" (known as Thai boxing and is the national sport of Thailand) means a pure striking art in which blows are delivered with the hands, feet, knees and elbows these techniques may be used in mixed martial arts events.
- (18) "No-holds-barred" means an erroneous description and characterization of the sport of mixed martial arts.
- (19) "Octagon" means a fenced enclosure in which some promotional organizations hold MMA competition.
- (20) "Pankration" means all strength or all power, this is an ancient style of Greek wrestling and boxing in which kicks, throws, and joint locks were used, these techniques may be used in mixed martial arts events.
- (21) "Passing the guard" means a term which describes a fighter's attempt to escape from

their opponents guard in order to secure the mount position.

- (22) "Shoot" means a wrestling technique wherein a competitor attempts to capture his opponent's legs and takes him off his feet, these techniques may be used in mixed martial arts events.
- (23) "Spike, Spiking" means after lifting and inverting an opponent, attempting to slam them headfirst into the canvas.
- (24) "Sprawl" means a defensive wrestling technique employed to block and counter an opponents shoot.
- (25) "Strikes" means a cumulative number of punches administered by a contestant to their opponent.
- (26) "Submission" means a grappling technique which forces a contestant to tap-out. Techniques include chokes, and the hyperextension or over-rotation of a joint.
- (27) "Tap-out" means the physical act of tapping the opponent, the mat, or one's self to signal a submission. When unable to physically tap-out, a submission can be vocal.

Authority G.S. 143-652.1; 143-651; S.L. 2007-490.

14A NCAC 12 .0103 NORTH CAROLINA STATE BOXING AUTHORITY SECTION OF THE ALE DIVISION

- (a) The Division ~~director or his designee~~ representative shall:
- (1) Approve, issue, withhold or deny licenses and permits subject to review by the Secretary of the Department of Crime Control and Public Safety and according to the provisions of G.S. 143-654 and G.S. 143-655 and the rules set forth in this Chapter;
 - (2) Be present at all matches;
 - (3) Ensure that all matches are conducted in accordance with the provisions of G.S. 143, Article 68 and the rules set forth in this Chapter. This shall include appointing or causing to be appointed licensed match officials and reviewing and approving or disapproving a match or fight card based on weights, abilities, records or physical condition of the prospective contestants. The Division ~~director or his designee~~ representative shall not approve a match where it is reasonable to assume, based on weights, abilities, records or physical condition of the prospective contestants that the match would not be competitive.
- (b) The Division ~~director or his designee~~ representative shall:
- (1) Ensure that all the requirements indicated in this Chapter to be the responsibility of the Boxing Authority Section of the Division are properly and timely carried out as set forth in this Chapter;

- (2) Appoint the inspectors for each match for which he is responsible. There shall be a minimum of two referees, three judges (plus two kick count judges for kickboxing matches), one announcer, and one timekeeper present at each boxing match;
 - (3) Inscribe the result of each match on the passport of each participant, if so requested;
 - (4) Have rubber gloves available for use by the seconds, physicians and officials; and
 - (5) Ensure that all officials are paid by the promoter prior to their leaving the premises of the boxing matches after the matches have been concluded; and that all officials acknowledge by signature, on a form provided by the Division, the receipt of payment.
- (c) Each inspector shall observe and report the conduct of the seconds in the corner of his designated contestant during the course of the match and immediately report any violation or suspicious or improper behavior to the Division ~~director or his designee~~ representative. Each inspector shall be present in his designated contestant's dressing room to insure that:
- (1) No illegal drugs or foreign substances are ingested or used. Any use or suspected use of an illegal drug or foreign substance shall be immediately reported to the Division ~~director or his designee~~ representative;
 - (2) Handwraps are applied in accordance with these Rules;
 - (3) Gloves to be used are clean, sanitary and in good condition, and are laced and tied;
 - (4) A urine sample is collected, when necessary, in accordance with the prescribed protocol as designated by these Rules; and
 - (5) Security is maintained for the protection of the contestant, and the public, and to ensure that the Division ~~director or his designee~~ representative and inspectors can carry out the provisions of G.S. 143, Article 68 and the rules set forth in this Chapter.
- (d) The Division ~~director or his designee~~ representative may issue subpoenas requiring the attendance and testimony of, or the production of books and papers by, any person whom the Division believes to have information or documents of importance to any Boxing Authority Section investigation.
- (e) Forms for applications for licenses and permits shall be available from the Boxing Authority Section of the Division. These forms may be obtained by contacting, and shall be filed with:

NC ALE Boxing Authority Section
Department of Crime Control and Public Safety
4704 Mail Service Center
Raleigh, North Carolina 27699-4704
Telephone (919) 733-3925.

Authority G.S. 143-652.1; 143-651(7a); S.L. 2007 - 490.

SECTION .0200 - DRUGS AND FOREIGN SUBSTANCES

14A NCAC 12-~~0109~~-.0201 SUBSTANCES

DRUGS AND FOREIGN

- (a) The following limitations shall apply to the ingestion of drugs and foreign substances by contestants:
- (1) No contestant shall at any time, use or be under the influence of any drug or foreign substance that would increase or decrease his performance, or impair his or the physician's ability to recognize a potentially serious injury or physical condition. No substance, other than plain drinking water, shall be given to or ingested by a contestant during the course of a match.
 - (2) The following drug or foreign substance classifications are prohibited except as otherwise indicated:
 - (A) Stimulants--All stimulants are banned with the following exceptions:
 - (i) Caffeine--provided, however, that an amount greater than 12 mcg/ml in the urine is prohibited;
 - (ii) Beta 2 Agonist--provided it is selected from the following list and is in aerosol or inhalant form only:

	Drug Chemical	Brand Name
(I)	Mesylate	Tornalate
(II)	Metaproterenol Sulfate	Alupent, Metaprel
(III)	Albuterol Sulfate	Ventolin, Proventil
(IV)	Terbutaline Sulfate	Brethaire
 - (B) Narcotics;
 - (C) Anabolic Steroids, including human growth hormone;
 - (D) Diuretics;
 - (E) Alcohol;
 - (F) Local Anesthetics; and
 - (G) Corticosteroids.
 - (3) Whenever the Division ~~director or his designee~~ representative has reason to believe that a contestant has ingested or used a prohibited drug or foreign substance, the Division ~~director or his designee~~ representative shall request and the contestant shall provide, under the supervision of the physician, Division ~~director or his designee~~ representative or

inspector, a sample of his urine taken not more than 1 hour after the conclusion of the match. No contestant shall use substances or methods which would alter the integrity of the urine sample.

- (4) Failure or refusal to provide a urine sample immediately upon request shall result in the revocation of the contestant's license. Any contestant who has been adjudged the loser of a match and who subsequently refuses or is unable to provide a urine sample shall forfeit his share of the purse to the Division. Any contestant who is adjudged the winner of a match and who subsequently refuses or is unable to provide a urine sample shall forfeit the win and shall not be allowed to engage in any future match in North Carolina. A no decision result shall be entered into the official record as the result of the match. The purse shall be redistributed as though the contestant found to be in violation of this Section had lost the match. If redistribution of the purse is not necessary or after redistribution of the purse is accomplished, the contestant found to be in violation of this Section shall forfeit his share of the purse to the Division.

- (5) After each match the physician shall advise the Division ~~director or his designee~~ representative as to whether or not he observed any behavior or other signs that would indicate the advisability of processing the urine sample. The Division ~~director or his designee~~ representative shall make the final decision as to the processing of the urine sample.

(b) The following limitations shall apply to the external use of drugs or foreign substances by contestants.

- (1) No drug or foreign substance shall be used unless expressly provided for in these Rules or as directed by the physician.
- (2) The following drugs or foreign substances may be used by contestants under the conditions described in this Chapter:
 - (A) Petroleum Jelly--The discretionary use of petroleum jelly shall be allowed around the eyes. However, the use of petroleum jelly on the arms, legs and body of a contestant is prohibited.
 - (B) The discretionary use of a 1/1000 solution of Adrenalin and Avitine, or their generic equivalents, as approved by the physician, shall be allowed between rounds to stop bleeding of minor cuts and lacerations sustained by a contestant.
 - (C) Any contestant determined to have been using or under the influence of a prohibited drug or foreign substance and who has been adjudged the loser of a match shall forfeit his share of

the purse to the Division. Any contestant determined to have been using or under the influence of a prohibited drug or foreign substance and who has been adjudged the winner of a match, shall forfeit the win and a no decision result shall be entered into the official record as the result of the match. The purse shall be redistributed as though the contestant found to be in violation of this Section had lost the match. If redistribution of the purse is not necessary or after redistribution of the purse is accomplished, the contestant found to be in violation of this Section shall forfeit his share of the purse to the Division. The following penalties shall be assessed against any contestant found to be in violation of this Section:

- (i) The first occurrence shall be penalized by suspending the contestant's license banning his participating in any manner, in any match for a period of 180 calendar days;
- (ii) The second occurrence shall be penalized by suspending the contestant's license and banning his participation in any manner in any match for a period of one year;
- (iii) The third occurrence shall be penalized by permanently revoking the contestant's license and banning permanently his participation in any manner in any match or activity regulated by G.S. 143, Article 68.

(D) No person licensed by the Division shall participate in or contribute to the act of violating this Section and any violation shall be grounds for suspension or revocation of all licenses held by such person. Any person found to be in violation of this Section shall forfeit his share of the purse or other compensation to the Division and shall be assessed the following penalty:

- (i) The first occurrence shall be penalized by suspending the person's license and banning his participating in any manner, in any match for a period of 180 calendar days;

- (ii) The second occurrence shall be penalized by suspending the person's license and banning his participation in any manner, in any match for a period of one year;
- (iii) The third occurrence shall be penalized by permanently revoking the person's license and banning permanently his participation in any manner, in any match or activity regulated by G.S. 143, Article 68.

(c) Drugs, containers and other equipment used in conjunction with the match, regardless of why or how they are used or where they are located shall at all times be available for inspection by the physician, referee or Division ~~director or his designee~~ representative and shall be seized if there is any evidence that they may have been used to violate or are in violation of any provision of G.S. 143, Article 68 or these Rules.

(d) Every person under the jurisdiction of the Division shall immediately advise the physician, referee or Division ~~director or his designee~~ representative of any knowledge that any contestant scheduled to be engaged in any match has, in violation of this Section, ingested or is under the influence of any drug or foreign substance prohibited by these Rules.

Authority G.S. 143-652.1; S.L. 2007 - 490.

SECTION .0300 - PHYSICAL EXAMINATION

14A NCAC 12-~~0105~~ .0301 PHYSICAL EXAMINATION

(a) Each contestant shall, at the time of the weigh-in, be examined by a physician. The physician shall certify in writing the contestant's physical condition and ~~his professional assessment as to whether or not the contestant may engage in the match. The physician shall, prior to the match, file with the Division director or his designee his written report of examination of the contestant, which report shall state whether or not, in the opinion of the physician, the contestant is physically fit to engage in the match. No contestant shall be permitted to engage in a match unless he has been examined and pronounced fit to do so by a physician. Physicians shall utilize the appropriate forms furnished by the Boxing Authority Section of the Division. The examination given all contestants shall include the following submit the following:~~

- (1) Pre-Match Examination-A thorough pre-match physical examination shall be given to each contestant by a licensed physician not more than four hours before the start of the program of matches. The physician conducting the pre-match physical examination shall submit to the Division representative the results of the pre-match physical on a form approved by the Division. The physician shall certify his professional assessment as to whether or not the contestant is physically and mentally fit to

engage in the match. No contestant shall be permitted to engage in a match unless he has been examined and pronounced fit to do so by a physician.

- (2) Post-Match Examination-At the conclusion of a match and before each contestant leaves the premises, he or she shall be given a thorough post-match examination by a licensed physician. The physician conducting the post-match physical examination shall submit to the Division representative the results of the post-match physical examination on a form approved by the Division. The physician shall certify his professional assessment as to: the contestant's physical condition; whether or not a medical suspension is necessary; and whether additional medical treatment or assessments are necessary.

(b) The examination given to all contestants shall include, but not limited to, the following:

- (1) Temperature;
- (2) Pulse; sitting, standing and running;
- (3) Lungs;
- (4) Heart; ~~and~~
- (5) ~~Blood-pressure.~~ pressure; and

(c) In addition to the requirements, at the time of the pre-match physical examination, the promoter shall furnish to the physician a Division approved pregnancy test for all female contestants. The results of the pregnancy test will be reported on a form approved by the Division. If the promoter does not have the approved test kits on site, the Division representative shall provide approved test kits, the cost of which to be paid by the promoter. At no time will a contestant who test positive for pregnancy be cleared or allowed to compete in any match.

~~(b)(d)~~ No contestant shall be allowed to engage in any match if any of the following conditions are found by the physician:

- (1) Hernia, or bubonocoele;
- (2) Organic heart murmurs;
- (3) Active pulmonary lesions;
- (4) Abnormal temperature as determined by the physician;
- (5) Systolic pressure over ~~150;~~ 150 and diastolic pressure over 90;
- (6) Infectious skin lesions, such as boils or infected wounds;
- (7) Open wounds;
- (8) Hand injuries, and fractures less than 6 weeks old, if, in the physician's opinion, the injury would be detrimental to the contestant's health or ability to effectively compete or exhibit;
- (9) An indication that the contestant is using or is under the influence of narcotics, drugs, stimulants, depressants, alcohol, local anesthetics or such a high level of analgesics as to render the contestant unable to recognize if he is seriously injured. If the physician finds any indication or evidence that the contestant is using, is under the influence, of unauthorized drugs or foreign substances such

that the physician cannot make a definite determination and therefore allows the match to proceed, the physician shall immediately advise the Division ~~director or his designee~~ representative who shall ensure that a urine sample is taken and processed in accordance with these Rules;

- (10) Retinopathy or detached retina; provided however, that at the request of the applicant the Division shall review individual cases of repaired retinal damage for the purpose of permitting the individual to engage in a boxing match in North Carolina. In order for the Division to consider such request the individual must provide to the Division such medical information as the Division deems appropriate which must include a written statement by the doctor performing the retinal repair that the retina is completely healed; that in his opinion, within a reasonable medical certainty, no unusual or extraordinary risk to the individual is anticipated as a result of the repaired retina; and that he authorizes the individual to engage in the sport of boxing or kickboxing. In the event the physician who made the repair is unavailable, the individual must authorize the Division and the Division's physician total and unlimited access to all medical records pertaining to the damage, repair of the damage and any subsequent treatment regarding the eyes. Nevertheless, the Division shall then direct its physician to review all information and to examine the individual seeking licensure and report the results and recommendation to the Division for consideration by the Division. Any costs associated with the review and examination of records or the individual shall be borne by the individual seeking licensure;
- (11) Dental abscess;
- (12) Ophthalmological problem;
- (13) History of epilepsy or seizures;
- (14) Blindness;
- (15) History of kidney problems;
- (16) Change in gait or balance; or
- (17) History of any change in a CAT scan, electroencephalogram (EEG), or electrocardiogram (EKG).

~~(e) A referee shall undergo a physical examination prior to acting as a referee in any match.~~

~~(d)(e) If at any time, evidence is revealed that indicates that the match may be adverse to the health of a contestant or referee, the Division director or his designee shall order a medical examination to be given to the contestant or referee, the report of which examination shall be made to the Division director or his designee.~~ If at any time, evidence is revealed that indicates that the match may be adverse to the health of a contestant or referee, the Division representative shall order the contestant or referee to be medically examined by a licensed physician. The physician

conducting the medical examination shall submit to the Division the results of the examination on a form approved by the Division. The physician shall certify his professional assessment as to: the contestant's or referee's physical condition; whether or not a medical suspension is necessary and the recommended length of suspension commensurate with the specified injury; and whether additional medical treatment or assessments are necessary.

Authority G.S. 143-652.1; S.L. 2007 - 490.

SECTION .0400 - PERMITS, LICENSING AND CONTRACTS

14A NCAC 12-~~0110~~ .0401 PERMITS

(a) No promoter shall be given tentative approval for or issued a permit if such person has an unpaid fine or any delinquent indebtedness outstanding to the Division.

(b) Each application for a permit shall be in writing, verified by the applicant, complete, and be accompanied by the required fee. The application for permit shall be on file with the Division at least ~~seven~~ 30 calendar days prior to the scheduled program of matches.

(c) Upon receipt of the application for permit, the Division ~~director or his designee~~ representative shall review the application and, if the application is in compliance with the requirements of G.S. 143, Article 68 and the rules set forth in this Chapter, he shall give tentative approval to the promoter for the proposed date of the program. If the Division ~~director or his designee~~ representative determines that the application for permit is not in compliance with Article 68 or the rules as set forth in this Chapter, he shall immediately advise the promoter that the application for permit has been disapproved and shall state the reasons that the application is not in compliance. The Division ~~director or his designee~~ representative shall deny an application for permit if another program of matches has previously been scheduled for the same date, and he has determined that adequate staff would not be available to properly supervise both programs of matches.

(d) The promoter shall provide the proposed fight card not later than seven calendar days prior to the proposed date of the program. The promoter may advise the Division ~~director or his designee~~ representative verbally of the names of the proposed contestants. The Division ~~director or his designee~~ representative shall review the proposed fight card and, if he determines that all the proposed matches meet the requirements of Article 68, and the rules set forth in this Chapter, he shall approve the proposed fight card. If the Division ~~director or his designee~~ representative determines that the proposed fight card is not in compliance with Article 68 or the rules set forth in this Chapter, he shall not approve the proposed fight card and shall immediately advise the promoter that the proposed fight card has been disapproved and the reasons for the disapproval.

(e) All other pre-match requirements of the promoter described in Article 68 and the rules set forth in this Chapter shall be accomplished before final approval is given and the permit issued. The final approval of the permit shall not be given unless the Division ~~director or his designee~~ representative has observed that all requirements related to facilities, equipment,

personnel, licensing and approvals, and procurement of insurance have been met by the promoter. Immediately upon determining that the promoter has met all the requirements as set forth in this Chapter, the Division ~~director or his designee representative~~ shall issue the permit. If the Division ~~director or his designee representative~~ determines that the promoter is not in compliance with the requirements set forth in this Rule, the Division ~~director or his designee representative~~ shall rescind the tentative approval of the permit and the program of matches shall be canceled. If the program of matches is canceled, all tickets shall be refunded in accordance with the refund provisions set forth in these Rules.

(f) A permit shall only be valid for the program of matches for which it was issued. A new permit shall be required for each program of matches. If, after the payment of the permit fee to the Division a program of matches is canceled for any reason, whether by the promoter or the Division, the permit fee shall not be refunded, provided however, that the fee shall be refunded if the cancellation by the Division was the result of an error made by the Division and which was through no fault of the promoter.

(g) A non-refundable permit fee shall be submitted with the application for permit and shall be based on the seating capacity of the premises to be utilized to present the program of matches. The following fee structure shall be utilized to determine the permit fee:

- (1) Seating capacity is less than 2000--Fee=\$~~100.00~~ \$150.00
- (2) Seating capacity is 2000 or more but no greater than 5000--Fee=\$~~200.00~~ \$300.00
- (3) Seating capacity exceeds 5000--Fee=\$~~300.00~~ \$450.00

Authority G.S. 143-652.1; S.L. 2007 - 490.

14A NCAC 12 ~~.0144~~ .0402 LICENSING REQUIREMENTS AND DUTIES OF LICENSEES

(a) No person shall be issued a license if such person has an unpaid fine or any delinquent indebtedness outstanding to the Division.

(b) No person shall be issued a license who, in any jurisdiction, has been convicted of any act which would constitute a violation of G.S. 143, Article 68 or the rules set forth in this Chapter; or which would constitute any of the grounds set forth in G.S. 143, Article 68 for suspension or revocation of a license; or against whom such charges are pending before any regulatory body.

(c) No person shall be issued a license who has been named in an administrative action or indictment for any act which would constitute a violation of G.S. 143, Article 68 or the rules set forth in this Chapter, or which act would constitute a ground for suspension or revocation of a license.

(d) No person shall transfer or attempt to transfer, including by the use of a power of attorney, any rights, privileges, responsibilities, duties, obligations or liabilities which by their nature are entitled to or encumbered by only those individuals holding a license to perform and be responsible for such activities.

(e) For the purposes of these Rules, the requirements and responsibilities of a foreign copromoter shall be the same as that

of a promoter, and wherever the term promoter is used it is deemed to include the term foreign copromoter.

(f) All applications for a license shall be in writing on a form provided by the Boxing Authority Section of the Division, verified by the applicant, complete, and accompanied by the required fee.

(g) Upon receipt of an application for a license, the Division director or his designee shall review the application and, if the application is in compliance with the requirements of G.S. 143, Article 68 and the rules set forth in this Chapter, he shall issue the license. If the Division ~~director or his designee representative~~ determines that the application is not in compliance, he shall notify the applicant and set forth the reasons for his finding that the application is not in compliance.

(h) A license issued pursuant to G.S. 143, Article 68 and these Rules shall be valid from the date of issuance until December 31 of the year in which the license was effective. An application for the renewal of a license shall be submitted on the same forms as referenced in this Rule and all of the requirements, standards, and criteria used to approve or disapprove an application for a new or initial license shall be used to approve or disapprove the application for the renewal of a license.

(i) The following requirements shall apply to the licensing and duties of contestants:

- (1) No contestant shall also be licensed as a judge, promoter or referee nor shall he act as judge, promoter or referee.
- (2) No contestant shall have any financial or pecuniary interest in his opponent.
- (3) No person shall be licensed as a contestant and the license of any contestant shall be suspended or revoked if such person:
 - (A) Is under 18 years of age;
 - (B) Has had cardiac surgery;
 - (C) Has not received a ophthalmic examination within the immediate 12 month period prior to the date of the scheduled match and the results of the examination filed with the Division;
 - (D) Is found to have any blindness or whose vision is so poor as to cause a health hazard or impairment to his ability to effectively participate in a match;
 - (E) Has suffered cerebral hemorrhage or any other serious head injury. The Division ~~director or his designee representative~~ shall, if he has cause to believe that a contestant may have suffered neurological injury, direct the contestant to undergo an EKG or CAT scan, and the interpretation and diagnosis shall be filed with the Division; or
 - (F) Is no longer able to competently perform based on his win/lose/draw record, his previous opponents and the results of such matches, his proposed opponent and the results of

the matches between his proposed opponent and others, and his physical condition.

- (4) No contestant whose most recent match was eight rounds or more in duration, shall engage in a match with less than seven calendar days between matches. No contestant whose most recent match was less than eight rounds in duration, shall engage in a match with less than 48 hours between matches.
- (5) Any contestant who fails to appear at a match or fails to appear timely at a match for which he or his manager has contracted and does not provide a valid reason or, in the case of physical disability, furnish a physician's certificate, shall be suspended for a period to be determined by the Division. A valid reason for failure to appear or to appear timely at a match includes an unforeseen travel delay or other circumstance beyond the contestant's control. In making a determination as to the period of suspension, the Division shall consider the following factors:
 - (A) The relative importance of the match;
 - (B) The contestant's past record of punctuality and tardiness; and
 - (C) The reason or reasons for his failure to appear or appear timely.
- (j) The following requirements shall apply to the licensing and duties of promoters and matchmakers:
 - (1) No licensed promoter or matchmaker shall act as a promoter or matchmaker for any boxing or kickboxing match in this State unless the match is held in accordance with the rules in this Chapter.
 - (2) Any person licensed as an individual shall have sole ownership of such license and such license shall not be transferable or assignable to another. If such person is no longer in business, the license shall become void.
 - (3) Any license issued to and in the name of a corporation shall not be transferable or assignable to another. If such corporation is no longer in business or no longer operates as the corporation, the license shall become void. If any officer of the corporation is added or deleted, the licensee shall, within 10 calendar days, notify the Division of such addition or deletion. A newly added officer shall be required to submit an Application For Promoter Or Foreign Copromoter License.
 - (4) Any license issued to a partnership shall not be transferable or assignable to another. If the partnership is no longer in business or no longer operates as the partnership, the license shall become void, provided however that if the business continues to operate but does not operate as a partnership and the sole remaining person was one of the licensed partners and all

other previous licensed partners have, in writing, authorized such sole remaining person to have control and use of the licensed name, than the license may remain in force and effective until its expiration date, at which time the person shall apply as an individual.

- (5) No promoter shall also be licensed as a judge or referee.
- (6) An applicant for a promoter's license shall satisfy the following bonding requirements:
 - (A) An applicant for a promoter license shall deposit with the Division a bond or other security in the amount of ~~five~~ ten thousand dollars ~~(\$5,000)~~ (\$10,000) prior to being issued a promoter license. If, at any time and for whatever reason, the bond or other security is not maintained in full force and effect, the license shall be automatically void.
 - (B) If it is determined that the projected liability for a match may exceed ~~five~~ ten thousand dollars ~~(\$5,000)~~ (\$10,000), the Division ~~director or his designee~~ representative shall require an additional bond or additional security for the match. The additional bond or additional security shall be required and used only for the designated match and shall be released or returned 90 calendar days after the date of the match unless, as a result of violations or suspected violations, the Division ~~director or his designee~~ representative determines that the additional bond or additional security shall be retained by the Division for a longer period.
 - (C) The bond and other security, or additional bond and additional security shall be filed with the Division for the purpose of providing surety that the promoter will and does faithfully perform and fulfill his obligations as described in Article 68, and the rules set forth in this Chapter. Any fault, negligence, error or omission, failure to fulfill contractual obligations, violation of any rules of the Division or any other act or failure to act shall result in a claim for recovery from the bond and recovery from the other security. When the amount of recovery cannot be determined by the Division due to the failure of the promoter to perform as required by G.S. 143, Article 68 or the rules set forth in this Chapter, the Division shall recover the face value

- of the bond and other security and the additional bond and additional security, as appropriate provided however that the recovery shall not be greater than the amount of the bond and other security required to be deposited with the Division.
- (D) A bond or additional bond shall be acceptable if the following conditions are met:
- (i) The bond or additional bond shall have attached a power of attorney, which power of attorney shall not have an expiration date;
 - (ii) The bond and additional bond shall provide surety in an amount equal to the face amount of the bond and additional bond and the aggregate annual liability shall be for the face amount of the bond and additional bond;
 - (iii) The bond and additional bond shall be made out in the name of the Division of Alcohol Law Enforcement, Boxing Authority Section and shall be negotiable on the authority of the Division ~~director or his designee~~ representative;
 - (iv) The bond and additional bond may not be canceled, for any reason, unless the following conditions have been met, provided however, when an additional bond is required, as referenced in this Subparagraph, Subpart (II) in this Rule shall not apply:
 - (I) The surety company has provided the Division at least a 60 calendar-day written notice of intent to cancel; and
 - (II) The promoter's license has expired or the license has been returned to the Division with a request to cancel such license and canceled by the Division and the promoter has not filed an application for renewal of the license; and
- (III) A period of 90 calendar days has elapsed since the most recent match of the promoter.
- (E) Other security may be provided in lieu of the bond or additional bond provided the following conditions are met:
- (i) The security must be in the form of cash, a certified check or direct obligations of the United States or this state;
 - (ii) The certified check shall be made payable to the Division of Alcohol Law Enforcement, Boxing Authority Section and, the certified check and the direct obligations of the United States or this state shall be negotiable on the authority of the Division ~~director or his designee~~ representative;
 - (iii) The Division shall not pay interest or other charges or fees to the promoter;
 - (iv) The security may not be canceled or requested to be returned, for any reason, unless the following conditions have been met, provided however, when an additional security is required, as referenced in this Subparagraph, Subparts (II) and (IV) of this Rule shall not apply:
 - (I) The promoter has provided the Division at least a 60-calendar day written notice of request for return or release of the security; and
 - (II) The promoter's license has expired or the license has been returned to the Division with a request for cancellation and canceled by the

- Division and the promoter has not filed an application for renewal of the license, or the promoter has substituted a bond for the security and such bond indicates on its face that it shall retroactively cover the promoter for all times and for all obligations of the promoter covered by the security for which the bond is being substituted. In the event of substitution of a bond for the security on deposit with the Division, (III) and (IV) in this Rule shall not apply; and
- (III) A period of 90 calendar days has elapsed since the most recent match of the promoter; and
- (IV) A period of 1 year has elapsed since the security was deposited with the Division.
- (7) More than one promoter may be involved in the promotion of a single program of matches. The promoter to whom the permit is issued shall be considered as the promoter of record and such promoter shall ensure that all the requirements and responsibilities of the promoter are accomplished as set forth in this Chapter, provided however that the bonds or other securities deposited with the Division of all promoters involved in the promotion of the program of matches shall be liable and used as surety against any claim or obligation involving the program of matches.
- (8) A matchmaker shall make matches in which the contestants are of similar ability and skill.
- (9) A matchmaker or promoter shall not contract with or negotiate with managers or contestants who are under suspension or whose license has been revoked in North Carolina or any other state.
- (10) Contracts between contestants and the promoter shall be filed with the Division no later than at the time of weigh-in.
- (A) All contracts between contestant and promoter must be executed on a form provided or approved by the Division.
- (B) All contracts between a contestant and promoter must provide a minimum one hundred dollar (\$100.00) purse to be valid.
- (11) After the application for a permit has been tentatively approved and a proposed match has been approved, the promoter may provide the names of the contestants for the approved match to the media. Under no circumstances shall a promoter advertise, sell or cause to be sold any tickets, distribute or cause to be distributed any complimentary tickets, enter into any contracts or in any way make any obligations, commitments or announcements relative to a match or program of matches unless the match or program of matches has been approved and the permit has been tentatively approved.
- (12) The promoter shall, in the case of a substitution in a main event, post in a conspicuous place in front of the arena or directly over the cashier windows, notice of the substitution, and if time permits, shall advertise the substitution by radio and in a newspaper expected to have the widest circulation for the intended audience.
- (13) No promoter may pay, lend, or give a contestant an advance against his purse before a contest.
- (14) The promoter shall ensure that each contestant scheduled to be engaged in a match shall have received ~~an ophthalmic examination, which examination shall have been performed within the immediate past 12 month period. The results of the examination shall be filed with the Division prior to the match the following examinations:~~
- (A) A full dilated eye examination performed by a licensed ophthalmologist and submitted on a form approved by the Division.
- (B) Negative HIV.
- (C) Negative Hepatitis B surface antigens.
- (D) Negative Hepatitis C antibody.
- (E) Procedures to complete when failing Hepatitis B surface Antigen test: The contestant must pass a Hepatitis B "PCR" quantitative test. The quantitative limit must be within permissible limits according to the laboratory where test were administered. The test and results

- must not be older than 180 days from date of receipt of report by the Division and must be submitted on letterhead of the laboratory, accompanied by contestant's declaration under penalty of perjury that the report represents the contestant's most recent HIV, Hepatitis B and Hepatitis C test results.
- (15) The Division ~~director or his designee~~ representative shall, if he has cause to believe that a contestant may have suffered cardiac or neurological injury, direct the contestant to undergo an EKG, EEG, or CAT scan. The interpretation and diagnosis shall be filed with the Division. The promoter shall ensure that this requirement is satisfied.
- (16) The promoter shall acquire insurance as described in the insurance section of these Rules.
- (17) The promoter shall advise all managers and contestants under contract for a match or program of matches of the time and place of the weigh-in as designated by the Division ~~director or his designee~~ representative and of the time and place of their appearance for the match or program of matches.
- (18) The promoter shall provide the proper arena equipment, seating, services, facilities, personnel, ushers, ticket sellers, security and other equipment or services necessary to provide for the correct handling of the boxing or kickboxing ~~program~~ program of matches.
- (19) The promoter shall contract with and compensate the officials required to be present and rendering services during a program of matches. Included are an announcer, a timekeeper, two referees, three judges, plus two kick count judges for kickboxing and a ringside physician. A physician shall be present at the weigh-in.
- (20) The promoter shall ensure that all tickets shall have printed on them the admission price and no ticket shall be sold for a price higher than the price shown on its face. Each complimentary ticket shall have printed on its face the face value of the ticket and in no case shall the dollar value shown on the face of the ticket be \$ 0.00. Each complimentary ticket shall be either marked "COMPLIMENTARY" in large letters on its face or shall be marked or punched in such a manner as to make it clear that the ticket is complimentary. A promoter may not issue complimentary tickets for more than four percent of the seats in the venue.
- (A) The promoter shall collect a fee in the amount of one dollar and fifty cents (\$1.50) per each ticket sold to attend matches regulated by the Division.
- (B) The total amount of this fee shall be deposited with the Division immediately after the conclusion of the program of matches.
- (C) The promoter shall complete, certify and sign a form, supplied and approved by the Division, indicating the total number of paid and complimentary tickets for the program of matches.
- (21) No promoter shall sell or issue, or cause to be sold or issued more tickets of admission for any match or program of matches than can be accommodated by the seating capacity of the premises where the match or program of matches is to be held.
- (22) The following criteria and procedure shall be used for the refunding of the purchase price of tickets:
- (A) The promoter shall refund the full purchase price of a ticket for a match or program of matches if:
- (i) The match or program of matches is postponed; or
 - (ii) The main event or the entire program of matches is canceled; and
 - (iii) The person presenting the ticket for refund has presented such ticket within 30 calendar days after the scheduled date of the match or program of matches.
- (B) Within 10 calendar days after the expiration of the 30-calendar day period, the promoter shall pay all unclaimed ticket receipts to the Division. The Division shall hold the funds in the State Boxing Division Revenue Account for one year and make refunds during such time to any person presenting a valid ticket for a refund.
- (C) Failure to comply with this provision shall result in the forfeiture of the bond or other security and additional bond or additional security and revocation of the license of the promoter or foreign copromoter.
- (23) The promoter shall retain all records necessary to justify and support the information submitted on any reports required by the Division for a period of two years following the date of the match or program of matches.
- (24) ~~The promoter shall provide the following~~ It shall be the responsibility of the promoter to provide the following:

- (A) ~~A licensed physician; A minimum of two licensed physicians. The Division representative may, in his or her discretion, require only one physician. In determining whether to waive the two physician requirement to one physician, the Division may consider the following: the match type such as boxing, kickboxing, toughman or mixed martial arts, the number of contestants participating in the program of matches and the experience, size and skill of contestants participating in the program of matches. The Division shall note these findings on Division forms and provide the promoter with a copy;~~
- (B) ~~A portable resuscitator with all additional equipment necessary for its operation; defibrillator and canister of oxygen including all additional equipment necessary for proper operation.~~
- (C) An ambulance with two attendants;
- (D) A clean stretcher and clean blanket which shall be in place at all times throughout the program of matches;
- No match shall begin or continue unless such equipment and personnel are on the premises, in a state of readiness and in a pre-designated readily assessable location known to the referee, physicians and the ~~Commission~~ Division representative.
- (25) It shall be the responsibility of the promoter to have available at all times during the progress of a program of matches a person or persons capable of making emergency repairs, corrections and adjustments to the ring, lights and other necessary fixtures.
- (26) The promoter shall supply the following items which shall be in good working order and available for use as needed:
- (A) A public address system;
- (B) Chairs, properly located in accordance with the floor plan;
- (C) A bell, positioned in a neutral location designated by the Division ~~director or his designee;~~ representative, for use by the timekeeper;
- (D) Two stools, a clean water bucket and a clean water container for drinking purposes for each contestant's corner; ~~and~~
- (E) Cleaning solution to clean blood and debris in the cage or ring. A solution of 10 percent bleach and 90 percent water is an acceptable solution; and
- (~~E~~)(F) A complete set of numbered round cards, which shall be of such size as to make them legible from all parts of the arena.
- (27) The promoter for the match shall acquire the insurance coverage described in this Chapter and file with the Division written evidence of insurance no later than 72 hours prior to the date of the match. Such evidence of insurance shall specify the name of the insurance company, the insurance policy number, the effective date of the coverage and evidence that each contestant is covered by the insurance. Any deductible associated with the insurance policy shall be paid by the promoter. If the promoter fails to provide evidence of insurance as required in this Chapter the permit shall not be issued or, if issued, shall be suspended and the program of matches shall be canceled. Each contestant in a match held in North Carolina shall be covered by insurance for medical, surgical and hospital care for injuries sustained while engaged in a match. Said coverage shall be for an amount not less than two thousand five hundred dollars (\$2,500) for each contestant.
- (k) The following requirements shall apply to the licensing and duties of managers:
- (1) No person shall act as a manager for any contestant without having first obtained a manager license.
- (2) No manager shall also be licensed as a judge, or referee and nor shall he act as a judge or referee.
- (3) No manager shall have financial or pecuniary interest in an opponent of his contestant.
- (4) No licensed manager shall act as a manager in any boxing or kickboxing match in this state which match is not sanctioned by the Division.
- (5) No manager shall attempt to select or insist upon the selection of any referee or judge in a match in which a contestant under his management is to appear, nor shall he have the name of any such referee or judge written into the contract governing such match.
- (6) No manager shall pay or contribute to the pay of any referee or judge.
- (7) A manager shall not coach or in any way assist a contestant during a match, or by word or action attempt to heckle or annoy his opponent. A manager shall not enter the corner or the ring at any time during the match. If any manager enters the corner or the ring during any match, he shall be immediately ejected by the referee, and the referee shall order the match to continue. However, a manager may be designated as a second for his contestant and, if so designated, shall comply

with the requirements set forth for seconds in these Rules.

- (8) The manager shall furnish to his contestant a statement of distribution of the purse together with the contestant's share of the purse no later than 24 hours after the manager receives the purse and promoter's statement from the promoter. The manager shall retain a copy of his statement of distribution of the purse, certified by him to be correct, with receipted vouchers for all expenditures and deductions for a period of six months following the date of the match and shall present such copy to the Division for inspection if requested to do so.

(l) The following requirements shall apply to the licensing and duties of referees:

- (1) If, during the course of a match, the referee receives an injury or is unable to continue acting in his capacity as referee, the Division ~~director or his designee~~ representative shall:
- (A) Select another qualified person to act as referee for the remainder of the match and program of matches; or
- (B) If no qualified person is available, cancel the remainder of the match and program of matches.
- (2) No person who has financial or pecuniary interest in any contestant shall be granted a referee license.
- (3) No referee shall also be licensed as a promoter, manager, matchmaker, or contestant, nor shall he act as a promoter, manager, matchmaker or, contestant.
- (4) No licensed referee shall act as a referee at any ~~boxing or kickboxing~~ boxing, kickboxing, toughman or mixed martial arts match in this State unless the match is held in accordance with the Rules in this Chapter.
- (5) ~~A referee, in addition to being examined by a physician prior to officiating, shall submit to an annual physical examination to establish his physical fitness. The result of this examination shall be filed with the Division.~~ Prior to being issued a license in accordance with Chapter 143, Article 68 of the North Carolina General Statutes, each referee shall:

- (A) Fulfill the Testing Requirement-Each applicant must pass a standardized examination recognized by the Association of Boxing Commissions and approved by the Division;
- (B) Fulfill the Continuing Education Seminar Requirement-Each applicant shall have completed a Division approved continuing education seminar within one year prior to application for licensure. Any Division-approved seminar

completed after licensure shall satisfy this continuing education seminar requirement for a period of one year from its completion. Education seminars shall contain general emergency medical information applicable to contestants participating in matches. Proof of successful educational seminar completion shall be submitted to and maintained by the Division;

- (C) Fulfill the Prior Officiating Experience Requirement-Each applicant shall have either officiated previously in a Division approved sanctioned amateur competition and submit to the Division verification of satisfactory officiating experience from a Division approved sanctioned amateur organization or have officiated in another state or jurisdiction within five years prior to applying for licensure. The applicant shall submit to the Division verification of satisfactory officiating experience from the state or jurisdiction or applicant shall otherwise demonstrate knowledge and proficiency. The Division may consider any other training and experience including, but not limited to, attendance at seminars conducted by the Division as satisfying the prior officiating requirements. Once an applicant has completed this officiating experience requirement, the Division may waive this requirement for subsequent applications for licensure;

- (D) Fulfill Medical Screening Requirement-A referee shall submit to an annual physical examination to establish his or her physical fitness. The results of this examination shall be filed with the Division. The cost of the examination shall be the responsibility of the applicant. The results of the examination are valid for one licensing year;

- (E) All assigned referees must submit to a pre-match medical examination by a physician for general physical fitness. The Division representative shall ensure that this requirement is fulfilled the day of the match.

- (6) Prior to the beginning of each match, and periodically for the duration of the match, the referee shall examine the contestants' gloves, equipment, and person to ensure that no unsafe

- or improper conditions exist. Before allowing a match to continue after a contestant has been knocked down, the referee shall wipe clean the surface of the gloves of the contestant who was knocked down.
- (7) When a contestant receives an injury which the referee believes may incapacitate the contestant, the referee shall call time out and consult with the physician as to the advisability of allowing the match to continue. No person shall attempt to render aid to a contestant who has been counted out during the course of a match before the physician has examined the contestant. However, the referee may remove the contestant's mouthpiece.
- (8) The referee may:
- (A) Terminate a match at any time when he considers that one of the contestants has such superior skills or ability as to make such match unreasonably dangerous to the other contestant;
 - (B) Disqualify a contestant who commits an intentional foul and award the decision to the opponent;
 - (C) Terminate a match and disqualify either or both contestants if he considers that either or both contestants are not competing in earnest;
 - (D) Terminate a match if either contestant has been injured and is in such condition that to continue the match might subject him to a more serious injury;
 - (E) Temporarily or permanently halt a match if he believes that a health hazard exists, which hazard could reasonably be anticipated to create a hazard to the contestants or the public; and
 - (F) Enforce discipline and the rules, as set forth in this Chapter, pertaining to the conduct and behavior of contestants, managers and seconds.
- (9) The referee shall not touch the contestants, except for the failure of either or both contestants to obey the break command.
- (10) The referee's remarks shall be limited to instructions to the contestants and to the chief seconds.
- (m) The following requirements shall apply to the licensing and duties of judges:
- (1) A judge shall not also be licensed as a promoter, manager, matchmaker, or contestant.
 - (2) No judge shall have a financial or pecuniary interest in any contestant.
 - (3) No licensed judge shall act as a judge at any boxing or kickboxing match in this State unless the match is held in accordance with the rules in this Chapter.
 - (4) Three scoring judges and two kick count judges (if applicable) shall be assigned to officiate in each match. If five judges are not available, the Division ~~director or his designee~~ representative may appoint a referee to act in the capacity of judge.
 - (5) The judges shall be located in seats designated for them by the Division ~~director or his designee~~ representative.
 - (6) No match shall begin or continue unless all judges are in their designated seats.
 - (7) Judges shall, if requested by the referee, assist in deciding whether fouls have been committed, and may bring other points to the attention of the referee at the end of a round.
 - (8) Each Judge shall:
 - (A) Be fully informed of and conversant with the rules, regulations, standards, guidelines and policies of G.S. 143, Article 68 and the rules set forth in this Chapter;
 - (B) Observe at all times during the match the performance of the contestants;
 - (C) Appraise such performance fairly, accurately and expertly using G.S. 143, Article 68, and the rules set forth in this Chapter;
 - (D) Inscribe the result of such appraisal after each round on the round score card or match score card, whichever is appropriate, according to the scoring system adopted in this Chapter; and
 - (E) Complete and sign the match score card and deliver it to the referee at the conclusion of the match.
 - (9) Judges shall utilize forms provided by the Division for scoring.
 - (n) The following requirements shall apply to the licensing and duties of "announcers":
 - (1) No person shall act as an announcer at any match held in North Carolina without first having obtained an announcer license.
 - (2) No licensed announcer shall act as an announcer at any boxing or kickboxing match in this State unless the match is held in accordance with the rules in this Chapter.
 - (3) The announcer shall make all announcements in the English language. He may also announce the match in another language after he has first made all announcements in the English language.
 - (4) The announcer shall be at all times, subject and responsible to the Division ~~director or his designee~~ representative in the discharge of his

- duties and shall accept directions only from the Division ~~director or his designee~~ representative.
- (5) Announcers shall not make announcements or introductions of persons other than the contestants and officials unless authorized to do so by the promoter with the consent of the Division ~~director or his designee~~ representative. Under no circumstances shall an individual be introduced if his license has been revoked or is currently under suspension.
- (6) After both contestants and their chief seconds are in the ring, the announcer shall announce the name of each contestant, his weight as determined at the weigh-in, and such other announcements as directed by the Division ~~director or his designee~~ representative.
- (7) An announcer shall display impartiality in word and action while performing his duties.
- (8) The number of the round shall be announced or displayed at the 1-minute interval between rounds.
- (9) At the conclusion of each match, the announcer shall make the announcement of the win or draw in the manner and at such time as directed by the Division ~~director or his designee~~ representative.
- (10) In the event of a knockout or a technical knockout, the announcer shall obtain the result and the official time of the termination of the match from the Division ~~director or his designee~~ representative and shall announce the result, the time and the round in which the knockout or technical knockout occurred.
- (11) At the conclusion of each match and immediately after the announcements have been made, the announcer shall submit to the Division ~~director or his designee~~ representative any match score cards used by the judges and the referee that he may have in his possession.
- (o) The following requirements shall apply to the licensing and duties of timekeepers and knockdown timekeepers:
- (1) No licensed timekeeper shall act as a timekeeper at any boxing or kickboxing match in this State unless the match is held in accordance with the rules in this Chapter.
 - (2) The timekeeper shall have with him during the performance of his duties a whistle, a 3-minute stopwatch, and a hammer or wooden mallet.
 - (3) The timekeeper shall be located within his arm length of the bell in a seat designated by the Division ~~director or his designee~~ representative. No match shall begin or continue unless the timekeeper is in his designated seat.
 - (4) The timekeeper shall not use the whistle, bell, or other instrument during the progress of a round except in the manner and at the time authorized in this Chapter.
- (5) Ten seconds before the beginning of each round, the timekeeper shall give warning to the seconds of each contestant by blowing the whistle. Ten seconds before the end of each round, the timekeeper shall give warning by pounding twice on the ring floor.
- (6) If directed by the referee, the timekeeper shall take time out.
- (7) The timekeeper shall strike the bell to signify the beginning and ending of each round.
- (8) If a match ends before the scheduled number of rounds, the timekeeper shall inform the referee and the Division ~~director or his designee~~ representative of the exact duration of the match.
- (9) The timekeeper shall be familiar with and perform such other duties as set forth these Rules.
- (10) In the event that an automatic timekeeping machine is available, it may be used, provided however, that manual timekeeping is maintained in the event of equipment failure.
- (11) The knockdown timekeeper shall have with him during the performance of his duties a knockdown watch which shall be examined and checked as to accuracy for each match by the Division ~~director or his designee~~ representative.
- (12) The knockdown timekeeper shall be located adjacent to the timekeeper in a seat designated by the Division ~~director or his designee~~ representative. No match shall begin or continue unless the knockdown timekeeper is in his designated seat.
- (13) The knockdown timekeeper shall count each second for knockdowns by striking the floor of the ring or a wooden striking-board with a hammer or wooden mallet and, by stating in a loud voice, the elapse of each second.
- (14) The knockdown timekeeper shall be familiar with and perform such other duties as set forth in these Rules.
- (p) The following requirements shall apply to the licensing and duties of seconds:
- (1) No licensed second shall act as a second at any boxing or kickboxing match in this State unless the match is held in accordance with the rules of this Chapter.
 - (2) No second shall have any financial or pecuniary interest in the opponent of his contestant.
 - (3) Each contestant shall be allowed no more than three seconds, one of whom shall be designated the chief ~~second~~ second, with the exception of a championship match which allows four seconds. The chief second shall be in charge of the participant's corner and be

- responsible for the conduct of all seconds, and shall be held responsible for any violation committed by any second.
- (4) The chief second of any contestant shall have with him at the ringside the following articles:
- (A) One stool;
 - (B) One pair of scissors;
 - (C) One towel;
 - (D) One clean water bucket;
 - (E) One container of drinking water;
 - (F) Tape and bandages; and
 - (G) Caustic to stop bleeding of minor cuts and lacerations.
- (5) First aid and other ring equipment of a second shall in all cases and at all times before, during, and after use, be available for inspection by the physician and the Division ~~director or his designee~~ representative whose decision shall be final as to the propriety of its use.
- (6) Seconds shall not coach or in any way assist a contestant during a round, or by word or action attempt to heckle or annoy his contestant's opponent. Seconds shall remain seated in place and silent during the fight period of any round and shall not knock or pound on the ring floor.
- (7) No second shall attempt to render aid to a contestant who has been counted out during the course of a match before the physician has examined the contestant.
- (8) If any second enters the ring during any fight period of any match, he shall be immediately ejected by the referee, and the referee shall order the match to continue.
- (9) The spraying of water on any fighter between rounds is prohibited.
- (10) Only one second shall be allowed in the ring. No second shall enter the ring until the bell indicates the end of a round. He shall leave the ring at the sound of the timekeeper's whistle indicating the beginning of the next round is imminent. Prior to the beginning of each round, the entire ring platform and ropes shall be cleared of all obstructions, including buckets, stools, towels, and other articles; and none of these articles shall again be placed on the ring platform until the bell has sounded indicating the end of the round.
- (11) All seconds working a corner must wear rubber/latex gloves.
- (12) If a second leaves the designated corner area, his contestant will be disqualified.
- (q) The following requirements shall apply to the duties of trainers:
- (1) The trainer shall prepare the contestant for the match in which he is to engage and shall provide information and direction so as to ensure that the contestant is in good physical condition and is prepared to utilize and display his skills to the best of his ability.
 - (2) A trainer shall not coach or in any way assist a contestant during a match, or by word or action attempt to heckle or annoy his participant's opponent.
 - (3) A trainer shall not enter the corner or the ring at any time during the match and shall remain seated and silent during the match.
 - (4) If any trainer enters the corner or the ring during any match, he shall be immediately ejected by the referee, and the referee shall order the match to continue.
- (r) The following requirements shall apply to the duties of physicians:
- (1) No physician shall have a financial or pecuniary interest in any contestant participating in a match at which the physician is acting as a ringside physician.
 - (2) At least one physician shall be present at each match and render service and assistance as provided for in these Rules. A physician shall be located near each contestant's corner in a designated seat for the duration of each match. No match shall be allowed to begin or continue unless at least one physician is in his designated seat.
 - (3) The physician shall provide medical assistance for any illness or injury sustained by any person under the jurisdiction of the Division.
 - (4) If, at any time during the match, the physician is of the opinion that a contestant has received severe punishment or injury, or that to continue the match would pose the threat of unreasonable harm or injury to a contestant, the physician shall advise the referee that the match should be terminated.
 - (5) If, in the opinion of the physician, the referee has received an injury, the seriousness of which prevents him from continuing to officiate, the physician shall notify the Division ~~director or his designee~~ representative who shall temporarily halt the match. The injured referee shall be attended by the physician until he is no longer in danger or has been transferred to the care of another physician or emergency medical personnel.
 - (6) In the event of injury to or illness of any person under the jurisdiction of the Boxing Authority Section of the Division and while located on the premises where a program of matches is being conducted, the physician shall have complete charge of such person and shall be accorded the full cooperation of the Division ~~director or his designee~~ representative and all licensees present.
 - (7) Whenever a knockout occurs in any match, the physician shall examine the contestant knocked out immediately after the match. In

the event of a knockout or other injury, the physician shall remain on the premises to provide medical attention as needed. When the physician is satisfied that the injured or knocked out contestant has recovered to the extent that the physician releases the contestant from his care, he shall, prior to releasing him, instruct him as to the danger signs of which the contestant should be aware and which would indicate the need to seek immediate medical attention.

- (8) The physician shall not leave the premises until after the decision in the final match has been rendered and he is satisfied that his services are no longer necessary.

Authority G.S. 143-652.1; 143-655; S.L. 2007 - 490;

14A NCAC 12-~~0112~~.0403 CONTRACTS AND FINANCIAL ARRANGEMENTS

- (a) A promoter or matchmaker shall not contract with or negotiate with managers or contestants who are under suspension or whose license has been revoked in North Carolina or any other state.
- (b) All contracts shall be in writing and shall be filed with the Division within seven days after execution. The Division shall be notified immediately of any changes in contractual status, which change shall be in writing, signed by all parties of the contract and filed with the Division within seven calendar days after execution. Contracts between contestants and the promoter shall be filed with the Division no later than at the time of the weigh-in.
- (c) Except as provided in G.S. 143-651(13)(a), only a licensed manager may negotiate or contract for or on behalf of any contestant with any promoter or matchmaker under the jurisdiction of the Division. Any contract or negotiation entered into by any other person shall be unenforceable.
- (d) No manager shall negotiate, obligate or contract for matches for a contestant not under contract to him.
- (e) Managers shall file changes in contractual status filed with the Division no later than at the time of the weigh-in.
- (f) No contract shall be entered into which entitles a manager or group of managers to a total fee in excess of 33 1/3% of the gross earnings of the contestants, and no contract containing such a provision shall be valid or binding.
- (g) Release of a contestant from a contestant or manager contract shall be in writing and filed with the Division.
- (h) No manager of a contestant shall sell, assign, transfer any interest, or in any way encumber, or attempt to sell, assign, transfer any interest or in any way encumber in whole or in part, any interest which he holds in any contract for services of such contestant without notice to such contestant and without notice to the Division.
- (i) No person shall sign a contract with a contestant as a promoter, manager, or matchmaker, unless such person has first applied for and been granted the appropriate license, or such a contract shall not be valid.
- (j) Each contract between a manager and a contestant shall contain provisions governing its duration, division of the

contestant's purse, and any minimum sum guaranteed to the contestant by the manager. Each contract shall provide and if not included, shall be deemed to include, that it is automatically terminated if the license of either party is revoked by the Division or if the manager fails to renew his license before its expiration date. If the license of either party is suspended, the contract is not binding upon the other party during the period of suspension, provided however that if the manager's license is revoked or suspended for a period of greater than sixty days, the contract shall be automatically terminated.

(k) The Division may withhold any or all of any manager's share of a purse in the event of a contractual dispute as to entitlement to any portion of the purse until such dispute is resolved. If the Division deems it appropriate, the Division may impel interested parties over any disputed funds into the appropriate court for resolution of the dispute prior to release of all or any part of the funds.

(l) No manager shall attempt to select or insist upon the selection of any referee or judge in a match in which a contestant under his management is to appear, nor shall he have the name of any such referee or judge written into the contract governing such match.

(m) No manager shall pay or contribute to the pay of any referee, judge, or timekeeper.

(n) For accounting purposes, a promoter may make checks payable to contestants but shall immediately cash such checks. In no case shall a contestant be required to accept a payment by check in lieu of cash. The promoter shall retain receipted vouchers for all expenditures and deductions, for a period of six months, during which time the promoter shall provide to the Division upon demand such copy. Total amount of all purses, official fees and administrative costs shall be deposited in the form of American currency, to the Division representative at least two hours before the start of the first match.

(o) The manager shall furnish to the contestant he manages a statement of distribution, together with the contestant's share of the purse, no later than 24 hours after the manager receives the purse and a statement from the promoter. The manager shall retain receipted vouchers for all expenditures and deductions, for one year following the expiration date of the contract between manager and contestant, during which time the manager shall provide to the Division upon demand such copy.

(p) A contract, which states that a contestant shall fight exclusively for one promoter or at the option of the promoter shall not be valid under this Chapter nor will the division be responsible to resolve disputes arising under any such promoter contract.

Authority G.S. 143-652.1; S.L. 2007 - 490.

SECTION .0500 - BOXING

14A NCAC 12-~~0104~~.0501 WEIGH-INS-BOXING

(a) Boxers shall be classified by weight as shown in the following schedule. A contestant shall not be permitted to compete if the difference in weight between the contestants exceeds the difference shown in the following schedule:

	<u>Weight Class</u>	<u>Weight</u>	<u>Allowance</u>	<u>Glove Size</u>
(1)	Flyweight	112 pounds or under	not more than 3 pounds.	<u>8 oz</u>
(2)	Bantamweight	over 112 pounds to 118 pounds	not more than 3 pounds.	<u>8 oz</u>
(3)	Featherweight	over 118 pounds to 126 pounds	not more than 5 pounds.	<u>8 oz</u>
(4)	Junior Lightweight	over 126 pounds to 130 pounds	not more than 7 pounds.	<u>8 oz</u>
(5)	Lightweight	over 130 pounds to 135 pounds	not more than 7 pounds.	<u>8 oz</u>
(6)	Junior Welterweight	over 135 pounds to 140 pounds	not more than 9 pounds.	<u>8 oz</u>
(7)	Welterweight	over 140 pounds to 147 pounds	not more than 9 pounds.	<u>8 oz</u>
(8)	Junior Middleweight	over 147 pounds to 154 pounds	not more than 11 pounds.	<u>10 oz</u>
(9)	Middleweight	over 154 pounds to 160 pounds	not more than 11 pounds.	<u>10 oz</u>
(10)	Light Heavyweight	over 160 pounds to 175 pounds	not more than 12 pounds.	<u>10 oz</u>
(11)	Cruiserweight	over 175 pounds to 190 pounds	not more than 15 pounds.	<u>10 oz</u>
(12)	Heavyweight	all over 190 pounds no limit.		<u>10-12 oz</u>

(b) Contestants in matches shall be weighed on the same scale at a time and place to be determined by the Division ~~director or his designee, representative~~, in the presence of the opponent and the Division ~~director or his designee, representative~~. All contestants are limited to shirt, shorts and socks, with the exception of heavyweights. The weigh-in shall occur 12 hours or less prior to the scheduled starting time of the first match of the program of matches, provided however, that where a program of matches is scheduled to begin in the afternoon, the Division ~~director or his designee, representative~~, if requested by the promoter, ~~shall~~ may approve an early weigh-in time of ~~8:00 p.m.~~ 6:00 p.m. or later the evening before the day of the program of matches. Substitution of a contestant or contestants shall not be allowed after the weigh-in.

(c) Failure of a contestant to be present at the weigh-in at the time and place designated by the Division ~~director or his designee, representative~~ shall result in the following penalties, which shall be in addition to his loss of right to view the weigh-in of his opponent:

- (1) In lieu of suspension or revocation of the participant's license for the first occurrence, the contestant shall be penalized by assessing a fine of twenty-five dollars (\$25.00);
- (2) In lieu of suspension or revocation of the participant's license for the second occurrence, the contestant shall be penalized by assessing a fine of fifty dollars (\$50.00);
- (3) The third occurrence shall be penalized by suspending the license of the contestant and not allowing the contestant to engage in the program of matches; and
- (4) The fourth occurrence shall be penalized by revoking the license of the participant.

(d) For safety purposes, if, at the time of the official weigh-in, the weight of any contestant in a contest match fails to meet the weight parameters of the rules set forth herein, he shall have only two additional hours to meet such weight parameters. No contestant that weighs 147 pounds or less may lose more than two pounds in less than 12 hours of a match. No contestant weighing more than 147 pounds, with the exception of heavyweights, may lose more than three pounds in less than 12 hours of a match. This Rule also applies to second day weigh-ins.

(e) At the time of weigh-in, each contestant in a ~~contest match~~ shall provide to the Division ~~director or his designee representative~~ for inspection a picture identification issued by a federal, state or local unit of government or other similar authority. The contestant may utilize the passport issued by another state in which he is licensed provided that such passport contains the information as required in this Paragraph:

- (1) Legal name of contestant;
- (2) Ring name of contestant;
- (3) A passport type picture which shows the face of the contestant. Passports issued by states that do not require a picture shall be accompanied by another form of positive identification;
- (4) Address of contestant;
- (5) Age of contestant;
- (6) Date, place, opponent and result of the contestant's professional contests since the issuance of the passport, which entries shall be signed by the Division ~~director or his designee representative~~ as designated by these rules or the rules of the jurisdiction in which the match occurred; and
- (7) Signature of the contestant and a statement attesting to the validity of the information contained in his passport.

(f) The contestant may be required to complete a contestant information form which shall be provided by the Boxing Authority Section of the Division. Any contestant who refuses to complete this form shall not be allowed to engage in any match in North Carolina.

Authority G.S. 143-652.1; S.L. 2007 - 490.

14A NCAC 12 .0106 .0502 EQUIPMENT—BOXING

(a) Boxing Gloves--All contestants shall wear thumb attached boxing gloves. Boxing gloves weighing a minimum of ~~8~~ eight ounces shall be worn by contestants weighing ~~160 lbs.~~ 147 lbs. or less. Boxing gloves weighing a minimum of 10 ounces shall be worn by contestants weighing ~~160 lbs. or more~~ more than 147 lbs. Spare boxing gloves, in good condition, must be kept on hand by the promoter. All gloves must pass the inspection of the referee or the Division ~~director or his designee, representative~~.

and the Division may require a brand new set of gloves for any ~~event match.~~

(b) Bandages and handwraps shall meet the following requirements:

- (1) In all weight classes except light heavyweight, cruiserweight and heavyweight, all bandages and handwraps applied to each hand of a contestant shall be restricted to soft cloth, not more than 10 yards in length and two inches in width, held in place by not more than 4 feet of surgical tape.
- (2) In the light heavyweight, cruiserweight and heavyweight weight classes, all bandages and handwraps applied to each hand of a contestant shall be restricted to soft cloth, not more than 12 yards in length and two inches in width, held in place by not more than 8 feet of surgical tape.
- (3) The use of six inches of adhesive tape, not more than one inch in width, shall be permitted across the back of each hand before bandaging or wrapping the hands, provided however, that the tape shall not be applied across the knuckles.
- (4) All bandages and handwraps shall be applied and adjusted in the dressing room in the presence of the inspector. The inspector shall initial or in some other manner mark the bandage or handwrap on each hand so as to be able to determine at the conclusion of the match whether or not the bandage or handwrap was tampered with after the inspector initially examined the bandage or handwrap.

(c) Each contestant's apparel and appearance shall meet the following requirements:

- (1) Each contestant shall wear boxing trunks, the belt of which shall not extend above the waistline;
- (2) Each contestant shall wear a protective cup, which shall be firmly adjusted before entering the ring;
- (3) An individually fitted mouthpiece shall be in the contestant's mouth at all times during the fight period of each round as provided by these Rules;
- (4) Each contestant shall wear shoes made of soft material as is standard for the type of event in which the contestant is to engage, and not fitted with spikes, cleats, hard soles or hard heels;
- (5) Each contestant shall wear an abdominal guard of standard type which provides sufficient protection to withstand any low blow;
- (6) Although not required, female contestants may wear a protective pelvic girdle to cover the pubic area, coccyx and sides of the hips;
- (7) Female contestants must wear a breast protector;

- (8) All contestants shall be clean and present a neat appearance. This also applies to the contestants' ring apparel. If the Division ~~director or his designee~~ representative determines the hair on the contestant's head or face presents any potential hazard to the safety of the contestant, his opponent or will interfere with the supervision of the match he shall notify the contestant of such determination at the time of the weigh-in. If, at the time the inspector makes the final inspection of the contestant before the match begins, the contestant has not made the necessary corrections, he shall not be permitted to fight and shall be disqualified.

Any contestant who fails to comply with these requirements shall not be allowed to participate in a match and such failure to comply with these requirements shall be grounds for suspension of the contestant's license.

(d) A boxing ring shall meet the following requirements:

- (1) The ring shall be not less than 16 feet square nor more than 24 feet square within the ropes. The ring floor shall extend at least 18 inches beyond the ropes. The ring floor shall be padded to a thickness of at least 1 inch, and shall be padded with insulate or another similar closed-cell foam. Padding shall extend beyond the ring ropes and over the edge of the platform, with a top covering of canvas, duck or similar material tightly stretched and laced to the ring platform. Material that tends to gather in lumps or ridges shall not be used.
- (2) The ring platform shall not be more than five feet above the floor of the building, and shall be provided with steps for use by contestants and ring officials.
- (3) Ring posts shall be of a metal not less than three inches in diameter, extending from the floor of the building to a height of 58 inches above the ring floor. Ring posts shall be at least 18 inches away from the ropes.
- (4) There shall be four ring ropes, not less than one inch in diameter and wrapped in soft material. The ring ropes shall extend in parallel lines 18, 30, 42, and 54 inches in height above the ring floor.
- (5) The floor plan and apron seating arrangements shall be approved by the Division ~~director or his designee~~ representative. A separate divider, approved by the Division, must be installed between the ring, cage or fenced area and the spectators. An isle shall be left clear from the contestant's dressing room to the ring. Clear access to the ring shall also be available for emergency medical personnel. Only match officials shall be allowed to sit at ringside. Alcoholic beverages shall not be permitted at ringside.

Authority G.S. 143-652.1; S.L. 2007 - 490.

14A NCAC 12-~~0107~~.0503 SCORING – BOXING

(a) Length and number of rounds shall be as follows:

- (1) The length of each round of a match shall be three minutes with one minute rest intervals between rounds.
- (2) A match shall be scheduled for four, six, eight, or 10 rounds.
- (3) A championship match shall be scheduled for 12 rounds.

(b) The following rules apply to scoring of boxing matches:

- (1) Scoring shall be by the "10 point must" system. The winner of any round shall be awarded 10 points. The loser of any round shall be awarded one to nine points. When a round is even, each contestant shall be scored 10 points.
- (2) The awarding or deducting of points by the judges and referee, the determination as to the occurrence of knockdowns, knockouts and fouls and the procedure to be used following such occurrence shall be accomplished in the following manner and based on the following criteria, which criteria is listed in the order of importance:
 - (A) The only fair punch is a punch delivered with the padded knuckle part of the glove to the front or side of the head or body above the belt, and the contestant who delivers such a punch shall be awarded points in proportion to its damaging effects.
 - (B) A clean knockdown shall be highly scored. A knockdown is scored as soon as it occurs. The contestant who takes advantage of the full ~~9-second~~ nine-second count shall be credited with ring generalship that would not be credited to him if he arose immediately and, in a groggy condition, tried to continue. If he arises before the count of nine and handles himself well, either aggressively or defensively after he is on his feet, he shall be credited with ring generalship. If the contestant who is down arises during the count, the referee may, if he deems it advisable, step between the contestants for such period of time to assure himself that the contestant who has just arisen is able to continue. When so assured, he shall, without loss of time, order both contestants to proceed with the match. The following shall be used to determine when a knockdown has occurred and

the procedure to be followed after a knockdown has occurred:

- (i) A contestant shall be considered to be knocked down when:
 - (I) Any part of his body, other than his feet, is on the floor;
 - (II) He is hanging helplessly over the ropes;
 - (III) He is rising from a down position; or
 - (IV) At the conclusion of a round in a match, he leaves the ring and fails to be in the ring when the bell sounds indicating the beginning of the next round.
- (ii) When a contestant is knocked down, the referee shall order the opponent to retire to the farthest neutral corner of the ring by pointing to that corner and shall immediately begin a 10-second count over the contestant who is down. He shall announce the passing of the seconds, accompanying the count with a downward motion of his arm. The knockdown timekeeper, by effective signaling, shall provide the referee the correct one second interval for his count. The referee's count is the official count.
- (iii) If the contestant taking the count is still down when the referee calls the count of 10, the referee shall wave both arms to indicate that the contestant has been knocked out, provided however, that if the contestant is counted out by virtue of his failure to be in the ring when the bell sounds indicating the beginning of the next round, the match shall be terminated and the contestant who was counted out shall be declared the loser by technical knockout.

- (iv) If a contestant is knocked down and is down at the time the bell rings to end the round, the knockdown timekeeper shall continue to count. If the downed contestant fails to rise before the count of 10, he shall be considered to have been knocked out in the next subsequent round. If a contestant is knocked down and is down at the time the bell rings in the final round, the knockdown timekeeper shall cease the count and the contest shall be deemed to be concluded.
- (v) If both contestants are knocked down at the same time, counting shall be continued as long as either remains down. If both contestants remain down until the count of 10, the match shall be terminated and the decision shall be a technical draw.
- (vi) A contestant who has been knocked down shall be required to take a count of eight whether or not he has regained his feet before the count of eight has been reached. The referee may, if in his opinion a contestant has been dazed or significantly hurt but remains standing, administer a standing ~~8-count~~ eight-count. A standing ~~8-count~~ eight-count shall be considered a knockdown.
- (vii) If a contestant who is down arises before the count of 10 is reached, and then goes down immediately, without being struck, the referee shall resume the count where he previously stopped counting.
- (viii) When a contestant is knocked out, the referee shall perform a full 10 second count before terminating the match, provided however that if, in the opinion of the referee or physician, the contestant

requires immediate medical attention, the referee shall not be required to count to 10.
- (ix) If a contestant is knocked out of or has fallen out of the ring the referee shall allow the contestant ~~a reasonable period of time~~ no more than 20 seconds, to re-enter the ring without the assistance of anyone, provided however, that if the contestant was knocked out of the ring as a result of a legal technique and is unable to regain his feet, the referee shall consider this to be a knockdown and shall begin a 10 second count. The opponent shall be ordered to retire to the furthest neutral corner, where he shall remain until signaled by the referee to continue with the match. If a contestant intentionally falls through the ropes, his seconds shall not assist him and, the contestant shall be considered to have been knocked down and the appropriate count and procedures for knockdowns shall be initiated by the referee. If a contestant ~~is assisted to his feet~~, enters the ring and immediately goes down, the referee shall begin a 10 second count or shall continue a 10 second count started after the contestant was knocked out of the ring. Any contestant who does not immediately re-enter the ring shall be deemed to have been knocked down and the appropriate count and procedures used in the event of a knockdown shall be used. If, in the opinion of the referee, the contestant has been dazed or significantly hurt but remains standing, the referee shall administer a standing ~~8-count~~ eight-count.
- (x) If the contestant who is not down and who has been

ordered to a neutral corner fails to stay in the neutral corner the referee and knockdown timekeeper shall cease the count and shall not resume the count until the contestant has retired to the neutral corner.

- (xi) If a towel is thrown into the ring when a contestant is down, the towel shall be ignored and the referee and knockdown timekeeper shall continue to count as if it had not appeared.

(c) If a contestant slips, falls down or is pushed down, the referee shall order him to his feet immediately.

Authority G.S. 143-652.1; S.L. 2007 - 490.

14A NCAC 12-~~0108~~.0504 FOULS—BOXING

(a) Except in the case of punching while the opponent is down, a foul, whether intentional or unintentional, may result in a deduction of a point, as determined by the referee. The first offense of punching while down shall result in the deduction of two points from the score of the contestant who punches his opponent while his opponent is down, unless the first offense is determined by the referee to be a blatant and clear disregard of the rule. If such determination is made by the referee, the contestant committing the foul shall be immediately disqualified and his opponent shall be declared the winner by disqualification. The second offense of punching while down shall result in the disqualification of the contestant committing the offense and his opponent shall be declared the winner by disqualification. In the case of all other fouls, the referee shall determine whether or not a point is to be deducted, using as his criteria the severity of the foul and its effect upon the opponent. When the referee determines that he shall deduct a point from a contestant, he shall immediately advise the contestant and judges of such action. The referee shall not tolerate continual and repeated commission of fouls by a contestant. The referee shall give warning to a contestant who continually and repeatedly commits fouls and when, in the opinion of the referee, the contestant has displayed persistent disregard for the rule governing the commission of fouls, the referee shall disqualify the contestant, terminate the match and provide such findings to the Division ~~director or his designee~~ representative for appropriate action. Points for fouls shall only be deducted in the round in which the fouls occurred. A contestant shall not be penalized in a subsequent round for fouls that occurred in a previous round. The following actions are considered to be fouls, the committing of which may result in a deduction of points:

- (1) Major fouls consist of the following:
 - (A) Punching below the belt;
 - (B) Punching an opponent who is down or is getting up after being down;
 - (C) Holding an opponent with one hand and punching with the other;

- (D) Holding or deliberately maintaining a clinch after several warnings;
- (E) Wrestling or kicking;
- (F) Striking an opponent who is helpless as a result of punches received and so supported by the ropes that he does not fall;
- (G) Butting with the head or shoulder or using the knee;
- (H) Punching with an open glove, or with the butt of the hand, the wrist or elbow and all backhand punches;
- (I) Purposely going down without being punched;
- (J) Striking deliberately at that part of the back near the spine and over the kidneys;
- (K) The deliberate use of the pivot punch or rabbit punch or any punch struck at the back of the neck near the base of the skull and which is not the result of the opponent turning his head to avoid a punch;
- (L) Jabbing the opponent's eyes with the thumb of the glove;
- (M) The use of abusive language in the ring;
- (N) Any unsportsmanlike trick or action causing injury to an opponent;
- (O) Punching on the break;
- (P) Punching after the bell has sounded ending the round;
- (Q) Roughing at the ropes;
- (R) Pushing an opponent around the ring or into the ropes;
- (S) Tripping; or
- (T) Intentional spitting out of the mouthpiece or allowing the mouthpiece to fall out of the mouth.

(2) Minor fouls include:

- (A) Punching or flicking with the open glove; and
- (B) Clinching after warning has been given.

(b) Points for aggressiveness shall be awarded to the contestant who sustains the actions of a round by the greatest number of skillful attacks.

(c) A contestant shall be awarded points for sportsmanlike conduct, close adherence to the rules and refraining from taking technical advantage of situations which are unfair to his opponent. Points shall be deducted from a contestant for unsportsmanlike conduct, disregard of the rules and taking technical advantage of situations which are unfair to his opponent.

(d) Points shall be given for clever defensive work such as avoiding or blocking a punch.

(e) Points shall be awarded where ring generalship is conspicuous. Ring generalship includes the ability to:

- (1) Quickly recognize and take advantage of every opportunity presented;
- (2) Cope with a diversity of situations;
- (3) Anticipate and neutralize an opponent's form of attack; and
- (4) Force an opponent to adopt a style of boxing at which he is not particularly skillful.

(f) Points shall be deducted when a contestant persistently delays the action of a match by clinching, holding or lack of aggressiveness.

(g) The following rules apply to the determination of a win or draw:

- (1) A contestant who knocks out his opponent shall be declared the winner of the match.
- (2) If both contestants are knocked down at the same time and both contestants remain down until the count of 10, the match shall be considered a technical draw.
- (3) A contestant who is awarded a technical knockout shall be declared the winner of the match.
- (4) A contestant who is knocked down three times in any one round shall be considered to have lost the match by a technical knockout. If requested by a sanctioning body, this Rule shall be waived for a championship fight.
- (5) When the winner of a match is to be determined by the number of points awarded or deducted or by the number of rounds awarded to each contestant, the scores for all rounds shall be compiled for each judge and the following criteria shall be used:
 - (A) Three wins shall be declared a win;
 - (B) Two wins and one draw shall be declared a win;
 - (C) Two wins and one loss shall be declared a win;
 - (D) One win and two draws shall be declared a draw;
 - (E) One win, one draw and one loss shall be declared a draw;
 - (F) One win and two losses shall be declared a loss;
 - (G) Three draws shall be declared a draw;
 - (H) Two draws and one loss shall be declared a draw;
 - (I) One draw and two losses shall be declared a loss; and
 - (J) Three losses shall be declared a loss.
- (6) A contestant shall not be declared the winner of a match on a claim of low blow foul and a contestant shall not lose a match by reason of a low blow foul.
- (7) No contestant shall be awarded a match based on an unintentional foul unless the foul was unintentional butting. If a match is temporarily halted because of an unintentional foul, the referee shall determine whether the contestant who has been fouled can continue.

If the referee determines that the contestant can continue, the referee shall order the match to be continued. If the referee determines that the contestant is unable to continue the match as a result of an unintentional foul other than for butting, the match shall be terminated but no decision shall be rendered by the referee, who shall order the purses of both contestants withheld. The Division ~~director or his designee~~ representative shall then rule as to the disposition of the purses based on the prior contractual agreement between the promoter and the contestants. If no such contractual provision exists, then the purses shall be disposed of as follows: If the unintentional foul occurs in any round during the first half of the match, the purses shall revert back to the promoter. If the unintentional foul occurs in any round during the second half of the match, the Division ~~director or his designee~~ representative shall award the purses in accordance with the determination of win, loss or draw based upon the score cards of the judges. If a contestant is unintentionally butted in a match so that he cannot continue, the referee shall declare the result of the match using the following criteria:

- (A) If the unintentional butt occurs prior to the scoring of the third round and the fouled contestant is unable to continue, the result shall be a technical draw.
- (B) During a four or six round match, if the unintentional butt occurs in any round subsequent to the scoring of the third round or occurs prior to the scoring of third round but the contestant is not determined to be unable to continue until after the scoring of the third round, the determination of win, loss or draw shall be based upon the score cards of the judges.
- (C) During an eight round match, if the unintentional butt occurs in any round subsequent to the scoring of the fourth round or occurs prior to the scoring of fourth round but the contestant is not determined to be unable to continue until after the scoring of the fourth round, the determination of win, loss or draw shall be based upon the score cards of the judges.
- (D) During a ~~ten~~ 10 round match, if the unintentional butt occurs in any round subsequent to the scoring of the fifth round or occurs prior to the scoring of fifth round but the contestant is not

determined to be unable to continue until after the scoring of the fifth round, the determination of win, loss or draw shall be based upon the score cards of the judges.

(E) During a ~~twelve-12~~ round match, if the unintentional butt occurs in any round subsequent to the scoring of the sixth round or occurs prior to the scoring of sixth round but the contestant is not determined to be unable to continue until after the scoring of the sixth round, the determination of win, loss or draw shall be based upon the score cards of the judges.

(8) When an injury is produced by a fair punch but because of the severity of the injury the match cannot continue, the injured contestant shall be declared the loser by a technical knockout.

(h) If a contestant refuses to continue a match while physically able to do so, the referee shall disqualify him, and award the match to his opponent. The referee shall provide a written report to the Division. If the Division determines that the contestant refused to continue a match while physically able to do so, the Division shall impose a period of suspension for a period not less than six months and may impose a civil penalty.

(i) In any case where the referee determines that both contestants are not honestly competing, that a knockdown is intentional and predetermined by both parties or a foul has been prearranged so as to cause the match to be terminated, he shall not finish the knockdown count or disqualify either contestant for fouling or render a decision, but shall instead terminate the match not later than the end of the round and order the promoter to surrender the purses of both contestants to the Division ~~director or his designee representative~~ pending an investigation of the alleged violation. The announcer or referee shall inform the audience that no decision has been rendered.

(j) If, in the opinion of the physician, the referee or a judge has received an injury, or has become ill the seriousness of which prevents him from continuing to officiate, time out shall be called and another official shall be immediately assigned by the Division ~~director or his designee representative~~ to replace the incapacitated person.

(k) A decision rendered at the conclusion or termination of any match is final and shall not be changed unless it is determined that any of the following occurred:

- (1) There was collusion affecting the result of any match;
- (2) The compilation of the round or match score cards of the referee and judges shows an error which indicates that the decision was awarded to the wrong contestant;
- (3) There was a violation of these Rules, relating to drugs or foreign substances; or

(4) There was a violation of G.S. 143, Article 68 or the rules set forth in this Chapter which violation affected the result of the match.

If it is determined that any of the above occurred, the decision rendered shall be changed in an equitable manner as directed by the Division.

(l) As a result of injuries or suspected injuries sustained or suspected to have been sustained in any match, the Division ~~director or his designee representative~~ shall, based upon the recommendation of the physician, order a medical examination to be given to any contestant or referee at any time if he has cause to believe that the health or safety of the contestant or referee is in jeopardy.

(m) When it shall appear to a physician, for whatever reason and regardless of how the injury was sustained, that a contestant or referee is no longer able to safely continue to compete or officiate, the physician shall report such findings, in writing, to the Division ~~director or his designee representative~~. If the physician has so recommended, the contestant or referee shall not be permitted to participate until such time as he is certified as fit to participate by the physician.

(n) A participant, losing by knockout or having been rendered a decision of technical draw as a result of being counted out in any jurisdiction, shall be automatically suspended for a period of time to be determined by the Division ~~director or his designee representative~~ based upon the recommendation of the physician, or 60 calendar days from the date of the knockout or technical draw, whichever is longer. A contestant shall not engage in any match, contact exhibition or contact sparring for training purposes during the suspension period. After the suspension period and prior to engaging in any match, contact exhibition or contact sparring for training purposes he shall be examined by a physician. The contestant shall advise the physician of the previous knockout or technical draw and shall provide medical records or his permission for the physician to consult with the physician who treated him at the time of the previous knockout or technical draw. The results of this examination shall be filed with the Division prior to any further matches being approved for the contestant.

(o) A contestant losing by technical knockout shall be automatically suspended for a period of time to be determined by the Division ~~director or his designee representative~~ based upon the recommendation of the physician, or 30 calendar days from the date of the technical knockout, whichever is longer. A contestant shall not engage in any match, contact exhibition or contact sparring for training purposes during the suspension period without the approval of the physician.

(p) Any contestant who has lost six consecutive matches shall be automatically suspended and not be reinstated unless he has been examined and pronounced fit by a physician. In the case of repeated knockouts and severe beatings, the license of the contestant shall be revoked and shall not be reissued or renewed.

Authority G.S. 143-652.1; S.L. 2007 - 490.

SECTION .0600 - KICKBOXING

**14A NCAC 12-~~0113~~.0601 WEIGH-INS-
KICKBOXING**

Kickboxing shall be classified by weight as shown in the following schedule. A contest shall not be permitted if the difference in weight between the contestants exceeds the difference shown in the following schedule:

	<u>Weight Class</u>	<u>Weight</u>	<u>Allowances</u>	<u>Glove Size</u>
(1)	Flyweight -	118 pounds or under.....	not more than 4 pounds	<u>8 oz</u>
(2)	Bantamweight -	over 118 pounds to 125 pounds.....	not more than 5 pounds	<u>8 oz</u>
(3)	Featherweight -	over 125 pounds to 132 pounds.....	not more than 6 pounds	<u>8 oz</u>
(4)	Lightweight -	over 132 pounds to 140 pounds.....	not more than 7 pounds	<u>8 oz</u>
(5)	Light Welterweight -	over 140 pounds to 148 pounds.....	not more than 7 pounds	<u>8 oz</u>
(6)	Welterweight -	over 148 pounds to 155 pounds.....	not more than 7 pounds	<u>10 oz</u>
(7)	Light Middleweight -	over 155 pounds to 164 pounds.....	not more than 8 pounds	<u>10 oz</u>
(8)	Middleweight -	over 164 pounds to 170 pounds.....	not more than 9 pounds	<u>10 oz</u>
(9)	Light Heavyweight -	over 170 pounds to 180 pounds.....	not more than 10 pounds	<u>10 oz</u>
(10)	Heavyweight -	over 180 pounds to 195 pounds.....	not more than 12 pounds	<u>10 oz</u>
(11)	Super Heavyweight -	all over 195 pounds	no limit	<u>10-12 oz</u>

Authority G.S. 143-652.1; S.L. 2007 - 490.

**14A NCAC 12-~~0114~~.0602 EQUIPMENT-
KICKBOXING**

(a) Each contestant shall wear the following:

- (1) Kickboxing type trunks or karate style long pants, the belt of which does not extend above the waistline;
- (2) A protective groin cup, which shall be firmly adjusted before entering the ring;
- (3) An individually fitted mouthpiece which shall be in the contestant's mouth at all times during the fight period of each round;
- (4) Breast protectors for female contestants; and
- (5) An abdominal guard which provides sufficient protection to withstand any low blow.

Female contestants may wear a protective pelvic girdle to cover the pubic area, ovaries, coccyx and sides of the hips.

(b) All contestants shall be clean and present a neat appearance. This also applies to the contestants' ring apparel. If the Division ~~director or his designee representative~~ determines the hair on the contestant's head or face presents any potential hazard to the safety of the contestant, his opponent or will interfere with the supervision of the match, he shall notify the contestant of such determination at the time of the weigh-in. If, at the time the inspector makes the final inspection of the contestant before the match begins, the contestant has not made the necessary corrections, he shall not be permitted to fight and shall be disqualified.

(c) Any contestant who fails to comply with the requirements in this Rule shall not be allowed to participate in a match and such failure to comply with the requirements in this Rule shall be grounds for suspension of the contestant's license.

(d) All contestants shall wear thumb attached kickboxing gloves, and footpads. Kickboxing gloves weighing a minimum of 8 eight ounces shall be worn by contestants weighing ~~153 lbs.~~ 147 lbs. or less. Kickboxing gloves weighing a minimum of 10 ounces shall be worn by contestants weighing ~~154 lbs. or more~~ more than 147 lbs. A supply of kickboxing gloves and

footpads in good condition, ~~must~~ shall be kept on hand by the promoter. All gloves and footpads must pass the inspection of the referee or the ~~Commission-Division~~ representative, and the ~~Commission-Division~~ may require a brand new set of gloves or footpads for any event. Laces of gloves shall be knotted on the back of the wrist with tape applied over the laces so as to prevent injury to the opponent.

(e) Wrapping of hands is required, and shall conform to the standards as described in Rule ~~0106(b)~~ .0502(b) of this Section. Footpads are required and shall be of a soft material of a type and construction normally used for kickboxing.

(f) Shinguards are required and shall be of a soft material of a type and construction normally used for kickboxing. Shinguards shall be held in place at two locations using no more than two windings of one 2 inch surgical tape.

(g) The ring shall meet the requirements as described under "boxing ring" in Rule ~~0104(a)~~ .0502(d) of this Section.

(h) The length of each round of a match shall be two minutes with one minute rest intervals between rounds with a 10 second warning signal.

(i) A match shall be scheduled for four, six, eight, or 10 rounds.

Authority G.S. 143-652.1.

**14A NCAC 12-~~0115~~.0603 SCORING-
KICKBOXING**

(a) Scoring shall be by the "10 point must" system. The winner of any round shall be awarded 10 points by the scoring judge, provided however that penalty points shall be deducted for fouls or for failure to execute the eight required kicks. The loser of any round shall be scored 7 seven to 9 nine points, provided however that penalty points may be deducted for fouls or for failure to execute the number of required kicks. Decimal scoring using 2 two points (0.5) may be permitted.

(b) The awarding or deducting of points by the judges and referee, the determination as to the occurrence of knockdowns, knockouts and fouls and the procedure to be used following such

occurrence shall be accomplished in the following manner and based on the following criteria, which criteria is listed in the order of importance:

- (1) Offensive full-contact professional karate punching, kicking and striking techniques, with the exception of those techniques identified in this Chapter as fouls, are appropriate, and the execution of such techniques in an effective and timely manner shall be scored highly. Professional karate techniques include all techniques in various karate, kung fu, tae kwon do and similar fighting systems, which techniques may be executed according to the individual kickboxer's style or system of fighting.
- (2) A clean knockdown shall be highly scored. A successful sweep is not considered a knockdown. The following shall be used to determine when a knockdown has occurred and the procedure to be followed after a knockdown has occurred:
 - (A) A contestant shall be considered to be knocked down when:
 - (i) Any part of his body, other than his feet, is on the floor;
 - (ii) He is hanging helplessly over the ropes;
 - (iii) He is rising from a down position;
 - (iv) He purposefully falls down without being hit; or
 - (v) At the conclusion of a round in a match, he leaves the ring and fails to be in the ring when the bell sounds indicating the beginning of the next round.
 - (B) When a contestant is knocked down, the referee shall order the opponent to retire to the farthest neutral corner of the ring by pointing to that corner, and shall immediately begin a 10-second count, of which ~~8~~ eight seconds shall be mandatory, over the contestant who is down. He shall announce the passing of the seconds, accompanying the count with a downward motion of his arm. The assistant or knockdown timekeeper, by effective signaling, shall provide the referee the correct one second interval for his count. The referee's count is the official count.
 - (C) If the contestant taking the count is still down when the referee calls the count of 10, the referee shall wave both arms to indicate that the contestant has been knocked out, provided however, that if the

contestant is counted out by virtue of his failure to be in the ring when the bell sounds indicating the beginning of the next round, the match shall be terminated and the contestant who was counted out shall be declared the loser by technical knockout.

- (D) If a contestant is knocked down and is down at the time the bell rings to end the round, the knockdown timekeeper shall continue to count. If the downed contestant fails to rise before the count of 10, he shall be considered to have been knocked out in the subsequent round. If a contestant is knocked down and is down at the time the bell rings in the final round, the knockdown timekeeper shall continue to count and if the downed contestant fails to rise before the count of 10 the downed contestant shall be considered to have been knocked out in the final round.
- (E) If both participants are knocked down at the same time, counting shall continue as long as either remains down. If both participants remain down until the count of 10, the match shall be terminated and the decision shall be a technical draw.
- (F) A contestant who has been knocked down shall be required to take a count of eight whether or not he has regained his feet before the count of eight has been reached.
- (G) The referee shall, if in his opinion a contestant has been dazed or significantly hurt but remains standing, administer a standing ~~8-count~~ eight-count. The referee shall order the opponent to retire to the farthest neutral corner of the ring by pointing to that corner, and shall immediately begin the ~~8~~ eight second count. He shall announce the passing of the seconds, accompanying the count with a downward motion of his arm. The assistant or knockdown timekeeper, by effective signaling, shall provide the referee the correct one second interval for his count. The referee's count is the official count. A standing ~~8-count~~ eight-count shall be considered a knockdown.
- (H) If a contestant who is down arises before the count of 10 is reached, and then goes down immediately, without

- being struck, the referee shall resume the count where he previously stopped counting.
- (I) When a contestant is knocked out, the referee shall perform a full 10 second count before terminating the match, provided however that if, in the opinion of the referee or physician, the contestant requires immediate medical attention, the referee shall not be required to count to 10. The referee shall waive his arms to indicate that the contestant is knocked out and shall immediately summon the physician.
- (J) If a contestant is knocked out of or has fallen out of the ring the referee shall allow the contestant ~~a reasonable period of time~~ no more than 20 seconds, to re-enter the ring, without assistance of anyone, provided however, that if the contestant was knocked out of the ring as a result of a legal technique and is unable to regain his feet, the referee shall consider this to be a knockdown and shall begin a 10 second count. The opponent shall be ordered to retire to the furthest neutral corner, where he shall remain until signaled by the referee to continue with the match. If a contestant intentionally falls through the ropes, his seconds shall not assist him and, the contestant shall be considered to have been knocked down and the appropriate count and procedures for knockdowns shall be initiated by the referee. If a contestant ~~is assisted to his feet,~~ enters the ring and immediately goes down, the referee shall begin a 10 second count or shall continue a 10 second count started after the contestant was knocked out of the ring. Any contestant who does not immediately re-enter the ring shall be deemed to have been knocked down and the appropriate count and procedures used in the event of a knockdown shall be used. If, in the opinion of the referee, the contestant has been dazed or significantly hurt but remains standing, the referee shall administer a standing ~~8-count~~ eight-count.
- (K) When a contestant rises from being knocked down, the referee shall, if he deems it advisable, step between the participants for such period of time to assure himself that the contestant who has just arisen is able to continue. When so assured, he shall, without loss of time, order both participants to proceed with the match.
- (L) Should the contestant who is not down and who has been ordered to a neutral corner, fail to stay in the neutral corner, the referee and knockdown timekeeper shall cease the count and shall not resume the count until the contestant has retired to the neutral corner.
- (M) Unless otherwise agreed upon by the contestants and managers before the match, a towel thrown into the ring shall be ignored and the match shall commence as though it had not appeared.
- (N) If a contestant slips, falls down or is pushed down, the referee shall immediately order him to his feet, clean his gloves of any dirt and debris and order the match to continue.
- (O) If a contestant is knocked down three times during any one round, he shall be declared the loser by technical knockout, provided however, that this Rule may be waived in advance for a championship match.
- (3) Legal kicks are those which are attempts to land hard on a target area of the opponent's body with the intent to do damage. The determination of a legal kick shall be made by the kick count judge. The minimum kick requirement shall be ~~8~~ eight legal kicks delivered above the belt. For each legal kick less than the minimum number required, a contestant shall be penalized by the deduction of one point, not to exceed three points in any one round. Each knockdown in a round shall result in the reduction by ~~±~~ one of the minimum number of kicks required for each participant. At the point of a knockdown, which shall be indicated by the referee performing the mandatory ~~8-count~~ eight-count, both kick count judges shall flip another card to show the awarding of a kick to each participant, thereby reducing the number of required kicks remaining to be executed in order to meet the minimum. The scoring judges shall score the round, after which the point or points penalized for failure to execute the minimum number of kicks shall be deducted from the score.
- (4) Sweeping is that technique used to throw the opponent off balance. When used, it must be an obvious attempt to unbalance the opponent's front leg and not be intended to

injure the leg. Sweeps shall be executed with the arch part of the foot and delivered to the outside portion of the forward leg only. A sweep delivered to the inside, front or rear of the leg, or a kick directed to the inside region of the thigh, non-footpad to footpad or shin to shin sweeps are fouls and shall be so penalized. The low kick of French savate or coup de pied bas is considered a sweep and is subject to the same restrictions.

Authority G.S. 143-652.1; S.L. 2007 - 490.

14A NCAC 12-~~0116~~.0604 FOULS-KICKBOXING

(a) A foul, whether intentional or unintentional, shall result in a warning or deduction of a point or points, as determined by the referee:

- (1) The referee shall determine the severity of the penalty using as his criteria the intent of the contestant committing the foul and the result and effect of the foul upon the opponent.
- (2) When the referee determines that he shall deduct a point or points from a participant, he shall immediately notify the Division ~~director~~ or his designee representative or scorekeeper (if one is used), who shall ensure that the specified number of points are deducted from each of the judge's score cards at the end of the round.
- (3) The referee shall not tolerate continual and repeated commission of fouls by a participant. The referee shall give warning to a contestant who continually and repeatedly commits fouls and when, in the opinion of the referee, the contestant has displayed persistent disregard for the rule governing the commission of fouls, the referee shall disqualify the participant, terminate the match and provide such findings to the Division for appropriate action.
- (4) Points for fouls shall only be deducted in the round in which the fouls occurred. A contestant shall not be penalized in a subsequent round for fouls that occurred in a previous round.
- (5) The following actions are fouls, the committing of which shall result in a deduction of points:
 - (A) Striking an opponent who is down or is getting up after being down;
 - (B) Holding an opponent with one hand and punching with the other;
 - (C) Holding or deliberately maintaining a clinch;
 - (D) Butting with the head;
 - (E) Striking with the knee, elbow or palm-heel;
 - (F) Clubbing blows with the hand;
 - (G) Striking to the face with any part of the arm other than the gloved hand;

- (H) Deliberately striking or kicking the groin area, women's breasts, women's ovaries, back of the head, neck or throat, or that part of the back near the spine and over the kidneys;
- (I) The deliberate use of any scraping or rabbit blow;
- (J) Flicking or jabbing the opponent's eyes with the thumb of the glove;
- (K) Hitting with the open glove or with the wrist;
- (L) The use of abusive language in the ring or corner, or spitting or biting;
- (M) Kicking with the knee, or kicking into the knee or to the inside region of the thigh, and sweeps to the inside region of the leg or shin-to-shin sweeps;
- (N) Linear or straight-in striking or kicking to the spine;
- (O) Intentionally pushing, shoving or wrestling an opponent to the ring floor or out of the ring, or throwing or taking an opponent to the floor with foot sweeps that make contact with any area above the opponent's ankle knuckle;
- (P) Attacking or striking on the break;
- (Q) Striking after the bell has sounded ending the round;
- (R) Intentionally delaying the contest through any action or failure to act;
- (S) Leg checking which is the act of extending the leg to check an opponent's leg to prevent him from kicking;
- (T) Grabbing or holding an opponent's leg or foot followed by a takedown, strike or kick;
- (U) Pushing an opponent around the ring or into the ropes;
- (V) Anti-joint techniques which is the act of striking or applying leverage against any joint;
- (W) Holding the ropes with one hand while kicking, punching or defending with the other hand or the legs;
- (X) Any unsportsmanlike action which causes or is intended to cause injury to an opponent; or
- (Y) Intentional spitting out of the mouthpiece or allowing the mouthpiece to fall out of the mouth.

(b) Wins or draws shall be determined as follows:

- (1) A contestant who knocks out his opponent shall be declared the winner of the match.
- (2) If both participants are knocked down at the same time and both participants remain down until the count of 10, the match shall be considered a technical draw.

- (3) A contestant who is awarded a technical knockout shall be declared the winner of the match.
 - (4) A contestant who is knocked down three times in any one round shall be considered to have lost the match by a technical knockout. If requested by a sanctioning body, this Rule shall be waived for a championship fight.
 - (5) When the winner of a match is to be determined by the number of points awarded or deducted or by the number of rounds awarded to each participant, the scores for all rounds shall be compiled for each judge and the following criteria shall be used:
 - (A) Three wins shall be declared a win;
 - (B) Two wins and one draw shall be declared a win;
 - (C) Two wins and one loss shall be declared a win;
 - (D) One win and two draws shall be declared a draw;
 - (E) One win, one draw and one loss shall be declared a draw;
 - (F) One win and two losses shall be declared a loss;
 - (G) Three draws shall be declared a draw;
 - (H) Two draws and one loss shall be declared a draw;
 - (I) One draw and two losses shall be declared a loss; and
 - (J) Three losses shall be declared a loss.
 - (6) If, as the result of a foul, whether unintentional or intentional, except for an unintentional butt, a contestant is unable to continue, the following procedure shall be used to determine the result of the match:
 - (A) If the foul occurs prior to the scoring of the first round the result shall be a technical draw;
 - (B) If the foul occurs in any round subsequent to the first round or the foul occurs in the first round but the contestant is not determined to be unable to continue until after the scoring of the first round, the winner shall be the contestant who is leading based upon the score cards of the judges.
 - (7) If, as the result of an unintentional butt foul, a contestant is unable to continue, the following procedure shall be used to determine the result of the match:
 - (A) If the foul occurs prior to the scoring of the third round and the fouled contestant is unable to continue, the result shall be a technical draw;
 - (B) If the foul occurs in any round subsequent to the third round or the foul occurs in the first, second or third rounds round but the contestant is not determined to be unable to continue until after the scoring of the third round, the winner shall be the contestant who is leading based upon the score cards of the judges;
 - (8) When an injury is produced by a fair strike but because of the severity of the injury the match cannot continue, the injured contestant shall be declared the loser by a technical knockout.
 - (9) If a contestant refuses to continue a match while physically able to do so, the referee shall disqualify him, and award the match to his opponent. The referee shall provide a written report to the Division. If the Division determines that the contestant refused to continue a match while physically able to do so, the Division shall impose a period of suspension for a period not less than six months and may impose a civil penalty.
 - (10) In any case where the referee determines that both participants are not honestly competing, that a knockdown is intentional and predetermined by both parties or a foul has been prearranged so as to cause the match to be terminated, he shall not finish the knockdown count or disqualify either contestant for fouling or render a decision, but shall instead terminate the match not later than the end of the round and order the promoter to surrender the purses of both participants to the Division director or his designee pending an investigation of the alleged violation. The announcer or referee shall inform the audience that no decision has been rendered.
 - (11) If, in the opinion of the physician, the referee or judge has received an injury, or has become ill, the seriousness of which prevents him from continuing to officiate, time out shall be called, and another official shall be immediately assigned by the Division ~~director or his designee representative~~ to replace the incapacitated person.
- (c) Finality of decisions shall be governed by the following:
- (1) A decision rendered at the conclusion or termination of any match is final and shall not be changed unless it is determined that any of the following occurred:
 - (A) There was collusion affecting the result of any match;
 - (B) The compilation of the round or match score cards shows an error which indicates that the decision was awarded to the wrong participant;
 - (C) There was a violation of these Rules relating to drugs or foreign substances; or

(D) There was a violation of the rules set forth in this Chapter which violation affected the result of the match.

(2) If it is determined that any of the above occurred, the decision rendered shall be changed in an equitable manner as directed by the Division.

(d) Kickboxers shall conform to the standards set forth for boxers in Rule ~~.0108~~ .0504 of this Section.

Authority G.S. 143-652.1; S.L. 2007 - 490.

14A NCAC 12 .0605 AMATEURS-KICKBOXING

(a) In addition to compliance with 14A NCAC 12 .0201, .0301, .0402, .0502 and .0601-.0604 the following requirements shall apply to amateur kickboxing matches.

(1) Any contestant competing as an amateur may not currently or have ever been a professional fighter in any unarmed combat sport. This includes, but not limited to, mixed martial arts, boxing, karate, or any other form of a striking sport.

(2) Amateur weigh-ins must be scheduled no earlier than 12 PM the day of the event.

(3) Contestants must wear footpads and shinguards approved by the Division representative.

(4) Contestants must wear 10 ounce competition headgear with no jar bar or excessive ear padding. Training headgear is not allowed.

(5) Foot wrappings: For each foot, contestants may use soft surgical bandage not over two inches wide, held in place by surgical adhesive tape, not over one and a half inches wide. Foot wrappings shall not exceed three to four windings of soft surgical bandages around the sole and instep and no more than four around the ankle.

(6) No kicks below the waist will be permitted.

(b) Matches will be three, two minute rounds with a one minute rest period that includes a 10 second warning signal.

(c) Kick counters shall be in neutral corners only. Each contestant must score at least six hard kicks per round.

(d) The promoter of record must provide to the Division for approval, every amateur contestant's name, address, date of birth, and social security number scheduled to compete in a program of matches. This information must be submitted no later than seven calendar days prior to the event.

(e) A contestant will be required to have a minimum of five recorded amateur matches prior to being submitted to compete as a professional kickboxing contestant.

(f) Contestants under 18 years of age may compete only in matches supervised by an Amateur Sport Organization that has been recognized and approved by the Division. Events open to the public where admission is charged for viewing must be conducted by a promoter licensed in accordance with the provisions of Rule .0402 of this Chapter.

Authority S.L. 2007 - 490.

SECTION .0700 - TOUGHMAN

14A NCAC 12-~~0117~~.0701

TOUGHMAN MATCH

Contestants and officials in toughman events shall comply with ~~Rule .0104 of this Section, Rules .0201, .0301, and .0402 of this Chapter,~~ except for the following exceptions or additional rules:

(1) Each contest shall be limited to three one-minute rounds.

(2) Each contest shall be scored by the 10 point must system as outlined in Rule .0503 of this Chapter.

~~(2)(3)~~ There shall be four weight classifications: lightweight (up to but not over 140 lbs.); middleweight (over 140 lbs. to but not over 160 lbs.); light heavyweight (over 160 lbs. to but not over 185 lbs.); and heavyweight (over 185 lbs.).

~~(3)(4)~~ Boxing gloves weighing a minimum of 16 ounces shall be worn by all contestants.

~~(4)(5)~~ Headgear and abdominal and/or groin protectors, provided by the promoter, shall be worn by all contestants.

~~(5)(6)~~ The seconds shall use clean towels and mouth pieces for each match.

~~(6)(7)~~ All equipment shall be inspected by the referee or the Division ~~director or his designee~~ representative to insure that it provides for the safety of the contestants, and does not give either contestant an unfair advantage.

~~(7)(8)~~ A contestant shall not participate in more than four matches in the same calendar day. The ringside physician shall check and record a contestant's blood pressure prior to each event program of matches.

~~(8)(9)~~ A contestant shall not be allowed to compete in a toughman ~~event match~~ if he has:

(A) Been a competitor in professional ~~boxing or kickboxing; boxing, kickboxing or mixed martial arts;~~ or

(B) Been a winner of more than five amateur ~~boxing, kickboxing, boxing, kickboxing or mixed martial arts~~ or toughman ~~events matches~~ or more than five of any combination of amateur ~~boxing, kickboxing, boxing, kickboxing or mixed martial arts~~ or toughman ~~events matches.~~

~~(9)(10)~~ Competing for or winning a prize in a toughman contest shall not, in itself, make the contestant a professional within the scope of these Rules.

Authority G.S. 143-652.1; S.L. 2007 - 490.

SECTION .0800 - MIXED MARTIAL ARTS

14A NCAC 12 .0801

WEIGH INS-MIXED MARTIAL

ARTS

(a) The weigh-ins must be conducted by a Division representative at a place and time designated by the Division in accordance with the rules as set in Rules out in 14A NCAC 12 .0201, .0301, .0402, .0403 and .0501 of this Chapter except for the following exceptions or additional rules:

(b) All contestants must weigh in. Contestants are limited to shorts, shirt and socks with the exception of heavyweights.

(c) The scale shall be provided by the promoter and approved by the Division representative.

(d) Allowance in weight class is the weight difference permitted between contestants in two different weight classes per chart in this section.

(1) There may not be a difference of more than three pounds between weight classes from lightweight up to but not including the welterweight class.

(2) There may not be a difference of more than five pounds between weight classes from welterweight up to but not including the super heavyweight class.

(3) Example: a fighter weighing 134 pounds in the bantamweight class may not compete against an opponent who weighs more than 137 pounds in the featherweight class.

(4) Example: a fighter weighing 184 pounds in the middle weight class may not compete against an opponent who weighs more than one hundred eighty-nine pounds in the light heavy weight class. -Weight classifications, weight allowance between weight classes and glove sizes-

<u>Weight class</u>	<u>Weights</u>	<u>Allowances</u>	<u>Glove sizes</u>
<u>Straw weight</u>	<u>up to 115 lbs</u>	<u>3 lbs</u>	<u>4 oz to 8 oz amateur min 6 oz</u>
<u>Flyweight</u>	<u>116 to 125 lbs</u>	<u>3 lbs</u>	<u>4 oz to 8 oz amateur min 6 oz</u>
<u>Bantamweight</u>	<u>126 to 135 lbs</u>	<u>3 lbs</u>	<u>4 oz to 8 oz amateur min 6 oz</u>
<u>Featherweight</u>	<u>136 to 145 lbs</u>	<u>5 lbs</u>	<u>4 oz to 8 oz amateur min 6 oz</u>
<u>Lightweight</u>	<u>146 to 155 lbs</u>	<u>5 lbs</u>	<u>4 oz to 8 oz amateur min 6 oz</u>
<u>Welterweight</u>	<u>156 to 170 lbs</u>	<u>5 lbs</u>	<u>4 oz to 8 oz amateur min 6 oz</u>
<u>Middleweight</u>	<u>171 to 185 lbs</u>	<u>7 lbs</u>	<u>4 oz to 8 oz amateur min 6 oz</u>
<u>Light Heavyweight</u>	<u>186 to 205 lbs</u>	<u>7 lbs</u>	<u>4 oz to 8 oz amateur min 6 oz</u>
<u>Heavyweight</u>	<u>206 to 265 lbs</u>	<u>7 lbs</u>	<u>4 oz to 8 oz amateur min 6 oz</u>
<u>Super Heavyweight</u>	<u>over 265 lbs</u>		<u>4 oz to 8 oz amateur min 6 oz</u>

(e) When a weigh-in is conducted the day prior to the event, with the exception of the heavyweight class, all other contestants must weigh-in at a second weigh-in the next day scheduled by the Division representative within eight hours of the starting time of the event. The contestant may not be more than 13 pounds heavier than their recorded weight from the day prior.

(f) No contestant, weighing 145 or less, may lose more than two pounds in less than 12 hours of a contest. No contestant, weighing 146 or more, may lose more than three pounds in less than 12 hours of a contest. This Rule applies to a second day weigh-in also. This does not apply to light heavyweight class and above.

Authority S.L. 2007 - 490.

14A NCAC 12 .0802 APPEARANCE AND ATTIRE-MIXED MARTIAL ARTS

(a) Groin and breast protectors.

(1) Male fighters must wear a groin protector which will protect them against injury from a foul blow.

(2) Although not required, it is permissible for a female contestant to wear a protective girdle to cover the pubic area, coccyx and sides of the hip.

(3) Female contestants must wear a breast protector.

(b) At the time of the pre-bout physical, Female contestants must submit a negative pregnancy test.

(c) Each contestant shall wear mixed martial arts shorts, biking shorts, or kick boxing shorts that must be approved by the Division representative. The contestant may not wear the same color in the ring, if the contest or exhibition is being held in a fenced are, in the fenced area, without the approval of the Division representative. Under no circumstances shall apparel or equipment which includes metallic and /or hard plastic and/or any edge or surface which could cause extraneous injury to the contestants be allowed.

(d) No "GI"'s or shirts permitted for male contestants. Female contestants shall wear a body shirt/blouse or any other appropriate attire approved by the Division representative.

(e) No shoes are permitted.

(f) No grappling shin guards.

(g) Absolutely "no" body grease, gels, balms or lotions may be applied. Vaseline may be applied to the facial area at cage side or ringside in the presence of a inspector, referee, or Division representative. Any contestant applying anything prior to this could be penalized a point or disqualified.

(h) The contestant may not wear any jewelry or any other piercing accessories while competing in a match.

(i) Neoprene joint supports only. No metal supports can ever be worn.

(j) Finger and toe nails must be trimmed.

(k) The Division representative shall determine whether head or facial hair presents any hazard to the safety of the contestant or their opponent or will interfere with the conduct of a match. Hair shall be secured with soft and non-abrasive material when deemed appropriate by the Division representative. Facial hair may not be braided.

(l) May not wear any equipment that does not pass the Division's representatives approval.

Authority S.L. 2007 - 490.

**14A NCAC 12 .0803 SPECIFICATIONS FOR
BANDAGES AND/OR HANDWRAPS-MIXED MARTIAL
ARTS**

(a) In all weight classes except light heavyweight, cruiserweight and heavyweight, all bandages and handwraps applied to each hand of a contestant shall be restricted to soft cloth, not more than 10 yards in length and two inches in width, held in place by not more than four feet of surgical tape.

(b) In the light heavyweight, cruiserweight and heavyweight weight classes, all bandages and handwraps applied to the hand of a contestant shall be restricted to soft cloth, not more than 12 yards in length and two inches in width, held in place by not more than eight feet of surgical tape.

(c) The use of six inches of surgical tape, not more than one inch in with, shall be permitted across the back of the hand before bandaging or wrapping the hands, provided however, that the tape shall not be applied across the knuckles.

(d) The bandages shall be evenly distributed across the hand.

(e) Bandages and tapes shall be placed on contestant's hands in the dressing room and must be inspected by the inspector or Division representative.

(f) The manager or chief second of the opponent may elect to be present when hands are being wrapped.

(g) Under no circumstances are gloves to be placed on the hands of a contestant until checked by the inspector or Division representative.

Authority S.L. 2007 - 490.

**14A NACA 12 .0804 GLOVE SPECIFICATIONS-
MIXED MARTIAL ARTS**

(a) For professional mixed martial arts contests each contestant must wear gloves that weigh not less than four ounces and not more than eight ounces.

(b) Amateur mixed martial arts contestants must wear gloves that weigh not less than six ounces and not more than eight ounces.

(c) The gloves will be supplied by the promoter. The promoter shall use only brands and models of gloves that have been approved by the Division representative.

(d) The gloves for every contest or exhibition that is designed as a championship match must be new, furnished by the promoter and made to fit the hands of the contestants.

(e) Both contestants will wear same size gloves.

(f) Must be inspected and passed by the inspector, referee or Division representative prior to starting the bout. If gloves to be used in preliminary contest or exhibition have been used before, they must be whole, clean, and in sanitary condition. If a glove

is found to be unfit, it must be replaced with a glove that meets the requirements of this Section.

Authority S.L. 2007 – 490.

**14A NCAC 12 .0805 REQUIREMENTS FOR A RING,
CAGE OR FENCED AREA-MIXED MARTIAL ARTS**

(a) Mixed martial arts may be held in a ring, cage or a fenced area with appropriate overhead lighting.

(b) The ring specifications for mixed martial arts must meet the following requirements:

(1) The ring may be no smaller than 20 feet square and no larger than 32 feet square within the ropes;

(2) One of the corners must have a blue designation, the corner directly across must have a red designation;

(3) The ring floor must extend at least eighteen inches beyond the ropes. The ring floor must be padded with ensolite or a similar closed-cell foam, with at least a one inch layer of foam padding. Padding must extend beyond the ring ropes and over the edge platform, with a top covering of canvas, duck or similar material tightly stretched and laced to the ring platform. Material that tends to gather in lumps and ridges may not be used;

(4) The ring platform must no be more than four feet above the floor of the building and must have suitable steps for the use of the contestants;

(5) Ring posts must be made of metal, not more than three inches in diameter, extending from the floor of the building to a minimum height of 58 inches above the ring floor, and must be properly padded in a manner approved by the Division. Ring posts must be 18 inches away from the ring ropes;

(6) There must be five ring ropes, not less than one inch in diameter and wrapped in soft material. The lowest rope must be no higher than 12 inches from the ring floor;

(7) There must not be any obstruction or object, including, without limitation, a triangular border, on any part of the ring floor;

(c) The fenced or cage specifications for mixed martial arts must meet the following requirements:

(1) The fenced or cage area must be of circular type dimensions or have as many as eight equal sides;

(2) Two sides opposite of each other must each have a designated color, one side blue the opposite red;

(3) Must be no smaller than 20 feet wide and no larger than 32 feet across within the ropes;

(4) The floor of the fenced area must be padded with ensolite or another similar closed-cell foam, with at least a one inch layer of foam padding, with a top covering of canvas, duck

or similar material tightly stretched and laced to the platform of the fenced or cage area. Material that tends to gather in lumps or ridges must not be used;

- (5) The platform of the fenced or cage area must not be more than four feet above the floor of the building and must have suitable steps for use of the contestants;
- (6) Fence posts must be made of metal, not more than six inches in diameter, extending from the floor of the building to between five and seven feet above the floor of the fenced or cage area, and must be properly padded in a manner approved by the Division representative;
- (7) The fencing used to enclose the fenced or cage area must be made of a material that will prevent a contestant from falling out or breaking through the fenced or cage area onto the floor of the building or onto spectators, including, without limitation, chain link fence coated with vinyl;
- (8) Any metal portion on the interior of the fenced or cage area must be covered and padded in a manner approved by the Division director, inspector or Division representative and must not be abrasive to the contestants;
- (9) The fenced or cage area must have two entrances. The entrances must be padded or covered and padded so that is no exposed metal on the interior of the fenced or caged area;
- (10) There must not be any obstruction on any part of the fence surrounding the area in which the contestants are competing;
- (11) Any metal parts used to enforce the fenced or caged area wall must be positioned as to not interfere with the safety of the contestants;
- (12) The floor and apron seating arrangement shall be approved by the Division. A separate divider, approved by the Division, between the ring, cage, or fenced area and the spectators.

(d) The Division representative may request a promoter of a mixed martial arts contests to place at least two video screens which meet the approval of the Division, which will allow patrons to view action inside the ring, fenced or caged area.

Authority S.L. 2007 – 490.

14A NCAC 12 .0806 DURATION AND NUMBER OF ROUNDS-MIXED MARTIAL ARTS

Except with the approval of the Division:

- (1) Non championship matches, exhibitions or mixed martial arts must not exceed three rounds of five minutes each with a one minute rest period that includes a 10 second warning signal.
- (2) Championship bouts will be five rounds of five minutes each with a one minute rest

period that includes a 10 second warning signal.

- (3) Amateur bouts will be three rounds of three minutes each with a 90 second rest period that includes a 10 second warning signal.
- (4) Amateur championship matches shall consist of five rounds of four minutes each with a 90 second rest period that includes a 10 second warning signal.
- (5) A minimum number of 21 rounds must be scheduled for any mixed martial arts program of matches. The Division director may grant a waiver of the required minimum amount of scheduled rounds.
- (6) "Pro/Am" events, there must be a minimum of eight scheduled bouts. The combination of three professional bouts and five amateur bouts or five professional bouts and three amateur bouts. All events must start with the amateur bouts and they must be in succession. Professional bouts will follow amateur bouts no intermixing bouts. The Division representative may grant a waiver of bouts.

Authority S.L. 2007 – 490.

14A NCAC 12 .0807 SECONDS DUTIES WHEN WORKING IN A CORNER-MIXED MARTIAL ARTS

- (a) There may be three licensed seconds positioned in a designated area by a cage or fenced area or positioned in each corner of a ring. For championship bouts there may be four licensed seconds.
- (b) No person other than the contestants and referee shall enter the ring, fenced area or cage during a match.
- (c) The referee may, in their discretion, stop a contest if an unauthorized person enters the ring, fenced area or cage during a round.
- (d) Only one second may enter the ring, cage or fenced area to tend a fighter between rounds.
- (e) There may be no loud yelling or profanity from anyone working the corner.
- (f) If a second leaves the designated area the fighter will be disqualified.
- (g) A fighter getting knocked out of a ring and onto the floor must get back into the ring within 20 seconds, without assistance from anyone working their corner.

Authority S.L. 2007 – 490.

14A NCAC 12 .0808 SCORING-MIXED MARTIAL ARTS

A mixed martial arts contest may end under the following results:

- (1) Submission:
 - (a) Tap out: when a contestant physically uses their hand(s) to indicate that they no longer wish to continue.

- (b) Verbal tap out: when a contestant verbally announces to the referee that they do not wish to continue.
- (2) Knockout "(KO)": failure to rise from the canvas.
- (3) Technical knockout "(TKO)":
 - (a) Referee stops bout because contestant can no longer defend themselves; or
 - (b) Ringside physician advises referee to stop bout; or
 - (c) When an injury as a result of a legal maneuver is severe enough to terminate the bout.
 - (d) If a contestant is knocked out of or has fallen out of the ring or cage, the referee shall allow the contestant no more than 20 seconds to re-enter the ring or cage without the assistance of anyone, provided however, that if the contestant was knocked out of the ring or cage as a result of a legal technique and is unable to regain his feet, the referee shall consider this to be a knockout.
- (4) All bouts will be scored by three judges. The "Ten-Point Must System" will be the standard system of scoring a bout. The winner of the round will be awarded 10 points and the loser of the round will be awarded nine points or less, except for rare occasions of an even round, which is scored 10 to 10.
- (5) Judges shall judge mixed martial art techniques, such as effective striking, effective grappling, and control of opponent, effective aggressiveness and defense.
 - (a) Effective striking is judged by determining the total number of legal heavy strikes landed.
 - (b) Effective grappling is judged by considering the amount of successful executions of a legal takedown and reversal. Factors to consider are take downs from the standing position to a mount position, passing the guard to the mount position, and bottom position fighters using an active threatening guard.
 - (c) Effective control is judged by determining who is dictating the pace, location and position of the bout. Factors to be considered are, countering a grappler's attempt at a takedown by remaining standing and legally striking; take sown an opponent to force a ground fight; creating threatening submission attempts; passing the guard to achieve a mount and creating striking opportunities.
- (d) Effective aggressiveness means moving and landing legal strikes.
- (e) Effective defense means avoiding being struck, take down or reversals while countering with offensive strikes.
- (6) Decision via scorecards:
 - (a) Unanimous: when all three judges score the bout for the same contestant.
 - (b) Split decision: when two judges score the bout for one contestant and one judge scores for the opponent.
 - (c) Majority decision: when two judges score the bout for the same contestant and one judge scores the bout a draw.
- (7) Draws:
 - (a) Unanimous: when all three judges score the bout a draw;
 - (b) Majority: when two judges score the bout a draw;
 - (c) Split when all three judges score it differently and the score total results in a draw.
- (8) Disqualification: when an injury sustained during competition as a result of an intentional foul severe enough to terminate the contestant.
- (9) Forfeit: when a contestant fails to begin competition or prematurely ends the contest for reasons other than injury or indicating a tap out.
- (10) Technical draw:
 - (a) When an injury sustained during competition as a result of an intentional foul causes the injured contestant to be unable to continue and the injured contestant is even or behind on the score cards at the time of the stoppage.
 - (b) When an injury sustained during competition an a result of an unintentional foul causes the injured contestant to be unable to continue and the sufficient number of rounds have been completed with the results of the scorecards being a draw.
- (11) Technical decision: when the bout is prematurely stopped due to an injury and a contestant is leading on the scorecards.
- (12) No contest: when a contestant is prematurely stopped due to accidental injury and a sufficient number of rounds have not been completed to render a decision via the scorecards.

Authority S.L. 2007 – 490.

14A NCAC 12 .0809

FOULS-MIXED MARTIAL ARTS

(a) Procedures:

- (1) Referee shall issue a warning. After the initial warning a penalty will be issued. The penalty may be a deduction of points or disqualification depending on the severity of the foul. Any points deducted for any foul must be deducted in the round which the foul occurred.
- (2) The referee as soon as practical after the foul, call time and notify which contestant is being penalized and the total points the contestant is being penalized.
- (3) If a bottom contestant commits a foul and in the referee's judgment is not in control, unless the top contestant is injured, the bout shall continue, so as not to jeopardize the top contestant's superior positioning at the time.
 - (A) The referee shall verbally notify the bottom contestant of the foul.
 - (B) When the round is over, the referee shall notify the judges and the inspector of the foul and the total point deduction.
- (4) Only the referee can assess a foul and any point deductions. Judges may not deduct points for what they interpret is a foul.
- (5) Referee shall check the fouled contestant's condition to see if they can still participate in the contest.
- (6) Disqualification occurs when after any combination of three fouls or if the referee determines the foul to be flagrant.

(b) Intentional foul:

- (1) If an injury results that is severe enough to terminate the bout, the contestant causing the injury loses by disqualification.
- (2) If an intentional foul causes an injury and the bout is allowed to continue a mandatory two point penalty shall be assessed to the contestant committing the foul.
- (3) If an injury sustained by a contestant as a result of the intentional foul causes the contestant to be unable to continue at a subsequent point, the injured contestant shall win by a technical decision, if they are ahead on the score cards. If the injured contestant is even or behind on the score cards at the time of the stoppage, the bout shall be declared a technical draw.

(c) Unintentional foul:

- (1) If a bout is stopped because of an unintentional foul, the referee shall determine whether the contestant who has been fouled can continue or not. If the contestant's chance of winning has not been seriously jeopardized as a result of the foul and if the foul did not involve concussive impact to the head of the contestant who has been fouled, the referee may order the bout continued after a recuperative interval of not more than five minutes. Immediately after

stopping the bout or at the end of the round the referee must immediately inform the inspector or Division representative of their determination that the foul was accidental and unintentional.

- (2) If the referee determines either from their observation or that of the ringside physician that the bout may not continue because of the injury from the unintentional foul the bout will be declared a no contest if the foul occurred:
 - (A) During the first two rounds of a non-championship bout, or
 - (B) During the first three round of a championship bout;
- (3) If the unintentional foul renders the contestant unable to continue the bout:
 - (A) After the completion of the second round in a non-championship bout;
 - (B) After the completion of the third round of a championship bout;
 - (C) The outcome shall be determined by scoring the completed rounds and the round which the referee stops the bout.
- (4) If an injury from an intentional foul later becomes aggravated by fair blows and the referee orders the bout stopped because of the injury, the outcome must be determined by scoring the completed rounds and the round which the referee stops the contest.
- (5) A contestant may not be declared the winner of a bout on the basis of their claim that the opponent fouled them unintentionally by hitting them in the groin. If after a recuperative interval of not more than five minutes, a contestant is unwilling to continue because of the claim of being hit in the groin, the bout will be declared a no contest if the second round has not been completed in a three round bout or the third round has not been completed in a five round bout.

(d) Types of fouls in a mixed martial arts contest.

- (1) Butting with the head.
- (2) Eye gouging of any kind.
- (3) Biting.
- (4) Hair pulling.
- (5) Fishhooking.
- (6) Groin attacks of any kind.
- (7) Putting a finger into any orifice or into any cut or laceration on an opponent.
- (8) Small joint/single digit manipulation, finger and toe locks.
- (9) Striking to the spine or back of head.
- (10) Striking downward using the point of the elbow. (Arcing elbow strikes are permitted).
- (11) Throat strikes of any kind, including, without limitation grabbing the trachea.
- (12) One or two handed chokes applied directly to the trachea/or windpipe.

- (13) Knuckle gouging to the face or any part of the body including into the throat.
- (14) Clawing, twisting or pinching the flesh.
- (15) Grabbing the clavicle.
- (16) Kicking the head of a grounded opponent.
- (17) Kicking the front of the opponents knee.
- (18) Kneeing the head of a grounded opponent.
- (19) Spiking an opponent to the canvas on his head or neck.
- (20) Stomping on a grounded opponent. A contestant is considered grounded when their torso or three points of their body are touching the canvas. Example: two legs and a hand are touching canvas. Applies to Subparagraphs (d)(16), (d)(18), and (d)(20) of this Rule. A downed opponent may kick up to all legal striking points of the body.
- (21) Kicking to the kidney with the heel.
- (22) Throwing, lifting, pushing, or otherwise forcing an opponent out of the ring area or fence area.
- (23) Holding the shorts or glove of an opponent.
- (24) Spitting on an opponent.
- (25) Engaging in any unsportsmanlike conduct that causes an injury to an opponent.
- (26) Holding the ropes or cage.
- (27) Using abusive language or illicit gestures in the cage or ring area.
- (28) Attacking an opponent on or during the break.
- (29) Attacking an opponent who is under the care of the referee, medical personnel or other ring officials.
- (30) Attacking an opponent after the bell has sounded to end the round.
- (31) Flagrantly disregarding the instructions of the referee.
- (32) Timidity, including, without limitation, avoiding contact with an opponent, intentionally or consistently dropping the mouthpiece, delaying the contest due to improper equipment, or faking an injury.
- (33) Interference from anyone working the corner or cornermen leaving their area.
- (34) Throwing in the towel during competition.
- (35) Any act in the judgment of the referee that is detrimental and places an opponent at a disadvantage.
- (36) Rope or cage grabbing to avoid a submission hold. Continually holding the rope to rest or pull self from action, or gain advantage.
- (37) Fighters may not grab the ring ropes or cage at any time the two fighters are in contact with each other during the match in an attempt to stall action, trap his opponent, escape a technique, or otherwise gain advantage in the match.
- (38) Fighters may momentarily grab the ring ropes or cage to steady themselves or to gain/maintain their balance.

- (39) If a fighter grabs or otherwise secures any ring rope with a hand, arm foot or leg during the match to avoid a submission hold, the referee shall stop the match and deduct a point from the fighter who so grabbed the rope.
- (40) If a fighter continually holds the ring ropes to rest or pull himself from the action, avoid the bout's action, or otherwise gain advantage in the match, the referee will deduct one point from the resting fighter and two points each additional time.
- (41) Excessive grabbing or other use of the ring ropes in violation of these Rules may result, in the referee's sole discretion, in a fighter's disqualification and an award of the bout to the fighter's opponent.
- (42) The referee shall verbally instruct fighters to release the ring ropes or cage, when appropriate, prior to warning, deducting points, and/or disqualifying a fighter for violating these rules.

Authority S.L. 2007 – 490.

14A NCAC 12 .0810 AMATEUR-MIXED MARTIAL ARTS

(a) In addition to compliance with Rules .0201, .0301, .0402 and .0801-.0809 of this Chapter, the following requirements shall apply to amateur mixed martial arts matches.

- (1) Any contestant competing as an amateur may not currently or have ever been a professional fighter in any unarmed combat sport. This includes, but not limited to, mixed martial arts, boxing, karate, or any other form of a striking sports.
- (2) Amateur weigh-ins must be scheduled no earlier than 12 PM the day of the event.
- (3) Grappling shin guards are optional.
- (4) No elbow strikes to the head at anytime.
- (5) No striking with the point of the elbow.
- (6) No knees to the head at anytime.
- (7) No kicks of any type to the head.
- (8) A contestant may only strike to the head with their fist.

(b) The promoter of record shall provide to the Division for approval, every amateur contestant's name, address, date of birth and social security number scheduled to compete in a program of matches. This information shall be submitted no later than seven calendar days prior to the event.

(c) A contestant will be required to have a minimum of five recorded amateur matches prior to being submitted to compete as a professional mixed martial arts contestant.

(d) Contestants under 18 years of age may compete only in matches supervised and regulated by an Amateur Sports Organization that has been recognized and approved by the Division. Events open to the public where admission is charged for viewing shall be conducted by a promoter licensed in accordance with the provisions of Rule .0402 of this Chapter.

Authority S.L. 2007 – 490.

**14A NCAC 12. 0811 FIGHTER SUSPENSION
GUIDELINES-MIXED MARTIAL ARTS**

(a) The following rules apply to determine the length of suspension for contestants. The Division representative or Ringside physician may increase/decrease the length of suspension as deemed appropriate:

- (1) TKO (Technical Knockout) = 30 Days
 - (A) Referee stoppage from submission or choke hold prior to verbal commitment or tap out
 - (B) Referee stoppage from strikes prior to verbal commitment or tap out
- (2) KO (Knockout) = 60 Days
- (3) 2nd TKO/KO in 12 months and contestant has a losing record= 120-180 Days
- (4) TKO/KO and contestant has lost three or more of the last five fights in the 1st round= 180-365 Days

(b) A contestant is designated as "High Risk" if one of the following criteria apply:

- (1) 40 years of age or older
- (2) Has six consecutive losses or three consecutive losses in the first round by TKO/KO
- (3) Lost more than 25 total fights
- (4) Has a career duration of more than 350 rounds
- (5) Has suffered a severe concussion (Grade 3) or difficulty in a match where the ringside physician recommends more medical test.
- (6) Has been inactive for 30 or more months

(c) Contestants designated as "High Risk" must provide the results of any or all of the following medical test to the Division representative prior to being approved to compete in a match:

- (1) MRI (Magnetic Resonance Imaging)
- (2) Complete Neurological Examination by a Neurologist
- (3) Overall physical conducted by a licensed physician indicating that the contestant is physically fit to compete in a match.
- (4) If the contestant is 40 years of age or older, cardiac examination and chest x-rays

(d) A contestant may not compete until seven days have elapsed from their last match. The seven day period starts the day following the event in which they competed. The Division representative may waive this mandatory rest period.

Authority S.L. 2007 – 490.

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

Notice is hereby given in accordance with G.S. 150B-21.2 that the Environmental Management Commission intends to adopt the rules cited as 15A NCAC 02C .0301 - .0308.

Proposed Effective Date: July 1, 2008

Public Hearing:

Date: October 30, 2007

Time: 2:00 p.m.

Location: 2728 Capital Blvd., 1H-120, Raleigh, NC

Date: November 14, 2007

Time: 2:00 p.m.

Location: NCDENR Washington Office, 943 Washington Square Mall Washington, NC

Date: November 29, 2007

Time: 2:00 p.m.

Location: NCDENR Asheville Regional Office, 2090 US Hwy 70, Swannanoa, NC

Reason for Proposed Action: *To meet the requirement in Session Law 2006-202 for the Environmental Management Commission to adopt rules governing permitting and inspection by local health departments of private drinking water wells pursuant to G.S. 87-97.*

Procedure by which a person can object to the agency on a proposed rule: *Any objections to these rules may be submitted in writing via mail, delivery service, hand deliver or email to: Jim Hayes, Division of Environmental Health, 1632 Mail Service Center, Raleigh, NC 27699-1632, (for hand delivery) 2728 Capital Blvd., Raleigh NC 27602, jim.hayes@ncmail.net*

Comments may be submitted to: *Jim Hayes, Division of Environmental Health, 1632 Mail Service Center, Raleigh, NC 27699-1632, phone (919) 715-0924, jim.hayes@ncmail.net*

Comment period ends: December 14, 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: A copy of the fiscal note can be obtained from the agency.

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

CHAPTER 02 – ENVIRONMENTAL MANAGEMENT

**SUBCHAPTER 02C – WELL CONSTRUCTION
STANDARDS**

**SECTION .0300 – PERMITTING AND INSPECTION OF
PRIVATE DRINKING WATER WELLS**

15A NCAC 02C .0301 SCOPE AND PURPOSE

(a) The purpose of the rules of this Section is to set out standards for permitting and inspection of private drinking water wells as defined in G.S. 87-85 by local health departments pursuant to G.S. 87-97.

(b) The rules of 15A NCAC 02C .0100 are applicable to private drinking water wells. In addition to the provisions in 15A NCAC 02C .0100, the following shall apply:

- (1) Separation distances required in 15A NCAC 02C .0107 STANDARDS OF CONSTRUCTION: WATER SUPPLY WELLS shall apply to all additions. No potential source of groundwater contamination shall be added within the minimum horizontal separation distances;
- (2) In addition to the provisions in 15A NCAC 02C .0109 PUMPS AND PUMPING EQUIPMENT, the builder, well contractor, pump installer, or homeowner, as applicable, shall provide assistance when necessary to gain access for inspection of the well, pumps, and pumping equipment; and
- (3) In addition to the requirements of 15A NCAC 02C .0113 ABANDONMENT OF WELLS, any well which acts as a source or channel of contamination shall be repaired or permanently abandoned within 30 days of receipt of notice from the local health department or within 30 days of commencement of construction. The person abandoning the well shall provide a minimum 24 hour notice to the local health department prior to commencement of permanent abandonment procedures.

Authority G.S. 87-87; 87-97.

15A NCAC 02C .0302 DEFINITIONS

The definitions in G.S. 87-85 and 15A NCAC 02C .0102 apply throughout this Section. In addition, the following definitions apply throughout this Section:

- (1) "Addition" means any structure that is constructed, altered or placed on property that contains one or more wells. This would not include replacement of existing equipment within the existing footprint of a structure and addresses only those situations for which a building permit is required.
- (2) "Board of Health" means the County Board of Health or successor entity.
- (3) "Certificate of Completion" means a certification by the Department that a private

drinking water well has been constructed or repaired in compliance with the construction permit or repair permit.

- (4) "Construction of wells" means all acts necessary to construct wells for any intended purpose or use, including the location and excavation of the well, placement of casings, screens and fittings, development and testing.
- (5) "Construction permit" means a well construction permit issued by the Department authorizing or allowing the construction of any private drinking water well as defined in the rules of this Section.
- (6) "Department of Environment and Natural Resources" or "Department" means the North Carolina Department of Environment and Natural Resources. The term also means the authorized representative of the Department. For the purposes of any notices required pursuant to the rules of this Section, notice shall be mailed to "Division of Environmental Health, On-Site Water Protection Section, North Carolina Department of Environment and Natural Resources," 1642 Mail Service Center, Raleigh, NC 27699-1642.
- (7) "Local Health Department" means the county or district health department or its successor.
- (8) "Person" means all persons, including individuals, firms, partnerships, associations, public or private institutions, municipalities or political subdivisions, governmental agencies, or private or public corporations organized or existing under the laws of this State or any other state or country.
- (9) "Plat" means a property survey prepared by a registered land surveyor, drawn to a scale of one inch equals no more than 60 feet, that includes: the specific location of all structures and proposed structures and appurtenances, including but not limited to decks, porches, pools, driveways, out buildings, existing and proposed wastewater systems, existing and proposed wells, springs, water lines, surface waters or designated wetlands, easements, including utility easements, and existing or proposed chemical or petroleum storage tanks above or below ground. "Plat" also means, for subdivision lots approved by the local planning authority and recorded with the county register of deeds, a copy of the recorded subdivisions plat that is accompanied by a site plan that is drawn to scale.
- (10) "Pumps and pumping equipment" means any equipment or materials utilized or intended for use in withdrawing or obtaining ground-water including well seals.
- (11) "Repair" means work involved in deepening, reaming, sealing, installing or changing casing depths, perforating, screening, or cleaning.

- acidizing or redevelopment of a well excavation, or any other work which results in breaking or opening the well seal.
- (12) "Repair permit" means a well repair permit issued by the Department authorizing or allowing the repair of any private drinking water well as defined in the rules of this Section.
- (13) "Site plan" means a drawing not necessarily drawn to scale that shows the existing and proposed property lines with dimensions, the specific location of all structures and proposed structures and appurtenances, including decks, porches, pools, driveways, out buildings, existing and proposed wastewater systems, existing and proposed wells, springs, water lines, surface waters or designated wetlands, easements, including utility easements, and existing or proposed chemical or petroleum storage tanks above or below ground.
- (14) "Water supply" means any source of drinking water.
- (15) "Water supply system" means pump and pipe used in connection with or pertaining to the operation of a private drinking water well including pumps, distribution service piping, pressure tanks and fittings.
- (16) "Well contractor activity" means the construction, installation, repair, alteration or abandonment of any well.
- (17) "Well Contractor" means any person in trade or business who undertakes to perform a well contractor activity or who undertakes to personally supervise or personally manage the performance of a well contractor activity on the person's own behalf or for any person, firm, or corporation in accordance with the well contractor certification requirements of 15A NCAC 27.
- (18) "Well seal" means an approved arrangement or device used to cap a well or to establish and maintain a junction between the casing or curbing of a well and the piping or equipment installed therein, the purpose or function of which is to prevent pollutants from entering the well at the upper terminal.
- (3) Address and parcel identification number of the property where the proposed well is to be located;
- (4) A plat or site plan as defined in the rules of this Section;
- (5) Intended use(s) of the property;
- (6) Other information deemed necessary by the Department to determine the location of the property and any site characteristics such as existing sewage disposal systems, easements or rights of way, existing wells or springs, surface water or designated wetlands, chemical or petroleum storage tanks, landfills, waste storage, known underground contamination and any other characteristics or activities on the property or adjacent properties that could impact groundwater quality or suitability of the site for well construction;
- (7) Any current or pending restrictions regarding groundwater use as specified in G.S. 87-88(a); and
- (8) Any variances regarding well construction or location issued under 15A NCAC 02C .0118.

Authority G.S. 87-87; 87-97.

15A NCAC 02C .0304 PERMITTING

(a) Before issuing a well construction permit, the Department shall conduct a field investigation to evaluate the topography, landscape position, available space and potential sources of groundwater contamination on or around the site on which a private drinking water well is to be located. The Department shall issue a private water well construction permit after determining the site can be permitted for a well meeting the rules of this Section. Notwithstanding the above, the Department shall not issue a construction permit for a well in violation of restrictions regarding groundwater use established pursuant to G.S. 87-88(a). The construction permit shall include a site plan showing the location of potential sources of contamination and area(s) suitable for well construction. The Department shall issue a written notice of denial of a construction permit if it determines a private water supply well cannot be constructed in compliance with the rules of this Section. The notice of denial shall include reference to specific laws or rules that cannot be met and shall be provided to the applicant.

(b) No person shall construct a private drinking water well without first obtaining a well construction permit from the Department. No person shall repair a private drinking water well without first obtaining a well repair permit except a well repair permit is not required for repairs involving only pumps and pumping equipment or storage tanks.

(c) A well construction permit is valid for a period of five years except that the Department may revoke a permit at any time if it determines that there has been a material change in any fact or circumstance upon which the permit is issued. The validity of a construction permit or a repair permit is not affected by a change in ownership of the site on which a private drinking water well is proposed to be located. Well construction permits issued under local well ordinances prior to the effective date of these Rules

Authority G.S. 87-87; 87-97.

15A NCAC 02C .0303 APPLICATION FOR CONSTRUCTION PERMIT

An application for a permit to construct, repair, or abandon a private drinking water well shall be submitted to the Department by a property owner or the property owner's agent. The application shall include:

- (1) Name, address and phone number of the proposed well property owner or owner's agent;
- (2) Signature of owner or agent;

remain valid for the term of those permits unless those permits are suspended or revoked. The Department may suspend or revoke any permits issued upon a determination that the rules of this Section have been violated.

(d) If there is an improperly abandoned well(s) on the site, the construction permit shall be conditioned upon permanent abandonment of any improperly abandoned well(s) in accordance with the rules of this Section.

Authority G.S. 87-87; 87-88; 87-97.

15A NCAC 02C .0305 GROUT INSPECTION: CERTIFICATION

(a) The well contractor shall contact the local health department to schedule a grout inspection before grouting a private drinking water well. Contact shall include the location, permit number and anticipated time for grouting each private drinking water well and the appointment shall be scheduled by the end of the business day before the grouting is to occur except where the local health department has made provisions for scheduling inspections at night or on the same day of the inspection.

(b) Upon completion of a grout inspection, the Department shall provide a written certification on the well permit that a grout inspection was completed and is in compliance with the rules of this Section. When a local health department is unable to conduct a grout inspection within one hour of the scheduled time, the well contractor may grout a well without a grout inspection by the Department. The well contractor shall provide a written certification to the local health department that the well has been grouted in compliance with the rules of this Section. A completed Residential Well Construction Record form GW-1a indicating the well was grouted in compliance with the rules of this Section shall serve as the well contractor's grout certification. For purposes of issuing a certificate of completion, the well contractor's grout certification shall be accepted by the Department as evidence the grout complies with the rules of this Section if the local health department:

- (1) was contacted by the well contractor to schedule a grout inspection;
- (2) was unable to inspect the grouting of the well within one hour following the scheduled time; and
- (3) upon final inspection, finds no evidence to indicate the well grout does not comply with the rules of this Section.

Authority G.S. 87-87; 87-97.

15A NCAC 02C .0306 WELL COMPLETION AND CERTIFICATION

(a) After receiving a permit to construct a private drinking water well, the property owner or his agent shall notify the health department prior to well construction if any of the following occur:

- (1) The separation criteria specified in 15A NCAC 02C .0107 cannot be met;
- (2) The residence or business is located other than originally indicated;

- (3) The use of the building is changed from the use permitted;
- (4) There is a need to install the septic system in an area other than indicated on the permit;
- (5) Landscaping changes have been made that affect the integrity of the well;
- (6) There are current or pending restrictions regarding groundwater use as specified in G.S. 87-88(a); or
- (7) The water source for any well intended for domestic use is adjacent to any water-bearing zone suspected or known to be contaminated.

(b) The well contractor shall maintain a copy of the well construction permit on the job site at all times during the construction, repair or abandonment of the well. The well contractor shall meet all the conditions of the permit.

(c) Well construction shall not commence within 50 feet of a utility easement until the well contractor, owner or agent has contacted North Carolina One Call Center, Inc. or other utility representatives designated to receive written or oral notice of intent to excavate in accordance with G.S. 87-110(a), to have the easement and utility located and marked.

(d) Upon completion of construction of a private water supply well, the Department shall complete a Well Log, showing an "as built" drawing of the well location. The well contractor shall submit a copy of Residential Well Construction Record to the local health department. Upon completion of construction or repair of a private drinking water well for which a permit is required, the Department shall inspect the well and issue a Certificate of Completion. Prior to the issuance of a Certificate of Completion, the Department shall: verify that the well was constructed in the designated area according to the well construction permit, inspect the grout around the casing, inspect the well head after the well seal is in place and obtain a well construction record from the Certified Well Contractor. No person shall place a private drinking water well into service without first having obtained a Certificate of Completion.

Authority G.S. 87-87; 87-97.

15A NCAC 02C .0307 WELL DATA AND RECORDS

(a) Any person completing, abandoning or repairing any well shall submit a record of the construction, abandonment or repair to the local health department within 30 days of completion of construction, abandonment or repair. The record shall be on a form provided by the Department. In addition, the submission of the construction, repair, or abandonment record must be submitted to the Division of Water Quality, as described in 15A NCAC 02C .0114(b)(1).

(b) The local health department shall maintain a registry of all permitted private drinking water wells, specifying the well location and the water quality test results.

Authority G.S. 87-87; 87-97.

15A NCAC 02C .0308 APPEAL PROCEDURE

Appeals concerning permit decisions or actions by the Department to enforce the rules of this Section shall be

conducted according to the procedures established in G.S. 150B, the Administrative Procedures Act.

Authority G.S. 87-87.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Environmental Management Commission intends to adopt the rules cited as 15A NCAC 02D .2601 - .2621; 02Q .0903, amend the rules cited as 15A NCAC 02D .0501, .0529, .0530 - .0531, .0535 - .0536, .0542, .0606, .0608, .0901, .0912, .0932, .0943, .0945, .1104, .1110, .1203 - .1206, .1208, .1210, .1415, .2401 - .2405, .2407, .2409, .2412; 02Q .0203 - .0204, .0508, .0523, .0711, .0902 and repeal the rules cited as 15A NCAC 02D .0913 - .0916, .0939 - .0942.

Proposed Effective Date: March 1, 2008

Public Hearing:

Date: November 7, 2007

Time: 7:00 p.m.

Location: Division of Air Quality Training Room, AQ-526, 2728 Capital Blvd., Raleigh, NC

Reason for Proposed Action:

15A NCAC 02D .0530 and .0531 – The prevention of significant deterioration and sources in nonattainment areas rules, are proposed for amendment to formally recognize NOx as a precursor to ozone and PM10 as a surrogate for PM2.5, and to remove obsolete references to pollution control projects and clean unit tests.

15A NCAC 02D .1104 – Is proposed for amendment to correct a cross-reference.

15A NCAC 02D .1104 and 15A NCAC 02Q .0711 – Are proposed for amendment to increase the Acceptable Ambient Level of 1,3-butadiene.

15A NCAC 02D .2401 - .2405, .2407, .2409, .2412 – The Clean Air Interstate Rules (CAIR), are proposed for amendment to clarify applicability to NOx SIP call sources, adjust new source growth pool by one ton, reference that allowances are not property rights, update facility names, and make other minor revisions in response to EPA comments.

15A NCAC 02D .2601 - .2621 – are proposed for adoption in a new rule section that consolidates source testing rules from the other rules. Twenty-one rules are proposed for amendment to remove testing procedures and Test Methods and to reference the new section. Eight rules are no longer required and are proposed for repeal.

15A NCAC 02Q .0203 and .0204 – Permit and Application Fees and Inflation Adjustment are proposed for amendment to increase Title V fees.

15A NCAC 02Q .0523 – Is proposed for amendment to remove the requirement for notification of trading credits made under CAMR and CAIR.

15A NCAC 02Q .0902 – Is proposed for amendment clarify the applicability of temporary rock crushers.

15A NCAC 02Q .0903 – Is proposed for adoption to clarify the applicability of emergency generators not required to get an operating permit.

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

Comments may be submitted to: Michael Abraczinskas, Division of Air Quality, 1641 mail Service Center, Raleigh, NC 27699-1641, phone (919) 715-3473, fax (919) 715-7476, email michael.abraczinskas@ncmail.net

Comment period ends: December 14, 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: A copy of the fiscal note can be obtained from the agency.

☒ **State** 15A NCAC 02Q .0203
☒ **Local** 15A NCAC 02Q .0203
☒ **Substantive** (≥\$3,000,000) 15A NCAC 02Q .0203
☒ **None** 15A NCAC 02D .0501, .0529, .0530 - .0531, .0535 - .0536, .0542, .0606, .0608, .0711, .0901, .0912 - .0916, .0932, .0939 - .0943, .0945, .1104, .1110, .1203 - .1206, .1208, .1210, .1415, .2401 - .2405, .2407, .2409, .2412, .2601 - .2621; 02Q .0204, .0508, .0523, .0711, .0902 - .0903

CHAPTER 02 - ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 02D - AIR POLLUTION CONTROL REQUIREMENTS

SECTION .0500 - EMISSION CONTROL STANDARDS

15A NCAC 02D .0501 COMPLIANCE WITH EMISSION CONTROL STANDARDS

(a) Purpose and Scope. The purpose of this Rule is to assure orderly compliance with emission control standards found in this Section. This Rule shall apply to all air pollution sources, both combustion and non-combustion.

(b) ~~In determining compliance with emission control standards, means shall be provided by the owner to allow periodic sampling and measuring of emission rates, including necessary~~

ports, scaffolding and power to operate sampling equipment; and upon the request of the Division of Environmental Management, data on rates of emissions shall be supplied by the owner.

(c) Testing to determine compliance shall be in accordance with the following procedures, except as may be otherwise required in Rules .0524, .0606, .1110, or .1111 of this Subchapter:

- (1) Method 1 of Appendix A of 40 CFR Part 60 shall be used to select a suitable site and the appropriate number of test points for the following situations:
 - (A) particulate testing;
 - (B) velocity and volume flow rate measurements;
 - (C) testing for acid mist or other pollutants which occur in liquid droplet form;
 - (D) any sampling for which velocity and volume flow rate measurements are necessary for computing final test results; and
 - (E) any sampling which involves a sampling method which specifies isokinetic sampling. (Isokinetic sampling is sampling in which the velocity of the gas at the point of entry into the sampling nozzle is equal to the velocity adjacent to the nozzle.)

Method 1 shall be applied as written with the following clarifications: Testing installations with multiple breechings may be accomplished by testing the discharge stack(s) to which the multiple breechings exhaust. If the multiple breechings are individually tested, then Method 1 shall be applied to each breeching individually. The Director or his designee may approve a test when test ports in a duct are located less than two diameters downstream from any disturbance (fan, elbow, change in diameter, or any other physical feature that may disturb the gas flow) or one half diameter upstream from any disturbance, if the tester demonstrates to the Director, or his designee, that locating test ports beyond these distances are impossible because the duct cannot be modified to meet the specifications of Method 1 or testing at an alternative location is not feasible.

- (2) Method 2 of Appendix A of 40 CFR Part 60 shall be applied as written and used concurrently with any test method in which velocity and volume flow rate measurements are required.
- (3) Sampling procedures for determining compliance with particulate emission control standards shall be in accordance with Method 5 of Appendix A of 40 CFR Part 60. Method 17 of Appendix A of 40 CFR Part 60 may be used instead of Method 5 provided that the

stack gas temperature does not exceed 320°F. The minimum time per test point for particulate testing shall be two minutes and the minimum time per test run shall be one hour. The sample gas drawn during each test run shall be at least 30 cubic feet. A number of sources are known to emit organic material (oil, pitch, plasticizers, etc.) which exist as finely divided liquid droplets at ambient conditions. These materials cannot be satisfactorily collected by means of the above Method 5. In these cases the Commission may require the use of Method 5 as proposed on August 17, 1971, in the Federal Register, Volume 36, Number 159.

- (4) The procedures for determining compliance with sulfur dioxide emission control standards for fuel burning sources may be either by determining sulfur content with fuel analysis or by stack sampling. Combustion sources choosing to demonstrate compliance through stack sampling shall follow procedures described in Method 6 of Appendix A of 40 CFR Part 60. When Method 6 of Appendix A of 40 CFR Part 60 is used to determine compliance, compliance shall be determined by averaging six 20-minute samples taken over such a period of time that no more than 20 minutes elapses between any two consecutive samples. If a source chooses to demonstrate compliance by analysis of sulfur in fuel, sampling, preparation, and analysis of fuels shall be in accordance with the following American Society of Testing and Materials (ASTM) methods:

(A) coal:

(i) Sampling:

(I) Sampling Location. A source shall collect the coal from a location in the handling or processing system that provides a sample representative of the fuel bunkered or burned during a boiler operating day. For the purpose of this method, a fuel lot size is defined as the weight of coal bunkered or consumed during each boiler operating day. For reporting and

calculation purposes, the gross sample shall be identified with the calendar day on which sampling began. The Director may approve alternate definitions of fuel sizes if the alternative will provide a more representative sample.

(H) ~~Sample Increment Collection.~~ A source shall use a coal sampling procedure that meets the requirements of ASTM D 2234 Type I, condition A, B, C and systematic spacing for collection of sample increments. All requirements and restrictions regarding increment distribution and sampling device constraints shall be observed.

(III) ~~Gross Samples.~~ A source shall use ASTM D 2234, 7.1.2, Table 2 except as provided in 7.1.5.2 to determine the number and weight of increments (composite or gross samples):

- (ii) ~~Preparation.~~ A source shall use ASTM D 2013 for sample preparation from a composite or gross sample.
- (iii) ~~Gross Calorie Value (GCV).~~ A source shall use ASTM D 2015 or D 3286 to determine GCV on a dry basis from a composite or gross sample.
- (iv) ~~Moisture Content.~~ A source shall use ASTM D 3173 to determine moisture from a composite or gross sample.

(v) ~~Sulfur Content.~~ A source shall use ASTM D 3177 or D 4239 to determine the percent sulfur on a dry basis from a composite or gross sample.

(B) ~~oil:~~

- (i) ~~sampling~~ A sample shall be collected at the pipeline inlet to the fuel burning unit after sufficient fuel has been drained from the line to remove all fuel that may have been standing in the line;
- (ii) ~~heat of combustion (BTU)~~ ASTM Method D 240 or D 2015;
- (iii) ~~sulfur content~~ ASTM Method D 129 or D 1552.

The sulfur content and BTU content of the fuel shall be reported on a dry basis. When the test methods described in Parts (A) or (B) of this Subparagraph are used to demonstrate that the ambient air quality standards for sulfur dioxide are being protected, the sulfur content shall be determined at least once per year from a composite of at least three or 24 samples taken at equal time intervals from the fuel being burned over a three-hour or 24-hour period, respectively, whichever is the time period for which the ambient standard is most likely to be exceeded; this requirement shall not apply to sources that are only using fuel analysis in place of continuous monitoring to meet the requirements of Section .0600 of this Subchapter.

- (5) ~~Sulfuric acid manufacturing plants and spodumene ore roasting plants shall demonstrate compliance with Rules .0517 and .0527, respectively, of this Section by using Method 8 of Appendix A of 40 CFR Part 60. Compliance shall be determined by averaging emissions measured by three one hour tests.~~
- (6) ~~All industrial processes not covered under Subparagraph (5) of this Paragraph emitting sulfur dioxide shall demonstrate compliance by sampling procedures described in Method 6 of Appendix A of 40 CFR Part 60. Compliance shall be determined by averaging six 20 minute samples taken over such a period of time that no more than 20 minutes elapses between any two consecutive samples.~~
- (7) ~~Sampling procedures to demonstrate compliance with emission standards for nitrogen oxides shall be in accordance with the procedures set forth in Method 7 of Appendix A of 40 CFR Part 60.~~

- (8) ~~Method 9 of Appendix A of 40 CFR 60 shall be used when opacity is determined by visual observation.~~
 - (9) ~~Notwithstanding the stated applicability to new source performance standards or primary aluminum plants, the procedures to be used to determine fluoride emissions are:~~
 - (A) ~~for sampling emissions from stacks, Method 13A or 13B of Appendix A of 40 CFR Part 60,~~
 - (B) ~~for sampling emissions from roof monitors not employing stacks or pollutant collection systems, Method 14 of Appendix A of 40 CFR Part 60, and~~
 - (C) ~~for sampling emissions from roof monitors not employing stacks but equipped with pollutant collection systems, the procedure under 40 CFR 60.8(b), except that the Director of the Division of Environmental Management shall be substituted for the administrator.~~
 - (10) ~~Emissions of total reduced sulfur shall be measured by the test procedure described in Method 16 of Appendix A of 40 CFR Part 60 or Method 16A of Appendix A of 40 CFR Part 60.~~
 - (11) ~~Emissions of mercury shall be measured by the test procedure described in Method 101 or 102 of Appendix B of 40 CFR Part 61.~~
 - (12) ~~Each test (excluding fuel samples) shall consist of three repetitions or runs of the applicable test method. For the purpose of determining compliance with an applicable emission standard the average of results of all repetitions shall apply. In the event that a sample is accidentally lost or conditions occur in which one of the three runs must be discontinued because of forced shutdown, failure of an irreplaceable portion of the sample train, extreme meteorological conditions, or other circumstances, beyond the owner or operator's control, and there is no way to obtain another sample, then compliance may be determined using the arithmetic average of the results of the two other runs.~~
 - (13) ~~In conjunction with performing certain test methods prescribed in this Rule, the determination of the fraction of carbon dioxide, oxygen, carbon monoxide and nitrogen in the gas being sampled is necessary to determine the molecular weight of the gas being sampled. Collecting a sample for this purpose shall be done in accordance with Method 3 of Appendix A of 40 CFR Part 60:~~
 - (A) ~~The grab sample technique may also be used with instruments such as~~
- ~~Bacharach Fyrite (trade name) with the following restrictions:~~

 - (i) ~~Instruments such as the Bacharach Fyrite (trade name) may only be used for the measurement of carbon dioxide.~~
 - (ii) ~~Repeated samples shall be taken during the emission test run to account for variations in the carbon dioxide concentration. No less than four samples shall be taken during a one hour test run, but as many as necessary shall be taken to produce a reliable average.~~
 - (iii) ~~The total concentration of gases other than carbon dioxide, oxygen and nitrogen shall be less than one percent.~~
- (B) ~~For fuel burning sources, concentrations of oxygen and nitrogen may be calculated from combustion relations for various fuels.~~
 - (14) ~~For those processes for which the allowable emission rate is determined by the production rate, provisions shall be made for controlling and measuring the production rate. The source shall ensure, within the limits of practicality, that the equipment or process being tested is operated at or near its maximum normal production rate or at a lesser rate if specified by the Director or his delegate. The individual conducting the emission test shall include with his test results, data which accurately represent the production rate during the test.~~
 - (15) ~~Emission rates for wood or fuel burning sources which are expressed in units of pounds per million BTU shall be determined by the "Oxygen Based F Factor Procedure" described in 40 CFR Part 60, Appendix A, Method 19, Section 5. Other procedures described in Method 19 may be used if appropriate. To provide data of sufficient accuracy to use with the F factor methods, an integrated (bag) sample shall be taken for the duration of each test run. In the case of simultaneous testing of multiple ducts, there shall be a separate bag for each sampling train. The bag sample shall be analyzed with an Orsat analyzer in accordance with Method 3 of Appendix A of 40 CFR Part 60. (The number of analyses and the tolerance between analyses are specified in Method 3.) The specifications indicated in Method 3 for the construction and operation of the bag sampling apparatus shall be followed.~~

- (16) ~~Particulate testing on steam generators that utilize soot blowing as a routine means for cleaning heat transfer surfaces shall be conducted so that the contribution of the soot blowing is represented as follows:~~

- (A) ~~If the soot blowing periods are expected to represent less than 50 percent of the total particulate emissions, one of the test runs shall include a soot blowing cycle.~~
- (B) ~~If the soot blowing periods are expected to represent more than 50 percent of the total particulate emissions then two of the test runs shall each include a soot blowing cycle.~~

~~Under no circumstances shall all three test runs include soot blowing. The average emission rate of particulate matter is calculated by the equation:~~

$$\text{E}_{\text{AVG}} = \text{E}_S \frac{(A+B)}{AR} + \text{E}_N \left(\frac{R-S}{R} \cdot \frac{BS}{AR} \right)$$

~~E_{AVG} equals the average emission rate in pounds per million Btu for daily operating time. E_S equals the average emission rate in pounds per million Btu of sample(s) containing soot blowing. E_N equals the average emission rate in pounds per million Btu of sample(s) with no soot blowing. A equals hours of soot blowing during sample(s). B equals hours without soot blowing during sample(s) containing sootblowing. R equals average hours of operation per 24 hours. S equals average hours of soot blowing per 24 hours. If large changes in boiler load or stack flow rate occur during soot blowing, other methods of prorating the emission rate may be considered more appropriate; for these tests the Director or his designee may approve an alternate method of prorating.~~

- (17) ~~Emissions of volatile organic compounds shall be measured by the appropriate test procedure in Section .0900 of this Subchapter.~~
- (18) ~~Upon prior approval by the Director or his delegate, test procedures different from those described in this Rule may be used if they will provide equivalent or more reliable results. Furthermore, the Director or his delegate may prescribe alternate test procedures on an individual basis when he considers that the action is necessary to secure reliable test data. In the case of sources for which no test method is named, the Director or his delegate may prescribe or approve methods on an individual basis.~~

(4)(b) All new sources shall be in compliance prior to beginning operations.

(e)(c) In addition to any control or manner of operation necessary to meet emission standards in this Section, any source of air pollution shall be operated with such control or in such manner that the source shall not cause the ambient air quality standards of Section .0400 of this Subchapter to be exceeded at any point beyond the premises on which the source is located. When controls more stringent than named in the applicable emission standards in this Section are required to prevent violation of the ambient air quality standards or are required to create an offset, the permit shall contain a condition requiring these controls.

(4)(d) The Bubble Concept. A facility with multiple emission sources or multiple facilities within the same area may choose to meet the total emission limitation for a given pollutant through a different mix of controls than that required by the rules in this Section or Section .0900 of this Subchapter.

- (1) In order for this mix of alternative controls to be permitted the Director shall determine that the following conditions are met:

- (A) Sources to which Rules .0524, .0530, .0531, .1110 or .1111 of this Subchapter, the federal New Source Performance Standards (NSPS), the federal National Emission Standards for Hazardous Air Pollutants (NESHAPS), regulations established pursuant to Section 111 (d) of the federal Clean Air Act, or state or federal Prevention of Significant Deterioration (PSD) requirements apply, shall have emissions no larger than if there were not an alternative mix of controls;
- (B) The facility (or facilities) is located in an attainment area or an unclassified area or in an area that has been demonstrated to be attainment by the statutory deadlines (with reasonable further progress toward attainment) for those pollutants being considered;
- (C) All of the emission sources affected by the alternative mix are in compliance with applicable regulations or are in compliance with established compliance agreements; and
- (D) The review of an application for the proposed mix of alternative controls and the enforcement of any resulting permit will not require expenditures on the part of the State in excess of five times that which would otherwise be required.

- (2) The owner(s) or operator(s) of the facility (facilities) shall demonstrate to the satisfaction of the Director that the alternative mix of controls is equivalent in total allowed emissions, reliability, enforceability, and environmental impact to the aggregate of the

otherwise applicable individual emission standards; and

- (A) that the alternative mix approach does not interfere with attainment and maintenance of ambient air quality standards and does not interfere with the PSD program; this demonstration shall include modeled calculations of the amount, if any, of PSD increment consumed or created;
- (B) that the alternative mix approach conforms with reasonable further progress requirements in any nonattainment area;
- (C) that the emissions under the alternative mix approach are in fact quantifiable, and trades among them are even;
- (D) that the pollutants controlled under the alternative mix approach are of the same criteria pollutant categories, except that emissions of some criteria pollutants used in alternative emission control strategies are subject to the limitations as defined in 44 FR 71784 (December 11, 1979), Subdivision D.1.c.ii. The Federal Register referenced in this Part is hereby incorporated by reference and does not include subsequent amendments or editions.

The demonstrations of equivalence shall be performed with at least the same level of detail as The North Carolina State Implementation ~~plan~~ Plan for Air Quality demonstration of attainment for the area in question. Moreover, if the facility involves another facility in the alternative strategy, it shall complete a modeling demonstration to ensure that air quality is protected. Demonstrations of equivalency shall also take into account differences in the level of reliability of the control measures or other uncertainties.

- (3) The emission rate limitations or control techniques of each source within the facility (facilities) subjected to the alternative mix of controls shall be specified in the facility's (facilities') permits(s).
- (4) Compliance schedules and enforcement actions shall not be affected because an application for an alternative mix of controls is being prepared or is being reviewed.
- (5) The Director may waive or reduce requirements in this Paragraph up to the extent allowed by the Emissions Trading Policy Statement published in the Federal Register of April 7, 1982, pages 15076-15086, provided that the analysis required by Paragraph ~~(g)~~(e) of this Rule shall support any waiver or

reduction of requirements. The Federal Register referenced in this Paragraph is hereby incorporated by reference and does not include subsequent amendments or editions.

~~(g)~~(e) In a permit application for an alternative mix of controls under Paragraph ~~(f)~~(d) of this Rule, the owner or operator of the facility shall demonstrate to the satisfaction of the Director that the proposal is equivalent to the existing requirements of the SIP in total allowed emissions, enforceability, reliability, and environmental impact. The Director shall provide for public notice with an opportunity for a request for public hearing following the procedures under 15A NCAC 02Q .0300 or .0500, as applicable.

- (1) If and when a permit containing these conditions is issued under 15A NCAC 02Q .0300 (non-Title V permits), it shall become a part of the state implementation plan (SIP) as an appendix available for inspection at the department's regional offices. Until the U.S. Environmental Protection Agency (EPA) approves the SIP revision embodying the permit containing an alternative mix of controls, the facility shall continue to meet the otherwise applicable existing SIP requirements.
- (2) If and when a permit containing these conditions is issued under 15A NCAC 02Q .0500 (Title V permits), it shall be available for inspection at the department's regional offices. Until the ~~U.S. Environmental Protection Agency (EPA)~~ EPA approves the Title V containing an alternative mix of controls, the facility shall continue to meet the otherwise applicable existing SIP requirements.

The revision shall be approved by EPA on the basis of the revision's consistency with EPA's "Policy for Alternative Emission Reduction Options Within State Implementation Plans" as promulgated in the Federal Register of December 11, 1989, pages 71780-71788, and subsequent rulings.

~~(h) The referenced ASTM test methods in this Rule are hereby incorporated by reference and include subsequent amendments and editions. Copies of referenced ASTM test methods or Federal Registers may be obtained from the Division of Air Quality, 1641 Mail Service Center, Raleigh, North Carolina 27699-1641 at a cost of ten cents (\$0.10) per page.~~

(f) If the owner or operator of any combustion and non-combustion source or control equipment subject to the requirements of this Section is required to demonstrate compliance with the source testing procedures of Section .2600 of this Subchapter.

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).

15A NCAC 02D .0529 FLUORIDE EMISSIONS FROM PRIMARY ALUMINUM REDUCTION PLANTS

(a) For the purpose of this ~~Regulation~~, Rule, the following definitions apply:

- (1) "Fluoride" means elemental fluorine and all fluoride compounds as measured by the methods specified in ~~Regulation .0501(d)(9) of this Section~~ Section .2600 of this Subchapter or by equivalent or alternative methods approved by the Director or his delegate.
- (2) "Prebake cell" is an aluminum reduction pot which uses carbon anodes that are formed, press, and baked prior to their placement in the pot.
- (3) "Primary aluminum reduction plant" means any facility manufacturing aluminum by electrolytic reduction.

(b) This ~~Regulation-Rule~~ shall apply to prebake cells at all primary aluminum reduction plants not subject to ~~Regulation Rule .0524 of this Section~~.

(c) An owner or operator of a primary aluminum reduction plant subject to this ~~Regulation-Rule~~ shall not cause, allow, or permit the use of the rebake cells unless:

- (1) 95 percent of the fluoride emissions are captured; and
- (2) 98.5 percent of the captured fluoride emissions are removed before the exhaust gas is discharged into the atmosphere.

(d) The owner or operator of a primary aluminum reduction plant subject to this ~~Regulation-Rule~~ shall:

- (1) ensure that hood covers are in good repair and properly positioned over the prebake cells;
- (2) minimize the amount of time that hood covers are removed during pot working operations;
- (3) if the hooding system is equipped with a dual low and high hood exhaust rate, use the high rate whenever hood covers are removed and return to the normal exhaust rate when the hood covers are replaced;
- (4) minimize the occurrence of fuming pots and correct the cause of a fuming pot as soon as practical; and
- (5) if the tapping crucibles are equipped with hoses which return aspirator air under the hood, ensure that the hoses are in good repair and that the air return system is functioning properly.

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).

15A NCAC 02D .0530 PREVENTION OF SIGNIFICANT DETERIORATION

(a) The purpose of the Rule is to implement a program for the prevention of significant deterioration of air quality as required by 40 CFR 51.166 ~~51.166, as amended November 7, 2003, except those provisions noticed as stayed in 69 FR 40274.~~

(b) For the purposes of this Rule the definitions contained in 40 CFR 51.166(b) and 40 CFR 51.301 shall apply except the definitions of "baseline actual ~~emissions~~" emissions," and "~~pollution control projects~~."

- (1) "Baseline actual emissions" means the rate of emissions, in tons per year, of a regulated new source review (NSR) pollutant, as determined

in accordance with Parts (A) through (C) of this Subparagraph.

(A) For an existing emissions unit, baseline actual emissions means the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 5-year period immediately preceding the date that a complete permit application is received by the Division for a permit required under this Rule. The Director shall allow a different time period, not to exceed 10 years immediately preceding the date that a complete permit application is received by the Division, if the owner or operator demonstrates that it is more representative of normal source operation.

(i) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

(ii) The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the consecutive 24-month period.

(iii) For an existing emission unit (other than an electric utility steam generating unit), the average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently comply. However, if the State has taken credit in an attainment demonstration or maintenance plan consistent with the requirements of 40 CFR 51.165(a)(3)(ii)(G) for an emission limitation that is part of a maximum achievable control technology standard that the Administrator proposed or

- promulgated under part 63 of the Code of Federal Regulations, the baseline actual emissions shall be adjusted to account for such emission reductions.
- (iv) For an electric utility steam generating unit, the average rate shall be adjusted downward to reflect any emissions reductions under G. S. 143-215.107D and for which cost recovery is sought pursuant to G. S. 62-133.6.
 - (v) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period shall be used to determine the baseline actual emissions for all the emissions units being changed. A different consecutive 24-month period for each regulated NSR pollutant can be used for each regulated NSR pollutant.
 - (vi) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by Subparts (ii) and (iii) of this Part.
- (B) For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero; and thereafter, for all other purposes, shall equal the unit's potential to emit.
 - (C) For a plantwide applicability limit (PAL) for a stationary source, the baseline actual emissions shall be calculated for existing emissions units in accordance with the procedures contained in Part (A) of this Subparagraph, and for a new emissions unit in accordance with the procedures contained in Part (B) of this Subparagraph.
- (2) ~~"Pollution control project" (PCP) means, at an existing emissions unit, any activity, set of~~
- ~~work practices, or project (including pollution prevention as defined under 40 CFR 51.166(b)(38)), the purpose of which is to reduce emissions of air pollutants from such unit. Such qualifying activities or projects may include the replacement or upgrade of an existing emissions control technology with a more effective unit. Other changes that may occur at the source are not considered part of the PCP if they are not necessary to reduce emissions through the PCP. Projects listed in Parts (A) through (F) of this Subparagraph carry the rebuttable presumption during the permitting process that they are environmentally beneficial pursuant to 40 CFR 51.166(v)(2)(i), and, using the criteria in 40 CFR 51.166(v)(2), the Director may rebut such presumption and determine that the project is not environmentally beneficial and the project does not qualify as a PCP. Projects not listed in Parts (A) through (F) of this Subparagraph may qualify for a case specific PCP exclusion pursuant to the requirements of 40 CFR 51.166(v)(2) and (v)(5). The following are the rebuttable presumption pollution control projects described above:~~
- ~~(A) Conventional or advanced flue gas desulfurization or sorbent injection for control of SO₂.~~
 - ~~(B) Electrostatic precipitators, baghouses, high efficiency multiclones, or scrubbers for control of particulate matter or other pollutants.~~
 - ~~(C) Flue gas recirculation, low NO_x burners or combustors, selective non-catalytic reduction, selective catalytic reduction, low emission combustion (for internal combustion engines), and oxidation absorption catalyst for control of NO_x.~~
 - ~~(D) Regenerative thermal oxidizers, catalytic oxidizers, condensers, thermal incinerators, hydrocarbon combustion flares, biofiltration, absorbers and adsorbers, and floating roofs for storage vessels for control of volatile organic compounds or hazardous air pollutants. For the purpose of this Section, "hydrocarbon combustion flare" means either a flare used to comply with an applicable NSPS or MACT standard (including uses of flares during startup, shutdown, or malfunction permitted under such a standard), or a flare that serves to control emissions of waste streams comprised predominately of hydrocarbons and containing no more than 230 mg/dscm hydrogen sulfide.~~

- (E) ~~Activities or projects undertaken to accommodate switching (or partially switching) to an inherently less polluting fuel, to be limited to the following fuel switches:~~
- (i) ~~Switching from a heavier grade of fuel oil to a lighter fuel oil, or any grade of oil to 0.05 percent sulfur diesel (i.e., from a higher sulfur content #2 fuel or from #6 fuel, to CA 0.05 percent sulfur diesel);~~
 - (ii) ~~Switching from coal, wood, oil, or any other solid fuel to natural gas, propane, gasified coal, or gasified wood;~~
 - (iii) ~~Switching from coal to wood, excluding construction or demolition waste, chemical or pesticide treated wood, and other forms of "unclean" wood;~~
 - (iv) ~~Switching from coal to #2 fuel oil (0.5 percent maximum sulfur content); and~~
 - (v) ~~Switching from high sulfur coal to low sulfur coal (maximum 1.2 percent sulfur content).~~
- (F) ~~Activities or projects undertaken to accommodate switching from the use of one ozone depleting substance (ODS) to the use of a substance with a lower or zero ozone depletion potential (ODP,) including changes to equipment needed to accommodate the activity or project, that meet the following requirements:~~
- (i) ~~The productive capacity of the equipment is not increased as a result of the activity or project.~~
 - (ii) ~~The projected usage of the new substance is lower, on an ODP-weighted basis, than the baseline usage of the replaced ODS. To make this determination, the following procedure shall be used:~~
 - (I) ~~Determine the ODP of the substances by consulting 40 CFR part 82, Subpart A, appendices A and B.~~
- (II) ~~Calculate the replaced ODP-weighted amount by multiplying the baseline actual usage (using the annualized average of any 24 consecutive months of usage within the past 10 years) by the ODP of the replaced ODS.~~
- (III) ~~Calculate the projected ODP-weighted amount by multiplying the projected actual usage of the new substance by its ODP.~~
- (IV) ~~If the value calculated in Sub-Subpart (II) of this Subpart is more than the value calculated in Sub-Subpart (III) of this Subpart, then the projected use of the new substance is lower, on an ODP-weighted basis, than the baseline usage of the replaced ODS.~~
- (3)(2) In the definition of "net emissions increase," the reasonable period specified in 40 CFR 51.166(b)(3)(ii) shall be seven years.
- (4)(3) The limitation specified in 40 CFR 51.166(b)(15)(ii) shall not apply.
- (c) All areas of the State shall be classified as Class II except that the following areas are Class I:
- (1) Great Smoky Mountains National Park;
 - (2) Joyce Kilmer Slickrock National Wilderness Area;
 - (3) Linville Gorge National Wilderness Area;
 - (4) Shining Rock National Wilderness Area;
 - (5) Swanquarter National Wilderness Area.
- (d) Redesignations of areas to Class I or II may be submitted as state proposals to the Administrator of the Environmental Protection Agency (EPA), if the requirements of 40 CFR 51.166(g)(2) are met. Areas may be proposed to be redesignated as Class III, if the requirements of 40 CFR 51.166(g)(3) are met. Redesignations may not, however, be proposed which would violate the restrictions of 40 CFR 51.166(e). Lands within the boundaries of Indian Reservations may be redesignated only by the appropriate Indian Governing Body.

(e) In areas designated as Class I, II, or III, increases in pollutant concentration over the baseline concentration shall be limited to the values set forth in 40 CFR 51.166(c). However, concentration of the pollutant shall not exceed standards set forth in 40 CFR 51.166(d).

(f) Concentrations attributable to the conditions described in 40 CFR 51.166(f)(1) shall be excluded in determining compliance with a maximum allowable increase. However, the exclusions referred to in 40 CFR 51.166(f)(1)(i) or (ii) shall be limited to five years as described in 40 CFR 51.166(f)(2).

(g) Major stationary sources and major modifications shall comply with the requirements contained in 40 CFR 51.166(i) and (a)(7) and by extension in 40 CFR 51.166(j) through (o), (r), (v), and (w). The transition provisions allowed by 40 CFR 52.21 (i)(11)(i) and (ii) and (m)(1)(vii) and (viii) are hereby adopted under this Rule. The minimum requirements described in the portions of 40 CFR 51.166 referenced in this Paragraph are hereby adopted as the requirements to be used under this Rule, except as otherwise provided in this Rule. Wherever the language of the portions of 40 CFR 51.166 referenced in this Paragraph speaks of the "plan," the requirements described therein shall apply to the source to which they pertain, except as otherwise provided in this Rule. Whenever the portions of 40 CFR 51.166 referenced in this Paragraph provide that the State plan may exempt or not apply certain requirements in certain circumstances, those exemptions and provisions of nonapplicability are also hereby adopted under this Rule. However, this provision shall not be interpreted so as to limit information that may be requested from the owner or operator by the Director as specified in 40 CFR 51.166(n)(2).

(h) New natural gas-fired electrical utility generating units shall install best available control technology for NO_x and SO₂.

(i) 40 CFR 51.166(w)(10)(iv)(a) is changed to read: "If the emissions level calculated in accordance with Paragraph (w)(6) of this Section is equal to or greater than 80 percent of the PAL [plant wide applicability limit] level, the Director shall renew the PAL at the same level." 40 CFR 51.166(w)(10)(iv)(b) is not incorporated by reference.

~~(j) The owner or operator of a major stationary source that meets the requirements for using the clean unit provisions in 40 CFR 51.166(t) may use the provisions in 40 CFR 51.166(t) by following the procedures in 40 CFR 51.166(t). The Director shall modify the source's permit according to the provisions in 40 CFR 51.166(t).~~

~~(k) If a source does not qualify as a clean unit under 40 CFR 51.166(t), but does qualify to use the provisions in 40 CFR 51.166(u), the owner or operator of the source may use the provisions in 40 CFR 51.155(u) by following the procedures in 40 CFR 51.166(u). The Director shall modify the source's permit according to the provisions in 40 CFR 51.166(u).~~

~~(l)(j)~~ 15A NCAC 02Q .0102 and .0302 are not applicable to any source to which this Rule applies. The owner or operator of the sources to which this Rule applies shall apply for and receive a permit as required in 15A NCAC 02Q .0300 or .0500.

~~(m)(k)~~ When a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification to emit a pollutant, such as a restriction on hours of

operation, then the provisions of this Rule shall apply to the source or modification as though construction had not yet begun on the source or modification.

~~(n)(l)~~ Volatile organic compounds exempted from coverage in 40 CFR 51.100(s) shall also be exempted when calculating source applicability and control requirements under this Rule.

~~(o)(m)~~ The degree of emission limitation required for control of any air pollutant under this Rule shall not be affected in any manner by:

- (1) that amount of a stack height, not in existence before December 31, 1970, that exceeds good engineering practice; or
- (2) any other dispersion technique not implemented before then.

~~(p)(n)~~ A substitution or modification of a model as provided for in 40 CFR 51.166(l) shall be subject to public comment procedures in accordance with the requirements of 40 CFR 51.102.

~~(q)(o)~~ Permits may be issued on the basis of innovative control technology as set forth in 40 CFR 51.166(s)(1) if the requirements of 40 CFR 51.166(s)(2) have been met, subject to the condition of 40 CFR 51.166(s)(3), and with the allowance set forth in 40 CFR 51.166(s)(4).

~~(r)(p)~~ If a source to which this Rule applies impacts an area designated Class I by requirements of 40 CFR 51.166(e), notice to EPA will be provided as set forth in 40 CFR 51.166(p)(1). If the Federal Land Manager presents a demonstration described in 40 CFR 51.166(p)(3) during the public comment period or public hearing to the Director and if the Director concurs with this demonstration, the permit application shall be denied. Permits may be issued on the basis that the requirements for variances as set forth in 40 CFR 51.166(p)(4), (p)(5) and (p)(7), or (p)(6) and (p)(7) have been satisfied.

~~(s)(q)~~ A permit application subject to this Rule shall be processed in accordance with the procedures and requirements of 40 CFR 51.166(q). Within 30 days of receipt of the application, applicants shall be notified if the application is complete as to initial information submitted. Commencement of construction before full prevention of significant deterioration approval is obtained constitutes a violation of this Rule.

~~(t)(r)~~ Approval of an application with regard to the requirements of this Rule shall not relieve the owner or operator of the responsibility to comply fully with applicable provisions of other rules of this Subchapter or Subchapter 2Q of this Title and any other requirements under local, state, or federal law.

~~(u)(s)~~ When a source or modification subject to this Rule may affect the visibility of a Class I area named in Paragraph (c) of this Rule, the following procedures shall apply:

- (1) The Director shall provide written notification to all affected Federal Land Managers within 30 days of receiving the permit application or within 30 days of receiving advance notification of an application. The notification shall be at least 30 days prior to the publication of notice for public comment on the application. The notification shall include a copy of all information relevant to the permit application including an analysis provided by

the source of the potential impact of the proposed source on visibility.

- (2) The Director shall consider any analysis concerning visibility impairment performed by the Federal Land Manager if the analysis is received within 30 days of notification. If the Director finds that the analysis of the Federal Land Manager fails to demonstrate to his satisfaction that an adverse impact on visibility will result in the Class I area, the Director shall provide in the notice of public hearing on the application, an explanation of his decision or notice as to where the explanation can be obtained.
- (3) The Director may require monitoring of visibility in or around any Class I area by the proposed new source or modification when the visibility impact analysis indicates possible visibility impairment.

~~(v)~~(t) If the owner or operator of a source is using projected actual emissions to avoid applicability of prevention of significant deterioration requirements, the owner or operator shall notify the director of the modification. The notification shall include:

- (1) a description of the project,
- (2) identification of sources whose emissions could be affected by the project,
- (3) the calculated projected actual emissions and an explanation of how the projected actual emissions were calculated,
- (4) the calculated baseline emissions and an explanation of how the baseline emissions were calculated, and
- (5) any netting calculations if applicable.

If upon reviewing the notification, the Director finds that it will cause a prevention of significant deterioration evaluation, then the Director shall notify the owner or operator of his findings. The owner or operator shall not make the modification until it has received a permit issued pursuant to this Rule. If a permit revision is not required pursuant to this rule, the owner or operator shall maintain records of emissions related to the modifications for 10 years if the project involves increasing the emissions unit's design capacity or its potential to emit the regulated NSR pollutant by a significant amount, as defined at 40 CFR 51.166(b)(23)(i), when compared to the pre-modification potential to emit; otherwise these records shall be maintained for five years.

~~(w)~~(u) The reference to the Code of Federal Regulations (CFR) in this Rule are incorporated by reference unless a specific reference states otherwise. The version of the Code of Federal Regulations incorporated in this Rule is that as of November 7, 2003, 29, 2005 except those provisions noticed as stayed in 69 FR 40274, and does not include any subsequent amendments or editions to the referenced material.

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(3); 143-215.107(a)(5); 143-215.107(a)(7); 143-215.108(b); 150B-21.6.

15A NCAC 02D .0531 SOURCES IN NONATTAINMENT AREAS

(a) For the purpose of this Rule the definitions contained in 40 CFR 51.165(a)(1) and 40 CFR 51.301 shall apply except the definition of "baseline actual emissions" and "~~pollution control project~~-emissions."

(1) "Baseline actual emissions" means the rate of emissions, in tons per year, of a regulated new source review (NSR) pollutant, as determined in accordance with Parts (A) through (C) of this Subparagraph.

(A) For an existing emissions unit, baseline actual emissions means the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 5-year period immediately preceding the date that a complete permit application is received by the Division for a permit required under this Rule. The Director shall allow a different time period, not to exceed 10 years immediately preceding the date that a complete permit application is received by the Division, if the owner or operator demonstrates that it is more representative of normal source operation.

(i) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

(ii) The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the consecutive 24-month period.

(iii) For an existing emission unit (other than an electric utility steam generating unit), the average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently comply. However, if the State has taken credit in an

- attainment demonstration or maintenance plan consistent with the requirements of 40 CFR 51.165(a)(3)(ii)(G) for an emission limitation that is part of a maximum achievable control technology standard that the Administrator proposed or promulgated under part 63 of the Code of Federal Regulations, the baseline actual emissions shall be adjusted to account for such emission reductions.
- (iv) For an electric utility steam generating unit, the average rate shall be adjusted downward to reflect any emissions reductions under G.S. 143-215.107D and for which cost recovery is sought pursuant to G.S. 62-133.6.
 - (v) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period shall be used to determine the baseline actual emissions for all the emissions units being changed. A different consecutive 24-month period for each regulated NSR pollutant.
 - (vi) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by Subparts (ii) and (iii) of this Part.
- (B) For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero; and thereafter, for all other purposes, shall equal the unit's potential to emit.
 - (C) For a plantwide applicability limit (PAL) for a stationary source, the baseline actual emissions shall be calculated for existing emissions units in accordance with the procedures contained in Part (A) of this Subparagraph, and for a new emissions unit in accordance with the procedures contained in Part (B) of this Subparagraph.
- (2) ~~"Pollution control project" (PCP) means, at an existing emissions unit, any activity, set of work practices, or project (including pollution prevention as defined under 40 CFR 51.165(a)(1)(xxvi)), the purpose of which is to reduce emissions of air pollutants from such unit. Such qualifying activities or projects may include the replacement or upgrade of an existing emissions control technology with a more effective unit. Other changes that may occur at the source are not considered part of the PCP if they are not necessary to reduce emissions through the PCP. Projects listed in Parts (A) through (F) of this Subparagraph carry the rebuttable presumption during the permitting process that they are environmentally beneficial pursuant to 40 CFR 51.165(e)(2)(i), and, using the criteria in 40 CFR 51.165(e)(2), the Director may rebut such presumption and determine that the project is not environmentally beneficial and the project does not qualify as a PCP. Projects not listed in Parts (A) through (F) of this Subparagraph may qualify for a case specific PCP exclusion pursuant to the requirements of 40 CFR 51.165(e)(2) and (e)(5). The following are the rebuttable presumption pollution control projects described above:~~
 - ~~(A) Conventional or advanced flue gas desulfurization or sorbent injection for control of SO₂.~~
 - ~~(B) Electrostatic precipitators, baghouses, high efficiency multiclones, or scrubbers for control of particulate matter or other pollutants.~~
 - ~~(C) Flue gas recirculation, low NO_x burners or combustors, selective non-catalytic reduction, selective catalytic reduction, low emission combustion (for internal combustion engines), and oxidation absorption catalyst for control of NO_x.~~
 - ~~(D) Regenerative thermal oxidizers, catalytic oxidizers, condensers, thermal incinerators, hydrocarbon combustion flares, biofiltration, absorbers and adsorbers, and floating roofs for storage vessels for control of volatile organic compounds or hazardous air pollutants. For the purpose of this Section, "hydrocarbon combustion flare" means either a flare used to comply with an applicable NSPS or MACT standard (including~~

- uses of flares during startup, shutdown, or malfunction permitted under such a standard), or a flare that serves to control emissions of waste streams comprised predominately of hydrocarbons and containing no more than 230 mg/dsem hydrogen sulfide.
- (E) Activities or projects undertaken to accommodate switching (or partially switching) to an inherently less polluting fuel, to be limited to the following fuel switches:
- (i) Switching from a heavier grade of fuel oil to a lighter fuel oil, or any grade of oil to 0.05 percent sulfur diesel (i.e., from a higher sulfur content #2 fuel or from #6 fuel, to CA 0.05 percent sulfur diesel);
 - (ii) Switching from coal, wood, oil, or any other solid fuel to natural gas, propane, gasified coal, or gasified wood;
 - (iii) Switching from coal to wood, excluding construction or demolition waste, chemical or pesticide treated wood, and other forms of "unclean" wood;
 - (iv) Switching from coal to #2 fuel oil (0.5 percent maximum sulfur content); and
 - (v) Switching from high sulfur coal to low sulfur coal (maximum 1.2 percent sulfur content).
- (F) Activities or projects undertaken to accommodate switching from the use of one ozone depleting substance (ODS) to the use of a substance with a lower or zero ozone depletion potential (ODP), including changes to equipment needed to accommodate the activity or project, that meet the following requirements:
- (i) The productive capacity of the equipment is not increased as a result of the activity or project.
 - (ii) The projected usage of the new substance is lower, on an ODP weighted basis, than the baseline usage of the replaced ODS. To make this determination, the following procedure shall be used:
 - (I) Determine the ODP of the substances by consulting 40 CFR Part 82, Subpart A, Appendices A and B.
 - (II) Calculate the replaced ODP-weighted amount by multiplying the baseline actual usage (using the annualized average of any 24 consecutive months of usage within the past 10 years) by the ODP of the replaced ODS.
 - (III) Calculate the projected ODP-weighted amount by multiplying the projected actual usage of the new substance by its ODP.
 - (IV) If the value calculated in Sub-Subpart (II) of this Subpart is more than the value calculated in Sub-Subpart (III) of this Subpart, then the projected use of the new substance is lower, on an ODP-weighted basis, than the baseline usage of the replaced ODS.
- (3)(2) In the definition of "net emissions increase," the reasonable period specified in 40 CFR 51.165(a)(1)(vi)(C)(1) shall be seven years.
- (b) Redesignation to Attainment. If any county or part of a county to which this Rule applies is later designated in 40 CFR 81.334 as attainment for ozone or carbon monoxide, all sources in that county subject to this Rule before the redesignation date shall continue to comply with this Rule.
- (c) Applicability. This Rule applies to the following areas:
- (1) Ozone Nonattainment Areas, to major stationary sources and major modifications of sources of volatile organic compounds or nitrogen oxides for which construction commences after the area in which the source is located is designated according to Part (A) or (B) of this Subparagraph.

- (A) areas designated in 40 CFR 81.334 as nonattainment for ozone, or
- (B) any of the following areas and in that area only when the Director notices in the North Carolina Register that the area is in violation of the ambient air quality standard for ozone:

- (i) Charlotte/Gastonia, consisting of Mecklenburg and Gaston Counties; with the exception allowed under Paragraph (l) of this Rule;
- (ii) Greensboro/Winston-Salem/High Point, consisting of Davidson, Forsyth, and Guilford Counties and that part of Davie County bounded by the Yadkin River, Dutchmans Creek, North Carolina Highway 801, Fulton Creek and back to Yadkin River; or
- (iii) Raleigh/Durham, consisting of Durham and Wake Counties and Dutchville Township in Granville County.

Violations of the ambient air quality standard for ozone shall be determined according to 40 CFR 50.9.

- (2) Carbon Monoxide Nonattainment Areas. This Rule applies to major stationary sources and major modifications of sources of carbon monoxide located in areas designated in 40 CFR 81.334 as nonattainment for carbon monoxide and for which construction commences after the area in which the source is located is listed in 40 CFR 81.334 as nonattainment for carbon monoxide.

(d) This Rule is not applicable to:

- (1) complex sources of air pollution regulated only under Section .0800 of this Subchapter and not under any other rule in this Subchapter;
- (2) emission of pollutants at the new major stationary source or major modification located in the nonattainment area that are pollutants other than the pollutant or pollutants for which the area is nonattainment. (A major stationary source or major modification that is major for volatile organic compounds or nitrogen oxides is also major for ozone.);
- (3) emission of pollutants for which the source or modification is not major;
- (4) a new source or modification that qualifies for exemption under the provision of 40 CFR 51.165(a)(4); or

- (5) emission of compounds listed under 40 CFR 51.100(s) as having been determined to have negligible photochemical reactivity except carbon monoxide.

(e) 15A NCAC 02Q .0102 and .0302 are not applicable to any source to which this Rule applies. The owner or operator of the source shall apply for and receive a permit as required in 15A NCAC 02Q .0300 or .0500.

(f) To issue a permit to a source to which this Rule applies, the Director shall determine that the source meets the following requirements:

- (1) The new major stationary source or major modification will emit the nonattainment pollutant at a rate no more than the lowest achievable emission rate;
- (2) The owner or operator of the proposed new major stationary source or major modification has demonstrated that all major stationary sources in the State that are owned or operated by this person (or any entity controlling, controlled by, or under common control with this person) are subject to emission limitations and are in compliance, or on a schedule for compliance that is federally enforceable or contained in a court decree, with all applicable emission limitations and standards of this Subchapter that EPA has authority to approve as elements of the North Carolina State Implementation Plan for Air Quality;
- (3) The owner or operator of the proposed new major stationary source or major modification will obtain sufficient emission reductions of the nonattainment pollutant from other sources in the nonattainment area so that the emissions from the new major source and associated new minor sources will be less than the emissions reductions by a ratio of at least 1.00 to 1.15 for volatile organic compounds and nitrogen oxides and by a ratio of less than one to one for carbon monoxide. The baseline for this emission offset shall be the actual emissions of the source from which offset credit is obtained. Emission reductions shall not include any reductions resulting from compliance (or scheduled compliance) with applicable rules in effect before the application. The difference between the emissions from the new major source and associated new minor sources of carbon monoxide and the emission reductions shall be sufficient to represent reasonable further progress toward attaining the Ambient Air Quality Standards. The emissions reduction credits shall also conform to the provisions of 40 CFR 51.165(a)(3)(ii)(A) through (J); and
- (4) The North Carolina State Implementation Plan for Air Quality is being carried out for the nonattainment area in which the proposed source is located.

(g) New natural gas-fired electrical utility generating units shall install lowest achievable emission rate technology for NO_x and SO₂.

(h) 40 CFR 51.165(f)(10)(iv)(A) is changed to read: "If the emissions level calculated in accordance with Paragraph (f)(6) of this Section is equal to or greater than 80 percent of the PAL level, the Director shall renew the PAL at the same level." 40 CFR 51.165(f)(10)(iv)(B) is not incorporated by reference.

~~(i) The owner or operator of a major stationary source that meets the requirements for using the clean unit provisions in 40 CFR 51.165(c) may use the provisions in 40 CFR 51.165(c) by following the procedures in 40 CFR 51.165(c). The Director shall modify the source's permit according to the provisions in 40 CFR 51.165(c).~~

~~(j) If a source does not qualify as a clean unit under 40 CFR 51.165(c), but does qualify to use the provisions in 40 CFR 51.165(d), the owner or operator of the source may use the provisions in 40 CFR 51.155(d) by following the procedures in 40 CFR 51.165(d). The Director shall modify the source's permit according to the provisions in 40 CFR 51.165(d).~~

~~(k)(i)~~ When a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation established after August 7, 1980, on the capacity of the source or modification to emit a pollutant, such as a restriction on hours of operation, then the provisions of this Rule shall apply to the source or modification as though construction had not yet begun on the source or modification.

~~(l)(j)~~ To issue a permit to a source of a nonattainment pollutant, the Director shall determine, in addition to the other requirements of this Rule, that an analysis (produced by the permit applicant) of alternative sites, sizes, production processes, and environmental control techniques for source demonstrates that the benefits of the source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification.

~~(m)(k)~~ Approval of an application regarding the requirements of this Rule shall not relieve the owner or operator of the responsibility to comply fully with applicable provisions of other rules of this Chapter and any other requirements under local, state, or federal law.

~~(n)(l)~~ When a source or modification subject to this Rule may affect the visibility of a Class I area named in Paragraph (c) of Rule .0530 of this Section, the following procedures shall be followed:

- (1) The owner or operator of the source shall provide an analysis of the impairment to visibility that would occur because of the source or modification and general commercial, industrial and other growth associated with the source or modification;
- (2) The Director shall provide written notification to all affected Federal Land Managers within 30 days of receiving the permit application or within 30 days of receiving advance notification of an application. The notification shall be at least 30 days before the publication of the notice for public comment on the application. The notification shall include a

copy of all information relevant to the permit application including an analysis provided by the source of the potential impact of the proposed source on visibility;

- (3) The Director shall consider any analysis concerning visibility impairment performed by the Federal Land Manager if the analysis is received within 30 days of notification. If the Director finds that the analysis of the Federal Land Manager fails to demonstrate to his satisfaction that an adverse impact on visibility will result in the Class I area, the Director shall provide in the notice of public hearing on the application, an explanation of his decision or notice where the explanation can be obtained;
- (4) The Director shall issue permits only to those sources whose emissions will be consistent with making reasonable progress toward the national goal of preventing any future, and remedying any existing, impairment of visibility in mandatory Class I areas when the impairment results from manmade air pollution. In making the decision to issue a permit, the Director shall consider the cost of compliance, the time necessary for compliance, the energy and nonair quality environmental impacts of compliance, and the useful life of the source; and
- (5) The Director may require monitoring of visibility in or around any Class I area by the proposed new source or modification when the visibility impact analysis indicates possible visibility impairment.

The requirements of this Paragraph shall not apply to nonprofit health or nonprofit educational institutions.

~~(o)(m)~~ Paragraphs (f) and ~~(h)(j)~~ of this Rule shall not apply to a new major stationary source or a major modification of a source of volatile organic compounds or nitrogen oxides for which construction commences after the area in which the source is located has been designated according to Part (c)(1)(B) of this Rule and before the area is designated in 40 CFR 81.334 as nonattainment for ozone if the owner or operator of the source demonstrates, using the Urban Airshed Model (UAM), that the new source or modification will not contribute to or cause a violation. The model used shall be that maintained by the Division. The Division shall run the model only after the permit application has been submitted. The permit application shall be incomplete until the modeling analysis is completed. The owner or operator of the source shall apply such degree of control and obtain such offsets necessary to demonstrate the new source or modified source will not cause or contribute to a violation.

~~(p)(n)~~ If the owner or operator of a source is using projected actual emissions to avoid applicability of prevention of significant deterioration requirements, the owner or operator shall notify the director of the modification. The notification shall include:

- (1) a description of the project,
- (2) identification of sources whose emissions could be affected by the project,

- (3) the calculated projected actual emissions and an explanation of how the projected actual emissions were calculated,
- (4) the calculated baseline emissions and an explanation of how the baseline emissions were calculated, and
- (5) any netting calculations if applicable.

If upon reviewing the notification, the Director finds that it will cause a prevention of significant deterioration evaluation, then the Director shall notify the owner or operator of his findings. The owner or operator shall not make the modification until it has received a permit issued pursuant to this Rule. If a permit revision is not required pursuant to this Rule, the owner or operator shall maintain records of emissions related to the modifications for 10 years if the project involves increasing the emissions unit's design capacity or its potential to emit the regulated NSR pollutant by a significant amount, as defined at 40 CFR 51.165(a)(1)(x), when compared to the pre-modification potential to emit; otherwise these records shall be maintained for five years.

~~(g)(o)~~ The version of the Code of Federal Regulations incorporated in this Rule is that as of ~~November 7, 2003~~, November 29, 2005 except those provisions noticed as stayed in 69 FR 40274, and does not include any subsequent amendments or editions to the referenced material.

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5); 143-215.108(b).

15A NCAC 02D .0535 EXCESS EMISSIONS REPORTING AND MALFUNCTIONS

(a) For this Rule the following definitions apply:

- (1) "Excess Emissions" means an emission rate that exceeds any applicable emission limitation or standard allowed by any rule in Sections .0500, .0900, .1200, or .1400 of this Subchapter; or by a permit condition; or that exceeds an emission limit established in a permit issued under 15A NCAC 02Q .0700.
- (2) "Malfunction" means any unavoidable failure of air pollution control equipment, process equipment, or process to operate in a normal and usual manner that results in excess emissions. Excess emissions during periods of routine start-up and shut-down of process equipment shall not be considered a malfunction. Failures caused entirely or in part by poor maintenance, careless operations or any other upset condition within the control of the emission source shall not be considered a malfunction.
- (3) "Start-up" means the commencement of operation of any source that has shut-down or ceased operation for a period sufficient to cause temperature, pressure, process, chemical, or a pollution control device imbalance that would result in excess emission.

- (4) "Shut-down" means the cessation of the operation of any source for any purpose.

(b) This Rule does not apply to sources to which Rules .0524, .1110, or .1111 of this Subchapter applies unless excess emissions exceed an emission limit established in a permit issued under 15A NCAC 02Q .0700 that is more stringent than the emission limit set by Rules .0524, .1110 or .1111 of this Subchapter.

(c) Any excess emissions that do not occur during start-up or shut-down shall be considered a violation of the appropriate rule unless the owner or operator of the source of excess emissions demonstrates to the Director, that the excess emissions are the result of a malfunction. To determine if the excess emissions are the result of a malfunction, the Director shall consider, along with any other pertinent information, the following:

- (1) The air cleaning device, process equipment, or process has been maintained and operated, to the maximum extent practicable, consistent with good practice for minimizing emissions;
- (2) Repairs have been made expeditiously when the emission limits have been exceeded;
- (3) The amount and duration of the excess emissions, including any bypass, have been minimized to the maximum extent practicable;
- (4) All practical steps have been taken to minimize the impact of the excess emissions on ambient air quality;
- (5) The excess emissions are not part of a recurring pattern indicative of inadequate design, operation, or maintenance;
- (6) The requirements of Paragraph (f) of this Rule have been met; and
- (7) If the source is required to have a malfunction abatement plan, it has followed that plan. All malfunctions shall be repaired as expeditiously as practicable. However, the Director shall not excuse excess emissions caused by malfunctions from a source for more than 15 percent of the operating time during each calendar year. The Director may require the owner or operator of a facility to maintain records of the time that a source operates when it or its air pollution control equipment is malfunctioning or otherwise has excess emissions.

(d) All electric utility boiler units shall have a malfunction abatement plan approved by the Director as satisfying the requirements of Subparagraphs (1) through (3) of this Paragraph. In addition, the Director may require any other source to have a malfunction abatement plan approved by the Director as satisfying the requirements of Subparagraphs (1) through (3) of this Paragraph. If the Director requires a malfunction abatement plan for a source other than an electric utility boiler, the owner or operator of that source shall submit a malfunction abatement plan within 60 days after receipt of the Director's request. The malfunction plans of electric utility boiler units and of other sources required to have them shall be implemented when a malfunction or other breakdown occurs. The purpose of the malfunction abatement plan is to prevent, detect, and correct

malfunctions or equipment failures that could result in excess emissions. A malfunction abatement plan shall contain as a minimum:

- (1) a complete preventive maintenance program including:
 - (A) the identification of individuals or positions responsible for inspecting, maintaining and repairing air cleaning devices;
 - (B) a description of the items or conditions that will be inspected and maintained;
 - (C) the frequency of the inspection, maintenance services, and repairs; and
 - (D) an identification and quantities of the replacement parts that shall be maintained in inventory for quick replacement;
- (2) an identification of the source and air cleaning operating variables and outlet variables, such as opacity, grain loading, and pollutant concentration, that may be monitored to detect a malfunction or failure; the normal operating range of these variables and a description of the method of monitoring or surveillance procedures and of informing operating personnel of any malfunctions, including alarm systems, lights or other indicators; and
- (3) a description of the corrective procedures that the owner or operator will take in case of a malfunction or failure to achieve compliance with the applicable rule as expeditiously as practicable but no longer than the next boiler or process outage that would provide for an orderly repair or correction of the malfunction or 15 days, whichever is shorter. If the owner or operator anticipates that the malfunction would continue for more than 15 days, a case-by-case repair schedule will be established by the Director with the source. The owner or operator shall maintain logs to show that the operation and maintenance parts of the malfunction abatement plan are implemented. These logs shall be subject to inspection by the Director or his designee upon request during business hours.

(e) The owner or operator of any electric utility boiler unit required to have a malfunction abatement plan shall submit a malfunction abatement plan to the Director within 60 days of the effective date of this Rule. The owner or operator of any other source required by the Director to have a malfunction abatement plan shall submit a malfunction abatement plan to the Director within six months after it has been required by the Director. The malfunction abatement plan and any amendment to it shall be reviewed by the Director or his designee. If the plan carries out the objectives described by Paragraph (d) of this Rule, the Director shall approve it. If the plan does not carry out the objectives described by Paragraph (d) of this Rule, the Director

shall disapprove the plan. The Director shall state his reasons for his disapproval. The person who submits the plan shall submit an amendment to the plan to satisfy the reasons for the Director's disapproval within 30 days of receipt of the Director's notification of disapproval. Any person having an approved malfunction abatement plan shall submit to the Director for his approval amendments reflecting changes in any element of the plan required by Paragraph (d) of this Rule or amendments when requested by the Director. The malfunction abatement plan and amendments to it shall be implemented within 90 days upon receipt of written notice of approval.

(f) The owner or operator of a source of excess emissions that last for more than four hours and that results from a malfunction, a breakdown of process or control equipment or any other abnormal conditions, shall:

- (1) notify the Director or his designee of any such occurrence by 9:00 a.m. Eastern time of the Division's next business day of becoming aware of the occurrence and describe:
 - (A) name and location of the facility,
 - (B) the nature and cause of the malfunction or breakdown,
 - (C) the time when the malfunction or breakdown is first observed,
 - (D) the expected duration, and
 - (E) an estimated rate of emissions;
- (2) notify the Director or his designee immediately when the corrective measures have been accomplished;
- (3) submit to the Director within 15 days after the request a written report that includes:
 - (A) name and location of the facility,
 - (B) identification or description of the processes and control devices involved in the malfunction or breakdown,
 - (C) the cause and nature of the event,
 - (D) time and duration of the violation or the expected duration of the excess emission if the malfunction or breakdown has not been fixed,
 - (E) estimated quantity of pollutant emitted,
 - (F) steps taken to control the emissions and to prevent recurrences and if the malfunction or breakdown has not been fixed, steps planned to be taken, and
 - (G) any other pertinent information requested by the Director. After the malfunction or breakdown has been corrected, the Director may require the owner or operator of the source to test the source in accordance with Rule .0501 of this Section Section 2600 of this Subchapter to demonstrate compliance.

(g) Start-up and shut-down. Excess emissions during start-up and shut-down shall be considered a violation of the appropriate

rule if the owner or operator cannot demonstrate that the excess emissions are unavoidable. To determine if excess emissions are unavoidable during startup or shutdown the Director shall consider the items listed in Paragraphs (c)(1), (c)(3), (c)(4), (c)(5), and (c)(7) of this Rule along with any other pertinent information. The Director may specify for a particular source the amount, time, and duration of emissions allowed during start-up or shut-down. The owner or operator shall, to the extent practicable, operate the source and any associated air pollution control equipment or monitoring equipment in a manner consistent with best practicable air pollution control practices to minimize emissions during start-up and shut-down.

Authority G.S. 143-215.3(a)(1);143-215.107(a)(4); 143-215.107(a)(5).

15A NCAC 02D .0536 PARTICULATE EMISSIONS FROM ELECTRIC UTILITY BOILERS

(a) The purpose of this Rule is to establish particulate and visible emission limits for the listed units by utilizing control technology to protect the public health and welfare of the State and its citizens.

(b) Notwithstanding Rule .0503 of this Section, emissions of particulate matter from the utility boiler units specified in the following table shall not exceed the maximum emission rate in the table as measured by a stack test conducted in accordance with ~~Rule .0501 of this Section.~~ Section .2600 of this Subchapter. The results of any stack test shall be reported within 30 days, and the test report shall be submitted within 60 days after the test. In addition to limitations contained in Rule

.0521 of this Section, visible emissions from the utility boiler units specified in the table shall not exceed the annual average opacity limits in the table. Each day an annual average opacity value shall be calculated for each unit for the most recent 365-day period ending with the end of the previous day. The average is the sum of the measured non-overlapping six-minute averages of opacity determined only while the unit is in operation divided by the number of such measured non-overlapping six-minute averages. Start-up, shut-down, and non-operating time shall not be included in the annual average opacity calculation, but malfunction time shall be included, Rule .0535 of this Section notwithstanding. The ~~director~~ Director may approve an alternate method of calculating the annual average opacity if:

- (1) the alternate method is submitted by the electric utility company,
- (2) the director concludes that the alternate method will not cause a systematic or unacceptable difference in calculated values from the specified method, and
- (3) it is mutually agreed that the values calculated using the alternate method can be used for enforcement purposes.

The owner or operator of each unit shall submit a report to the ~~director~~ Director by the 30th day following the end of each month. This report shall show for each day of the previous month the calculated annual average opacity of each unit and the annual average opacity limit. If a violation occurs, the owner or operator of the unit shall immediately notify the ~~director~~ Director.

Facility	Boiler/Unit	Maximum Emission Rate (Lb/Million Btu of Heat Input)	Annual Average Opacity Limit (Percent)
Duke Power Comp.			
Allen	1	0.25	20
	2	0.25	20
	3	0.25	13
	4	0.25	14
	5	0.25	17
Belews Creek	1	0.15	17
	2	0.15	17
Buck	5	0.15	10
	6	0.15	10
	7	0.15	6
	8	0.15	8
	9	0.15	10
Cliffside	1	0.25	8
	2	0.25	12
	3	0.25	8
	4	0.25	8
	5	0.25	16

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Facility	Boiler/Unit	Maximum Emission Rate (Lb/Million Btu of Heat Input)	Annual Average Opacity Limit (Percent)
Dan River	1	0.15	7
	2	0.15	9
	3	0.25	20
Marshall	1	0.20	20
	2	0.20	20
	3	0.18	20
	4	0.18	20
Riverbend	4	0.12	12
	5	0.12	12
	6	0.12	12
	7	0.12	12
Carolina Power & Light Company			
Asheville	1	0.12	10
	2	0.12	5
Cape Fear	5	0.20	17
	6	0.20	15
Lee	1	0.25	18
	2	0.13	11
	3	0.25	15
Roxboro	1	0.25	15
	2	0.16	20
	3	0.10	25
Sutton	1	0.11	14
	2	0.11	14
	3	0.11	20
Weatherspoon	1	0.14	8
	2	0.14	10
	3	0.15	23

(c) For the purpose of this Rule, the heat input shall be the total heat content of all fuels burned in the unit during the period of time for which the compliance determination is being made.

(d) Stack tests shall be conducted in accordance with ~~Rule .0501 of this Section, Section .2600 of this Subchapter,~~ and six-minute average opacity readings shall be recorded during the tests. If a stack test and opacity data are acceptable to the ~~director~~ Director, the results shall be used by the owner or operator to update and refine the mass-opacity curve for that unit at least annually or when otherwise requested by the ~~director~~ Director. The owner or operator of a unit shall notify the ~~director~~ Director whenever an alteration in the equipment, method of operation, fuel, or other factors, may cause a systematic change in the mass-opacity curve expected to last more than one month.

(e) The owner or operator of units listed in Paragraph (b) of this Rule shall produce each year for each unit at least one stack test conducted in accordance with ~~Rule .0501 of this Section, Section .2600 of this Subchapter,~~ the results of which are submitted to and accepted by the ~~director~~ Director and which demonstrate achievement of the maximum emission rate for that unit.

(f) Whenever a stack test shows emissions of particulate matter exceeding the maximum emission rate listed in Paragraph (b) of this Rule, all necessary steps shall be taken to ensure that the emissions of particulate matter do not continue to exceed the maximum emission rate and a retest shall be conducted before the 45th operating day following the day the excess was measured.

(g) Opacity shall be measured using an opacity monitoring system that meets the performance specifications of Appendix B of 40 CFR Part 60. The opacity monitoring system shall be subjected to a quality assurance program approved by the ~~director~~ Director. The owner or operator of each unit subject to this Rule shall have on file with the ~~director~~ Director an approved quality assurance program, and shall submit to the ~~director~~ Director within the time period of his request for his approval a revised quality assurance program, including at least procedures and frequencies for calibration, standards traceability, operational checks, maintenance, auditing, data validation, and a schedule for implementing the quality assurance program.

(h) The owner or operator of each unit subject to this Rule shall have on file with the ~~director~~ Director an approved malfunction abatement plan, and shall submit to the ~~director~~ Director within the time period of his request for his approval a revised malfunction abatement plan, in accordance with Rule .0535(d) and (e) of this Section. The owner or operator shall submit each month for each malfunction and other equipment failures that occurred at each unit during the preceding month a report that meets the requirements of Rule .0535(f)(3) of this Section.

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).

15A NCAC 02D .0542 CONTROL OF PARTICULATE EMISSIONS FROM COTTON GINNING OPERATIONS

(a) Purpose. The purpose of this Rule is to establish control requirements for particulate emissions from cotton ginning operations.

(b) Definitions. For the purposes of this Rule the following definitions apply:

- (1) "1D-3D cyclone" means any cyclone-type collector of the 1D-3D configuration. This designation refers to the ratio of the cylinder to cone length, where D is the diameter of the cylinder portion. A 1D-3D cyclone has a cylinder length of 1xD and a cone length of 3xD.
- (2) "2D-2D cyclone" means any cyclone-type collector of the 2D-2D configuration. This designation refers to the ratio of the cylinder to cone length, where D is the diameter of the cylinder portion. A 2D-2D cyclone has a cylinder length of 2xD and a cone length of 2xD.
- (3) "Bale" means a compressed and bound package of cotton lint, nominally weighing 500 pounds.
- (4) "Existing facility" means a cotton ginning operation that operated prior to July 1, 2002.
- (5) "Ginning operation" means any facility or plant that removes seed, lint, and trash or one or more combination of these from raw cotton or bales of lint cotton.
- (6) "Ginning season" means the period of time during which the gin is in operation, which is generally from September of the current year through January of the following year.

(7) "High pressure exhausts" means the exhaust air systems at a cotton gin that are not defined as "low pressure exhausts."

(8) "Low pressure exhausts" means the exhaust cotton handling systems located at a cotton gin that handle air from the cotton lint handling system and battery condenser.

(c) Applicability. This rule applies to all existing, new, and modified cotton ginning operations. Existing facilities with a maximum rated capacity of less than 20 bales per hour that do not have cyclones on lint cleaners and battery condensers as of July 1, 2002 shall not be required to add:

- (1) the emission control devices in Paragraph (d)(1) of this Rule to lint cleaning exhausts if emissions from the lint cleaning are controlled by fine mesh screens; and
- (2) the emission control devices in Paragraph (d)(2) of this Rule to battery condenser exhausts if the emissions from the battery condenser are controlled by fine mesh screens.

(d) Emission Control Requirements. The owner or operator of each cotton ginning operation shall control particulate emissions from the facility by controlling as follows:

- (1) ~~By no later than September 1, 2003, the owner or operator shall control~~ all high pressure exhausts and lint cleaning exhausts with an emission control system that includes:
 - (A) one or more 1D-3D or 2D-2D cyclones to achieve 95% efficiency; or
 - (B) an equivalent device with a minimum of 95% efficiency.
- (2) ~~By no later than September 1, 2003, the owner or operator shall control~~ low pressure exhausts, except lint cleaning exhausts, by an emission control system that includes:
 - (A) one or more 1D-3D or 2D-2D cyclones to achieve 90% efficiency; or
 - (B) an equivalent device with at least a 90% efficiency.

Efficiency is based on the removal of particulate matter between the cyclone's inlet and outlet; it is measured using test methods in ~~Rule .0501 of this Section~~ Section .2600 of this Subchapter.

(e) Raincaps. Exhausts from emission points or control devices shall not be equipped with raincaps or other devices that deflect the emissions downward or outward ~~outward after September 1, 2002~~.

(f) Operation and Maintenance. To ensure that optimum control efficiency is maintained, the owner or operator shall establish, based on manufacturers recommendations, an inspection and maintenance schedule for the control devices, other emission processing equipment, and monitoring devices that are used pursuant to this Rule. The inspection and maintenance schedule shall be followed throughout the ginning season. The results of the inspections and any maintenance performed on the control equipment, emission processing equipment, or monitoring devices shall be recorded in the log book required in Paragraph (k) of this Rule.

(g) Fugitive Emissions. The owner or operator shall minimize fugitive emissions from cotton ginning operations as follows.

- (1) The owner or operator of a
 - (A) trash stacker shall:
 - (i) install, maintain, and operate as a minimum, a three sided enclosure with a roof whose sides are high enough above the opening of the dumping device to prevent wind from dispersing dust or debris; or
 - (ii) install, maintain, and operate a device to provide wet suppression at the dump area of the trash cyclone and minimize free fall distance of waste material exiting the trash cyclone; or
 - (B) trash stacker/trash composting system shall install, maintain, and operate a wet suppression system providing dust suppression in the auger box assembly and at the dump area of the trash stacker system. The owner or operator shall keep the trash material wet and compost it in place until the material is removed from the dump area for additional composting or disposal.
- ~~(3)~~(2) Gin Yard. The owner or operator shall clean and dispose of accumulations of trash or lint on the non-storage areas of the gin yard daily.
- ~~(4)~~(3) Traffic areas. The owner or operator shall clean paved roadways, parking, and other traffic areas at the facility as necessary to prevent re-entrainment of dust or debris. The owner or operator shall treat unpaved roadways, parking, and other traffic areas at the facility with wet or chemical dust suppressant as necessary to prevent dust from leaving the facility's property and shall install and maintain signs limiting vehicle speed to 10 miles per hour where chemical suppression is used and to 15 miles per hour where wet suppression is used.
- ~~(5)~~(4) Transport of Trash Material. The owner or operator shall ensure that all trucks transporting gin trash material are covered and that the trucks are cleaned of over-spill material before trucks leave the trash hopper dump area. The dump area shall be cleaned daily.

(h) Alternative Control Measures. The owner or operator of a ginning operation may petition for use of alternative control measures to those specified in this Rule. The petition shall include:

- (1) the name and address of the petitioner;
- (2) the location and description of the ginning operation;

- (3) a description of the alternative control measure;
- (4) a demonstration that the alternative control measure is at least as effective as the control device or method specified in this Rule.

(i) Approval of Alternative Control Measure. The Director shall approve the alternative control measure if he finds that:

- (1) all the information required by Paragraph (h) of this Rule has been submitted; and
- (2) the alternative control measure is at least as effective as the control device or method specified in this Rule.

(j) Monitoring.

- (1) The owner or operator of each ginning operation shall install, maintain, and calibrate monitoring devices that measure pressures, rates of flow, and other operating conditions necessary to determine if the control devices are functioning properly.
- (2) Before or during the first week of operation of the 2002-2003 ginning season, the owner or operator of each gin shall conduct a baseline study of the entire dust collection system, without cotton being processed, to ensure air flows are within the design range for each collection device. For 2D-2D cyclones the air flow design range is 2600 to 3600 feet per minute. For 1D-3D cyclones the design range is 2800 to 3600 feet per minute. For other control devices the air flow design range is that found in the manufacturer's specifications. Gins constructed after the 2002-2003 ginning season shall conduct the baseline study before or during the first week of operation of the first ginning season following construction. During the baseline study the owner or operator shall measure or determine according to the methods specified in this Paragraph and record in a logbook:
 - (A) the calculated inlet velocity for each control device; and
 - (B) the pressure drop across each control device.

The owner or operator shall use Method 1 and Method 2 of 40 CFR Part 60 Appendix A to measure flow and static pressure and determine inlet velocity or the USDA method for determining duct velocity and static pressure in Agricultural Handbook Number 503, *Cotton Ginners Handbook*, dated December 1994. The Cotton Ginners Handbook method shall only be used where test holes are located a minimum of eight and one-half pipe diameters downstream and one and one-half pipe diameters upstream from elbows, valves, dampers, changes in duct diameter or any other flow disturbances. Where Method 2 is used a standard pitot tube may be used in lieu of the s-pitot specified in

Method 2 subject to the conditions specified in Paragraph 2.1 of Method 2.

- (3) On a monthly basis following the baseline study, the owner or operator shall measure and record in the logbook the static pressure at each port where the static pressure was measured in the baseline study. Measurements shall be made using a manometer, a Magnahelic® gauge, or other device that the Director has approved as being equivalent to a manometer. If the owner or operator measures a change in static pressure of 20 percent or more from that measured in the baseline study, the owner or operator shall initiate corrective action. Corrective action shall be recorded in the logbook. If corrective action will take more than 48 hours to complete, the owner or operator shall notify the regional supervisor of the region in which the ginning operation is located as soon as possible, but by no later than the end of the day such static pressure is measured.
- (4) When any design changes to the dust control system are made, the owner or operator shall conduct a new baseline study for that portion of the system and shall record the new values in the logbook required in Paragraph (k) of this Rule. Thereafter monthly static pressure readings for that portion of the system shall be compared to the new values.
- (5) During the ginning season, the owner or operator shall daily inspect for structural integrity of the control devices and other emissions processing systems and shall ensure that the control devices and emission processing systems conform to normal and proper operation of the gin. If a problem is found, corrective action shall be taken and recorded in the logbook required in Paragraph (k) of this Rule.
- (6) At the conclusion of the ginning season, the owner or operator shall conduct an inspection of the facility to identify all scheduled maintenance activities and repairs needed relating to the maintenance and proper operation of the air pollution control devices for the next season. Any deficiencies identified through the inspection shall be corrected before beginning operation of the gin for the next season.
- (k) Recordkeeping. The owner operator shall establish and maintain on-site a logbook documenting the following items:
 - (1) Results of the baseline study as specified in Paragraph (j)(2) of this Rule;
 - (2) Results of new baseline studies as specified in Paragraph (j)(4) of this Rule;
 - (3) Results of monthly static pressure checks and any corrective action taken as specified in Paragraph (j)(3) of this Rule;

- (4) Observations from daily inspections of the facility and any resulting corrective actions taken as required in Paragraph (j)(5) of this Rule; and
- (5) A copy of the manufacturer's specifications for each type of control device installed.

The logbook shall be maintained on site and made available to Division representatives upon request.

(l) Reporting. The owner or operator shall submit:

- (1) by March 1 of each year a report containing the following:
 - (2) the name and location of the cotton gin;
 - (3) the number of bales of cotton produced during the previous ginning season;
 - (4) a maintenance and repair schedule based on inspection of the facility at the conclusion of the previous cotton ginning season required in Paragraph (j)(6) of this Rule; and
 - (5) signature of the appropriate official as identified in 15A NCAC 02Q .0304(j), certifying as to the truth and accuracy of the report.

(m) Compliance Schedule. Existing sources shall comply as specified in Paragraph (d) of this Rule. New and modified sources shall be in compliance upon start-up.

(n) Record retention. The owner or operator shall retain all records required to be kept by this Rule for a minimum of three years from the date of recording.

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).

SECTION .0600 - MONITORING: RECORDKEEPING: REPORTING

15A NCAC 02D .0606 SOURCES COVERED BY APPENDIX P OF 40 CFR PART 51

(a) The following sources shall be monitored as described in Paragraph 2 of Appendix P of 40 CFR Part 51:

- (1) fossil fuel-fired steam generators,
- (2) nitric acid plants,
- (3) sulfuric acid plants, and
- (4) petroleum refineries.

Sources covered by Rule .0524 of this Subchapter are exempt from this Rule.

(b) The monitoring systems required under Paragraph (a) of this Rule shall meet the minimum specifications described in Paragraphs 3.3 through 3.8 of Appendix P of 40 CFR Part 51.

(c) The excess emissions recorded by the monitoring systems required to be installed under this Rule shall be reported no later than 30 days after the end of the quarter to the Division in the manner described in Paragraphs 4 and 5.1 through 5.3.3 of Appendix P of 40 CFR Part 51 except that a six-minute time period shall be deemed as an appropriate alternative opacity averaging period as described in Paragraph 4.2 of Appendix P of 40 CFR Part 51. The owner or operators of any sources subject to this Rule that are required to monitor emissions of sulfur dioxide or nitrogen oxides under any other state or federal rule with continuous emission monitoring systems shall monitor compliance with the sulfur dioxide emission standard in Rule

.0516 of this Subchapter and the nitrogen oxide emission standard in Rule .0519 or Section .1400 of this Subchapter with a continuous emission monitoring system. Compliance with sulfur dioxide and nitrogen oxide emission standards shall be determined by averaging hourly continuous emission monitoring system values over a 24-hour block period beginning at midnight. To compute the 24-hour block average, the average hourly values shall be summed, and the sum shall be divided by 24. A minimum of four data points, equally spaced, is required to determine a valid hour value unless the continuous emission monitoring system is installed to meet the provisions of 40 CFR Part 75. If a continuous emission monitoring system is installed to meet the provisions of 40 CFR Part 75, the minimum number of data points shall be determined by 40 CFR Part 75.

(d) For emissions of sulfur dioxide, fuel analysis may be used in place of a continuous emissions monitoring system if the source is not required to monitor emissions of sulfur dioxide using a continuous emissions monitoring system under another state or federal rule. If fuel analysis is used as an alternative method to determine emissions of sulfur dioxide, the test methods described in ~~Parts (c)(4)(A) and (B) of Rule .0501 of this Subchapter~~ Section .2600 of this Subchapter shall be used except that gross or composite samples, gross calorific value, moisture content, and sulfur content shall be determined per shipment. Alternatively, gross or composite samples, gross calorific value, moisture content, and sulfur content may be determined sampling the fuel as fired if the owner or operator demonstrates to the Director that sampling as fired provides a more accurate estimation of sulfur dioxide emissions than sampling each shipment. If sulfur dioxide emissions are determined sampling fuel as fired, then a fuel sample shall be taken every four hours. These four-hour samples shall be composited into a daily sample, and the daily sample shall be composited into a weekly sample. This weekly sample shall be analyzed using the procedures in ~~Parts (c)(4)(A) and (B) of Rule .0501 of this Subchapter~~ Section .2600 of this Subchapter. The sulfur dioxide emission rate shall also be determined using fuel analysis data. Sulfur retention credit shall be granted and used for computing sulfur dioxide emission rates if a source, on a case-by-case basis, quantitatively and empirically demonstrates the sulfur retention.

(e) Wherever the language of the referenced portion of Appendix P of 40 CFR Part 51 speaks of the "state" or "state plan", the requirements described in Appendix P of 40 CFR Part 51 shall apply to those sources to which the requirements pertain.

(f) The owner or operator of the source shall conduct a daily zero and span check of the continuous opacity monitoring system following the manufacturer's recommendations and shall comply with the requirements of Rule .0613 of this Section.

(g) The owner or operator of the source may request to use a different procedure or methodology than that required by this Rule if one of the conditions identified in 40 CFR Part 51, Appendix P, Section 3.9 exists. The person requesting to use a different procedure or methodology shall submit the request to the Director along with a description of the different procedure or methodology proposed to be used, an explanation of why the procedure or methodology required by this Rule will not work, and a showing that the proposed procedure or methodology is equivalent to the procedure or methodology being replaced. The

Director shall approve the use of this procedure or methodology if he finds that one of the conditions identified in 40 CFR Part 51, Appendix P, Section 3.9 exists, that the procedure or methodology required by this Rule will not work, and that the proposed procedure or methodology is equivalent to the procedure or methodology that it will replace.

(h) The owner or operator of the source shall report to the Director no later than 30 days following the end of the quarter the following information:

- (1) for fuel analysis per shipment:
 - (A) the quantity and type of fuels burned,
 - (B) the BTU value,
 - (C) the sulfur content in percent by weight, and
 - (D) the calculated sulfur dioxide emission rates expressed in the same units as the applicable standard.
- (2) for continuous monitoring of emissions:
 - (A) the daily calculated sulfur dioxide and nitrogen oxide emission rates expressed in the same units as the applicable standard for each day, and
 - (B) other information required under Appendix P of 40 CFR Part 51.

(i) If emission testing for compliance with the sulfur dioxide emission standard is required, the testing shall be done according to 40 CFR Part 60, Appendix A, Method 6.

(j) If emission testing for compliance with the nitrogen oxide emission standard is required, the testing shall be done according to 40 CFR Part 60, Appendix A, Method 7.

Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(4).

15A NCAC 02D .0608 OTHER LARGE COAL OR RESIDUAL OIL BURNERS

(a) The owner or operator of any fuel burning unit shall determine sulfur dioxide emissions into the ambient air if the unit:

- (1) burns coal or residual oil;
- (2) is not required to monitor sulfur dioxide emissions by Rules .0524 or .0606 of this ~~Subchapter~~ Subchapter;
- (3) has a total heat input of more than 250 million BTU per hour from coal and residual oil; and
- (4) has an annual average capacity factor greater than 30 percent as determined from the three most recent calendar year reports to the Federal Power Commission or as otherwise demonstrated to the Director by the owner or operator. (If the unit has not been in existence for three calendar years, its three-calendar-year average capacity factor shall be determined by estimating its annual capacity factors for enough future years to allow a three-calendar-year average capacity factor to be computed. If this three-calendar-year average capacity factor exceeds 30 percent, the unit shall be monitored. If this three-calendar-year average

capacity factor does not exceed 30 percent, the unit need not be monitored.)

(b) Once the unit is being monitored in accordance with Paragraph (a) of this Rule, it shall continue to be monitored until its most recent three-calendar-year average capacity factor does not exceed 25 percent. Once the unit is not being monitored in accordance with Subparagraph (a) of this Rule, it need not be monitored until its most recent three-calendar-year average capacity factor exceeds 35 percent.

(c) If units required to be monitored have a common exhaust or if units required to be monitored have a common exhaust with units not required to be monitored, then the common exhaust may be monitored, and the sulfur dioxide emissions need not be apportioned among the units with the common exhaust.

(d) The owner or operator of the source shall determine sulfur dioxide emissions by:

- (1) an instrument for continuous monitoring and recording of sulfur dioxide emissions, or
- (2) analyses of representative samples of fuels to determine BTU value and percent sulfur content.

(e) The owner or operators of any sources subject to this Rule that are required to monitor emissions of sulfur dioxide under any other state or federal rule with continuous emission monitoring systems shall monitor compliance with the sulfur dioxide emission standard in Rule .0516 of this Subchapter with a continuous emission monitoring system. Compliance with sulfur dioxide emission standards shall be determined by averaging hourly continuous emission monitoring system values over a 24-hour block period beginning at midnight. To compute the 24-hour block average, the average hourly values shall be summed, and the sum shall be divided by 24. A minimum of four data points, equally spaced, is required to determine a valid hour value unless the continuous emission monitoring system is installed to meet the provisions of 40 CFR Part 75. If a continuous emission monitoring system is installed to meet the provisions of 40 CFR Part 75, the minimum number of data points shall be determined by 40 CFR Part 75.

(f) For emissions of sulfur dioxide, fuel analysis may be used in place of a continuous emissions monitoring system if the source is not required to monitor emissions of sulfur dioxide using a continuous emissions monitoring system under another state or federal rule. If fuel analysis is used as an alternative method to determine emissions of sulfur dioxide, then:

- (1) for coal, the test methods described in ~~Rule 2D .0501(e)(4)(A) of this Subchapter~~ Section .2600 of this Subchapter shall be used except that gross or composite samples, gross caloric value, moisture content, and sulfur content shall be determined per shipment. Alternatively, gross or composite samples, gross caloric value, moisture content, and sulfur content may be determined sampling the fuel as fired if the owner or operator demonstrates to the Director that sampling as fired provides a more accurate estimation of sulfur dioxide emissions than sampling each shipment. If sulfur dioxide emissions are determined sampling fuel as fired, then a fuel

sample shall be taken every four hours. These four-hour samples shall be composited into a daily sample, and the daily sample shall be composited into a weekly sample. This weekly sample shall be analyzed using the procedures in ~~Parts (e)(4)(A) and (B) of Rule .0501 of this Subchapter~~ Section .2600 of this Subchapter. The sulfur dioxide emission rate shall also be determined using fuel analysis data. Sulfur retention credit shall be granted and used for computing sulfur dioxide emission rates if a source, on a case-by-case basis, quantitatively and empirically demonstrates the sulfur retention.

- (2) for residual oil, the test methods described in ~~Rule .0501(e)(4)(B) of this Subchapter~~ Section .2600 of this Subchapter shall be used except that sulfur content shall be determined per shipment. Alternatively, gross or composite samples, gross caloric value, moisture content, and sulfur content may be determined sampling the fuel as fired if the owner or operator demonstrates to the Director that sampling as fired provides a more accurate estimation of sulfur dioxide emissions than sampling each shipment. If sulfur dioxide emissions are determined sampling fuel as fired, then a fuel sample shall be taken every four hours. These four-hour samples shall be composited into a daily sample, and the daily sample shall be composited into a weekly sample. This weekly sample shall be analyzed using the procedures in ~~Parts (e)(4)(A) and (B) of Rule .0501 of this Subchapter~~ Section .2600 of this Subchapter. Residual oil shall be collected in accordance with ASTM D4177 or D4057.

(g) The owner or operator of the source may request to use a different procedure or methodology than that required by this Rule if one of the conditions identified in 40 CFR Part 51, Appendix P, Section 3.9 exists. The person requesting to use a different procedure or methodology shall submit the request to the Director along with a description of the different procedure or methodology proposed to be used, an explanation of why the procedure or methodology required by this Rule will not work, and a showing that the proposed procedure or methodology is equivalent to the procedure or methodology being replaced. The Director shall approve the use of this procedure or methodology if he finds that one of the conditions identified in 40 CFR Part 51, Appendix P, Section 3.9 exists, that the procedure or methodology required by this Rule will not work, and that the proposed procedure or methodology is equivalent to the procedure or methodology that it will replace.

(h) The owner or operator of the source shall report to the Director no later than 30 days following the end of the quarter the following information:

- (1) for fuel analysis per shipment:
 - (A) the quantity and type of fuels burned,
 - (B) the BTU value,

- (C) the sulfur content in percent by weight, and
- (D) the calculated sulfur dioxide emission rates expressed in the same units as the applicable standard.
- (2) for continuous monitoring of emissions:
 - (A) the daily calculated sulfur dioxide emission rates expressed in the same units as the applicable standard for each day, and
 - (B) other information required under Appendix P of 40 CFR Part 51.

(i) The owner or operator of the source shall conduct a daily zero and span check of the continuous emission monitoring system following the manufacturer's recommendations and shall comply with the requirements of Rule .0613 of this Section.

(j) If emission testing for compliance with the sulfur dioxide emission standard is required, the testing shall be done according to 40 CFR Part 60, Appendix A, Method 6.

Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(4).

SECTION .0900 - VOLATILE ORGANIC COMPOUNDS

15A NCAC 02D .0901 DEFINITIONS

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

- (1) "Coating" means a functional, protective, or decorative film applied in a thin layer to a surface.
- (2) "Coating applicator" means an apparatus used to apply a surface coating.
- (3) "Coating line" means one or more apparatus or operations in a single line wherein a surface coating is applied, dried, or cured and which include a coating applicator and flashoff area and may include an oven or associated control devices.
- (4) "Continuous vapor control system" means a vapor control system which treats vapors displaced from tanks during filling on a demand basis without intermediate accumulation.
- (5) "Delivered to the applicator" means the condition of coating after dilution by the user just before application to the substrate.
- (6) "Flashoff area" means the space between the application area and the oven.
- (7) "High solids coating" means a coating which contains a higher percentage of solids and a lower percentage of volatile organic compounds and water than conventional organic solvent borne coatings.
- (8) "Hydrocarbon" means any organic compound of carbon and hydrogen only.
- (9) "Incinerator" means a combustion apparatus designed for high temperature operation in which solid, semisolid, liquid, or gaseous combustible wastes are ignited and burned

efficiently and from which the solid and gaseous residues contain little or no combustible material.

- (10) "Intermittent vapor control system" means a vapor control system which employs an intermediate vapor holder to accumulate vapors displaced from tanks during filling. The control device treats the accumulated vapors only during automatically controlled cycles.
- (11) "Loading rack" means an aggregation or combination of loading equipment arranged so that all loading outlets in the combination can be connected to a tank truck or trailer parked in a specified loading space.
- (12) "Low solvent coating" means a coating which contains a substantially lower amount of volatile organic compound than conventional organic solvent borne coatings; it usually falls into one of three major groups of high solids, waterborne, or powder coatings.
- (13) "Organic material" means a chemical compound of carbon excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate.
- (14) "Oven" means a chamber within which heat is used to bake, cure, polymerize, or dry a surface coating.
- (15) "Potential emissions" means the quantity of a pollutant which would be emitted at the maximum capacity of a stationary source to emit the pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is described or contained as a condition in the federally enforceable permit. Secondary emissions do not count in determining potential emissions of a stationary source. Fugitive emissions count, to the extent quantifiable, in determining the potential emissions only in these cases:
 - (a) petroleum refineries;
 - (b) chemical process plants; and
 - (c) petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels.
- (16) "Prime coat" means the first film of coating applied to a surface to protect it or to prepare it to receive subsequent coatings.
- (17) "Reasonably available control technology" (also denoted as RACT) means the lowest emission limit which a particular source is

capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility. It may require technology which has been applied to similar, but not necessarily identical, source categories.

- (18) "Reid vapor pressure" means the absolute vapor pressure of volatile crude oil and volatile nonviscous petroleum liquids except liquefied petroleum gases as determined by American Society for Testing and Materials, Part 17, 1973, D-323-72 (reapproved 1977).
- (19) "Shutdown" means the cessation of operation of a source or a part thereof or emission control equipment.
- (20) "Solvent" means organic materials which are liquid at standard conditions and which are used as dissolvers, viscosity reducers, or cleaning agents.
- (21) "Standard conditions" means a temperature of 68 pressure of 29.92 inches of mercury.
- (22) "Startup" means the setting in operation of a source or emission control equipment.
- (23) "Substrate" means the surface to which a coating is applied.
- (24) "Topcoat" means the final films of coating applied in a multiple or single coat operation.
- (25) "True vapor pressure" means the equilibrium partial pressure exerted by a petroleum liquid as determined in accordance with methods described in American Petroleum Institute Bulletin 2517, "Evaporation Loss from Floating Roof Tanks," 1962.
- (26) "Vapor collection system" means a vapor transport system which uses direct displacement by the liquid loaded to force vapors from the tank into a vapor control system.
- (27) "Vapor control system" means a system which prevents release to the atmosphere of at least 90 percent by weight of organic compounds in the vapors displaced from a tank during the transfer of gasoline.
- (28) "Volatile organic compound" (also denoted as VOC) means any compound of carbon whose volatile content can be determined by the procedure described in ~~Rules .0913 or .0939 of this~~ Section .2600 of this Subchapter excluding any compound that is listed under 40 CFR 51.100(s) as having been determined to have negligible photochemical reactivity.

~~described in Section .2600 of this Subchapter. Rules .0912 through .0916 and .0939 through .0942 of this Section.~~ The owner or operator of a volatile organic compound source shall demonstrate compliance when the Director requests such demonstration. ~~The Director shall explain to the owner or operator the basis for requesting a demonstration of compliance and shall allow reasonable time for testing to be performed.~~

~~(b) Volatile organic compound emissions compliance testing shall be allowed and the results shall be accepted, only if the Director has been notified as required by Paragraph (c) of this Rule and if the Director has granted approval. The Director shall grant approval if all the information required under Paragraph (c) of this Rule is included in the notification and if the correct testing procedures are used.~~

~~(c) Any person proposing to conduct a volatile organic compound emissions test shall notify the Director at least 21 days before beginning the test so that the Director may at his option observe the test. Any person notifying the Director of a proposed volatile organic compound emissions test shall include as part of notification the following minimum information:~~

- ~~(1) a statement indicating the purpose of the proposed test;~~
- ~~(2) a detailed description of the facility to be tested;~~
- ~~(3) a detailed description of the test procedures, equipment, and sampling sites; and~~
- ~~(4) a timetable, setting forth the dates on which:

 - ~~(A) The testing will be conducted;~~
 - ~~(B) Preliminary test results will be reported (not later than 30 days after sample collection); and~~
 - ~~(C) The final test report will be submitted (not later than 60 days after completion of on site sampling).~~~~

~~(d)~~ (b) If the volatile organic compound emissions test shows noncompliance, the owner or operator of the volatile organic source shall submit along with the final test report proposed corrective action.

~~(e) For compliance determination, the owner or operator of any volatile organic compound emissions source shall be responsible for providing:~~

- ~~(1) sampling ports, pipes, lines, or appurtenances for the collection of samples and data required by the test procedure;~~
- ~~(2) safe access to the sample and data collection locations; and~~
- ~~(3) light, electricity, and other utilities required for sample and data collection.~~

~~(f)~~ (c) Compliance shall be determined on a line-by-line basis using the more stringent of the following two:

- (1) Compliance shall be determined on a daily basis for each coating line using a weighted average, that is, dividing the sum of the mass (pounds) of volatile organic compounds in coatings consumed on that coating line, as received, and the mass (pounds) of volatile organic compound solvents added to the coatings on that coating line by the volume

Authority G.S. 143-215.3(a)(1).

15A NCAC 02D .0912 GENERAL PROVISIONS ON TEST METHODS AND PROCEDURES

(a) The owner or operator of any volatile organic compound source required to comply with rules in this Section ~~shall~~ shall, ~~at his own expense,~~ demonstrate compliance by the methods

- (gallons) of coating solids consumed during that day on that coating line; or
- (2) Compliance shall be determined as follows:
- (A) When low solvent or high solids coatings are used to reduce emissions of volatile organic compounds, compliance shall be determined instantaneously.
- (B) When add on control devices, e.g., solvent recovery systems or incinerators, are used to reduce emissions of volatile organic compounds, compliance shall be determined by averaging emissions over a one-hour period.

~~(g) The Director may authorize the Division of Air Quality to conduct independent tests of any source subject to a rule in this Section to determine the compliance status of that source or to verify any test data submitted about that source. Any test conducted by the Division of Air Quality using the appropriate testing procedures described in this Section shall have precedence over all other tests. The United States Environmental Protection Agency (EPA) may verify any test submitted by the owner or operator of a source, and any test conducted by EPA using the appropriate testing procedures described in this Section shall have precedence over tests conducted by the owner or operator of the source.~~

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).

15A NCAC 02D .0913 DETERMINATION OF VOLATILE CONTENT OF SURFACE COATINGS

~~(a) In accordance with Regulation .0912 of this Section, the volatile matter content, water content, density, volume of solids and weight of solids of surface coatings shall be determined by the procedures set forth in Method 24 of Appendix A of 40 CFR Part 60. Compounds exempted under Paragraph (28) of Regulation .0901 of this Section shall be treated as water. The results of the tests shall be expressed in the same units as the emission limits given in the regulation for which compliance is being determined.~~

~~(b) In accordance with Regulation .0912 of this Section, the volatile matter and density of printing inks and related coatings shall be determined by the procedures set forth in Method 24A of Appendix A of 40 CFR Part 60. The results of the tests shall be expressed in the same units as the emission limits given in the regulation for which compliance is being determined.~~

~~(c) The Code of Federal Regulations adopted by reference in this Rule shall automatically include any later amendments thereto as allowed by G.S. 150B-14(c).~~

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5); 150B-14(c).

15A NCAC 02D .0914 DETERMINATION OF VOC EMISSION CONTROL SYSTEM EFFICIENCY

~~(a) The provisions of this Rule are applicable, in accordance with Rule .0912 of this Section, to any test method employed to determine the collection or control efficiency of any device or~~

~~system designed, installed, and operated for the purpose of reducing volatile organic compound emissions.~~

~~(b) The following procedures shall be used to determine efficiency:~~

- ~~(1) The volatile organic compound containing material shall be sampled and analyzed using the procedures contained in this Subchapter such that the quantity of emissions that could result from the use of the material can be quantified.~~
- ~~(2) Samples of the gas stream containing volatile organic compounds shall be taken simultaneously at the inlet and outlet of the emissions control device.~~
- ~~(3) The total combustible carbon content of the samples shall be determined by a method described in Rule .0939 of this Section.~~
- ~~(4) The efficiency of the control device shall be expressed as the fraction of total combustible carbon content reduction achieved.~~
- ~~(5) The volatile organic compound mass emission rate shall be the sum of emissions from the control device and emissions not collected by the capture system.~~

~~(c) Capture efficiency performance of volatile organic compound emission control systems shall be determined using the EPA recommended capture efficiency protocols and test methods as described in the EPA document, EMTIC-GD-035, "Guidelines for Determining Capture Efficiency".~~

~~(d) The EPA document, EMTIC-GD-035, "Guidelines for Determining Capture Efficiency" cited in this Rule is hereby incorporated by reference including any subsequent amendments or editions. A copy of this document is available for inspection at the Regional Offices of the North Carolina Department of Environment and Natural Resources (Addresses are given in Rule .0103 of this Subchapter). Copies of this document may be obtained by downloading a text file from the EPA TTN 2000 home page through the EMTIC (Emission Measurement Technical Information) technical information area at <http://ttnwww.rtpnc.epa.gov/html/emtic/guidlnd.htm>.~~

Authority G.S. 143-215.3(a)(1); 143-215.68; 143-215.107(a)(5).

15A NCAC 02D .0915 DETERMINATION OF SOLVENT METAL CLEANING VOC EMISSIONS

~~(a) This method is used to determine volatile organic compound emissions from solvent metal cleaning equipment.~~

~~(b) The purpose of this method is to quantify, by material balance, the amount of solvent input into a degreaser over a sufficiently long period of time so that an average emission rate can be computed.~~

~~(c) The following procedure shall be followed to perform a material balance test:~~

- ~~(1) clean the degreaser sump before testing;~~
- ~~(2) record the amount of solvent added to the tank with a flow meter;~~
- ~~(3) record the weight and type of work load degreased each day;~~

- (4) ~~at the end of the test run, pump out the used solvent and measure the amount with a flow meter; also, estimate the volume of metal chips and other material remaining in the emptied sump, if significant;~~
- (5) ~~bottle a sample of the used solvent and analyze it to find the percent that is oil and other contaminants; the oil and solvent proportions can be estimated by weighing samples of used solvent before and after boiling off the solvent. Compute the volume of oils in the used solvent. The volume of solvent displaced by this oil along with the volume of make up solvent added during operations is equal to the solvent emissions.~~

Authority G.S. 143-215.3(a)(1); 143-215.68; 143-215.107(a)(5).

15A NCAC 02D .0916 DETERMINATION: VOC EMISSIONS FROM BULK GASOLINE TERMINALS

~~In accordance with Regulation .0912 of this Section, the emissions of volatile organic compounds from bulk gasoline terminals shall be determined by the procedures set forth in 40 CFR 60.503.~~

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).

15A NCAC 02D .0932 GASOLINE TRUCK TANKS AND VAPOR COLLECTION SYSTEMS

(a) For the purposes of this Rule, the following definitions apply:

- (1) "Bottom filling" means the filling of a tank truck or stationary storage tank through an opening that is flush with the tank bottom.
- (2) "Bulk gasoline plant" means:
 - (A) breakout tanks of an interstate oil pipeline facility; or
 - (B) a gasoline storage and distribution facility that has an average daily throughput of less than 20,000 gallons of gasoline and usually receives gasoline from bulk terminals by trailer transport, stores it in tanks, and subsequently dispenses it via account trucks to local farms, businesses, and service stations.
- (3) "Bulk gasoline terminal" means a gasoline storage facility that usually receives gasoline from refineries primarily by pipeline, ship, or barge; delivers gasoline to bulk gasoline plants or to commercial or retail accounts primarily by tank truck; and has an average daily throughput of no less than 20,000 gallons of gasoline.
- (4) "Certified facility" means any facility that has been certified under Rule .0960 of this Section to perform leak tightness tests on truck tanks.

- (5) "Gasoline" means any petroleum distillate having a Reid vapor pressure of 4.0 psia or greater.
- (6) "Gasoline dispensing facility" means any site where gasoline is dispensed to motor vehicle gasoline tanks from stationary storage tanks.
- (7) "Gasoline service station" means any gasoline dispensing facility where gasoline is sold to the motoring public from stationary storage tanks.
- (8) "Truck tank" means the storage vessels of trucks or trailers used to transport gasoline from sources of supply to stationary storage tanks of bulk gasoline terminals, bulk gasoline plants, gasoline dispensing facilities and gasoline service stations.
- (9) "Truck tank vapor collection equipment" means any piping, hoses, and devices on the truck tank used to collect and route gasoline vapors in the tank to or from the bulk gasoline terminal, bulk gasoline plant, gasoline dispensing facility or gasoline service station vapor control system or vapor balance system.
- (10) "Vapor balance system" means a combination of pipes or hoses that create a closed system between the vapor spaces of an unloading tank and a receiving tank such that vapors displaced from the receiving tank are transferred to the tank being unloaded.
- (11) "Vapor collection system" means a vapor balance system or any other system used to collect and control emissions of volatile organic compounds.

(b) This Rule applies to gasoline truck tanks that are equipped for vapor collection and to vapor control systems at bulk gasoline terminals, bulk gasoline plants, gasoline dispensing facilities, and gasoline service stations equipped with vapor balance or vapor control systems.

(c) Gasoline Truck Tanks

- (1) Gasoline truck tanks and their vapor collection systems shall be tested annually by a certified facility. The test procedure that shall be used is described in ~~Rules .0940 and .0941 of this Section, Section .2600 of this Subchapter and~~ is according to Rule .0912 of this Section. The gasoline truck tank shall not be used if it sustains a pressure change greater than 3.0 inches of water in five minutes when pressurized to a gauge pressure of 18 inches of water or when evacuated to a gauge pressure of 6.0 inches of water.
- (2) Each gasoline truck tank that has been certified leak tight, according to Subparagraph (1) of this Paragraph shall display a sticker near the Department of Transportation certification plate required by 49 CFR 178.340-10b.
- (3) There shall be no liquid leaks from any gasoline truck tank.

- (4) Any truck tank with a leak equal to or greater than 100 percent of the lower explosive limit, as detected by a combustible gas detector using the test procedure described in Rule ~~.2715 of this Subchapter .0940 of this Section~~, shall not be used beyond 15 days after the leak has been discovered, unless the leak has been repaired and the tank has been certified to be leak tight according to Subparagraph (1) of this Paragraph.

(d) Vapor Collection System

- (1) The vapor collection system and vapor control system shall be designed and operated to prevent gauge pressure in the truck tank from exceeding 18 inches of water and to prevent a vacuum of greater than six inches of water.
- (2) During loading and unloading operations there shall be:
- (A) no vapor leakage from the vapor collection system such that a reading equal to or greater than 100 percent of the lower explosive limit at one inch around the perimeter of each potential leak source as detected by a combustible gas detector using the test procedure described in Rule ~~.2715 of this Subchapter .0940 of this Section~~; and
- (B) no liquid leaks.
- (3) If a leak is discovered that exceeds the limit in Part (2) (A) of this Paragraph, the vapor collection system or vapor control system (and therefore the source) shall not be used beyond 15 days after the leak has been discovered, unless the leak has been repaired and the system has been retested and found to comply with Part (2)(A) of this Paragraph.
- (4) The owner or operator of a vapor collection system at a bulk gasoline plant or a bulk gasoline terminal shall test, according to Rule .0912 ~~and .0940~~ of this Section, the vapor collection system at least once per year. If after two complete annual checks no more than 10 leaks are found, the Director may allow less frequent monitoring. If more than 20 leaks are found, the Director may require that the frequency of monitoring be increased.

(e) The owner or operator of a source subject to this Rule shall maintain records of all certification testing and repairs. The records shall identify the gasoline truck tank, vapor collection system, or vapor control system; the date of the test or repair; and, if applicable, the type of repair and the date of retest. The records of certification tests shall include:

- (1) the gasoline truck tank identification number;
- (2) the initial test pressure and the time of the reading;
- (3) the final test pressure and the time of the reading;
- (4) the initial test vacuum and the time of reading;

- (5) the final test vacuum and the time of the reading, and
- (6) the date and location of the tests.

A copy of the most recent certification report shall be kept with the truck tank. The owner or operator of the truck tank shall also file a copy of the most recent certification test with each bulk gasoline terminal that loads the truck tank. The records shall be maintained for at least two years after the date of the testing or repair, and copies of such records shall be made available within a reasonable time to the Director upon written request.

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).

15A NCAC 02D .0939 DETERMINATION OF VOLATILE ORGANIC COMPOUND EMISSIONS

~~(a) Where the test methods are applicable, the owner or operator of a source of volatile organic compounds shall, in accordance with Regulation .0912 of this Section, use one of the following test methods to determine compliance with the regulations of this Section:~~

- ~~(1) Method 25 of Appendix A of 40 CFR Part 60;~~
- ~~(2) Method 25A of Appendix A of 40 CFR Part 60; or~~
- ~~(3) Method 25B of Appendix A of 40 CFR Part 60.~~

~~The results of the tests shall be expressed in the same units as the emission limits given in the regulation for which compliance is being determined. Method 1 of Appendix A of 40 CFR Part 60 shall be used to determine sample and velocity traverses. Method 2 of Appendix A of 40 CFR Part 60 shall be used to determine stack gas velocity and volumetric flow rate.~~

~~(b) Method 21 of Appendix A of 40 CFR Part 60 shall be used, in accordance with Regulation .0912 of this Section, to determine leaks of volatile organic compounds from organic process equipment. These sources include valves, flanges and other connections, pumps and compressors, pressure relief devices, process drains, open ended valves, pump and compressor seal system degassing vents, accumulator vessel vents, access door seals, and agitator seals.~~

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).

15A NCAC 02D .0940 DETERMINATION OF LEAK TIGHTNESS AND VAPOR LEAKS

~~(a) In accordance with Regulation .0912 of this Section, one of the following test methods from the EPA document "Control of Volatile Organic Compound Leaks from Gasoline Tank Trucks and Vapor Collection System," EPA 450/2-78-051, published by the U.S. Environmental Protection Agency, December 1978, shall be used to determine compliance with Regulation .0932 of this Section:~~

- ~~(1) The gasoline vapor leak detection procedure by combustible gas detector described in Appendix B of EPA 450/2-78-051 shall be used to determine leakage from gasoline truck tanks and vapor control systems;~~
- ~~(2) The leak detection procedure for bottom loaded truck tanks by bag capture method described in Appendix C of~~

EPA 450/2-78-051 shall be used to determine the leak tightness of truck tanks during bottom loading.

The pressure vacuum test procedures for leak tightness of truck tanks described in Method 27 of Appendix A of 40 CFR Part 60 shall be used to determine the leak tightness of gasoline truck tanks in use and equipped with vapor collection equipment. Techniques other than specified in Method 27 of Appendix A of 40 CFR Part 60 may be used for purging and pressurizing the truck tank, if the techniques are approved by the Director.

(b) The test method described in Regulation .0941 of this Section may be used instead of the test methods described in Subparagraph (a)(2) of this Regulation or Method 27 of Appendix A of 40 CFR Part 60.

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).

15A NCAC 02D .0941 ALTERNATIVE METHOD FOR LEAK TIGHTNESS

(a) This test method may be used, in accordance with Regulation .0912 of this Section, as an alternative to the test method described in Regulation .0940 of this Section.

(b) Principle. Pressure and vacuum are applied to the compartment of gasoline truck tanks, and the change in pressure/vacuum is recorded after a specified period of time. Water is used instead of air to create the pressure and vacuum. The water test method does not require that the truck tank be gas free.

(c) Applicability. This method is applicable to determine the leak tightness of gasoline truck tanks in use and equipped with vapor collection equipment.

(d) Apparatus. The following equipment is required to conduct the test:

- (1) a pressure/vacuum gauge (Dwyer Magnehelic pressure/vacuum gauge, Model No. 2030 or equivalent) calibrated in 0 to 30 inches of water or a water manometer capable of measuring at least 25 inches of water gauge;
- (2) a locally fabricated water hose coupler which mates with the A.P.I. bottom loading adaptor on the truck tank;
- (3) an appropriate length water hose with shutoff cock to connect to a water supply source;
- (4) a check valve to prevent water from flowing back into the water supply;
- (5) a mixture of soap and water and a two inch paint brush; and
- (6) a Son-Testor ultrasonic air leak detector, Model No. 110, or equivalent.

(e) Test Preparation

- (1) The unit to be tested is properly parked and chocked. The unit is parked as close as practical to the water supply locations.
- (2) All compartments, discharge lines, and vapor return lines are visually inspected to ascertain that all are completely drained.
- (3) All dome cover, inspection hatches, vapor recovery connections and bottom loading

valves are visually inspected to ascertain that all are fully closed.

- (4) At the rear of one of the overturn rails, the pipe plug is removed from the pipe coupling provided for de-gasing operations. The piping containing the pressure/vacuum gauge is installed into the coupling.
- (5) The water supply hose with check valve is connected to any one compartment bottom loading adaptor.
- (6) All compartment emergency valves and positive vents are opened in the normal manner. This condition permits all compartments to vent into the common vapor recovery system; therefore, only one test is required for the entire tank.

(f) Pressure Test

- (1) The test is begun by flowing water into the compartment. The pressure gauge is monitored.
- (2) When the pressure gauge indicates 18 inches of water in the tank, the water flow is shut off. When a water manometer is used, this reading is nine inches above and nine inches below the zero indicator.
- (3) The gauge is monitored for five minutes. If the pressure gauge does not drop below an indicated 15 inches of water in these five minutes, the tank passes the pressure test. If the pressure does drop below an indicated 15 inches of water in five minutes, the tank does not pass the pressure test and the leak source must be determined. The soap and water method and a sonic leak detector are to be used to locate the source of leak or leaks. After correcting the leaks, the pressure test must be rerun to certify compliance.
- (4) After compliance has been accomplished, one dome cover is carefully opened to depressurize the tank and is then re-closed.

(g) Vacuum Test

- (1) The water hose is removed, and water is drained from the compartment until a vacuum of six inches of water is registered on the gauge. The flow of water is stopped by closing the bottom loading valve.
- (2) The gauge is monitored for five minutes. If the vacuum does drop below an indicated three inches of water in the five minutes, the tank does not pass the vacuum test, and the leak source must be determined. The soap and water method and a sonic leak detector are to be used to locate the source of leak or leaks. After the leaks are corrected, the vacuum test must be rerun to certify compliance.
- (3) After compliance has been accomplished, the compartment dome cover is opened; and all water is drained from compartment, line, and bottom loading valve.

~~(h) Conclusion of Test~~

- ~~(1) The test results are recorded and retained in the vehicle test file.~~
- ~~(2) The pressure/vacuum gauge is removed, and the plug is re-installed in the rail. The water hose coupler is removed.~~
- ~~(3) The tank unit is returned to service.~~

Authority G.S. 143-215.3(a)(1); 143-215.68; 143-215.107(a)(5).

15A NCAC 02D .0942 DETERMINATION OF SOLVENT IN FILTER WASTE

~~This Regulation applies, in accordance with Regulation .0912 of this Section, to the determination of the amount of solvent in filter materials (muck and distillation waste). To be derived is the quantity of volatile organic compounds per quantity of discarded filter muck. The procedure to be used in making this determination is the test method described by the American National Standards Institute's "Standard Method of Test for Dilution of Gasoline Engine Crankcase Oils" (ASTM 322-67 or IP 23/68) except that filter muck is to be used instead of crankcase oil.~~

Authority G.S. 143-215.3(a)(1); 143-215.68; 143-215.107(a)(5).

15A NCAC 02D .0943 SYNTHETIC ORGANIC CHEMICAL AND POLYMER MANUFACTURING

(a) For the purposes of this ~~Regulation~~, Rule, the following definitions apply:

- (1) "Closed vent system" means a system which is not open to the atmosphere and which is composed of piping, connections, and if necessary, flow inducing devices that transport gas or vapor from a fugitive emission source to an enclosed combustion device or vapor recovery system.
- (2) "Enclosed combustion device" means any combustion device which is not open to the atmosphere such as a process heater or furnace, but not a flare.
- (3) "Fugitive emission source" means each pump, valve, safety/relief valve, open-ended valve, flange or other connector, compressor, or sampling system.
- (4) "In gas vapor service" means that the fugitive emission source contains process fluid that is in the gaseous state at operating conditions.
- (5) "In light liquid service" means that the fugitive emission source contains a liquid having:
 - (A) a vapor pressure of one or more of the components greater than 0.3 kilopascals at 201° C; and
 - (B) a total concentration of the pure components having a vapor pressure greater than 0.3 kilopascals at 201° C equal to or greater than 10 percent by weight, and the fluid is a liquid at operating conditions.

- (6) "Open-ended valve" means any valve, except safety/relief valves, with one side of the valve seat in contact with process fluid and one side that is open to the atmosphere, either directly or through open piping.
- (7) "Polymer manufacturing" means the industry that produces, as intermediates or final products, polyethylene, polypropylene, or polystyrene.
- (8) "Process unit" means equipment assembled to produce, as intermediates or final products, polyethylene, polypropylene, polystyrene, or one or more of the chemicals listed in 40 CFR 60.489. A process unit can operate independently if supplied with sufficient feed or raw materials and sufficient storage facilities for the final product.
- (9) "Quarter" means a three month period. The first quarter concludes at the end of the last full month during the 180 days following initial start-up.
- (10) "Synthetic organic chemical manufacturing" means the industry that produces, as intermediates or final products, one or more of the chemicals listed in 40 CFR Part 60.489.

(b) This ~~Regulation~~ Rule applies to synthetic organic chemicals manufacturing facilities and polymer manufacturing facilities.

(c) The owner or operator of a synthetic organic chemical manufacturing facility or a polymer manufacturing facility shall not cause, allow or permit:

- (1) any liquid leakage of volatile organic compounds; or
- (2) any gaseous leakage of volatile organic compound of 10,000 ppm or greater from any fugitive emission source.

The owner or operator of these facilities shall control emissions of volatile organic compounds from open-ended valves as described in Paragraph (f) of this ~~Regulation~~ Rule.

(d) The owner or operator shall visually inspect each week every pump in light liquid service. If there are indications of liquid leakage, the owner or operator shall repair the pump within 15 days after detection except as provided in Paragraph (k) of this ~~Regulation~~ Rule.

(e) ~~The~~ Using procedures in Section .2600 of this Section, owner or operator shall monitor each pump, valve, compressor and safety/relief valve in gas/vapor service or in light liquid service for gaseous leaks at least once each quarter. The owner or operator shall monitor safety/relief valves after each overpressure relief to ensure the valve has properly reseated. ~~The monitoring procedure shall be in accordance with Regulation .0939 of this Section.~~ If a volatile organic compound concentration of 10,000 ppm or greater is measured, the owner or operator shall repair the component within 15 days after detection except as provided in Paragraph (k) of this ~~Regulation~~ Rule. Exceptions to the quarterly monitoring frequency are provided for in Paragraphs (h), (i) and (j) of this ~~Regulation~~ Rule.

(f) The owner or operator shall install on each open-ended valve:

- (1) a cap,
- (2) a blind flange,
- (3) a plug, or
- (4) a second closed valve,

which shall remain attached to seal the open end at all times except during operations requiring process fluid flow through the opened line.

(g) If any fugitive emission source appears to be leaking on the basis of sight, smell, or sound, it shall be repaired within 15 days after detection except as provided in Paragraph (k) of this ~~Regulation. Rule.~~

(h) If after four consecutive quarters of monitoring no more than two percent of the valves in gas/vapor service or in light liquid service are found leaking more than 10,000 ppm of volatile organic compounds, then the owner or operator may monitor valves for gaseous leaks only every third quarter. If the number of these valves leaking more than 10,000 ppm of volatile organic compounds remains at or below two percent, these valves need only be monitored for gaseous leaks every third quarter. However, if more than two percent of these valves are found leaking more than 10,000 ppm of volatile organic compounds, they shall be monitored every quarter until four consecutive quarters are monitored which have no more than two percent of these valves leaking more than 10,000 ppm of volatile organic compounds.

(i) When a fugitive emission source is unsafe to monitor because of extreme temperatures, pressures, or other reasons, the owner or operator of the facility shall be required to monitor the fugitive emission source only when process conditions are such that the fugitive emission source is not operating under extreme conditions. The Director may allow monitoring of these ~~fugitive~~ fugitive emission sources less frequently than each quarter, provided they are monitored at least once per year.

(j) Any fugitive emission source more than 12 feet above a permanent support surface may be monitored only once per year.

(k) The repair of a fugitive emission source may be delayed until the next turnaround if the repair is technically infeasible without a complete or partial shutdown of the process unit.

(l) The owner or operator of the facility shall maintain records in accordance with ~~Regulation. Rule~~ .0903 of this Section, which shall include:

- (1) identification of the source being inspected or monitored,
- (2) dates of inspection or monitoring,
- (3) results of inspection or monitoring,
- (4) action taken if a leak was detected,
- (5) type of repair made and when it was made, and
- (6) if the repair were delayed, an explanation as to why.

~~(m) The Code of Federal Regulations adopted by reference in this Rule shall automatically include any later amendments thereto as allowed by G.S. 150B-14(c).~~

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5); 150B-14(c).

15A NCAC 02D .0945 PETROLEUM DRY CLEANING

(a) For the purpose of this ~~Regulation. Rule.~~, the following definitions apply:

- (1) "Cartridge filter" means perforated canisters containing filtration paper and/or activated carbon that are used in a pressurized system to remove solid particles and fugitive dyes from soil-laden solvent, together with the piping and ductwork used in the installation of this device.
- (2) "Containers and conveyors of solvent" means piping, ductwork, pumps, storage tanks, and other ancillary equipment that are associated with the installation and operation of washers, dryers, filters, stills, and settling tanks.
- (3) "Dry cleaning" means a process for the cleaning of textiles and fabric products in which articles are washed in a non-aqueous solution (solvent) and then dried by exposure to a heated air stream.
- (4) "Dryer" means a machine used to remove petroleum solvent from articles of clothing or other textile or leather goods, after washing and removing of excess petroleum solvent, together with the piping and ductwork used in the installation of this device.
- (5) "Perceptible leaks" means any petroleum solvent vapor or liquid leaks that are conspicuous from visual observation or that bubble after application of a soap solution, such as pools or droplets of liquid, open containers of solvent, or solvent laden waste standing open to the atmosphere.
- (6) "Petroleum solvent" means organic material produced by petroleum distillation comprising a hydrocarbon range of eight to 12 carbon atoms per organic molecule that exists as a liquid under standard conditions.
- (7) "Petroleum solvent dry cleaning" means a dry cleaning facility that uses petroleum solvent in a combination of washers, dryers, filters, stills, and settling tanks.
- (8) "Settling tank" means a container which gravimetrically separates oils, grease, and dirt from petroleum solvent, together with the piping and ductwork used in the installation of the device.
- (9) "Solvent filter" means a discrete solvent filter unit containing a porous medium which traps and removes contaminants from petroleum solvent, together with the piping and ductwork used in the installation of this device.
- (10) "Solvent recovery dryer" means a class of dry cleaning dryers that employs a condenser to condense and recover solvent vapors evaporated in a closed-loop stream of heated air, together with the piping and ductwork used in the installation of this device.
- (11) "Still" means a device used to volatilize, separate, and recover petroleum solvent from contaminated solvent, together with the piping

and ductwork used in the installation of this device.

- (12) "Washer" means a machine which agitates fabric articles in a petroleum solvent bath and spins the articles to remove the solvent, together with the piping and ductwork used in the installation of this device.

(b) This ~~Regulation-Rule~~ applies to petroleum solvent washers, dryers, solvent filters, settling tanks, stills, and other containers and conveyors of petroleum solvent that are used in petroleum solvent dry cleaning facilities that consume 32,500 gallons or more of petroleum solvent annually.

(c) The owner or operator of a petroleum solvent dry cleaning dryer subject to this ~~Regulation-Rule~~ shall:

- (1) limit emissions of volatile organic compounds to the atmosphere to an average of 3.5 pounds of volatile organic compounds per 100 pounds dry weight of articles dry cleaned, or
- (2) install and operate a solvent recovery dryer in a manner such that the dryer remains closed and the recovery phase continues until a final recovered solvent flow rate of 50 milliliters per minute is attained.

(d) The owner or operator of a petroleum solvent filter subject to this ~~Regulation-Rule~~ shall:

- (1) reduce the volatile organic compound content in all filter wastes to 1.0 pound or less per 100 pounds dry weight of articles dry cleaned, before disposal and exposure to the atmosphere; or
- (2) install and operate a cartridge filter and drain the filter cartridges in their sealed housings for 8 hours or more before their removal.

(e) The owner or operator of a petroleum solvent dry cleaning facility subject to this ~~Regulation-Rule~~ shall inspect the facility every 15 days and shall repair all perceptible leaks within 15 working days after identifying the sources of the leaks. If necessary repair parts are not on hand, the owner or operator shall order these parts within 15 working days and repair the leaks no later than 15 working days following the arrival of the necessary parts. The owner or operator shall maintain records, in accordance with ~~Regulation-Rule~~ .0903 of this Section, of when inspections were made, what was inspected, leaks found, repairs made and when repairs were made.

(f) To determine compliance with Subparagraph (c)(1) of this ~~Regulation-Rule~~, the owner or operator shall use the test method in Section .2600 of this Subchapter ~~Regulation-Rule~~ .0939(a)(2) of this Section and shall:

- (1) field calibrate the flame ionization analyzer with propane standards;
- (2) determine in a laboratory the ratio of the flame ionization analyzer response to a given parts per million by volume concentration of propane to the response to the same parts per million concentration of the volatile organic compounds to be measured;
- (3) determine the weight of volatile organic compounds vented to the atmosphere by:

(A) multiplying the ratio determined in Subparagraph (2) of this Paragraph by the measured concentration of volatile organic compound gas (as propane) as indicated by the flame ionization analyzer response output record,

(B) converting the parts per million by volume value calculated in Part (A) of this Subparagraph into a mass concentration value for the volatile organic compounds present, and

(C) multiplying the mass concentration value calculated in Part (B) of this Subparagraph by the exhaust flow rate, and

- (4) Calculate and record the dry weight of articles dry cleaned. The test shall be repeated for normal operating conditions that encompass at least 30 dryer loads that total not less than 4,000 pounds dry weight and that represent a normal range of variation in fabrics, solvents, load weights, temperatures, flow rates, and process deviations.

(g) To determine compliance with Subparagraph (c)(2) of this ~~Regulation-Rule~~, the owner or operator shall verify that the flow rate of recovered solvent from the solvent recovery dryer at the termination of the recovery phase is no greater than 50 milliliters per minute. This one-time procedure shall be conducted for a duration of not less than two weeks during which not less than 50 percent of the dryer loads shall be monitored for their final recovered solvent flow rate. The suggested point for measuring the flow rate of recovered solvent is from the solvent-water separator. Near the end of the recovery cycle, the flow of recovered solvent is to be diverted to a graduated cylinder. The cycle continues until the minimum flow of solvent is 50 milliliters per minute. The type of articles cleaned and the total length of the cycle is then recorded.

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).

SECTION .1100 - CONTROL OF TOXIC AIR POLLUTANTS

15A NCAC 02D .1104 TOXIC AIR POLLUTANT GUIDELINES

A facility shall not emit any of the following toxic air pollutants in such quantities that may cause or contribute beyond the premises (adjacent property boundary) to any significant ambient air concentration that may adversely affect human health. In determining these significant ambient air concentrations, the Division shall be guided by the following list of acceptable ambient levels in milligrams per cubic meter at 77° F (25° C) and 29.92 inches (760 mm) of mercury pressure (except for asbestos):

PROPOSED RULES

Pollutant (CAS Number)	Annual (Carcinogens)	24-hour (Chronic Toxicants)	1-hour (Acute Systemic Toxicants)	1-hour (Acute Irritants)
acetaldehyde (75-07-0)				27
acetic acid (64-19-7)				3.7
acrolein (107-02-8)				0.08
acrylonitrile (107-13-1)	1.5×10^{-4}			
ammonia (7664-41-7)				2.7
aniline (62-53-3)			1	
arsenic and inorganic arsenic compounds	2.3×10^{-7}			
asbestos (1332-21-4)	2.8×10^{-11} fibers/ml			
aziridine (151-56-4)		0.006		
benzene (71-43-2)	1.2×10^{-4}			
benzidine and salts (92-87-5)	1.5×10^{-8}			
benzo(a)pyrene (50-32-8)	3.3×10^{-5}			
benzyl chloride (100-44-7)			0.5	
beryllium (7440-41-7)	4.1×10^{-6}			
beryllium chloride (7787-47-5)	4.1×10^{-6}			
beryllium fluoride (7787-49-7)	4.1×10^{-6}			
beryllium nitrate (13597-99-4)	4.1×10^{-6}			
bioavailable chromate pigments, as chromium (VI) equivalent	8.3×10^{-8}			
bis-chloromethyl ether (542-88-1)	3.7×10^{-7}			
bromine (7726-95-6)				0.2
1,3-butadiene (106-99-0)	1.7×10^{-4} 4.4×10^{-4}			
cadmium (7440-43-9)	5.5×10^{-6}			
cadmium acetate (543-90-8)	5.5×10^{-6}			
cadmium bromide (7789-42-6)	5.5×10^{-6}			
carbon disulfide (75-15-0)		0.186		
carbon tetrachloride (56-23-5)	6.7×10^{-3}			
chlorine (7782-50-5)		0.0375		0.9
chlorobenzene (108-90-7)		2.2		
chloroform (67-66-3)	4.3×10^{-3}			
chloroprene (126-99-8)		0.44	3.5	
cresol (1319-77-3)			2.2	
p-dichlorobenzene (106-46-7)				66
dichlorodifluoromethane (75-71-8)		248		
dichlorofluoromethane (75-43-4)		0.5		
di(2-ethylhexyl)phthalate (117-81-7)		0.03		
dimethyl sulfate (77-78-1)		0.003		
1,4-dioxane (123-91-1)		0.56		
epichlorohydrin (106-89-8)	8.3×10^{-2}			
ethyl acetate (141-78-6)			140	
ethylenediamine (107-15-3)		0.3	2.5	
ethylene dibromide (106-93-4)	4.0×10^{-4}			
ethylene dichloride (107-06-2)	3.8×10^{-3}			
ethylene glycol monoethyl ether (110-80-5)		0.12	1.9	
ethylene oxide (75-21-8)	2.7×10^{-5}			
ethyl mercaptan (75-08-1)			0.1	

PROPOSED RULES

Pollutant (CAS Number)	Annual (Carcinogens)	24-hour (Chronic Toxicants)	1-hour (Acute Systemic Toxicants)	1-hour (Acute Irritants)
fluorides		0.016	0.25	
formaldehyde (50-00-0)				0.15
hexachlorocyclopentadiene (77-47-4)		0.0006	0.01	
hexachlorodibenzo-p-dioxin (57653-85-7)	7.6×10^{-8}			
n-hexane (110-54-3)		1.1		
hexane isomers except n-hexane				360
hydrazine (302-01-2)		0.0006		
hydrogen chloride (7647-01-0)				0.7
hydrogen cyanide (74-90-8)		0.14	1.1	
hydrogen fluoride (7664-39-3)		0.03		0.25
hydrogen sulfide (7783-06-4)		0.12		
maleic anhydride (108-31-6)		0.012	0.1	
manganese and compounds		0.031		
manganese cyclopentadienyl tricarbonyl (12079-65-1)		0.0006		
manganese tetroxide (1317-35-7)		0.0062		
mercury, alkyl		0.00006		
mercury, aryl and inorganic compounds		0.0006		
mercury, vapor (7439-97-6)		0.0006		
methyl chloroform (71-55-6)		12		245
methylene chloride (75-09-2)	2.4×10^{-2}		1.7	
methyl ethyl ketone (78-93-3)		3.7		88.5
methyl isobutyl ketone (108-10-1)		2.56		30
methyl mercaptan (74-93-1)			0.05	
nickel carbonyl (13463-39-3)		0.0006		
nickel metal (7440-02-0)		0.006		
nickel, soluble compounds, as nickel		0.0006		
nickel subsulfide (12035-72-2)	2.1×10^{-6}			
nitric acid (7697-37-2)				1
nitrobenzene (98-95-3)		0.06	0.5	
n-nitrosodimethylamine (62-75-9)	5.0×10^{-5}			
non-specific chromium (VI) compounds, as chromium (VI) equivalent	8.3×10^{-8}			
pentachlorophenol (87-86-5)		0.003	0.025	
perchloroethylene (127-18-4)	1.9×10^{-1}			
phenol (108-95-2)			0.95	
phosgene (75-44-5)		0.0025		
phosphine (7803-51-2)				0.13
polychlorinated biphenyls (1336-36-3)	8.3×10^{-5}			
soluble chromate compounds, as chromium (VI) equivalent		6.2×10^{-4}		
styrene (100-42-5)			10.6	
sulfuric acid (7664-93-9)		0.012	0.1	
tetrachlorodibenzo-p-dioxin (1746-01-6)	3.0×10^{-9}			
1,1,1,2-tetrachloro-2,2,-		52		

Pollutant (CAS Number)	Annual (Carcinogens)	24-hour (Chronic Toxicants)	1-hour (Acute Systemic Toxicants)	1-hour (Acute Irritants)
difluoroethane (76-11-9)				
1,1,2,2-tetrachloro-1,2-difluoroethane (76-12-0)		52		
1,1,2,2-tetrachloroethane (79-34-5)	6.3×10^{-3}			
toluene (108-88-3)		4.7		56
toluene diisocyanate, 2,4- (584-84-9) and 2,6- (91-08-7) isomers		0.0002		
trichloroethylene (79-01-6)	5.9×10^{-2}			
trichlorofluoromethane (75-69-4)			560	
1,1,2-trichloro-1,2,2-trifluoroethane (76-13-1)				950
vinyl chloride (75-01-4)	3.8×10^{-4}			
vinylidene chloride (75-35-4)		0.12		
xylene (1330-20-7)		2.7		65

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(3),(4),(5); 143B-282; S.L. 1989, c. 168, s. 45.

15A NCAC 02D .1110 NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS

(a) With the exception of Paragraph (b) of this Rule, sources subject to national emission standards for hazardous air pollutants promulgated in 40 CFR Part 61 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 Section .0500 of this Subchapter that would be in conflict therewith.

(b) 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 national emission standards for hazardous air pollutants promulgated under 40 CFR Part 61, 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.

(c) 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 ~~.0902(e), (f), or (g)~~ as in violation of the ambient air quality standard for ozone shall comply with the requirements of 40 CFR Part 61 that are not excluded by this Rule, as well as with any applicable requirements in Section .0900 of this Subchapter.

(d) 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; except that all such reports, applications, submittals, and other communications to the administrator required by 40 CFR 61.145 shall be submitted to the Director, Division of Epidemiology.

(e) In the application of this Rule, definitions contained in 40 CFR Part 61 shall apply rather than those of Section .0100 of this Subchapter.

(f) 15A NCAC 02Q .0102 and .0302 are not applicable to any source to which this Rule applies. The owner or operator of the source shall apply for and receive a permit as required in 15A NCAC 02Q .0300 or .0500.

Authority G.S. 143-215.3(a)(1); 143-215.107 (a)(5); 150B-21.6.

SECTION .1200 - CONTROL OF EMISSIONS FROM INCINERATORS

15A NCAC 02D .1203 HAZARDOUS WASTE INCINERATORS

(a) Applicability. This Rule applies to hazardous waste incinerators.

(b) Definitions. For the purpose of this Rule, the definitions contained in 40 CFR 260.10, 270.2, and 40 CFR 63.1201 shall apply in addition to the definitions in Rule .1202 of this Section.

(c) Emission Standards.

- (1) The emission standards in this Paragraph apply to all incinerators subject to this Rule except where Rule .0524, .1110, or .1111 of this Subchapter applies. However, when Subparagraphs (8) or (9) of this Paragraph or Paragraph (h) of this Rule and Rules .0524, .1110, or .1111 of this Subchapter regulate the same pollutant, the more restrictive provision for each pollutant shall 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 meet the particulate matter emission requirements of 40 CFR 264.343(c).
 - (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 meet the hydrogen chloride emission requirements of 40 CFR 264.343(b). Compliance with this Subparagraph shall be determined by averaging emissions over a one-hour period.
 - (7) Mercury Emissions. The 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 for the control of toxic emissions.
 - (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
 2.3×10^{-7}
 - (ii) beryllium and its compounds
 4.1×10^{-6}
 - (iii) cadmium and its compounds
 5.5×10^{-6}
 - (iv) chromium (VI) and its compounds
 8.3×10^{-8}
 - (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 Rules .0524, .1110, or .1111 of this Subchapter requires more restrictive rates.
 - (d) Operational Standards.
 - (1) The operational standards in this Rule do not apply to any incinerator subject to this Rule when applicable operational standards in Rules .0524, .1110, or .1111 of this Subchapter apply.
 - (2) Hazardous waste incinerators shall comply with 15A NCAC 13A .0101 through .0119, which are administered and enforced by the Division of Waste Management.
 - (e) Test Methods and Procedures.
 - (1) The test methods and procedures described in ~~Rule .0501 of this Subchapter~~ Section .2600 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 may require the owner or operator to test his incinerator to demonstrate compliance with the emission standards listed in Paragraph (c) of this Rule.
 - (f) 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, 40 CFR 270.31, and 40 CFR 264.347.
 - (2) The owner or operator of an incinerator subject to the requirements of this Rule 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 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 the 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 may 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 as necessary to determine proper operation of the incinerator.

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

(h) Incinerators subject to this Rule shall comply with the emission limits, operational specifications, and other restrictions or conditions determined by the Division of Waste Management under 40 CFR 270.32, establishing Resource Conservation and Recovery Act permit conditions, as necessary to protect human health and the environment.

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).

15A NCAC 02D .1204 SEWAGE SLUDGE AND SLUDGE INCINERATORS

(a) Applicability. This Rule applies to sewage sludge and sludge incinerators.

(b) Definitions. For the purpose of this Rule, the definitions in 40 CFR Part 503 shall apply in addition to the definitions in Rule .1202 of this Section.

(c) Emission Standards.

- (1) The emission standards in this Paragraph apply to any incinerator subject to this Rule except where Rules .0524, .1110, or .1111 of this Subchapter applies. However when Subparagraphs (11) or (12) of this Paragraph and Rules .0524, .1110, or .1111 of this Subchapter regulate the same pollutant, the more restrictive provision for each pollutant shall 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 is 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 block three-hour 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 block three-hour 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 hydrogen chloride emissions 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 from any incinerator subject to this Rule are regulated under 15A NCAC 02D .1110.
 - (8) Beryllium Emissions. Emissions of beryllium from any incinerator subject to this Rule are regulated under 15A NCAC 02D .1110.
 - (9) Lead Emissions. The daily concentration of lead in sewage sludge fed to a sewage sludge incinerator shall meet the requirements specified in 40 CFR 503.43(c).
 - (10) Other Metal Emissions. The daily concentration of arsenic, cadmium, chromium, and nickel in sewage sludge fed to a sewage sludge incinerator shall meet the requirements specified in 40 CFR 503.43(d).
 - (11) 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.
 - (12) 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 2.3×10^{-7}
 - (ii) beryllium and its compounds 4.1×10^{-6}
 - (iii) cadmium and its compounds 5.5×10^{-6}
 - (iv) chromium (VI) and its compounds 8.3×10^{-8}
 - (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 Rules .0524, .1110, or .1111 of this Subchapter requires more restrictive rates.
- (d) Operational Standards.
- (1) The operational standards in this Rule do not apply to any incinerator subject to this Rule when applicable operational standards in Rules .0524, .1110, or .1111 of this Subchapter apply.
 - (2) Sewage Sludge Incinerators.
 - (A) The maximum combustion temperature for a sewage sludge incinerator shall be specified as a permit condition and be based on information obtained during the performance test of the sewage sludge incinerator to determine pollutant control efficiencies as needed to comply with .1204(c).
 - (B) The values for the operational parameters for the sewage sludge incinerator air pollution control device(s) shall be specified as a permit condition and be based on information obtained during the performance test of the sewage sludge incinerator to determine pollutant control efficiencies as needed to comply with .1204(c).
 - (C) The monthly average concentration for total hydrocarbons, or carbon monoxide as provided in 40 CFR 503.40(c), in the exit gas from a sewage sludge incinerator stack, corrected to zero percent moisture and seven percent oxygen as specified in 40 CFR 503.44, shall not exceed 100 parts per million on a volumetric basis using the continuous emission monitor required in Part (f)(3)(A) of this Rule.
 - (3) Sludge Incinerators. The combustion temperature in a sludge incinerator shall not be less than 1200°F. The maximum oxygen content of the exit gas from a sludge incinerator stack shall be:
 - (A) 12 percent (dry basis) for a multiple hearth sludge incinerator;
 - (B) seven percent (dry basis) for a fluidized bed sludge incinerator;
 - (C) nine percent (dry basis) for an electric sludge incinerator; and
 - (D) 12 percent (dry basis) for a rotary kiln sludge incinerator.
- (e) Test Methods and Procedures.
- (1) The test methods and procedures described in Rule .0501 of this Subchapter Section .2600 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 may require the owner or operator to test his incinerator to demonstrate compliance with the emission standards listed in Paragraph (c) of this Rule.
- (3) The owner or operator of a sewage sludge incinerator shall perform testing to determine pollutant control efficiencies of any pollution control equipment and obtain information on operational parameters, including combustion temperature, to be specified as a permit condition.

(f) 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 subject to the requirements of this Rule 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 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.
- (3) In addition to the requirements of Subparagraphs (1) and (2) of this Paragraph, the owner or operator of a sewage sludge incinerator shall:

- (A) install, operate, and maintain, for each incinerator, continuous emission monitors to determine the following:
 - (i) total hydrocarbon concentration of the incinerator stack exit gas according to 40 CFR 503.45(a) unless the requirements for continuously monitoring carbon monoxide as provided in 40 CFR 503.40(c) are satisfied;
 - (ii) oxygen content of the incinerator stack exit gas; and
 - (iii) moisture content of the incinerator stack exit gas;

- (B) monitor the concentration of beryllium and mercury from the sludge fed to the incinerator at least as frequently as required by Rule .1110 of this Subchapter but in no case less than once per year;
- (C) monitor the concentrations of arsenic, cadmium, chromium, lead, and nickel in the sewage sludge fed to the incinerator at least as frequently as required under 40 CFR 503.46(a)(2) and (3);
- (D) determine mercury emissions by use of Method 101 or 101A of 40 CFR Part 61, Appendix B, where applicable to 40 CFR 61.55(a);
- (E) maintain records of all material required under Paragraph (e) of this Rule and this Paragraph according to 40 CFR 503.47; and
- (F) for class I sludge management facilities (as defined in 40 CFR 503.9), POTWs (as defined in 40 CFR 501.2) with a design flow rate equal to or greater than one million gallons per day, and POTWs that serve a population of 10,000 people or greater, submit the information recorded in Part (D) of this Subparagraph to the Director on or before February 19 of each year.

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

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(4),(5).

15A NCAC 02D .1205 LARGE MUNICIPAL WASTE COMBUSTORS

(a) Applicability. This Rule applies ~~to~~ to

- (1) ~~Class I municipal waste combustors, as defined in Rule .1202 of this Section; and~~
- (2) ~~Large large municipal waste combustors, as defined in Rule .1202 of this Section.~~

(b) Definitions. For the purpose of this Rule, the definitions contained in 40 CFR ~~60.31b 60.51b and 40 CFR 60.1940~~ (except ~~administration~~ administration means the Director of the Division of Air Quality) shall apply in addition to the definitions in Rule .1202 of this Section.

(c) Emission Standards.

- (1) The emission standards in this Paragraph apply to any municipal waste combustor subject to the requirements of this Rule except where Rule .0524, .1110, or .1111 of this Subchapter applies. However, when Subparagraphs (13) or (14) of this Paragraph and Rule .0524, .1110, or .1111 of this Subchapter regulate the same pollutant, the more restrictive provision for

- each pollutant shall apply, notwithstanding provisions of Rules .0524, .1110, or .1111 of this Subchapter to the contrary.
- (2) Particulate Matter. Emissions of particulate matter from each municipal waste combustor shall not exceed ~~27 milligrams per dry standard cubic meter corrected to seven percent oxygen, exceed:~~
- (A) ~~before April 28, 2009, 27 milligrams per dry standard cubic meter corrected to seven percent oxygen, and~~
- (B) ~~on or after April 28, 2009, 25 milligrams per dry standard cubic meter corrected to seven percent oxygen.~~
- (3) Visible Emissions. The emission limit for opacity from ~~any each~~ municipal waste combustor shall not exceed 10 percent ~~(6-minute average) (average of 30 6 minute averages).~~
- (4) Sulfur Dioxide.
- (A) ~~Emissions of sulfur dioxide from each class I municipal waste combustor shall be reduced by at least 75 percent by weight or volume of potential sulfur dioxide emissions or to no more than 31 parts per million by volume corrected to seven percent oxygen (dry basis), whichever is less stringent. Compliance with this emission limit is based on a 24 hour daily block geometric average concentration percent reduction.~~
- (B) ~~Emissions of sulfur dioxide from each large municipal waste combustor shall be:~~
- (i) ~~reduced by at least 75 percent by weight or volume, or to no more than 31 parts per million by volume corrected to seven percent oxygen (dry basis), whichever is less stringent, by August 1, 2000. Compliance with this emission limit is based on a 24-hour daily geometric mean; and~~
- (ii) ~~reduced by at least 75 percent by weight or volume, or to no more than 29 parts per million by volume corrected to seven percent oxygen (dry basis), whichever is less stringent, by August 1, 2002. Compliance with this emission limit is based on a 24 hour daily geometric mean.~~
- (4) Sulfur Dioxide. Emissions of sulfur dioxide from each municipal waste combustor shall be
- reduced by at least 75 percent reduction or to no more than:
- (A) before April 28, 2009, 31 parts per million dry volume, and
- (B) on or after April 28, 2009, 29 parts per million dry volume.
- Percent reduction shall be determined from continuous emissions monitoring data and according to Reference Method 19, Section 12.5.4 of 40 CFR Part 60 Appendix A-7. Compliance with either standard, whichever is less stringent, is based on a 24-hour daily block geometric average of concentration data corrected to seven percent oxygen (dry basis).
- (5) Nitrogen Oxides.
- (A) ~~Emissions of nitrogen oxide from each class I municipal waste combustor shall not exceed the emission limits in Table 3 40 CFR 60, Subpart BBBB.~~
- (B) ~~Emissions of nitrogen oxides from each large municipal waste combustor shall not exceed the emission limits in Table 1 of Paragraph (d) of 40 CFR 60.33b, to Subpart Cb of Part 60 "Nitrogen Oxide Guidelines for Designated Facilities." Nitrogen oxide emissions averaging is allowed as specified in 40 CFR 60.33b(d)(1)(i) through (d)(1)(v). Nitrogen oxide emissions averaging shall not exceed Table 2 to Subpart Cb of Part 60 "Nitrogen Oxides Limits for Existing Designated Facilities Included in an Emission Averaging Plan at a Municipal Waste Combustor Plant."~~
- (C) ~~In addition to the requirements of Part (B) of this Subparagraph, emissions of nitrogen oxide from fluidized bed combustors located at a large municipal waste combustor shall not exceed 180 parts per million by volume, corrected to seven percent oxygen, by August 1, 2002. If nitrogen oxide emissions averaging is used as specified in 40 CFR 60.33b(d)(1)(i) through (d)(1)(V), emissions of nitrogen oxide from fluidized bed combustors located at a large municipal waste combustor shall not exceed 165 parts per million by volume, corrected to seven percent oxygen, by August 1, 2002.~~
- (6) Odorous Emissions. Each Any incinerator subject to this Rule shall comply with Rule .1806 of this Subchapter for the control of odorous emissions.
- (7) Hydrogen Chloride.

- (A) ~~Emissions of hydrogen chloride from each class I municipal waste combustor shall be reduced by at least 95 percent by weight or volume of potential hydrogen chloride emissions or to no more than 31 parts per million by volume corrected to seven percent oxygen (dry basis), whichever is less stringent. Compliance with this Part shall be determined by averaging emissions over a one hour period.~~
- (B) ~~Emissions of hydrogen chloride from each large municipal waste combustor shall be:~~
- (i) ~~reduced by at least 95 percent by weight or volume, or to no more than 31 parts per million by volume, corrected to seven percent oxygen (dry basis), whichever is less stringent, by August 1, 2000. Compliance with this emission limit shall be determined by averaging emissions over a one hour period; and~~
- (ii) ~~reduced by at least 95 percent by weight or volume, or to no more than 29 parts per million by volume, corrected to seven percent oxygen (dry basis), whichever is less stringent, by August 1, 2002. Compliance with this Part emission limit shall be determined by averaging emissions over a one hour period.~~
- (7) Hydrogen Chloride. Emissions of hydrogen chloride from each municipal waste combustor shall be reduced by at least 95 percent, or shall not exceed, as determined by Reference Method 26 or 26A of 40 CFR Part 60 Appendix A-8, more than:
- (A) before April 28, 2009, 31 parts per million dry volume, and
- (B) on or after April 28, 2009, 29 parts per million dry volume.
- Compliance with this Subparagraph shall be determined by averaging emissions over three one-hour test runs, with paired data sets for percent reduction and correction to seven percent oxygen.
- (8) Mercury Emissions. Emissions of mercury from each municipal waste combustor shall be reduced by at least 85 percent by weight of potential mercury emissions or shall not exceed, as determined by Reference Method 26 or 26A of 40 CFR Part 60 Appendix A-8, more than 0.08 milligrams per dry standard cubic, corrected to seven percent oxygen, whichever is less stringent. than:
- (A) before April 28, 2009, 31 parts per million, and
- (B) on or after April 28, 2009, 29 parts per million.
- Compliance with this Subparagraph shall be determined by averaging emissions over a one-hour period ~~three one hour test runs, with paired data set for percent reduction and correction to seven percent oxygen.~~
- Lead Emissions.
- (A) ~~Emissions of lead from each class I municipal waste combustor shall not exceed 0.49 milligrams per dry standard cubic meter, corrected to seven percent oxygen.~~
- (B) ~~Emissions of lead from each large municipal waste combustor shall not exceed 0.49 milligrams per dry standard cubic meter, corrected to seven percent oxygen, by August 1, 2000 and shall not exceed 0.44 milligrams per dry standard cubic meter, corrected to seven percent oxygen by August 1, 2002. exceed, as determined by Reference Method 29 of 40 CFR Part 60 Appendix A-8:~~
- (A) before April 28, 2009, 440 micrograms, per dry standard cubic meter and corrected to seven percent oxygen, and
- (B) on or after April 28, 2009, 400 micrograms per dry standard cubic meter and corrected to seven percent oxygen.
- (10) Cadmium Emissions. Emissions of cadmium from each municipal waste combustor shall not exceed, as determined by Reference Method 29 of 40 CFR Part 60 Appendix A-8, 0.040 milligrams per dry standard cubic meter, corrected to seven percent oxygen.
- (A) before April 28, 2009, 40 micrograms per dry standard cubic meter and corrected to seven percent oxygen, and
- (B) on or after April 28, 2009, 35 micrograms per dry standard cubic meter and corrected to seven percent oxygen.
- (11) Dioxins and Furans. Emissions of dioxins and furans from each municipal waste combustor:
- ~~combustor shall not exceed:~~
- (A) that employ electrostatic precipitator-based emission control system, shall not exceed before April 28, 2009, 60 nanograms and shall not exceed on or after April 28, 2009, 35 nanograms per dry standard cubic meter (total mass) (total mass dioxins and furans) per dry standard cubic meter (total

- mass dioxins and furans) ~~corrected to seven percent oxygen for facilities that employ an electrostatic precipitator-based emission control system, or~~
- (B) that does not employ an electrostatic precipitator-based emission control system, shall not exceed 30 nanograms per dry standard cubic meter (total mass) (total mass dioxins and furans) corrected to seven percent oxygen for facilities that do not employ an electrostatic precipitator-based emission control system.
- Compliance with this Subparagraph shall be determined by averaging emissions over three test runs with a minimum four hour run duration, performed in accordance with Reference Method 23 of 40 CFR Part 60 Appendix A-7, and corrected to seven percent oxygen.
- (12) Fugitive Ash.
- (A) On or after the date on which the initial performance test is completed, no owner or operator of a municipal waste combustor shall cause to be discharged to the atmosphere visible emissions of combustion ash from an ash conveying system (including conveyor transfer points) in excess of five percent of the observation period (i.e., nine minutes per three-hour block period), as determined by visible emission observations using EPA Reference Method Reference Method 22 of 40 CFR 60 Appendix A-7, observations as specified in 40 CFR 60.58b(k), except as provided in Part (B) of this Subparagraph. Compliance with this Part shall be determined from at least three 1-hour observation periods when the facility transfers fugitive ash from the municipal waste combustion unit to the area where the fugitive ash is stored or loaded into containers or trucks.
- (B) The emission limit specified in Part (A) of this Subparagraph covers visible emissions discharged to the atmosphere from buildings or enclosures, not the visible emissions discharged inside of the building or enclosures, of ash conveying systems.
- (13) Toxic Emissions. The owner or operator of a municipal waste combustor shall demonstrate compliance with Section .1100 of this Subchapter according to 15A NCAC 02Q .0700.
- (14) Ambient Standards.
- (A) In addition to the ambient air quality standards in Section .0400 of this Subchapter, the following annual average ambient air quality standards ~~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), ~~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 ~~2.3x10⁻⁷~~ 2.3x10⁻⁷
 - (ii) beryllium and its compounds ~~4.1x10⁻⁶~~ 1x10⁻⁶
 - (iii) cadmium and its compounds ~~5.5x10⁻⁶~~ 5.5x10⁻⁶,
and
 - (iv) chromium (VI) and its compounds ~~8.3x10⁻⁸~~ 8.3x10⁻⁸.
- These are increments above background concentrations and shall apply aggregately to all incinerators at a facility subject to this Rule.
- (B) The owner or operator of a facility with incinerators subject to this Rule shall demonstrate compliance with the ambient standards of ~~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 good engineering practice stack height 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 as their allowable emission limits unless Rule .0524, .1110, or .1111 of this Subchapter requires more restrictive rates.
- (15) The emission standards of Subparagraphs (1) through ~~(12)~~ (14) of this Paragraph shall apply at all times except during periods of municipal waste combustion unit startup, shutdown, or malfunction that last no more than three hours.
- (d) 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 ~~applies apply.~~
- (2) Each municipal waste combustor shall meet the following operational standards:
- (A) The concentration of carbon monoxide at the municipal waste combustor outlet shall not exceed the applicable emissions level contained in~~concentration in:~~
- (i) ~~table Table 3 of 40 CFR 60.34b(a) for large municipal waste combustors to Subpart Cb of Part 60 "Municipal Waste Combustor Operating Guidelines." The municipal waste combustor technology named in this table is defined in 40 CFR 60.51b; and~~
- (ii) ~~table 5 of 40 CFR 60 Subpart BBBB. The municipal waste combustor technology named in this table is defined in 40 CFR 60.1940.~~
- (B) The load level shall not exceed 110 percent of the maximum demonstrated municipal waste combustor unit load ~~(four-hour block average);~~ determined from the highest four-hour block arithmetic average achieved during four consecutive hours in the course of the most recent dioxins and furans stack test that demonstrates compliance with the emission limits of Paragraph (c) of this Rule.
- (C) The combustor operating temperature at which the combustor operates ~~measured at each~~ particulate matter control device inlet shall not exceed 63 degrees F above the maximum demonstrated particulate matter control device temperature ~~(four-hour block average);~~ from the highest four-hour block arithmetic average measured at the inlet of the particulate matter control device during four consecutive hours in the course of the most recent dioxins and furans stack test that demonstrates compliance with the emission limits of Paragraph (c) of this Rule.
- (D) The owner or operator of a municipal waste combustor with activated carbon control system to control dioxins and furans or mercury emissions shall maintain an eight-hour block average carbon feed rate at or above the highest average level established during the most recent dioxins and furans or mercury test. ~~test and shall evaluate total carbon usage for each calendar quarter. The total amount of carbon purchased and delivered to the municipal waste combustor shall be at or above the required quarterly usage of carbon and shall be calculated as specified in equation four or five in 40 CFR 60.1935(f).~~
- (E) The owner or operator of a municipal waste combustor shall be exempted from limits on load level, temperature at the inlet of the particular matter control device, and carbon feed rate during:
- (i) the annual tests for dioxins and furans;
- (ii) the annual mercury tests for carbon feed requirements only;
- (iii) the two weeks preceding the annual tests for dioxins and furans; and
- (iv) the two weeks preceding the annual mercury tests (for carbon feed rate requirements only); and
- (v) ~~any activities to improve the performance of the municipal waste combustor or its emission control including performance evaluations and diagnostic or new technology testing.~~
- (F) The Director shall exempt the owner or operator of a municipal waste combustor from limits on load level, temperature at the inlet of the particular matter control device, and carbon feed rate when the Director approves test activities to:
- (i) evaluate system performance;
- (ii) test new technology or control technology.
- (iii) perform diagnostic testing;
- (iv) perform other activities to improve the performance; or
- (v) perform other activities to advance the state of the art for emissions controls.
- (3) ~~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 and Subparagraph (4) of this Paragraph. Incinerators 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.

- (3)(4) The operational standards of this Paragraph apply at all times except during periods of municipal waste combustor startup, shutdown, or malfunction that last no more ~~than~~ than:
- (A) ~~three hours for Class I combustors; or~~
 - (B) ~~three hours, hours except as specified in 60.58b(a)(1)(iii) for large municipal waste combustors, with the following exception: For the purpose of compliance with the carbon monoxide emission limits in Subparagraph (2) of this Paragraph, if a loss of boiler water level control (e.g., boiler waterwall tube failure) or a loss of combustion air control (e.g., loss of combustion air fan, induced draft fan, combustion grate bar failure) is determined to be a malfunction according to 15A NCAC 02D .0536, the duration of the malfunction period is limited to 15 hours per occurrence. During such periods of malfunction, monitoring data shall be dismissed or excluded from compliance calculations, but shall be recorded and reported in accordance with the provisions of Paragraph (f) of this Rule.~~

(e) Test Methods and Procedures.

- (1) The test methods and procedures described in 15A NCAC 02D .0501 and in Parts (A) through (K) of this Subparagraph shall be used to show compliance:
 - (A) 40 CFR 60.58b(b) for continuous emissions monitoring of oxygen or carbon monoxide at each location where carbon monoxide, sulfur dioxide, or nitrogen oxides are monitored;
 - (B) 40 CFR 60.58b(c) for determination of compliance with particulate emission limits;
 - (C) 40 CFR 60.58b(d) for determination of compliance with emission limits for cadmium, lead and mercury;
 - (D) 40 CFR 60.58b(e) for determination of compliance with sulfur dioxide

emission limits from continuous emissions monitoring data;

- (E) 40 CFR 60.58b(f) for determination of compliance with hydrogen chloride emission limits;
 - (F) 40 CFR 60.58b(g) for determination of compliance with dioxin/furan emission limits;
 - (G) 40 CFR 60.58b(h) for determination of compliance with nitrogen oxides limits from continuous emission monitoring data;
 - (H) 40 CFR 60.58b(i) for determination of compliance with operating requirements under Paragraph (d);
 - (I) 40 CFR 60.58b(j) for determination of municipal waste combustor unit capacity;
 - (J) 40 CFR 60.58b(k) for determination of compliance with the fugitive ash emission limit; and
 - (K) 40 CFR 60.58b(m)(1) to determine parametric monitoring for carbon injection control systems.
- (2) ~~Rule .0501 of this Subchapter and in Method 29 of 40 CFR Part 60 Appendix A-8, 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 only to collect sample for chromium (VI), and SW 846 Method 0060 shall be used for the analysis.~~
- (3) The owner or operator will conduct initial and annual stack tests to measure the emission levels of dioxins and furans, cadmium, lead, mercury, beryllium, arsenic, chromium (VI), particulate matter, opacity, hydrogen chloride, and fugitive ash. Annual stack tests for the same pollutants will be conducted no later than 12 months after the previous stack test.
- (2) ~~The owner or operator of a municipal waste combustor shall do compliance and performance testing according to 40 CFR 60.58b.~~
- (3) ~~For large municipal waste combustors that achieve a dioxin and furan emission level less than or equal to 15 nanograms per dry standard cubic meter total mass, corrected to seven percent oxygen, the performance testing shall be performed according to the testing schedule specified in 40 CFR 60.58b(g)(5)(iii). For class I municipal waste combustors the performance testing shall be performed according to the testing schedule specified in 40 CFR 60.1785 to demonstrate compliance with the applicable emission standards in Paragraph (e) of this Rule.~~

- (4) The testing frequency for dioxin and furan may be reduced if the conditions under 40 CFR 60.58b(g)(5)(iii) are met and the owner or operator notifies the Director of the intent to begin the reduced dioxin and furan performance testing schedule during the following calendar year.
- (5) The owner or operator of an affected facility may request that compliance with the dioxin and furan emission limit be determined using carbon dioxide measurements corrected to an equivalent of seven percent oxygen. The relationship between oxygen and carbon dioxide levels for the affected facility shall be established as specified in 40 CFR 60.58b(b)(6).
- (6)(4) The Director may require the owner or operator of any incinerator subject to this Rule to test his incinerator to demonstrate compliance with the emission standards in Paragraph (c) of this Rule.
- (f) Monitoring, Recordkeeping, and Reporting.
- (1) The owner or operator of ~~an incinerator subject to the requirements of this Rule~~ a municipal waste combustor shall comply with the monitoring, recordkeeping, and reporting requirements established pursuant to Section .0600 of this Subchapter.
- (2) The owner or operator of ~~an incinerator~~ a municipal waste combustor 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.
- (3) The owner or operator of a municipal waste combustor shall:
- (A) install, calibrate, operate, and maintain, for each municipal waste combustor, continuous emission monitors to ~~determine~~ determine the following:
- (i) ~~opacity according to 40 CFR 60.58b(e) for large municipal waste combustors and 40 CFR 60.1720 for class I municipal waste combustors;~~
- (ii)(i) sulfur dioxide emissions, according to 40 CFR 60.58b(e) for large ~~municipal waste combustors and 40 CFR 60.1720 for class I municipal waste combustors;~~
- (iii)(ii) nitrogen oxides emissions, according to 40 CFR 60.58b(h) for large ~~municipal waste combustors and 40 CFR 60.1720 for class I municipal waste combustors;~~ and
- (iv)(iii) oxygen or carbon dioxide emissions, according to 40 CFR 60.58b(b) for large ~~municipal waste combustors and 40 CFR 60.1720 for class I municipal waste combustors;~~ and
- (v) ~~temperature level in the primary chamber and, where there is a secondary chamber, in the secondary chamber;~~
- (B) monitor the load level of each municipal waste combustor according to 40 CFR 60.58b(i)(6); each class I municipal waste combustor according to 40 CFR 60.1810;
- (C) monitor the temperature of each municipal waste combustor the gases flue gases at the inlet of the particulate matter air pollution control device according to 40 CFR 60.58b(i)(7); ~~60.1815;~~
- (D) monitor carbon feed rate of each municipal waste combustor carbon delivery system and total plant predicted quarterly usage if activated carbon is used to abate dioxins and furans or mercury emissions according to 40 CFR 60.58b(m)(2) and (m)(3); ~~60.1820;~~
- (E) maintain records of the information listed in 40 CFR 60.59b(d)(1) through (d)(15) for large ~~municipal waste combustors and in 40 CFR 60.1840 through 1855 for class I municipal waste combustors~~ for a period of at least five years;
- (F) ~~following the initial compliance tests as required under Paragraph (e) of this Rule, submit the information specified in 40 CFR 60.59b(f)(1) through (f)(6) for large municipal waste combustors and in 40 CFR 60.1875 for class I municipal waste combustors, in the initial performance test report;~~
- (F)(G) following the first year of municipal combustor operation, submit an annual report specified in 40 CFR 60.59b(g) for large ~~municipal waste combustors and in 40 CFR 60.1885 for class I municipal waste combustors, as applicable, no later than February 1 of each year~~

following the calendar year in which the data were collected. Once the unit is subject to permitting requirements under 15A NCAC 02Q .0500, Title V Procedures, the owner or operator of an affected facility shall submit these reports semiannually; and

(H)(G) submit a semiannual report specified in 40 CFR 60.59b(h) for ~~large municipal waste combustors and in 40 CFR 60.1900 for class I municipal waste combustors~~, for any recorded pollutant or parameter that does not comply with the pollutant or parameter limit specified in this Section, according to the schedule specified in 40 CFR 60.59b(h)(6).

(g) Excess Emissions and Start-up and Shut-down. All municipal waste combustors subject to this Rule shall comply with Rule .0535, Excess Emissions Reporting and Malfunctions, of this Subchapter.

(h) Operator Training and Certification.

(1) ~~By January 1, 2000, or six months after the date of start up of a class I municipal waste combustor, whichever is later, and by July 1, 1999 or six months after the date of start up of a large municipal waste combustor, whichever is later:~~

(A)(1) Each chief facility operator and shift supervisor of a municipal waste combustor shall obtain and maintain a current provisional operator certification within six months after he transfers to the municipal waste combustion unit or six months after he is hired to work at the municipal waste combustor unit, from the American Society of Mechanical Engineers (ASME QRO-1-1994).

(2) Each chief facility operator and shift supervisor shall obtain a full certification or be scheduled to take the certification exam within six months after he transfers to the municipal waste combustion unit or six months after he is hired to work at the municipal waste combustor unit.

(B)(3) ~~Each facility operator and shift supervisor of a municipal waste combustor shall have completed full certification exam or shall have scheduled a full certification exam with the American Society of Mechanical Engineers (ASME QRO-1-1994).~~

(C)(4) The owner or operator of a municipal waste combustor plant shall not allow the facility to be operated at any time unless one of the following persons is on duty at the affected facility:

(i)(A) a fully certified chief facility operator;

(ii)(B) a provisionally certified chief facility operator who is scheduled to take the

full certification exam; ~~exam according to the schedule specified in Part (B) of this Subparagraph;~~

(iii)(C) a fully certified shift supervisor; or

(iv)(D) a provisionally certified shift supervisor who is scheduled to take the full certification exam; ~~exam according to the schedule specified in Part (B) of this Subparagraph.~~

(D)(5) ~~If one of the persons listed in this Subparagraph leaves the certified chief facility operator and certified shift supervisor are both unavailable, the large municipal waste combustor during his operating shift, a provisionally certified control room operator who is scheduled to take the full certification exam, who is onsite at the affected facility may fulfill the requirements of this Subparagraph.~~ Part.

(E) ~~If one of the persons listed in this Subparagraph leaves the class I municipal waste combustor during his operating shift, a provisionally certified control room operator who is onsite at the affected facility may fulfill the requirements specified in 40 CFR 60.1685.~~

(6) All chief facility operators, shift supervisors, and control room operators shall complete the EPA municipal waste combustor training course. This requirement does not apply to chief facility operators, shift supervisors, and control room operators who have obtained full certification from the American Society of Mechanical Engineers on or before July 1, 1998. Furthermore, the owner or operator may request that the Director waive the requirement for chief facility operators, shift supervisors, and control room operators who have obtained provisional certification from the American Society of Mechanical Engineers on or before July 1, 1998.

(i) Training

(2)(1) The owner or operator of each municipal waste combustor shall develop and update on a yearly basis a site-specific operating manual that shall at the minimum address the elements of municipal waste combustor unit operation specified in 40 CFR 60.54b(e)(1) through (e)(11). The operating manual shall be kept in a readily accessible location for all persons required to undergo training under Subparagraph (2) of this Paragraph. The operating manual and records of training shall be available for inspection by the personnel of the Division on request.

(3)(2) ~~By July 1, 1999, or six months after the date of start up of a municipal waste combustor, whichever is later, the~~ The owner or operator

of the municipal waste combustor plant shall establish a training program to review the operating manual according to the schedule specified in Parts (A) and (B) of this Subparagraph with each person who has responsibilities affecting the operation of the facility including chief facility operators, shift supervisors, control room operators, ash handlers, maintenance personnel, and crane and load handlers; comply with the following requirements:

(A) A date prior to the day when the person assumes responsibilities affecting municipal waste combustor unit operation; and

(B) Annually, following the initial training required by Part (A) of this Subparagraph.

(A) All chief facility operators, shift supervisors, and control room operators shall complete the EPA municipal waste combustor training course:

(i) The requirements specified in Part (A) of this Subparagraph shall not apply to chief facility operators, shift supervisors and control room operators who have obtained full certification from the American Society of Mechanical Engineers on or before July 1, 1998.

(ii) As provided under 40 CFR 60.39b(c)(4)(iii)(B), the owner or operator may request that the Administrator waive the requirement specified in Part (A) of this Subparagraph for the chief facility operators, shift supervisors, and control room operators who have obtained provisional certification from the American Society of Mechanical Engineers on or before July 1, 1998.

(B) The owner or operator of each municipal waste combustor shall establish a training program to review the operating manual, according to the schedule specified in Subparts (i) and (ii) of this Part, with each person who has responsibilities affecting the operation of an affected facility, including the chief facility operators, shift supervisors, control room

operators, ash handlers, maintenance personnel, and crane load handlers.

(i) Each person specified in Part (B) of this Subparagraph shall undergo initial training no later than the date specified in Items (I) through (III) of this Subpart, whichever is later:

(I) The date six months after the date of start-up of the affected facility;

(II) July 1, 1999; or

(III) A date prior to the day when the person assumes responsibilities affecting municipal waste combustor unit operation:

(ii) Annually, following the initial training required by Subpart (i) of this Part.

(C) The operating manual required by Subparagraph (2) of this Paragraph shall be updated continually and be kept in a readily accessible location for all persons required to undergo training under Part (B) of this Subparagraph. The operating manual and records of training shall be available for inspection by the personnel of the Division on request.

(D) The operating manual of class I municipal waste combustors shall contain requirements specified in 40 CFR 60.1665 in addition to requirements of Part (C) of this Subparagraph.

(4) The referenced ASME exam in this Paragraph is hereby incorporated by reference and includes subsequent amendments and editions. Copies of the referenced ASME exam may be obtained from the American Society of Mechanical Engineers (ASME), 22 Law Drive, Fairfield, NJ 07007, at a cost of forty nine dollars (\$49.00).

(i) Compliance Schedules.

(1) The owner or operator of a large municipal waste combustor shall choose one of the following three compliance schedule options:

(A) comply with all the requirements or elose before August 1, 2000;

(B) comply with all the requirements before three years following the date of issuance of a revised construction and operation permit, if permit modification is required, or after

August 1, 2000, but before August 1, 2002, if a permit modification is not required. If this option is chosen, then the owner or operator of the facility shall submit to the Director measurable and enforceable incremental steps of progress towards compliance which include:

- (i) a date by which contracts for the emission control system or equipment shall be awarded or orders issued for purchase of component parts;
- (ii) a date by which on site construction, installation, or modification of emission control equipment shall begin;
- (iii) a date by which on site construction, installation, or modification of emission control equipment shall be completed;
- (iv) a date for initial start up of emissions control equipment;
- (v) a date for initial performance test(s) of emission control equipment; and
- (vi) a date by which the municipal waste combustor shall be in compliance with this Rule, which shall be no later than three years from the issuance of the permit; or

(C) close between August 1, 2000, and August 1, 2002. If this option is chosen then the owner or operator of the facility shall submit to the Director a closure agreement which includes the date of the plant closure.

- (2) All large municipal waste combustors for which construction, modification, or reconstruction commenced after June 26, 1987, but before September 19, 1994, shall comply with the emission limit for mercury specified in Subparagraph (c)(8) of this Rule and the emission limit for dioxin and furan specified in Subparagraph (c)(11) of this Rule within one year following issuance of a revised construction and operation permit, if a permit modification is required, or by August 1, 2000, whichever is later.
- (3) The owner or operator of a class I municipal waste combustor shall choose one of the following four compliance schedule options:

(A) comply with all requirements of this Rule beginning July 1, 2002;

(B) comply with all requirements of this Rule by July 1, 2002 whether a permit modification is required or not. If this option is chosen, then the owner or operator shall submit to the Director along with the permit application if a permit application is needed or by September 1, 2002 if a permit application is not needed a compliance schedule that contains the following increments of progress:

- (i) a final control plan as specified in 40 CFR 60.1610;
- (ii) a date by which contracts for the emission control system or equipment shall be awarded or orders issued for purchase of component parts;
- (iii) a date by which onsite construction, installation, or modernization of emission control system or equipment shall begin;
- (iv) a date by which onsite construction, installation, or modernization of emission control system or equipment shall be completed; and
- (v) a date by which the municipal waste combustor shall be in compliance with this Rule, which shall be no later no later than December 1, 2004;

(C) comply with all requirements of this Rule by closing the combustor by July 1, 2002 and then reopening it. If this option is chosen the owner or operator shall:

- (i) meet increments of progress specified in 40 CFR 60.1585, if the class I combustor is closed and then reopened prior to the final compliance date; and
- (ii) complete emissions control retrofit and meet the emission limits and good combustion practices on the date that the class I combustor reopens operation if the class I combustor is closed and then reopened after the final compliance date; or

- ~~(D) — comply by permanently closing the combustor. If this option is chosen the owner or operator shall:~~
 - ~~(i) — submit a closure notification, including the date of closure, to the Director by July 1, 2002 if the class I combustor is to be closed on or before September 1, 2002; or~~
 - ~~(ii) — enter into a legally binding closure agreement with the Director by July 1, 2002 if the class I combustor is to be closed after September 1, 2002, and the combustor shall be closed no later than December 1, 2004.~~
- ~~(4) — The owner or operator of a class I municipal waste combustor that began construction, reconstruction or modification after June 26, 1987 shall comply with the emission limit for mercury specified in Subparagraph (e)(8) of this Rule and the emission limit for dioxin and furan specified in Part (e)(11)(B) of this Rule by July 1, 2002.~~
- ~~(5) — The owner or operator of any municipal waste combustor shall certify to the Director within five days after the deadline, for each increment of progress, whether the required increment of progress has been met.~~

(j) The referenced ASME exam in this Paragraph is hereby incorporated by reference and includes subsequent amendments and editions. Copies of the referenced ASME exam may be obtained from the American Society of Mechanical Engineers (ASME), 22 Law Drive, Fairfield, NJ 07007.

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(3),(4),(5); 40 CFR 60.35b; 40 CFR 60.34e; 40 CFR 60.1515.

15A NCAC 02D .1206 HOSPITAL, MEDICAL, AND INFECTIOUS WASTE INCINERATORS

(a) Applicability. This Rule applies to any hospital, medical, and infectious waste incinerator (HMIWI), except:

- (1) any HMIWI required to have a permit under Section 3005 of the Solid Waste Disposal Act;
- (2) any pyrolysis unit;
- (3) any cement kiln firing hospital waste or medical and infectious waste;

- (4) any physical or operational change made to an existing HMIWI solely for the purpose of complying with the emission standards for HMIWIs in this Rule. These physical or operational changes are not considered a modification and do not result in an existing HMIWI becoming subject to the provisions of 40 CFR Part 60, Subpart Ec;
- (5) any HMIWI during periods when only pathological waste, low-level radioactive waste, or chemotherapeutic waste is burned, provided that the owner or operator of the HMIWI:
 - (A) notifies the Director of an exemption claim; and
 - (B) keeps records on a calendar quarter basis of the periods of time when only pathological waste, low-level radioactive waste, or chemotherapeutic waste is burned; or
- (6) any co-fired HMIWI, if the owner or operator of the co-fired HMIWI:
 - (A) notifies the Director of an exemption claim;
 - (B) provides an estimate of the relative weight of hospital, medical and infectious waste, and other fuels or wastes to be combusted; and
 - (C) keeps records on a calendar quarter basis of the weight of hospital, medical and infectious waste combusted, and the weight of all other fuels and wastes combusted at the co-fired HMIWI.

(b) Definitions. For the purpose of this Rule, the definitions contained in 40 CFR 60.51c shall apply in addition to the definitions in Rule .1202 of this Section.

(c) Emission Standards.

- (1) The emission standards in this Paragraph apply to all incinerators subject to this Rule except where Rules .0524, .1110, or .1111 of this Subchapter applies. However, when Subparagraphs (13) or (14) of this Paragraph and Rules .0524, .1110, or .1111 of this Subchapter regulate the same pollutant, the more restrictive provision for each pollutant shall apply, notwithstanding provisions of Rules .0524, .1110, or .1111 of this Subchapter to the contrary.
- (2) Particulate Matter.
 - (A) Emissions of particulate matter from a HMIWI shall not exceed:

Incinerator Size	Allowable Emission Rate (mg/dscm)
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	[corrected to seven percent oxygen]
Small	115
Medium	69
Large	34

- (B) Emissions of particulate matter from any small remote HMIWI shall not exceed 197 milligrams per dry standard cubic meter, corrected to seven percent oxygen.
- (3) Visible Emissions. On and after the date on which the initial performance test is completed, the owner or operator of any HMIWI shall not cause to be discharged into the atmosphere from the stack of the HMIWI any gases that exhibit greater than 10 percent opacity (6-minute block average).
- (4) Sulfur Dioxide. Emissions of sulfur dioxide from any HMIWI shall not exceed 55 parts per million corrected to seven percent oxygen (dry basis).
- (5) Nitrogen Oxide. Emissions of nitrogen oxides from any HMIWI shall not exceed 250 parts per million by volume corrected to seven percent oxygen (dry basis).
- (6) Carbon Monoxide. Emissions of carbon monoxide from any HMIWI shall not exceed 40 parts per million by volume, corrected to seven percent oxygen (dry basis).
- (7) Odorous Emissions. Any incinerator subject to this Rule shall comply with Rule .1806 of this Subchapter for the control of odorous emissions.
- (8) Hydrogen Chloride.
- (A) Emissions of hydrogen chloride from any small, medium, or large HMIWI shall be reduced by at least 93 percent by weight or volume or to no more than 100 parts per million by volume corrected to seven percent oxygen (dry basis), whichever is less stringent. Compliance with this Part shall be determined by averaging emissions over a one-hour period.
- (B) Emissions of hydrogen chloride from any small remote HMIWI shall not exceed 3100 parts per million by volume corrected to seven percent oxygen (dry basis). Compliance with this Part shall be determined by averaging emissions over a one-hour period.
- (9) Mercury Emissions.
- (A) Emissions of mercury from any small, medium, or large HMIWI shall be reduced by at least 85 percent by weight or shall not exceed 0.55 milligrams per dry standard cubic meter, corrected to seven percent oxygen, whichever is less stringent. Compliance with this Part shall be determined by averaging emissions over a one-hour period.
- (B) Emissions of mercury from any small remote HMIWI shall not exceed 7.5 milligrams per dry standard cubic meter, corrected to seven percent oxygen. Compliance with this Part shall be determined by averaging emissions over a one-hour period.
- (10) Lead Emissions.
- (A) Emissions of lead from any small, medium, or large HMIWI shall be reduced by at least 70 percent by weight or shall not exceed 1.2 milligrams per dry standard cubic meter, corrected to seven percent oxygen, whichever is less stringent.
- (B) Emissions of lead from any small remote HMIWI shall not exceed 10 milligrams per dry standard cubic meter, corrected to seven percent oxygen.
- (11) Cadmium Emissions.
- (A) Emissions of cadmium from any small, medium, or large HMIWI shall be reduced by at least 65 percent by weight or shall not exceed 0.16 milligrams per dry standard cubic meter, corrected to seven percent oxygen, whichever is less stringent.
- (B) Emissions of cadmium from any small remote HMIWI shall not exceed 4 milligrams per dry standard cubic meter, corrected to seven percent oxygen.
- (12) Dioxins and Furans.
- (A) Emissions of dioxins and furans from any small, medium, or large HMIWI shall not exceed 125 nanograms per dry standard cubic meter total dioxins and furans, corrected to seven percent oxygen or 2.3 nanograms per dry standard cubic meter (total equivalency), corrected to seven percent oxygen.

- (B) Emissions of dioxins and furans from any small remote HMIWI shall not exceed 800 nanograms per dry standard cubic meter total dioxins and furans, corrected to seven percent oxygen or 15 nanograms per dry standard cubic meter (total equivalency), corrected to seven percent oxygen.
- (13) 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.
- (14) 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 2.3×10^{-7}
 - (ii) beryllium and its compounds 4.1×10^{-6}
 - (iii) cadmium and its compounds 5.5×10^{-6}
 - (iv) chromium (VI) and its compounds 8.3×10^{-8}
 - (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 Rules .0524, .1110, or .1111 of this Subchapter requires more restrictive rates.
- (d) 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) Each small remote HMIWI shall have an initial equipment inspection by July 1, 2000, and an annual inspection each year thereafter.
 - (A) At a minimum, the inspection shall include all the elements listed in 40 CFR 60.36e(a)(1)(i) through (xvii).
 - (B) Any necessary repairs found during the inspection shall be completed within 10 operating days of the inspection unless the owner or operator submits a written request to the Director for an extension of the 10 operating day period. The Director shall grant the extension if:
 - (i) the owner or operator of the small remote HMIWI demonstrates that achieving compliance by the time allowed under this Part is not feasible; and
 - (ii) the Director does not extend the time allowed for compliance by more than 30 days following the receipt of the written request.
 - (3) The owner or operator of any HMIWI, except small remote HMIWI, subject to this Rule shall comply with the compliance and performance testing requirements of 40 CFR 60.56c, excluding the fugitive emissions testing requirements under 40 CFR 60.56c(b)(12) and (c)(3).
 - (4) The owner or operator of any small remote HMIWI shall comply with the following compliance and performance testing requirements:
 - (A) conduct the performance testing requirements in 40 CFR 60.56c(a), (b)(1) through (b)(9), (b)(11)(mercury only), and (c)(1). The 2,000 pound per week limitation does not apply during performance tests;
 - (B) establish maximum charge rate and minimum secondary chamber temperature as site-specific operating parameters during the initial performance test to determine compliance with applicable emission limits; and
 - (C) following the date on which the initial performance test is completed, ensure that the HMIWI does not operate above the maximum charge rate or below the minimum secondary

chamber temperature measured as three hour rolling averages, calculated each hour as the average of all previous three operating hours, at all times except during periods of start-up, shut-down and malfunction. Operating parameter limits do not apply during performance tests. Operation above the maximum charge rate or below the minimum secondary chamber temperature shall constitute a violation of the established operating parameters.

- (5) Except as provided in Subparagraph (3) of this Paragraph, operation of the HMIWI above the maximum charge rate and below the minimum secondary temperature, each measured on a three hour rolling average, simultaneously shall constitute a violation of the particulate matter, carbon monoxide, and dioxin and furan emission limits.
- (6) The owner or operator of a HMIWI may conduct a repeat performance test within 30 days of violation of applicable operating parameters to demonstrate that the HMIWI is not in violation of the applicable emission limits. Repeat performance tests conducted pursuant to this Subparagraph shall be conducted using the identical operating parameters that indicated a violation under Subparagraph (4) of this Paragraph.

(e) Test Methods and Procedures.

- (1) The test methods and procedures described in ~~Rule .0504~~ Section .2600 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 may require the owner or operator to test his incinerator to demonstrate compliance with the emission standards listed in Paragraph (c) of this Rule.

(f) 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 subject to the requirements of this Rule 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 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 the 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 may 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 as necessary to determine proper operation of the incinerator.

- (3) In addition to the requirements of Subparagraphs (1) and (2) of this Paragraph, the owner or operator of a HMIWI shall comply with the reporting and recordkeeping requirements listed in 40 CFR 60.58c(b), (c), (d), (e), and (f), excluding 40 CFR 60.58c(b)(2)(ii) and (b)(7).
- (4) In addition to the requirements of Subparagraphs (1), (2) and (3) of this Paragraph, the owner or operator of a small remote HMIWI shall:
 - (A) maintain records of the annual equipment inspections, any required maintenance, and any repairs not completed within 10 days of an inspection;
 - (B) submit an annual report containing information recorded in Part (A) of this Subparagraph to the Director no later than 60 days following the year in which data were collected. Subsequent reports shall be sent no later than 12 calendar months following the previous report. The report shall be signed by the HMIWI manager; and
 - (C) submit the reports required by Parts (A) and (B) of this Subparagraph to the Director semiannually once the HMIWI is subject to the permitting procedures of 15A NCAC 02Q .0500, Title V Procedures.
- (5) Waste Management Guidelines. The owner or operator of a HMIWI shall comply with the requirements of 40 CFR 60.55c for the preparation and submittal of a waste management plan.
- (6) Except as provided in Subparagraph (7) of this Paragraph, the owner or operator of any

HMIWI shall comply with the monitoring requirements in 40 CFR 60.57c.

- (7) The owner or operator of any small remote HMIWI shall:

- (A) install, calibrate, maintain, and operate a device for measuring and recording the temperature of the secondary chamber on a continuous basis, the output of which shall be recorded, at a minimum, once every minute throughout operation.
- (B) install, calibrate, maintain, and operate a device which automatically measures and records the date, time, and weight of each charge fed into the HMIWI.
- (C) obtain monitoring data at all times during HMIWI operation except during periods of monitoring equipment malfunction, calibration, or repair. At a minimum, valid monitoring data shall be obtained for 75 percent of the operating hours per day and for 90 percent of the operating hours per calendar quarter that the HMIWI is combusting hospital, medical, and infectious waste.

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

(h) Operator Training and Certification.

- (1) The owner or operator of a HMIWI shall not allow the HMIWI to operate at any time unless a fully trained and qualified HMIWI operator is accessible, either at the facility or available within one hour. The trained and qualified HMIWI operator may operate the HMIWI directly or be the direct supervisor of one or more HMIWI operators.
- (2) Operator training and qualification shall be obtained by completing the requirements of 40 CFR 60.53c(c) through (g).
- (3) The owner or operator of a HMIWI shall maintain, at the facility, all items required by 40 CFR 60.53c(h)(1) through (h)(10).
- (4) The owner or operator of a HMIWI shall establish a program for reviewing the information required by Subparagraph (3) of this Paragraph annually with each HMIWI operator. ~~The initial review of the information shall be conducted by January 1, 2000. Subsequent~~ reviews of the information shall be conducted annually.
- (5) The information required by Subparagraph (3) of this Paragraph shall be kept in a readily accessible location for all HMIWI operators. This information, along with records of

training shall be available for inspection by Division personnel upon request.

- ~~(6) All HMIWI operators shall be in compliance with this Paragraph by July 1, 2000.~~

~~(i) Compliance Schedules.~~

- ~~(1) Title V Application Date. Any HMIWI subject to this rule shall have submitted an application for a permit under the procedures of 15A NCAC 02Q .0500, Title V Procedures, by January 1, 2000.~~

- ~~(2) Final Compliance Date. Except for those HMIWIs described in Subparagraphs (3) and (4) of this Paragraph, any HMIWI subject to this Rule shall be in compliance with this Rule or close on or before July 1, 2000.~~

- ~~(3) Installation of Air Pollution Control Equipment. Any HMIWI planning to install the necessary air pollution control equipment to comply with the emission standards in Paragraph (c) of this Rule shall be in compliance with Paragraph (c) of this Rule by September 15, 2002. If this option is chosen, then the owner or operator of the HMIWI shall submit to the Director measurable and enforceable incremental steps of progress towards compliance which include:~~

- ~~(A) the submission of a petition for site specific operating parameters under 40 CFR 63.56c(i);~~

- ~~(B) the obtaining of services of an architectural and engineering firm regarding the air pollution control device(s);~~

- ~~(C) the obtaining of design drawings of the air pollution control device(s);~~

- ~~(D) the ordering of air pollution control device(s);~~

- ~~(E) the obtaining of the major components of the air pollution control device(s);~~

- ~~(F) the initiation of site preparation for the installation of the air pollution control device(s);~~

- ~~(G) the initiation of installation of the air pollution control device(s);~~

- ~~(H) the initial startup of the air pollution control device(s); and~~

- ~~(I) the initial compliance test(s) of the air pollution control device(s).~~

- ~~(4) Petition for Extension of Final Compliance Date.~~

- ~~(A) The owner or operator of a HMIWI may petition the Director for an extension of the compliance deadline of Subparagraph (2) of this Paragraph provided that the following information is submitted by January 1, 2000, to allow the Director~~

adequate time to grant or deny the extension by July 1, 2000:

- (i) ~~documentation of the analyses undertaken to support the need for an extension, including an explanation of why up to July 1, 2002 is sufficient time to comply with this Rule while July 1, 2000, is not sufficient. The documentation shall also include an evaluation of the option to transport the waste offsite to a commercial medical waste treatment and disposal facility on a temporary or permanent basis; and~~
- (ii) ~~documentation of the measurable and enforceable incremental steps of progress listed in Subparagraph (3) of this Paragraph to be taken towards compliance with the emission standards in Paragraph (c) of this Rule.~~

- (B) ~~The Director may grant the extension if all the requirements in Part (A) of this Subparagraph are met.~~
- (C) ~~If the extension is granted, the HMIWI shall be in compliance with this Section by July 1, 2002.~~

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5); 40 CFR 60.34e.

15A NCAC 02D .1208 OTHER INCINERATORS

(a) Applicability.

- (1) This Rule applies to any incinerator not covered under Rules .1203 through .1207 or .1210 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 shall 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 2.3×10^{-7}
 - (ii) beryllium and its compounds 4.1×10^{-6}
 - (iii) cadmium and its compounds 5.5×10^{-6}
 - (iv) chromium (VI) and its compounds 8.3×10^{-8}
 - (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~~ Section .2600 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 the 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.

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10).

15A NCAC 02D .1210 COMMERCIAL AND INDUSTRIAL SOLID WASTE INCINERATION UNITS

(a) Applicability. With the exceptions in Paragraph (b) of this Rule, this Rule applies to the commercial and industrial solid waste incinerators (CISWI).

(b) Exemptions. The following types of incineration units are exempted from this Rule:

- (1) incineration units covered under Rules .1203 through .1206 of this Section;
- (2) units, burning 90 percent or more by weight on a calendar-quarter basis, excluding the weight of auxiliary fuel and combustion air, of agricultural waste, pathological waste, low-

level radioactive waste, or chemotherapeutic waste, if the owner or operator of the unit:

- (A) notifies the Director that the unit qualifies for this exemption; and
 - (B) keeps records on a calendar-quarter basis of the weight of agricultural waste, pathological waste, low level radioactive waste, or chemotherapeutic waste burned, and the weight of all other fuels and wastes burned in the unit;
- (3) small power production or cogeneration units if;
- (A) the unit qualifies as a small power-production facility under Section 3(17)(C) of the Federal Power Act (16 U.S.C. 796(17)(C)) or as a cogeneration facility under section 3(18)(B) of the Federal Power Act (16 U.S.C. 796(18)(B));
 - (B) the unit burns homogeneous waste (not including refuse-derived fuel) to produce electricity; and
 - (C) the owner or operator of the unit notifies the Director that the unit qualifies for this exemption;
- (4) units that combust waste for the primary purpose of recovering metals;
- (5) cyclonic barrel burners;
- (6) rack, part, and drum reclamation units that burn the coatings off racks used to hold small items for application of a coating;
- (7) cement kilns;
- (8) chemical recovery units burning materials to recover chemical constituents or to produce chemical compounds as listed in 40 CFR 60.2555(n)(1) through (7);
- (9) laboratory analysis units that burn samples of materials for the purpose of chemical or physical analysis;
- (10) air curtain burners covered under Rule .1904 of this Subchapter.

(c) The owner or operator of a chemical recovery unit not listed under 40 CFR 60.2555(n) may petition the Director to be exempted. The petition shall include all the information specified under 40 CFR 60.2559(a). The Director shall approve the exemption if he finds that all the requirements of 40 CFR 60.2555(n) are satisfied and that the unit burns materials to recover chemical constituents or to produce chemical compounds where there is an existing market for such recovered chemical constituents or compounds.

(d) Definitions. For the purpose of this Rule, the definitions contained in 40 CFR 60.2875 shall apply in addition to the definitions in Rule .1202 of this Section.

(e) Emission Standards. The emission standards in this Rule apply to all incinerators subject to this Rule except where Rules .0524, .1110, or .1111 of this Subchapter applies. When Subparagraphs (12) or (13) of this Paragraph and Rules .0524, .1110, or .1111 of this Subchapter regulate the same pollutant,

the more restrictive provision for each pollutant shall apply, notwithstanding provisions of Rules .0524, .1110, or .1111 of this Subchapter to the contrary.

- (1) Particulate Matter. Emissions of particulate matter from a CISWI unit shall not exceed 70 milligrams per dry standard cubic meter corrected to seven percent oxygen (dry basis).
- (2) Opacity. Visible emissions from the stack of a CISWI unit shall not exceed 10 percent opacity (6-minute block average).
- (3) Sulfur Dioxide. Emissions of sulfur dioxide from a CISWI unit shall not exceed 20 parts per million by volume corrected to seven percent oxygen (dry basis).
- (4) Nitrogen Oxides. Emissions of nitrogen oxides from a CISWI unit shall not exceed 368 parts per million by volume corrected to seven percent oxygen (dry basis).
- (5) Carbon Monoxide. Emissions of carbon monoxide from a CIWI unit shall not exceed 157 parts per million by volume, corrected to seven percent oxygen (dry basis).
- (6) Odorous Emissions. Any incinerator subject to this Rule shall comply with Rule .1806 of this Subchapter for the control of odorous emissions.
- (7) Hydrogen Chloride. Emissions of hydrogen chloride from a CISWI unit shall not exceed 62 parts per million by volume, corrected to seven percent oxygen (dry basis).
- (8) Mercury Emissions. Emissions of mercury from a CISWI unit shall not exceed 0.47 milligrams per dry standard cubic meter, corrected to seven percent oxygen.
- (9) Lead Emissions. Emissions of lead from a CISWI unit shall not exceed 0.04 milligrams per dry standard cubic meter, corrected to seven percent oxygen.
- (10) Cadmium Emissions. Emissions of cadmium from a CISWI unit shall not exceed 0.004 milligrams per dry standard cubic meter, corrected to seven percent oxygen.
- (11) Dioxins and Furans. Emissions of dioxins and furans from a CISWI unit shall not exceed 0.41 nanograms per dry standard cubic meter (toxic equivalency basis), corrected to seven percent oxygen. Toxic equivalency is given in Table 4 of 40 CFR part 60, Subpart DDDD.
- (12) 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.
- (13) 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 2.3×10^{-7}
- (ii) beryllium and its compounds 4.1×10^{-6}
- (iii) cadmium and its compounds 5.5×10^{-6}
- (iv) chromium (VI) and its compounds 8.3×10^{-8}

(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 as their allowable emission limits unless Rules .0524, .1110, or .1111 of this Subchapter requires more restrictive rates.

(f) Operational Standards.

- (1) The operational standards in this Rule do not apply to any incinerator subject to this Rule when applicable operational standards in Rules .0524, .1110, or .1111 of this Subchapter apply.
- (2) If a wet scrubber is used to comply with emission limitations:
 - (A) operating limits for the following operating parameters shall be established:
 - (i) maximum charge rate, which shall be measured continuously, recorded every hour, and calculated using one of the following procedures:
 - (I) for continuous and intermittent units, the maximum charge rate is 110 percent of the average charge rate

- measured during the most recent compliance test demonstrating compliance with all applicable emission limitations; or
 - (II) for batch units, the maximum charge rate is 110 percent of the daily charge rate measured during the most recent compliance test demonstrating compliance with all applicable emission limitations;
 - (ii) minimum pressure drop across the wet scrubber, which shall be measured continuously, recorded every 15 minutes, and calculated as 90 percent of:
 - (I) the average pressure drop across the wet scrubber measured during the most recent performance test demonstrating compliance with the particulate matter emission limitations; or
 - (II) the average amperage to the wet scrubber measured during the most recent performance test demonstrating compliance with the particulate matter emission limitations;
 - (iii) minimum scrubber liquor flow rate, which shall be measured continuously, recorded every 15 minutes, and calculated as 90 percent of the average liquor flow rate at the inlet to the wet scrubber measured during the most recent compliance test demonstrating compliance with all applicable emission limitations; and
 - (iv) minimum scrubber liquor pH, which shall be measured continuously, recorded every 15 minutes, and calculated as 90 percent of the average liquor pH at the inlet to the wet scrubber measured during the most recent compliance test demonstrating compliance with all applicable emission limitations.
- (B) A three hour rolling average shall be used to determine if operating parameters in Subparts (A)(i) through (A)(iv) of this Subparagraph have been met.
- (C) The owner or operator of the CISWI unit shall meet the operating limits established during the initial performance test on the date the initial performance test is required or completed.
- (3) If a fabric filter is used to comply with the emission limitations, then it shall be operated as specified in 40 CFR 60.2675(c);
- (4) If an air pollution control device other than a wet scrubber is used or if emissions are limited in some other manner to comply with the emission standards of Paragraph (e) of this Rule, the owner or operator shall petition the Director for specific operating limits that shall be established during the initial performance test and continuously monitored thereafter. The initial performance test shall not be conducted until after the Director approves the petition. The petition shall include:
 - (A) identification of the specific parameters to be used as additional operating limits;
 - (B) explanation of the relationship between these parameters and emissions of regulated pollutants, identifying how emissions of regulated pollutants change with changes in these parameters, and how limits on these parameters will serve to limit emissions of regulated pollutants;
 - (C) explanation of establishing the upper and lower limits for these parameters, which will establish the operating limits on these parameters;
 - (D) explanation of the methods and instruments used to measure and monitor these parameters, as well as the relative accuracy and precision of these methods and instruments;

- (E) identification of the frequency and methods for recalibrating the instruments used for monitoring these parameters.

The Director shall approve the petition if he finds that the requirements of this Subparagraph have been satisfied and that the proposed operating limits will ensure compliance with the emission standards in Paragraph (e) of this Rule.

(g) Test Methods and Procedures.

- (1) For the purposes of this Paragraph, "Administrator" in 40 CFR 60.8 means "Director".
- (2) The test methods and procedures described in ~~Rule .0501~~ Section .2600 of this Subchapter, in 40 CFR Part 60 Appendix A, 40 CFR Part 61 Appendix B, and 40 CFR 60.2690 shall be used to determine compliance with emission standards in Paragraph (e) this Rule. Method 29 of 40 CFR Part 60 shall be used to determine emission standards for metals. However, Method 29 shall be used to sample for chromium (VI), and SW 846 Method 0060 shall be used for the analysis.
- (3) All performance tests shall consist of a minimum of three test runs conducted under conditions representative of normal operations. Compliance with emissions standards under Subparagraph (e)(1), (3) through (5), and (7) through (11) of this Rule shall be determined by averaging three one-hour emission tests. These tests shall be conducted within 12 months following the initial performance test and within every twelve month following the previous annual performance test after that.
- (4) The owner or operator of CISWI shall conduct an initial performance test as specified in 40 CFR 60.8 to determine compliance with the emission standards in Paragraph (e) of this Rule and to establish operating standards using the procedure in Paragraph (f) of this Rule. The initial performance test must be conducted no later than June 1, 2006.
- (5) The owner or operator of the CISWI unit shall conduct an annual performance test for particulate matter, hydrogen chloride, and opacity as specified in 40 CFR 60.8 to determine compliance with the emission standards for the pollutants in Paragraph (e) of this Rule.
- (6) If the owner or operator of CISWI unit has shown, using performance tests, compliance with particulate matter, hydrogen chloride, and opacity for three consecutive years, the Director shall allow the owner or operator of CISWI unit to conduct performance tests for these three pollutants every third year. However, each test shall be within 36 months

of the previous performance test. If the CISWI unit continues to meet the emission standards for these three pollutants the Director shall allow the owner or operator of CISWI unit to continue to conduct performance tests for these three pollutants every three years.

- (7) If a performance test shows a deviation from the emission standards for particulate matter, hydrogen chloride, or opacity, the owner or operator of the CISWI unit shall conduct annual performance tests for these three pollutants until all performance tests for three consecutive years show compliance for particulate matter, hydrogen chloride, or opacity.
- (8) The owner or operator of CISWI unit may conduct a repeat performance test at any time to establish new values for the operating limits.
- (9) The owner or operator of the CISWI unit shall repeat the performance test if the feed stream is different than the feed streams used during any performance test used to demonstrate compliance.
- (10) If the Director has evidence that an incinerator is violating a standard in Paragraph (e) or (f) of this Rule or that the feed stream or other operating conditions have changed since the last performance test, the Director may require the owner or operator to test the incinerator to demonstrate compliance with the emission standards listed in Paragraph (e) of this Rule at any time.

(h) Monitoring.

- (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 subject to the requirements of this Rule shall establish, install, calibrate to manufacturers specifications, maintain, and operate;
 - (A) devices or methods for continuous temperature monitoring and recording for the primary chamber and, where there is a secondary chamber, for the secondary chamber;
 - (B) devices or methods for monitoring the value of the operating parameters used to determine compliance with the operating parameters established under Paragraph (f)(2) of this Rule;
 - (C) a bag leak detection system that meets the requirements of 40 CFR 60.2730(b) if a fabric filter is used to comply with the requirements of the emission standards in Paragraph (e) of this Rule; and

- (D) Equipment necessary to monitor compliance with the cite-specific operating parameters established under Paragraph (f)(4) of this Rule.
- (3) The Director shall require the owner or operator of a CISWI unit 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 CISWI unit.
- (4) The Director shall require the owner or operator of a CISWI unit with a permitted charge rate of 750 pounds per hour or less to install, operate, and maintain continuous monitors for oxygen or for carbon monoxide or both if necessary to determine proper operation of the CISWI unit.
- (5) The owner or operator of the CISWI unit shall conduct all monitoring at all times the CISWI unit is operating, except;
 - (A) malfunctions and associated repairs;
 - (B) required quality assurance or quality control activities including calibrations checks and required zero and span adjustments of the monitoring system.
- (6) The data recorded during monitoring malfunctions, associated repairs, and required quality assurance or quality control activities shall not be used in assessing compliance with the operating standards in Paragraph (f) of this Rule.
- (i) Recordkeeping, and Reporting.
 - (1) The owner or operator of CISWI unit shall maintain records required by this Rule on site in either paper copy or electronic format that can be printed upon request for a period of at least five years.
 - (2) The owner or operator of CISWI unit shall maintain all records required under 40 CFR 60.2740.
 - (3) The owner or operator of CISWI unit shall submit as specified in Table 5 of 40 CFR 60, Subpart DDDD the following reports:
 - (A) Waste Management Plan;
 - (B) initial test report, as specified in 40 CFR 60.2760;
 - (C) annual report as specified in 40 CFR 60.2770;
 - (D) emission limitation or operating limit deviation report as specified in 40 CFR 60.2780;
 - (E) qualified operator deviation notification as specified in 40 CFR 60.2785(a)(1);
 - (F) qualified operator deviation status report, as specified in 40 CFR 60.2785(a)(2);
 - (G) qualified operator deviation notification of resuming operation as specified in 40 CFR 60.2785(b).
- (4) The owner or operator of the CISWI unit shall submit a deviation report if:
 - (A) any recorded three-hour average parameter level is above the maximum operating limit or below the minimum operating limit established under Paragraph (f) of this Rule;
 - (B) the bag leak detection system alarm sounds for more than five percent of the operating time for the six-month reporting period; or
 - (C) a performance test was conducted that deviated from any emission standards in Paragraph (e) of this Rule.
- The deviation report shall be submitted by August 1 of the year for data collected during the first half of the calendar year (January 1 to June 30), and by February 1 of the following year for data collected during the second half of the calendar year (July 1 to December 31).
- (5) The owner or operator of the CISWI unit may request changing semiannual or annual reporting dates as specified in this Paragraph, and the Director may approve the request change using the procedures specified in 40 CFR 60.19(c).
- (6) Reports required under this Rule shall be submitted electronically or in paper format, postmarked on or before the submittal due dates.
- (7) If the CISWI unit has been shut down by the Director under the provisions of 40 CFR 60.2665(b)(2), due to failure to provide an accessible qualified operator, the owner or operator shall notify the Director that the operations are resumed once a qualified operator is accessible.
- (j) Excess Emissions and Start-up and Shut-down. All incinerators subject to this Rule shall comply with 15A NCAC 2D .0535, Excess Emissions Reporting and Malfunctions, of this Subchapter.
- (k) Operator Training and Certification.
 - (1) The owner or operator of the CISWI unit shall not allow the CISWI unit to operate at any time unless a fully trained and qualified CISWI unit operator is accessible, either at the facility or available within one hour. The trained and qualified CISWI unit operator may operate the CISWI unit directly or be the direct supervisor of one or more CISWI unit operators.
 - (2) Operator training and qualification shall be obtained by completing the requirements of 40 CFR 60.2635(c) by the later of:
 - (A) ~~December 1, 2005;~~

- (B)(A) six month after CISWI unit startup; or
(C)(B) six month after an employee assumes responsibility for operating the CISWI unit or assumes responsibility for supervising the operation of the CISWI unit.
- (3) Operator qualification shall be valid from the date on which the training course is completed and the operator successfully passes the examination required in 40 CFR 60.2635(c)(2).
- (4) Operator qualification shall be maintained by completing an annual review or refresher course covering, at a minimum:
- (A) update of regulations;
 - (B) incinerator operation, including startup and shutdown procedures, waste charging, and ash handling;
 - (C) inspection and maintenance;
 - (D) responses to malfunctions or conditions that may lead to malfunction;
 - (E) discussion of operating problems encountered by attendees.
- (5) Lapsed operator qualification shall be renewed by:
- (A) completing a standard annual refresher course as specified in Subparagraph (4) of this Paragraph for a lapse less than three years, and
 - (B) repeating the initial qualification requirements as specified in Subparagraph (2) of this Paragraph for a lapse of three years or more.
- (6) The owner or operator of the CISWI unit shall:
- (A) have documentation specified in 40 CFR 60.2660(a)(1) through (10) and (c)(1) through (c)(3) available at the facility and accessible for all CISWI unit operators and are suitable for inspection upon request;
 - (B) establish a program for reviewing the documentation specified in Part (A) of this Subparagraph with each CISWI unit operator:
 - (i) the initial review of the documentation specified in Part (A) of this Subparagraph shall be conducted by the later of the ~~three~~ two dates:
 - (I) ~~December 1, 2005;~~
 - (H)(I) six month after CISWI unit startup; or
 - (HH)(II) six month after an employee assumes responsibility for
- operating the CISWI unit or assumes responsibility for supervising the operation of the CISWI unit; and
- (ii) subsequent annual reviews of the documentation specified in Part (A) of this Subparagraph shall be conducted no later than twelve month following the previous review.
- (7) The owner or operator of the CISWI unit shall meet one of the two criteria specified in 40 CFR 60.2665(a) and (b), depending on the length of time, if all qualified operators are temporarily not at the facility and not able to be at the facility within one hour.
- (l) Prohibited waste. The owner or operator of a CISIW shall not incinerate any of the wastes listed in G.S. 130A-309.10(f1).
- (m) Waste Management Plan.
- (1) The owner or operator of the CISWI unit shall submit a waste management plan to the Director that identifies in writing the feasibility and the methods used to reduce or separate certain components of solid waste from the waste stream in order to reduce or eliminate toxic emissions from incinerated waste. ~~A waste management plan shall be submitted to the Director before December 1, 2003.~~
- (2) The waste management plan shall include:
- (A) consideration of the reduction or separation of waste-stream elements such as paper, cardboard, plastics, glass, batteries, or metals; and the use of recyclable materials;
 - (B) a description of how the materials listed in G.S. 130A-309.10(f1) are to be segregated from the waste stream for recycling or proper disposal;
 - (C) identification of any additional waste management measures; and
 - (D) implementation of those measures considered practical and feasible, based on the effectiveness of waste management measures already in place, the costs of additional measures and the emissions reductions expected to be achieved and the environmental or energy impacts that the measures may have.
- (n) Compliance Schedule.
- ~~(1) The owner or operator of the CISWI unit, which plans to achieve compliance after November 30, 2003, shall submit before December 1, 2003, along with the permit~~

application, the final control plan for the CISWI unit. The final compliance shall be achieved no later than December 1, 2005.

- (2)(1) The final control plan shall contain the information specified in 40 CFR 60.2600(a)(1) through (5), and a copy shall be maintained on site.
- (3)(2) The owner or operator of the CISWI unit shall notify the Director within five days after the CISWI unit is to be in final compliance whether the final compliance have been achieved. The final compliance is achieved by completing all process changes and retrofitting construction of control devices, as specified in the final control plan, so that, if the affected CISWI unit is brought on line, all necessary process changes and air pollution control devices would operate as designed. If the final compliance has not been achieved, the owner or operator of the CISWI unit shall submit a notification informing the Director that the final compliance has not been met and submit reports each subsequent calendar month until the final compliance is achieved.
- (4)(3) The owner or operator of the CISWI unit, that closes the CISWI unit and restarts it: it
 - (A) before December 1, 2005, shall submit along with the permit application, the final control plan for the CISWI unit, and the final compliance shall be achieved by December 1, 2005.
 - (B) after December 1, 2005 shall complete emission control retrofits and meet the emission limitations and operating limits on the date the CISWI unit restarts operation.
- (5) The owner or operator of the CISWI unit that plans to close it rather than comply with the requirements of this Rule shall submit a closure notification including the date of closure to the Director by December 1, 2003, and shall cease operation by December 1, 2005.

Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(4),(5).

SECTION .1400 – NITROGEN OXIDES

15A NCAC 02D .1415 TEST METHODS AND PROCEDURES

(a) When source testing is used to determine compliance with rules in this Section, the methods and procedures in Section .2600 of this Subchapter shall be used. For stationary combustion turbines, Method 20 at 40 CFR Part 60, Appendix A or other equivalent method approved by Director shall be used when source testing is used to demonstrate compliance with a limitation established according to this Section. For all other

sources, Method 7E or Method 19 at 40 CFR Part 60, Appendix A or other equivalent method approved by the Director shall be used when source testing is used to demonstrate compliance with a limitation established according to this Section. The procedures specified in Methods 1, 2, 2F, 2G, 3, 3A, 3B, and 4 of 40 CFR Part 60, Appendix A, shall be used to measure velocity, flow rate, and molecular weight and to calculate heat input, as necessary, to determine compliance.

(b) When compliance with a limitation established according to this Section is determined using source testing, such testing shall be conducted according to this Rule.

(c) Before conducting a source test, the owner or operator of the sources to be tested shall submit to the Director a testing protocol describing what is to be tested and the test method or methods that will be used. The Director shall approve or disapprove the protocol within 45 days after receipt.

(d) The owner or operator shall notify the Director and obtain the Director's approval at least 21 days before beginning a test to demonstrate compliance with this Section so that the Division may observe the test. The notification required by this Paragraph shall include:

- (1) a statement of the purpose of the proposed test;
- (2) the location and a description of the facility where the test is to take place;
- (3) the proposed test method and a description of the test procedures, equipment, and sampling points; and
- (4) a schedule setting forth the dates that:
 - (A) the test will be conducted and data collected;
 - (B) the final test report will be submitted.

(e) The final test report shall be submitted to the Director no later than 45 days after the test data have been collected.

(f) The owner or operator shall be responsible for all costs associated with any tests required to demonstrate compliance with this Section.

(g)(b) The owner or operator shall maintain records of tests performed to demonstrate compliance with this Section according to Rule .1404 of this Section.

Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(5), (7), (10).

SECTION .2400 – CLEAN AIR INTERSTATE RULES

15A NCAC 02D .2401 PURPOSE AND APPLICABILITY

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

(b) Applicability. Except as provided in 40 CFR 96.104(b), 96.204(b), and 96.304(b), this Section applies to:

- (1) any stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine serving at any time, since the later of November 15, 1990 or the start-up of a unit's combustion chamber, a generator with nameplate capacity of more than 25 MWe producing electricity for sale;

- (2) for a unit that qualifies as a cogeneration unit during the 12-month period starting on the date that the unit first produces electricity and continues to qualify as a cogeneration unit, a cogeneration unit serving at any time since the later of November 15, 1990 or start-up of the unit's combustion chamber a generator with nameplate capacity of more than 25 MWe and supplying in any calendar year more than one-third of the unit's potential electric output capacity or 219,000 MWh, whichever is greater, to any utility power distribution system for sale. If a unit that qualifies as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity but subsequently no longer qualifies as a cogeneration unit, the unit shall be subject to Subparagraph (1) of this Paragraph starting on the day on which the unit first serves a generator with nameplate capacity of more than 25 MWe producing electricity for sale; or
- (3) solely for the purposes of the NOx ozone season program, fossil fuel-fired stationary boilers, combustion turbines, or combined cycle systems having a maximum design heat input greater than 250 million Btu per hour that are not covered under Subparagraph (b)(1) or (2) of this Rule except stationary combustion turbines constructed before January 1, 1979, that have 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)~~ (iii); or
- (4) solely for the purposes of the NOx ozone season program, fossil-fuel fired stationary boilers, combustion turbines, or combined cycle systems serving a generator with a nameplate capacity greater than 25 MW electrical and selling any amount of electricity.

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

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

(d) Effect on other authorities. No provision of this Section, any application submitted or any permit issued pursuant to Rule .2406 of this Section, or any exemption under 40 CFR 96.105, 96.205, or 96.305 shall be construed as exempting any source or facility covered under this Section or the owner or operator or

designated representative of any source or facility covered under this Section from complying with any other requirements of this Subchapter or Subchapter 15A NCAC 02Q or the Clean Air Act. The Environmental Management Commission may specify through rulemaking a specific emission limit lower than that established under this Rule for a specific source if compliance with the lower emission limit is required to attain or maintain the ambient air quality standard for ozone or fine particulate (PM_{2.5}) or any other ambient air quality standard in Section 15A NCAC 02D .0400.

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

15A NCAC 02D .2402 DEFINITIONS

(a) For the purpose of this Section, the definitions in 40 CFR 96.102, 96.202 and 96.302 shall apply except that solely for the purposes of units subject to Subparagraph .2401(b)(3) of this Section or .2405 (a)(2) of this Section, the term "fossil-fuel-fired" means:

- (1) sources that began operation before January 1, 1996, where fossil fuel actually combusted either alone or in combination with any other fuel, comprised more than 50 percent of the annual heat input on a Btu basis during 1995, or, if a source had no heat input in 1995, during the last year of operation of the unit before 1995;
- (2) sources that began operation on or after January 1, 1996 and before January 1, 1997, where fossil fuel actually combusted either alone or in combination with any other fuel, comprised more than 50 percent of the annual heat input on a Btu basis during 1996; or
- (3) sources that began operation on or after January 1, 1997;
 - (A) Where fossil fuel actually combusted either alone or in combination with any other fuel, comprised more than 50 percent of the annual heat input on a Btu basis during any year as determined by the owner or operator of the source and verified by the Director; or
 - (B) Where fossil fuel combusted either alone or in combination with any other fuel, is projected to comprise more than 50 percent of the annual heat input on a Btu basis during any year, provided that the unit shall be "fossil-fuel-fired" as of the date, during such year, on which the source begins combusting fossil fuel.

(b) Notwithstanding the provisions of the definition of "commence commercial operation" in 40 CFR 96.302, for a unit under Subparagraphs .2401(b)(3) or .2405(a)(2) of this Section, and not serving a ~~generator~~ generator producing electricity for sale, the unit's date of commencement of operations shall also be the unit's date of commencement of commercial operation.

(c) Notwithstanding the provisions of the definition of "commence operation" in 40 CFR 96.302, and solely for the purposes of 40 CFR Part 96 Subpart HHHH, for a unit that is not a CAIR NOx Ozone Season unit, under Rule .2401(b)(3) or .2405(a)(2) on the later of November 15, 1990 or the date the unit commenced or commences operation as defined in the first provision of this definition in 40 CFR 96.302 and that subsequently becomes or became such a CAIR NOx Ozone Season unit, the unit's date for commencement of operation shall be the date on which the unit becomes or became a CAIR NOx Ozone Season unit under Rule .2401(b)(3) or .2405(a)(2) of this Section.

(d) For the purposes of this Section, the following definitions apply:

- (1) "Modification" means modification as defined in 15A NCAC 02D .0101.
- (2) "Reconstruction" means the replacement of components of an existing unit that meets the requirements of 40 CFR 60.15(b)(1).
- (3) "Replacement" means, solely for the purposes of Rules .2403 and .2405 of this Section, removing an existing unit and putting in its place at the same facility a functionally equivalent new unit.

(e) For the purpose of this Section, the abbreviations and acronyms listed in 40 CFR 96.103, 96.203, 96.303 shall apply.

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

15A NCAC 02D .2403 NITROGEN OXIDE EMISSIONS

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

FACILITY	ALLOCATIONS FOR 2009-2014 (TONS)	ALLOCATIONS FOR 2015 AND LATER (TONS)
Butler-Warner Generation Plant	77	65
Craven County Wood Energy, LP	498	424
Duke Energy, Belews Creek	10,837	9,220
Duke Energy, Buck	1,355	1,153
Duke Energy, Cliffside	2,932	2,495
Duke Energy, Dan River	792	674
Duke Energy, G.G. Allen	4,338	3,691
Duke Energy, Lincoln	230	196
Duke Energy, Marshall	9,667	8,225
Duke Energy, Riverbend	1,709	1,454
Dynegy-Rockingham Power	194	165
Edgecombe GenCo	807	687
Elizabethtown Power	86	73
Lumberton Power	121	103
NC Electric Membership Corps., Anson	7	6
NC Electric Membership Corps., Person	7	6
NC Electric Membership Corps., Richmond	7	6
NC Electric Membership Corps., Wake	7	6
Primary Energy, Roxboro	164	140
Primary Energy, Southport	401	341
Progress Energy, Asheville	2,103	1,789
Progress Energy, Blewett	8	7
Progress Energy, Cape Fear	1,244	1,059
Progress Energy, H.F. Lee	1,776	1,511
<u>Progress Energy, Lee</u>	<u>1870</u>	<u>1591</u>
Progress Energy, L.V. Sutton	2,146	1,826
Progress Energy, Lee Wayne Co. Plant	94	80
Progress Energy, Mark's Creek Richmond Co.	374	318

FACILITY	ALLOCATIONS FOR 2009-2014 (TONS)	ALLOCATIONS FOR 2015 AND LATER (TONS)
Progress Energy, Mayo	4,004	3,407
Progress Energy, Roxboro	11,578	9,851
Progress Energy, Weatherspoon	674	573
Progress Energy, Woodleaf Rowan Co. Plant	25	22
<u>PWC-Butler Warner Generation Plant</u>	<u>77</u>	<u>65</u>
Rosemary Power Station, Halifax	42	36
<u>Southern Power Company Plant Rowan</u>	<u>25</u>	<u>22</u>
Westmoreland LG&E Partners Roanoke Valley I	963	819
Westmoreland LG&E Partners Roanoke Valley H	306	264
<u>Westmoreland Partners, LLC, Roanoke Valley Energy Facility</u>	<u>1269</u>	<u>1080</u>

In the event that EPA determines that Craven County Wood Energy is not subject to the provisions of this Section, its allocation shall go to the new source growth pool.

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

(c) Emission measurement requirements. The emissions measurements recorded and reported according to 40 CFR Part 96 Subpart HH shall be used to determine compliance by each CAIR NOx source with its emissions limitation according to 40 CFR ~~96.106(e)~~-96.106(c) including 96.106(c)(5) and (6).

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

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

(f) Modification and reconstruction, replacement, retirement, or change of ownership. The modification or reconstruction of a CAIR NOx unit shall not make that CAIR NOx unit a "new" CAIR NOx unit under Rule .2412 of this Section. The CAIR NOx unit that is modified or reconstructed shall not change the emission allocation under Paragraph (a) of this Rule. If one or more CAIR NOx units at a facility covered under this Rule is replaced, the new CAIR NOx unit shall not receive an allocation under Rule .2412 of this Section, nor shall it change the allocation of the facility. If the owner of a facility changes, the emission allocations under this Rule and revised emission allocations made under Rule .2413 of this Section shall remain with the facility. If a CAIR NOx unit is retired, the owner or operator and the designated representatives of the CAIR NOx unit shall follow the procedures in 40 CFR 96.105. The allocations of a retired CAIR NOx unit shall remain with the owner or operator of the retired CAIR NOx unit until a

reallocation occurs under Rule .2413 of this Section when the allocation shall be removed and given to other CAIR NOx units if the retired CAIR NOx unit is still retired using the procedure in Rule .2413 of this Section.

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

15A NCAC 02D .2404 SULFUR DIOXIDE

(a) Applicability. This Rule applies only to ~~facilities-units~~ that meet the description in 40 CFR 96.204(b) or Rule .2401(b)(1) or (2) of this Section.

(b) Allocations. The annual allocation of sulfur dioxide allowances shall be determined by EPA. The allocations for CAIR SO2 units are in 40 CFR 73.10.

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

(d) Emission measurement requirements. The emissions measurements recorded and reported according to 40 CFR Part 96 Subpart HHH shall be used to determine compliance by each CAIR SO2 source with its emissions limitation according to 40 CFR ~~96.206(e)~~-96.206(c) including 96.206(c)(5) and (6).

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

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

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

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

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

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

FACILITY	ALLOCATIONS FOR 2009-2014 (TONS)	ALLOCATIONS FOR 2015 AND LATER (TONS)
Butler Warner Generation Plant	53	45
Craven County Wood Energy, LP	211	179
Duke Energy, Belews Creek	4,917	4,184
Duke Energy, Buck	656	558
Duke Energy, Cliffside	1,350	1,148
Duke Energy, Dan River	436	371
Duke Energy, G.G. Allen	2,096	1,784
Duke Energy, Lincoln	169	144
Duke Energy, Marshall	4,179	3,556
Duke Energy, Riverbend	859	731
Dynegy-Rockingham Power	99	84
Edgecombe GenCo	331	281
Elizabethtown Power	51	43
Lumberton Power	46	39
NC Electric Membership Corps.-Anson	7	6
NC Electric Membership Corps.-Person	7	6
NC Electric Membership Corps.-Richmond	7	6
NC Electric Membership Corps.-Wake	7	6
Primary Energy, Roxboro	83	71
Primary Energy, Southport	213	181
Progress Energy, Asheville	899	765
Progress Energy, Blewett	7	6
Progress Energy, Cape Fear	527	448
Progress Energy, H.F. Lee	841	716
<u>Progress Energy, Lee</u>	<u>905</u>	<u>770</u>
Progress Energy, L.V. Sutton	1,023	871
Progress Energy, Lee Wayne Co. Plant	64	54
Progress Energy, Mark's Creek Richmond Co.	335	285
Progress Energy, Mayo	1,735	1,476
Progress Energy, Roxboro	5,069	4,314
Progress Energy, Weatherspoon	346	295
Progress Energy, Woodleaf Rowan Co. Plant	25	20
PWC-Fayetteville	<u>53</u>	<u>45</u>
Rosemary Power Station, Halifax	26	22
<u>Southern Power Company Plant Rowan County</u>	<u>25</u>	<u>20</u>
Westmoreland LG&E Partners Roanoke Valley I	387	329
Westmoreland LG&E Partners Roanoke Valley II	124	105

PROPOSED RULES

FACILITY	ALLOCATIONS FOR 2009-2014 (TONS)	ALLOCATIONS FOR 2015 AND LATER (TONS)
<u>Westmoreland Partners, LLC, Roanoke Valley Energy Facility</u>	<u>511</u>	<u>434</u>

In the event that EPA determines that Craven County Wood Energy is not subject to the provisions of this Section, its allocation shall go to the new source growth pool.

- (2) Facilities that do not meet the description in 15A NCAC 02D .2401(b)(1) or ~~(b)(2)~~; (b)(2) but meet the description in 02D .2401(b)(3) or (4):

FACILITY	ALLOCATON FOR 2009-2014 (TONS)	ALLOCATIONS FOR 2015 AND LATER (TONS)
Blue Ridge Paper Products	839	839
International Paper Corp., Columbus Co.	307	307
International Paper Corp., Halifax Co. <u>Kapstone Kraft Paper corporation</u>	346	346
United Cogen, Kenansville <u>Coastal Carolina Clean Power, LLC</u>	113	113
UNC-Chapel Hill	241	241
Weyerhaeuser, New Bern Mill	193	193
Weyerhaeuser, Plymouth <u>Domtar Paper Co.</u>	404	404

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

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

(d) Compliance. The nitrogen oxide ozone season emissions of a CAIR NOx Ozone Season source shall not exceed the number of allowances that it has in its compliance account established and administered under Rule .2408 of this Section. For purposes of making deductions for excess emissions for the ozone season in 2008 under the NOx SIP Call (Section 15A NCAC 02D .1400), the Administrator shall deduct allowances allocated under this Rule for the ozone season in 2009.

(e) Emission measurement requirements. The emissions measurements recorded and reported according to 40 CFR Part 96 Subpart HHHH shall be used to determine compliance by each CAIR NOx Ozone Season source with its emissions limitation according to 40 CFR ~~96.306(e)~~; 96.306(c) including 96.306(c)(5) and (6).

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

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

(h) Modification and reconstruction, replacement, retirement, or change of ownership. The modification or reconstruction of a CAIR NOx Ozone Season unit shall not make that CAIR NOx

Ozone Season unit a "new" CAIR NOx Ozone Season unit under Rule .2412. The CAIR NOx Ozone Season unit that is modified or reconstructed shall not change the emission allocation under Paragraph (a) of this Rule. If one or more CAIR NOx Ozone Season units at a facility is replaced, the new CAIR NOx Ozone Season unit shall not receive an allocation under Rule .2412 of this Section, nor shall it change the allocation of the facility. If the owner of a facility changes, the emission allocations under this Rule and revised emission allocations made under Rule .2413 of this Section shall remain with the facility. If a CAIR NOx Ozone Season unit is retired, the owner or operator, and designated representatives, of the CAIR NOx Ozone Season unit shall follow the procedures in 40 CFR 96.305. The allocations of a retired CAIR NOx Ozone Season unit shall remain with the owner or operator of the retired CAIR NOx Ozone Season unit until a reallocation occurs under Rule .2413 of this Section when the allocation shall be removed and given to other CAIR NOx Ozone Season units if the retired CAIR NOx Ozone Season unit is still retired using the procedure in Rule .2413 of this Section.

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

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

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

- (1) 40 CFR 96.106(b) and (e) and in 40 CFR Part 96, Subpart HH for each CAIR NOx unit;

- (2) 40 CFR 96.206(b) and (e) and in 40 CFR Part 96, Subpart HHH for each CAIR SO₂ unit; and
- (3) 40 CFR 96.306(b) and (e) and in 40 CFR Part 96, Subpart HHHH for each CAIR Ozone Season NO_x unit.

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

- (1) 40 CFR 96.171 and 40 CFR 96.172 for nitrogen oxides,
- (2) 40 CFR 96.271 and 40 CFR 96.272 for sulfur dioxides, and
- (3) 40 CFR 96.371 and 40 CFR 96.372 for ozone season nitrogen oxides.

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

15A NCAC 02D .2409 DESIGNATED REPRESENTATIVE

(a) Designated representative. The owners and operators of any source covered under this Section shall select a designated representative according to 40 CFR 96.110 for each CAIR NO_x source, 96.210 for each CAIR SO₂ source, and 96.310 for each CAIR NO_x Ozone Season source. The designated representative shall have the responsibilities and duties set out in 40 CFR 96.110 for a CAIR NO_x source, 96.210 for a CAIR SO₂ source, and 96.310 for a CAIR NO_x Ozone Season source.

(b) Alternate designated representative. The owners and operators of any source covered under this Section shall select an alternate designated representative according to 40 CFR 96.111 for each CAIR NO_x source, 96.211 for each CAIR SO₂ source, and 96.311 for each CAIR NO_x Ozone Season source. The alternate designated representative shall have the responsibilities and duties set out in 40 CFR 96.111 for a CAIR NO_x source, 96.211 for CAIR SO₂ source, and 96.311 for a CAIR NO_x Ozone Season source.

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

- (1) 40 CFR 96.112 for a CAIR NO_x source;
- (2) 40 CFR 96.212 for a CAIR SO₂ source; and
- (3) 40 CFR 96.312 for a CAIR NO_x Ozone Season source.

(d) A CAIR designated representative or alternative CAIR designated representative may delegate his or her authority to make an electronic submission to the Administrator using:

- (1) 40 CFR 96.115 for a CAIR NO_x source;
- (2) 40 CFR 96.215 for a CAIR SO₂ source; and
- (3) 40 CFR 96.315 for a CAIR NO_x Ozone Season source.

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

- (1) 40 CFR 96.112(c) for a CAIR NO_x source;
- (2) 40 CFR 96.212(c) for a CAIR SO₂ source; and
- (3) 40 CFR 96.312(c) for a CAIR NO_x Ozone Season source.

~~(e)~~(f) Certificate of representation. A complete certificate of representation for a CAIR designated representative or an alternate CAIR designated representative shall meet the requirements of 40 CFR 96.113 for nitrogen oxides, 40 CFR 96.213 for sulfur dioxide, and 40 CFR 96.313 for ozone season nitrogen oxides.

~~(f)~~(g) Objections concerning CAIR designated representative. Objections concerning CAIR designated representative shall be handled according to the procedures in 40 CFR 96.114 for nitrogen oxides, 40 CFR 96.214 for sulfur dioxide, and 40 CFR 96.314 for ozone season nitrogen oxides.

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

15A NCAC 02D .2412 NEW UNIT GROWTH

(a) For nitrogen oxide emissions, the total nitrogen oxide allowances available for allocation in the new unit set-aside for each control period in 2009 through 2014 shall be ~~2614~~2610 tons and the total nitrogen oxide allowances available for allocation in each control period in 2015 and thereafter shall be ~~4434~~4130 tons. Except for the reference to 40 CFR 96.142(b), the procedures in 40 CFR 96.142(c)(2) through (4) shall be used to create allocations for units covered under this Section that commenced operations on or after January 1, 2001 and that are not covered in the table in Rule .2403 of this Section.

(b) For ozone season nitrogen oxides emissions, the total ozone season nitrogen oxide allowances available for allocation in the new unit set-aside for each control period in 2009 through 2014 shall be 1206 tons and the total ozone season nitrogen oxide allowances available for allocation in each control period in 2015 and thereafter shall be 531 tons. Except for the reference to 40 CFR 96.142(b) the procedures in 40 CFR 96.342(c)(2) through (4) shall be used to create allocations for units covered under this Section that commenced operations on or after January 1, 2001 and that are not listed in the table in Rule .2405 of this Section.

(c) New unit allowances in Paragraph (a) of this Rule that are not allocated in a given year shall be redistributed to units under .2401(b)(1) and (2) according to the provisions of 40 CFR 96.142(d) and 96.342(d) except that the divisor used in calculating individual unit allocations:

- (1) for nitrogen oxide allowances shall be ~~2614~~2610 tons for each control period in 2009 through 2014 and ~~4434~~4130 tons in each control period in 2015 and thereafter, and
- (2) for ozone season nitrogen oxide allowances shall be 1206 tons for each control period in 2009 through 2014 and 531 tons for each control period in 2015 and thereafter.

(d) The Director shall report the allocations to new units to EPA in accordance with 40 CFR 51.123(o)(2) and (aa)(2).

SECTION .2600 – SOURCE TESTING

15A NCAC 02D .2601 PURPOSE AND SCOPE

(a) The purpose of this Section is to assure consistent application of testing methods and methodologies to demonstrate compliance with emission standards.

(b) This Section shall apply to all air pollution sources.

(c) Emission compliance testing shall be by the procedures of this Section, except as may be otherwise required in Rules .0524, .0912, .1110, .1111, or .1415 of this Subchapter.

(d) The Director may approve using test methods other than those specified in this Section under Paragraph (i) of Rule .2602 of this Section.

Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(5).

15A NCAC 02D .2602 GENERAL PROVISIONS ON TEST METHODS AND PROCEDURES

(a) The owner or operator of a source shall perform any required test at his own expense.

(b) The final test report shall describe the training and air testing experience of the person directing the air test.

(c) Air emission testing protocols shall be provided to the Director prior to air pollution testing, but are not required to be pre-approved by the Director prior to air pollution testing. The Director will review air emission testing protocols for pre-approval prior to testing if requested by the owner or operator at least 45 days before conducting the test.

(d) Any person proposing to conduct an emissions test to demonstrate compliance with an applicable standard shall notify the Director at least 15 days before beginning the test so that the Director may at his option observe the test.

(e) For compliance determination, the owner and operator of the source shall provide:

- (1) sampling ports, pipes, lines, or appurtenances for the collection of samples and data required by the test procedure;
- (2) scaffolding and safe access to the sample and data collection locations; and
- (3) light, electricity, and other utilities required for sample and data collection.

(f) Unless otherwise specified in the applicable permit or during the course of the protocol review, the results of the tests shall be expressed in the same units as the emission limits given in the rule for which compliance is being determined.

(g) The owner or operator of the source shall arrange for controlling and measuring the production rates during the period of air testing. The owner or operator of the source shall be responsible for ensuring that the equipment or process being tested is operated at the production rate that best fulfills the purpose of the test. The individual conducting the emission test shall describe the procedures used to obtain accurate process data and shall be responsible for including in the test report the average production rates determined during each testing period.

(h) The final air emission test report shall be submitted to the Director not later than 30 days after sample collection. The owner or operator may request an extension to submit the final test report. The Director shall approve an extension if he finds that the extension request is technically justified.

(i) The Director shall make the final determination regarding any testing procedure deviation and the validity of the compliance test.

- (1) The Director may allow deviations from a method specified under a rule in this Section if the owner or operator of the source being

tested demonstrates to the satisfaction of the Director that the specified method is inappropriate for the source being tested.

(2) The Director may prescribe alternate test procedures on an individual basis when he finds that the alternative method is necessary to secure more reliable test data.

(3) For sources or pollutants for which no test method is specified in this Section, the Director may prescribe or approve methods on an individual basis.

(j) The Director may authorize the Division of Air Quality to conduct independent tests of any source subject to a rule in this Subchapter to determine the compliance status of that source or to verify any test data submitted relating to that source. Any test conducted by the Division of Air Quality using the appropriate testing procedures described in this Section shall have precedence over all other tests.

Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(5).

15A NCAC 02D .2603 TESTING PROTOCOL

(a) Testing protocols shall include:

- (1) an introduction explaining the purpose of the proposed test, including identification of the regulations and permit requirements for which compliance is being demonstrated and the allowable emission limits;
- (2) a detailed description of the facility and the source to be tested;
- (3) a detailed description of the test procedures (sampling equipment, analytical procedures, sampling locations, reporting and data reduction requirements, and internal quality assurance and quality control activities);
- (4) any modifications made to the test methods referenced in the protocol; and
- (5) a description of how production or process data will be documented during testing.

(b) The tester shall not deviate from the protocol unless the deviation is technically justified and documented.

Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(5).

15A NCAC 02D .2604 NUMBER OF TEST POINTS

(a) Method 1 of Appendix A of 40 CFR Part 60 shall be used to select a suitable site and the appropriate number of test points for the following situations:

- (1) particulate testing,
- (2) volatile organic compounds,
- (3) velocity and volume flow rate measurements,
- (4) testing for acid mist or other pollutants that occur in liquid droplet form,
- (5) any sampling for which velocity and volume flow rate measurements are necessary for computing final test results, or

- (6) any sampling that specifies isokinetic sampling.

(b) Method 1 of Appendix A of 40 CFR Part 60 shall be used as written with the following clarifications:

- (1) Testing installations with multiple breechings can be accomplished by testing the discharge stack(s) to which the multiple breechings exhaust. If the multiple breechings are individually tested, then Method 1 shall be applied to each breeching individually.
- (2) If test ports in a duct are less than two diameters downstream from any disturbance (fan, elbow, change in diameter, or any other physical feature that may disturb the gas flow) or less than one-half diameter upstream from any disturbance, the acceptability of the test location shall be determined by the Director before the test and after his review of technical and economic factors.

Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(5).

15A NCAC 02D .2605 VELOCITY AND VOLUME FLOW RATE

Method 2 of Appendix A of 40 CFR Part 60 shall be applied as written and used concurrently with any test method in which velocity and volume flow rate measurements are required.

Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(5).

15A NCAC 02D .2606 MOLECULAR WEIGHT

(a) With the exceptions allowed under Paragraphs (b) and (c), Method 3 of Appendix A of 40 CFR Part 60 shall be applied as written and used concurrently with any test method when necessary to determine the molecular weight of the gas being sampled by determining the fraction of carbon dioxide, oxygen, carbon monoxide, and nitrogen.

(b) The grab sample technique may substituted using instruments such as Bacharach Fyrite™ with the following restrictions:

- (1) Instruments such as the Bacharach Fyrite™ may only be used for the measurement of carbon dioxide.
- (2) Repeated samples shall be taken during the emission test run to account for variations in the carbon dioxide concentration. At least four samples shall be taken during a one-hour test run, but as many as necessary shall be taken to produce a reliable average.
- (3) The total concentration of gases other than carbon dioxide, oxygen, and nitrogen shall be less than one percent.

Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(5).

15A NCAC 02D .2607 DETERMINATION OF MOISTURE CONTENT

Method 4 of Appendix A of 40 CFR Part 60 shall be applied as written and used concurrently with any test method requiring determination of gas moisture content.

Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(5).

15A NCAC 02D .2608 NUMBER OF RUNS AND COMPLIANCE DETERMINATION

Each test (excluding fuel samples) shall consist of three repetitions or runs of the applicable test method. For determining compliance with an applicable emission standard, the average of results of all repetitions shall apply. On a case-by-case basis, compliance may be determined using the arithmetic average of two run results if the Director determines that an unavoidable and unforeseeable event happened beyond the owner's or operator's or tester's control and that a third run could be not be completed.

Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(5).

15A NCAC 02D .2609 PARTICULATE TESTING METHODS

(a) With the exception allowed under Paragraph (b) of this Rule, Method 5 of Appendix A of 40 CFR Part 60 and Method 202 of Appendix M of 40 CFR Part 51 shall be used to demonstrate compliance with particulate emission standards. The owner or operator may request an exemption from using Method 202 provided the demonstration compliance with an applicable emission standard is unlikely to change with or without the Method 202 results included.

(b) Method 17 of Appendix A of 40 CFR Part 60 may be used instead of Method 5 if:

- (1) The stack gas temperature does not exceed 320° F.
- (2) Particulate matter concentrations are known to be independent of temperature over the normal range of temperatures characteristic of emissions from a specified source category, and
- (3) The stack does not contain liquid droplets or is not saturated with water vapor.

(c) Particulate testing on steam generators that use soot blowing as a routine means for cleaning heat transfer surfaces shall be conducted so that the contribution of the soot blowing is represented as follows:

- (1) If the soot blowing periods are expected to represent less than 50 percent of the total particulate emissions, only one of the test runs shall include a soot blowing cycle.
- (2) If the soot blowing periods are expected to represent more than 50 percent of the total particulate emissions then two of the test runs shall each include a soot blowing cycle. Under no circumstances shall all three test runs include soot blowing. The average

emission rate of particulate matter is calculated by the equation:

$$E_{AVG} = S(E_S)\{(A+B)/AR\} + E_N\{((R-S)/R) - (BS/AR)\}$$

where:

- (A) E_{AVG} equals the average emission rate in pounds per million Btu for daily operating time.
- (B) E_S equals the average emission rate in pounds per million Btu of sample(s) containing soot blowing.
- (C) E_N equals the average emission rate in pounds per million Btu of sample(s) with no sootblowing.
- (D) A equals hours of soot blowing during sample(s).
- (E) B equals hours without soot blowing during sample(s) containing soot blowing.
- (F) R equals average hours of operation per 24 hours.
- (G) S equals average hours of soot blowing per 24 hours.

The Director may approve an alternate method of prorating the emission rate during soot blowing if the owner or operator of the source demonstrates that changes in boiler load or stack flow occur during soot blowing that are not representative of normal soot blowing operations.

(d) Unless otherwise specified by an applicable rule or subpart, the minimum time per test point for particulate testing shall be two minutes, and the minimum time per test run shall be one hour.

(e) Unless otherwise specified by an applicable rule or subpart, the sample gas drawn during each test run shall be at least 30 cubic feet.

(f) Method 201 or Method 201A in combination with Method 202 of Appendix M of 40 CFR Part 51 shall be used to determine compliance with PM_{10} emission standards. If the exhaust gas contains entrained moisture droplets, Method 5 of Appendix A of 40 CFR Part 60 in combination with Method 202 of Appendix M of 40 CFR Part 51 shall be used to determine PM_{10} emission compliance.

Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(5).

15A NCAC 02D .2610 OPACITY

(a) Method 9 of Appendix A of 40 CFR 60 shall be used to show compliance with opacity standards when opacity is determined by visual observation.

(b) Method 22 Appendix A of 40 CFR 60 shall be used to determine compliance with opacity standards when such standards are based upon the frequency of fugitive emissions from stationary sources as specified in the applicable subpart, regulation, or by permit condition.

Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(5).

15A NCAC 02D .2611 SULFUR DIOXIDE TESTING METHODS

(a) If compliance is to be demonstrated for a combustion source through stack sampling the procedures described in Method 6 or Method 6C of Appendix A of 40 CFR Part 60 shall be used. When Method 6 of Appendix A of 40 CFR Part 60 is used to determine compliance, compliance shall be determined by averaging six 20-minute samples taken over such a period of time that no more than 20 minutes elapses between any two consecutive samples. The 20-minute run requirement only applies to Method 6 not to Method 6C. Method 6C is an instrumental method and the sampling is done continuously.

(b) Fuel burning sources not required to use continuous emissions monitoring to demonstrate compliance with sulfur dioxide emission standards, may determine compliance with sulfur dioxide emission standards by stack sampling or by analyzing sulfur content of the fuel.

(c) For stationary gas turbines, Method 20 of 40 CFR Part 60 shall be used to demonstrate compliance with applicable sulfur dioxide emissions standards.

(d) When compliance is to be demonstrated for a combustion source by analysis of sulfur in fuel, sampling, preparation, and analysis of fuels shall be according to the following American Society of Testing and Materials (ASTM) methods. The Director may approve ASTM methods different from those described in this Paragraph if they will provide equivalent or more reliable results. The Director may prescribe alternate ASTM methods on an individual basis if that action is necessary to secure reliable test data.

(1) Coal Sampling:

(A) Sampling Location. Coal shall be collected from a location in the handling or processing system that provides a sample representative of the fuel bunkered or burned during a boiler operating day. For the purpose of this method, a fuel lot size is defined as the weight of coal bunkered or consumed during each boiler-operating day. For reporting and calculation purposes, the gross sample shall be identified with the calendar day on which sampling began. The Director may approve alternate definitions of fuel lot sizes if the alternative will provide a more representative sample.

(B) Sample Increment Collection. A coal sampling procedure shall be used that meets the requirements of ASTM D 2234 Type I, condition A, B, and C, and systematic spacing for collection of sample increments. All requirements and restrictions regarding increment distribution and sampling device constraints shall be observed.

(C) Gross Samples. Use ASTM D 2234, 7.1.2, Table 2 except as provided in

- 7.1.5.2 to determine the number and weight of increments (composite or gross samples).
- (D) Preparation. Use ASTM D 2013 for sample preparation from a composite or gross sample.
- (E) Gross Caloric Value (GCV). Use ASTM D 2015 or D 3286 to determine GCV on a dry basis from a composite or gross sample.
- (F) Moisture Content. Use ASTM D 3173 to determine moisture from a composite or gross sample.
- (G) Sulfur Content. Use ASTM D 3177 or D 4239 to determine the percent sulfur on a dry basis from a composite or gross sample.
- (2) Oil Sampling
- (A) Sample Collection. A sample shall be collected at the pipeline inlet to the fuel-burning unit after sufficient fuel has been drained from the line to remove all fuel that may have been standing in the line.
- (B) Heat Of Combustion. Use ASTM Method D 240 or D 2015 to determine the heat of combustion.
- (C) Sulfur Content. Use ASTM Method D 129 or D 1552 to determine the sulfur content.

The sulfur content and BTU content of the fuel shall be reported on a dry basis. When the test methods described in Subparagraph (d)(1) or (d)(2) of this Rule are used to demonstrate that the ambient air quality standards for sulfur dioxide are being protected, the sulfur content shall be determined at least once per year from a composite of at least three or 24 samples taken at equal time intervals from the fuel being burned over a three-hour or 24-hour period, respectively, whichever is the time period for which the ambient standard is most likely to be exceeded; this requirement shall not apply to sources that are only using fuel analysis in place of continuous monitoring to meet the requirements of Section .0600 of this Subchapter.

(e) When compliance is shown for sulfuric acid manufacturing plants or spodumene ore roasting plants with Rules .0517 and .0527, respectively, of this Section through stack sampling, the procedures described in Method 8 of Appendix A of 40 CFR Part 60 shall be used. When Method 8 of Appendix A of 40 CFR Part 60 is used to determine compliance, compliance shall be determined by averaging emissions measured by three one-hour test runs unless otherwise specified in the applicable rule or subpart.

(f) When compliance is shown for a combustion source emitting sulfur dioxide not covered under Paragraph (a) through (e) of this Rule through stack sampling, the procedures described in Method 6 or Method 6C of Appendix A of 40 CFR Part 60 shall be used. When using Method 6 procedures to show compliance shall be determined by averaging six 20-minute samples taken over such a period of time that no more than 20 minutes elapses between any two consecutive samples. The 20-minute run

requirement only applies to Method 6 not to Method 6C. Method 6C is an instrumental method and the sampling is done continuously.

Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(5).

15A NCAC 02D .2612 NITROGEN OXIDE TESTING METHODS

(a) Combustion sources not required to use continuous emissions monitoring to demonstrate compliance with nitrogen oxide emission standards shall demonstrate compliance with nitrogen oxide emission standards using Method 7 or Method 7E of Appendix A of 40 CFR Part 60.

(b) Method 20 of Appendix A of 40 CFR Part 60 shall be used to demonstrate compliance with nitrogen oxide emissions standards for stationary gas turbines.

Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(5).

15A NCAC 02D .2613 VOLATILE ORGANIC COMPOUND TESTING METHODS

(a) For surface coating material, such as paint, varnish, stain, and lacquer, the volatile matter content, water content, density, volume of solids, and weight of solids shall be determined by Method 24 of Appendix A of 40 CFR Part 60.

(b) For printing inks and related coatings, the volatile matter and density shall be determined by Method 24A of Appendix A of 40 CFR Part 60.

(c) For solvent metal cleaning equipment, the following procedure shall be followed to perform a material balance test:

- (1) clean the degreaser sump before testing;
- (2) record the amount of solvent added to the tank with a flow meter;
- (3) record the weight and type of workload degreased each day;
- (4) at the end of the test run, pump out the used solvent and measure the amount with a flow meter; also, estimate the volume of metal chips and other material remaining in the emptied sump;
- (5) bottle a sample of the used solvent and analyze it to find the percent that is oil and other contaminants; the oil and solvent proportions can be estimated by weighing samples of used solvent before and after boiling off the solvent; and
- (6) compute the volume of oils in the used solvent. The volume of solvent displaced by this oil along with the volume of makeup solvent added during operations is equal to the solvent emissions.

(d) For bulk gasoline terminals, emissions of volatile organic compounds shall be determined by the procedures set forth in 40 CFR 60.503.

(e) For organic process equipment, leaks of volatile organic compounds shall be determined by Method 21 of Appendix A of 40 CFR Part 60. Organic process equipment includes valves,

flanges and other connections, pumps and compressors, pressure relief devices, process drains, open-ended valves, pump and compressor seal system degassing vents, accumulator vessel vents, access door seals, and agitator seals.

(f) For determination of solvent in filter waste in accordance with Rule .0912 of this Section, to the determination of the amount of solvent in filter materials (muck and distillation waste). To be derived is the quantity of volatile organic compounds per quantity of discarded filter muck. The procedure to be used in making this determination is the test method described by the American National Standards Institute's "Standard Method of Test for Dilution of Gasoline-Engine Crankcase Oils" (ASTM 322-67 or IP 23/68) except that filter muck is to be used instead of crankcase oil.

(g) For sources of volatile organic compounds not covered under the methods specified in Paragraphs (b) through (e) of this Rule, one of the applicable test methods in Appendix M in 40 CFR Part 51 or Appendix A in 40 CFR Part 60 shall be used to determine compliance with volatile organic compound emission standards.

(h) Compounds excluded from the definition of volatile organic compound under Rule .0901 of this Subchapter shall be treated as water.

Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(5).

15A NCAC 02D .2614 DETERMINATION OF VOC EMISSION CONTROL SYSTEM EFFICIENCY

(a) The provisions of this Rule are applicable to any test method employed to determine the collection or control efficiency of any device or system designed, installed, and operated for the purpose of reducing volatile organic compound emissions.

(b) The following procedures shall be used to determine efficiency:

- (1) The volatile organic compound containing material shall be sampled and analyzed using the procedures contained in this Section.
- (2) Samples of the gas stream containing volatile organic compounds shall be taken simultaneously at the inlet and outlet of the emissions control device.
- (3) The efficiency of the control device shall be expressed as the fraction of total combustible carbon content reduction achieved.
- (4) The volatile organic compound mass emission rate shall be the sum of emissions from the control device and emissions not collected by the capture system.

(c) Capture efficiency performance of volatile organic compound emission control systems shall be determined using the EPA recommended capture efficiency protocols and test methods as described in the EPA document, EMTIC GD-035, "Guidelines for Determining Capture Efficiency."

(d) The EPA document, EMTIC GD-035, "Guidelines for Determining Capture Efficiency" cited in this Rule is hereby incorporated by reference including any subsequent amendments or editions. A copy of the referenced materials may be obtained

free of charge via the Internet from the EPA TTN website at <http://www.epa.gov/ttn/emc/guidInd.html>.

Authority G.S. 143-215.3(a)(1); 143-215.68; 143-215.107(a)(5).

15A NCAC 02D .2615 DETERMINATION OF LEAK TIGHTNESS AND VAPOR LEAKS

(a) Leak Testing. One of the following test methods from the EPA document "Control of Volatile Organic Compound Leaks from Gasoline Tank Trucks and Vapor Collection System," EPA-450/2-78-051, published by the U.S. Environmental Protection Agency, December 1978, shall be used to determine compliance with Rule .0932 Gasoline Truck Tanks And Vapor Collector Systems of this Section:

- (1) The gasoline vapor leak detection procedure by combustible gas detector described in Appendix B of EPA-450/2-78-051 shall be used to determine leakage from gasoline truck tanks and vapor control systems.
- (2) The leak detection procedure for bottom-loaded truck tanks by bag capture method described in Appendix C of EPA-450/2-78-051 shall be used to determine the leak tightness of truck tanks during bottom loading.

(b) Annual Certification. The pressure-vacuum test procedures for leak tightness of truck tanks described in Method 27 of Appendix A of 40 CFR Part 60 shall be used to determine the leak tightness of gasoline truck tanks in use and equipped with vapor collection equipment. Method 27 of Appendix A of 40 CFR Part 60 is changed to read:

- (1) 8.2.1.2 "Connect static electrical ground connections to tank."
- (2) 8.2.1.3 "Attach test coupling to vapor return line."
- (3) 16.0 No alternative procedure is applicable.

(c) Copies of Appendix B and C of the EPA document, "Control of Volatile Organic Compound Leaks from Gasoline Tank Trucks and Vapor Collection System," EPA-450/2-78-051, cited in this Rule, are hereby incorporated by reference and are available on the Division's Website <http://daq.state.nc.us/enf/sourcetest>.

Authority G.S. 143-215.3(a)(1), 143-215.107(a)(5).

15A NCAC 02D .2616 FLUORIDES

The procedures for determining compliance with fluoride emissions standards shall be by using:

- (1) Method 13A or 13B of Appendix A of 40 CFR Part 60 for sampling emissions from stacks; or
- (2) Method 14 of Appendix A of 40 CFR Part 60 for sampling emissions from roof monitors not employing stacks or pollutant collection systems.

Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(5).

15A NCAC 02D .2617 TOTAL REDUCED SULFUR

(a) Method 16 of Appendix A of 40 CFR Part 60 or Method 16A of Appendix A of 40 CFR Part 60 shall be used to show compliance with total reduced sulfur emission standards.

(b) Method 15 of Appendix A of 40 CFR Part 60 may be used as an alternative method to determine total reduced sulfur emissions from tail gas control units of sulfur recovery plants, hydrogen sulfide in fuel gas for fuel gas combustion devices, and where specified in other applicable subparts.

Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(5).

15A NCAC 02D .2618 MERCURY

Method 101 or 102 of Appendix b of 40 CFR Part 61 shall be used to show compliance with mercury emission standards.

Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(5).

15A NCAC 02D .2619 ARSENIC, BERYLLIUM, CADMIUM, HEXAVALENT CHROMIUM

(a) Method 29 of 40 CFR Part 60 of Appendix A shall be used to show compliance for arsenic, beryllium, cadmium, and hexavalent chromium metals emission standards.

(b) SW 846 Method 3060 shall be used for the analysis to differentiate hexavalent from total chromium. The EPA publication SW-846, "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," cited in this Rule is hereby incorporated by reference including any subsequent amendments or editions. A copy of the EPA publication SW-846, "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," may be obtained free of charge via the Internet from the EPA website at <http://www.epa.gov/epaoswer/hazwaste/test/sw846.htm>.

Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(5).

15A NCAC 02D .2620 DIOXINS AND FURANS

Method 23 of Appendix A of 40 CFR Part 60 shall be used to show compliance with polychlorinated dibenzo-p-dioxins and polychlorinated dibenzofurans emission standards.

Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(5).

15A NCAC 02D .2621 DETERMINATION OF FUEL HEAT CONTENT USING F-FACTOR

(a) Emission rates for wood or fuel burning sources that are expressed in units of pounds per million BTU shall be determined by the "Oxygen Based F Factor Procedure" described in Section 5 of Method 19 of Appendix A of 40 CFR Part 60. Other procedures described in Method 19 may be used if appropriate. To provide data of sufficient accuracy for use with the F-factor methods, an integrated (bag) sample shall be taken for the duration of each test run. For simultaneous testing of multiple ducts, there shall be a separate bag sample for each sampling train. The bag sample shall be analyzed with an Orsat analyzer by Method 3 of Appendix A of 40 CFR Part 60. (The number of analyses and the tolerance between analyses are specified in Method 3.) The specifications stated in Method 3 for the construction and operation of the bag sampling apparatus shall be followed.

(b) A continuous oxygen (O₂) and carbon dioxide (CO₂) monitor under Method 3E of Appendix A of 40 CFR Part 60 may be used if the average of all values during the run are used to compute the average concentrations.

(c) The Director may approve the use of alternative methods according to Rule .2602 of this Section if they meet the requirements of Method 3 of Appendix A of 40 CFR Part 60.

Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(5).

SUBCHAPTER 02Q - AIR QUALITY PERMITS PROCEDURES

SECTION .0200 - PERMIT FEES

15A NCAC 02Q .0203 PERMIT AND APPLICATION FEES

(a) The owner or operator of any facility holding a permit shall pay the following permit fees:

**ANNUAL PERMIT FEES
(FOR CALENDAR YEAR 1994)**

Facility Category	Tonnage Factor	Basic Permit Fee	Nonattainment Area Added Fee
Title V Synthetic Minor	\$14.63	\$5100 1500	\$2600
Small		250	

PROPOSED RULES

<u>Transportation</u>	0
<u>General</u>	50% of the otherwise applicable fee

ANNUAL PERMIT FEES

<u>Facility Category</u>	<u>Tonnage Factor</u>	<u>Basic Permit Fee</u>	<u>Nonattainment Area Added Fee</u>
<u>Title V</u>	\$22.50 upon Rule effective date; \$25.00 on 01/01/2009; \$27.50 on 01/01/2010; \$30.00 on 01/01/2011 and thereafter.	\$6,500	\$3,500
<u>Synthetic Minor</u>		\$1,500	
<u>Small</u>		\$250	
<u>Transportation</u>		\$0	
<u>General</u>	50% of the otherwise applicable fee		

A facility, other than a Title V facility, which has been in compliance ~~may be~~ is eligible for a 25 percent discount from the annual permit fees as described in Paragraph (a) of Rule .0205 of this Section. Annual permit fees for Title V facilities shall be adjusted for inflation as described in Rule .0204 of this Section. Annual permit fees for Title V facilities consist of the sum of the applicable fee elements.

(b) In addition to the annual permit fee, a permit applicant shall pay a non-refundable permit application fee as follows:

PERMIT APPLICATION FEES
(FEES FOR CALENDAR YEAR 1994)

<u>Facility Category</u>	<u>New or Modification</u>	<u>New or Significant Modification</u>	<u>Minor Modification</u>	<u>Ownership Change</u>
<u>Title V</u>		\$7200	\$700	\$50
<u>Title V (PSD or NSR/NAA)</u>	\$10900			50
<u>Title V (PSD and NSR/NAA)</u>	21200			50
<u>Synthetic Minor</u>	400			50
<u>Small</u>	50			25
<u>Transportation</u>	400			50
<u>General</u>	50% of the otherwise applicable fee			25

Permit application fees for Title V facilities shall be adjusted for inflation as described in Rule .0204 of this Section.

(c) If a facility, other than a general facility, belongs to more than one facility category, the fees shall be those of the applicable category with the highest fees. If a permit application belongs to more than one type of application, the fee shall be that of the applicable permit application type with the highest fee.

(d) The tonnage factor fee shall be applicable only to Title V facilities. It shall be computed by multiplying the tonnage factor indicated in the table in Paragraph (a) of this Rule by the facility's combined total actual emissions of all regulated air pollutants, rounded to the nearest ton, contained in the latest emissions inventory that has been completed by the Division. The calculation shall not include:

- (1) carbon monoxide;
- (2) any pollutant that is regulated solely because it is a Class I or II substance listed under Section 602 of the federal Clean Air Act (ozone depleters);
- (3) any pollutant that is regulated solely because it is subject to a regulation or standard under Section 112(r) of the federal Clean Air Act (accidental releases); and
- (4) the amount of actual emissions of each pollutant that exceeds 4,000 tons per year.

Even though a pollutant may be classified in more than one pollutant category, the amount of pollutant emitted shall be counted only once for tonnage factor fee purposes and in a pollutant category chosen by the permittee. If a facility has more than one permit, the tonnage factor fee for the facility's combined total actual emissions as described in this Paragraph shall be paid only on the permit whose anniversary date first occurs on or after July 1.

(e) The nonattainment area added fee shall be applicable only to Title V facilities –required to comply with 15A NCAC 02D .0531, 15A NCAC 02D .0900 (Volatile Organic Compounds), or 15A NCAC 02D .1400 (Nitrogen Oxides) and either:

- (1) are in a area designated in 40 CFR 81.334 as nonattainment, or
- (2) are covered by a nonattainment or maintenance State Implementation Plan submitted for approval or approved as part of 40 CFR Part 52, Subpart II.

(f) A Title V (PSD or NSR/NAA) facility is a facility whose application is subject to review under 15A NCAC 02D .0530 (Prevention of Significant Deterioration) or 15A NCAC 02D .0531 (Sources in Nonattainment Areas).

(g) A Title V (PSD and NSR/NAA) facility is a facility whose application is subject to review under 15A NCAC 02D .0530 (Prevention of Significant Deterioration) and 15A NCAC 02D .0531 (Sources in Nonattainment Areas).

(h) Minor modification permit applications ~~which that~~ are group processed require the payment of only one permit application fee per facility included in the group.

(i) No permit application fee is required for renewal of an existing permit, for changes to an unexpired permit when the only reason for the changes is initiated by the Director or the Commission, for a name change with no ownership change, for a

change under Rule .0523 (Changes Not Requiring Permit Revisions) of this Subchapter, or for a construction date change, a test date change, a reporting procedure change, or a similar change.

(j) The permit application fee paid for modifications under 15A NCAC 02Q .0400, Acid Rain Procedures, shall be the fee for the same modification if it were under 15A NCAC 02D .0500, Title V Procedures.

(k) An applicant who files permit applications pursuant to Rule .0504 of this Subchapter shall pay an application fee as would be determined by the application fee for the permit required under Section .0500 of this Subchapter; this fee will cover both applications provided that the second application covers only what is covered under the first application. If permit terms or conditions in an existing or future permit issued under Section .0500 of this Subchapter will be established or modified by an application for a modification and if these terms or conditions are enforceable by the Division only, then the applicant shall pay the fee under the column entitled "02Q .0300 Only or Minor Modification" in the table in Paragraph (b) of this Rule.

Authority G.S. 143-215.3(a)(1),(1a),(1b),(1d); 150B-21.6.

15A NCAC 02Q .0204 INFLATION ADJUSTMENT

Beginning in ~~1995, 2012~~, the fees of Rule .0203 of this Section for Title V facilities shall be adjusted as of January 1st of each year for inflation. The inflation adjustment shall be done by the method described in ~~40 CFR 70.9(b)(2)(iv); 40 CFR 70.9(b)(2)(iv)~~, ~~except that the method shall be altered to account for the fact that the fees shown in Rule .0203 of this Section are for calendar year 1994.~~ The tonnage factor shall be rounded to a whole cent and the other fees shall be rounded to a whole dollar, except that the ownership change application fee shall be rounded to the nearest ten-dollar (\$10.00) increment.

Authority G.S. 143-215.3(a)(1),(1a),(1b),(1d); 150B-21.6.

SECTION .0500 - TITLE V PROCEDURES

15A NCAC 02Q .0508 PERMIT CONTENT

(a) The permit shall specify and reference the origin and authority for each term or condition and shall identify any differences in form as compared to the applicable requirement on which the term or condition is based.

(b) The permit shall specify emission limitations and standards, including operational requirements and limitations, that assure compliance with all applicable requirements at the time of permit issuance.

(c) Where an applicable requirement of the federal Clean Air Act is more stringent than an applicable requirement of rules promulgated pursuant to Title IV, both provisions shall be placed in the permit. The permit shall state that both provisions are enforceable by EPA.

(d) The permit for sources using an alternative emission limit established under 15A NCAC 02D .0501~~(f)(d)~~ or 15A NCAC 02D .0952 shall contain provisions to ensure that any resulting emissions limit has been demonstrated to be quantifiable, accountable, enforceable, and based on replicable procedures.

(e) The expiration date contained in the permit shall be for a fixed term of five years for sources covered under Title IV and for a term of no more than five years from the date of issuance for all other sources including solid waste incineration units combusting municipal waste subject to standards under Section 129(e) of the federal Clean Air Act.

(f) The permit shall contain monitoring and related recordkeeping and reporting requirements as specified in 40 CFR 70.6(a)(3) and 70.6(c)(1) including conditions requiring:

- (1) the permittee to submit reports of any required monitoring at least every six months. The permittee shall submit reports:
 - (A) on forms obtained from the Division at the address in Rule .0104 of this Subchapter,
 - (B) in a manner as specified by a permit condition, or
 - (C) on other forms that contain the information required by these Rules or as specified by a permit condition; and
- (2) the permittee to report malfunctions, emergencies, and other upset conditions as prescribed in 15A NCAC 02D .0524, .0535, .1110, or .1111 and to report by the next business day deviations from permit requirements not covered under 15A NCAC 02D .0524, .0535, .1110, or .1111. The permittee shall report in writing to either the Director or Regional Supervisor all other deviations from permit requirements not covered under 15A NCAC 02D .0535 within two business days after becoming aware of the deviation. The permittee shall include the probable cause of such deviation and any corrective actions or preventive measures taken. All deviations from permit requirements shall be certified by a responsible official.

(g) At the request of the permittee, the Director may allow records to be maintained in computerized form in lieu of maintaining paper records if computerized records contain the same information as the paper records would contain.

(h) The permit for facilities covered under 15A NCAC 02D .2100, Risk Management Program, shall contain:

- (1) a statement listing 15A NCAC 02D .2100 as an applicable requirement;
- (2) conditions that require the owner or operator of the facility to submit:
 - (A) a compliance schedule for meeting the requirements of 15A NCAC 02D .2100 by the dates provided in 15A NCAC 02D .2101(a); or
 - (B) as part of the compliance certification under Paragraph (t) of this Rule, a certification statement that the source is in compliance with all requirements of 15A NCAC 02D .2100, including the registration and

submission of the risk management plan.

The content of the risk management plan need not itself be incorporated as a permit term or condition.

(i) The permit shall:

- (1) contain a condition prohibiting emissions exceeding any allowances that a facility lawfully holds under Title IV; but shall not limit the number of allowances held by a permittee, but the permittee may not use allowances as a defense to noncompliance with any other applicable requirement;
- (2) contain a severability clause so that various permit requirements will continue to be valid in the event of a challenge to any other portion of the permit;
- (3) state that noncompliance with any condition of the permit is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application;
- (4) state that the permittee may not use as a defense in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit;
- (5) state that the Director may reopen, modify, revoke and reissue, or terminate the permit for reasons specified in Rule .0517 or .0519 of this Section;
- (6) state that the filing of a request by the permittee for a permit revision, revocation and reissuance, or termination, notification of planned changes, or anticipated noncompliance does not stay any permit condition;
- (7) specify the conditions under which the permit shall be reopened before the expiration of the permit;
- (8) state that the permit does not convey any property rights of any sort, or any exclusive privileges;
- (9) state that the permittee shall furnish to the Division, in a timely manner;
 - (A) any reasonable information that the Director may request in writing to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit or to determine compliance with the permit, and
 - (B) copies of records required to be kept by the permit when such copies are requested by the Director.

(For information claimed to be confidential, the permittee may furnish such records directly to EPA along with a claim of confidentiality.)

- (10) contain a provision to ensure that the permittee pays fees required under Section .0200 of this Subchapter;
 - (11) contain a condition that authorizes the permittee to make Section 502(b)(10) changes, off-permit changes, or emission trades in accordance with Rule .0523 of this Section;
 - (12) include all applicable requirements for all sources covered under the permit;
 - (13) include fugitive emissions, if regulated, in the same manner as stack emissions;
 - (14) contain a condition requiring annual reporting of actual emissions as required under Rule .0207 of this Subchapter;
 - (15) include all sources including insignificant activities; and
 - (16) may contain such other provisions as the Director considers appropriate.
- (i) The permit shall state the terms and conditions for reasonably anticipated operating scenarios identified by the applicant in the application. These terms and conditions shall:
- (1) require the permittee, contemporaneously with making a change from one operating scenario to another, to record in a log at the permitted facility a record of the operating scenario under which it is operating;
 - (2) extend the permit shield described in Rule .0512 of this Section to all terms and conditions under each such operating scenario; and
 - (3) ensure that each operating scenario meets all applicable requirements of Subchapter 02D of this Chapter and of this Section.
- (j) The permit shall identify which terms and conditions are enforceable by:
- (1) both EPA and the Division;
 - (2) the Division only;
 - (3) EPA only; and
 - (4) citizens under the federal Clean Air Act.
- (k) The permit shall state that the permittee shall allow personnel of the Division to:
- (1) enter the permittee's premises where the permitted facility is located or emissions-related activity is conducted, or where records are kept under the conditions of the permit;
 - (2) have access to and copy, at reasonable times, any records that are required to be kept under the conditions of the permit;
 - (3) inspect at reasonable times and using reasonable safety practices any source, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under the permit; and
 - (4) sample or monitor substances or parameters, using reasonable safety practices, for the purpose of assuring compliance with the permit or applicable requirements at reasonable times.
- (l) When a compliance schedule is required under 40 CFR 70.5(c)(8) or under a rule contained in Subchapter 02D of this Chapter, the permit shall contain the compliance schedule and shall state that the permittee shall submit at least semiannually, or more frequently if specified in the applicable requirement, a progress report. The progress report shall contain:
- (1) dates for achieving the activities, milestones, or compliance required in the compliance schedule, and dates when such activities, milestones, or compliance were achieved; and
 - (2) an explanation of why any dates in the compliance schedule were not or will not be met, and any preventive or corrective measures adopted.
- (m) The permit shall contain requirements for compliance certification with the terms and conditions in the permit that are enforceable by EPA under Title V of the federal Clean Air Act, including emissions limitations, standards, or work practices. The permit shall specify:
- (1) the frequency (not less than annually or more frequently as specified in the applicable requirements or by the Director) of submissions of compliance certifications;
 - (2) a means for monitoring the compliance of the source with its emissions limitations, standards, and work practices; and
 - (3) a requirement that the compliance certification include:
 - (A) the identification of each term or condition of the permit that is the basis of the certification;
 - (B) the status of compliance with the terms and conditions of the permit for the period covered by the certification, based on the methods or means designated in 40 CFR 70.6(c)(5)(iii)(B). The certification shall identify each deviation and take it into account in the compliance certification. The certification shall also identify as possible exceptions to compliance any periods during which compliance is required and in which an excursion or exceedance as defined under 40 CFR 64 occurred;
 - (C) whether compliance was continuous or intermittent;
 - (D) the identification of the method(s) or other means used by the owner and operator for determining the compliance status with each term and condition during the certification period; these methods shall include, at a minimum, the methods and means required under 40 CFR Part 70.6(a)(3); and

- (E) such other facts as the Director may require to determine the compliance status of the source;
- (4) that all compliance certifications be submitted to EPA as well as to the Division.

Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(10); 143-215.108.

15A NCAC 02Q .0523 CHANGES NOT REQUIRING PERMIT REVISIONS

(a) Section 502(b)(10) changes:

- (1) The permittee may make Section 502(b)(10) changes without having his permit revised if:
 - (A) The changes are not a modification under 15A NCAC 02D or Title I of the federal Clean Air Act;
 - (B) The changes do not cause the emissions allowed under the permit to be exceeded;
 - (C) The permittee notifies the Director and EPA with written notification at least seven days before the change is made; and
 - (D) The permittee shall attach the notice to the relevant permit.
- (2) The written notification required under Part (a)(1)(C) of this Rule shall include:
 - (A) a description of the change,
 - (B) the date on which the change will occur,
 - (C) any change in emissions, and
 - (D) any permit term or conditions that is no longer applicable as a result of the change.
- (3) Section 502(b)(10) changes shall be made in the permit the next time that the permit is revised or renewed, whichever comes first.

(b) Off-permit changes. A permittee may make changes in his operation or emissions without revising his permit if:

- (1) The change affects only insignificant activities and the activities remain insignificant after the change, or
- (2) The change is not covered under any applicable requirement.

(c) Emissions trading.

- (1) To the extent that emissions trading is allowed under 15A NCAC 02D, including subsequently adopted maximum achievable control technology standards, emissions trading shall be allowed without permit revisions provided that:
 - (A) All applicable requirements are met;
 - (B) The permittee complies with all terms and conditions of the permit in making the emissions trade; and
 - (C) The permittee notifies the Director and EPA with written notification at least seven days before the trade is

made; this notification requirement shall not apply to trades made under 15A NCAC 02D .1419, Nitrogen Oxide Budget Trading ~~Program~~, Program or 15A NCAC 02D .2408, Trading Program and Banking, or 15A NCAC 02D .2510, Trading and Banking.

- (2) If an emissions cap has been established by a permit condition for the purposes of limiting emissions below that allowed by an otherwise applicable requirement, emissions trading shall be allowed to the extent allowed by the permit if:
 - (A) An emissions cap is established in the permit to limit emissions;
 - (B) The permit specifies the emissions limits with which each source shall comply under any applicable requirement;
 - (C) The permittee complies with all permit terms that ensure the emissions trades are enforceable, accountable, and quantifiable;
 - (D) The permittee complies with all applicable requirements;
 - (E) The permittee complies with the emissions trading procedures in the permit; and
 - (F) The permittee notifies the Director and EPA with written notification at least seven days before the trade is made.
- (3) The written notification required under Subparagraph (1) of this Paragraph shall include:
 - (A) a description of the change,
 - (B) the date on when the change will occur,
 - (C) any change in emissions,
 - (D) the permit requirement with which the facility or source will comply using the emissions trading provision of the applicable provision of 15A NCAC 02D, and
 - (E) the pollutants emitted subject to the emissions trade.

This Subparagraph shall not apply to trades made under 15A NCAC 02D .1419, Nitrogen Oxide Budget Trading ~~Program~~, Program or 15A NCAC 02D .2408 Trading Program and Banking, or 15A NCAC 02D .2510, Trading and Banking.

- (4) The written notification required under Subparagraph (2) of this Paragraph shall include:
 - (A) a description of the change,
 - (B) the date on when the change will occur,

- (C) changes in emissions that will result and how the increases and decrease in emissions will comply with the terms and conditions of the permit. *Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10); 143-215.108.*

(d) The permit shield allowed under Rule .0512 of this Section shall not apply to changes made under Paragraphs (a), (b), or (c) of this Rule.

SECTION .0700 - TOXIC AIR POLLUTANT PROCEDURES

15A NCAC 02Q .0711 EMISSION RATES REQUIRING A PERMIT

(a) A permit to emit toxic air pollutants shall be required for any facility whose actual (or permitted if higher) rate of emissions from all sources are greater than any one of the following toxic air pollutant permitting emissions rates:

Pollutant (CAS Number)	Carcinogens lb/yr	Chronic Toxicants lb/day	Acute Systemic Toxicants lb/hr	Acute Irritants lb/hr
acetaldehyde (75-07-0)				6.8
acetic acid (64-19-7)				0.96
acrolein (107-02-8)				0.02
acrylonitrile (107-13-1)	10			
ammonia (7664-41-7)				0.68
aniline (62-53-3)			0.25	
arsenic and inorganic arsenic compounds	0.016			
asbestos (1332-21-4)	1.9×10^{-6}			
aziridine (151-56-4)		0.13		
benzene (71-43-2)	8.1			
benzidine and salts (92-87-5)	0.0010			
benzo(a)pyrene (50-32-8)	2.2			
benzyl chloride (100-44-7)			0.13	
beryllium (7440-41-7)	0.28			
beryllium chloride (7787-47-5)	0.28			
beryllium fluoride (7787-49-7)	0.28			
beryllium nitrate (13597-99-4)	0.28			
bioavailable chromate pigments, as chromium (VI) equivalent	0.0056			
bis-chloromethyl ether (542-88-1)	0.025			
bromine (7726-95-6)				0.052
1,3-butadiene (106-99-0)	12 11			
cadmium (7440-43-9)	0.37			
cadmium acetate (543-90-8)	0.37			
cadmium bromide (7789-42-6)	0.37			
carbon disulfide (75-15-0)		3.9		
carbon tetrachloride (56-23-5)	460			
chlorine (7782-50-5)		0.79		0.23
chlorobenzene (108-90-7)		46		
chloroform (67-66-3)	290			
chloroprene (126-99-8)		9.2	0.89	
cresol (1319-77-3)			0.56	
p-dichlorobenzene (106-46-7)				16.8
dichlorodifluoromethane (75-71-8)		5200		
dichlorofluoromethane (75-43-4)		10		
di(2-ethylhexyl)phthalate (117-81-7)		0.63		
dimethyl sulfate (77-78-1)		0.063		

PROPOSED RULES

1,4-dioxane (123-91-1)		12		
epichlorohydrin (106-89-8)	5600			
ethyl acetate (141-78-6)			36	
ethylenediamine (107-15-3)		6.3	0.64	
ethylene dibromide (106-93-4)	27			
ethylene dichloride (107-06-2)	260			
ethylene glycol monoethyl ether (110-80-5)		2.5	0.48	
ethylene oxide (75-21-8)	1.8			
ethyl mercaptan (75-08-1)			0.025	
fluorides		0.34	0.064	
formaldehyde (50-00-0)				0.04
hexachlorocyclopentadiene (77-47-4)		0.013	0.0025	
hexachlorodibenzo-p-dioxin (57653- 85-7)	0.0051			
n-hexane (110-54-3)		23		
hexane isomers except n-hexane				92
hydrazine (302-01-2)		0.013		
hydrogen chloride (7647-01-0)				0.18
hydrogen cyanide (74-90-8)		2.9	0.28	
hydrogen fluoride (7664-39-3)		0.63		0.064
hydrogen sulfide (7783-06-4)		1.7		
maleic anhydride (108-31-6)		0.25	0.025	
manganese and compounds		0.63		
manganese cyclopentadienyl tricarbonyl (12079-65-1)		0.013		
manganese tetroxide (1317-35-7)		0.13		
mercury, alkyl		0.0013		
mercury, aryl and inorganic compounds		0.013		
mercury, vapor (7439-97-6)		0.013		
methyl chloroform (71-55-6)		250		64
methylene chloride (75-09-2)	1600		0.39	
methyl ethyl ketone (78-93-3)		78		22.4
methyl isobutyl ketone (108-10-1)		52		7.6
methyl mercaptan (74-93-1)			0.013	
nickel carbonyl (13463-39-3)		0.013		
nickel metal (7440-02-0)		0.13		
nickel, soluble compounds, as nickel		0.013		
nickel subsulfide (12035-72-2)	0.14			
nitric acid (7697-37-2)				0.256
nitrobenzene (98-95-3)		1.3	0.13	
n-nitrosodimethylamine (62-75-9)	3.4			
non-specific chromium (VI) compounds, as chromium (VI) equivalent	0.0056			
pentachlorophenol (87-86-5)		0.063	0.0064	
perchloroethylene (127-18-4)	13000			
phenol (108-95-2)			0.24	
phosgene (75-44-5)		0.052		
phosphine (7803-51-2)				0.032
polychlorinated biphenyls (1336-36- 3)	5.6			
soluble chromate compounds, as chromium (VI) equivalent		0.013		
styrene (100-42-5)			2.7	
sulfuric acid (7664-93-9)		0.25	0.025	
tetrachlorodibenzo-p-dioxin (1746- 01-6)	0.00020			

1,1,1,2-tetrachloro-2,2,- difluoroethane (76-11-9)		1100		
1,1,2,2-tetrachloro-1,2- difluoroethane (76-12-0)		1100		
1,1,2,2-tetrachloroethane (79-34-5)	430			
toluene (108-88-3)		98		14.4
toluene diisocyanate,2,4-(584-84-9) and 2,6- (91-08-7) isomers		0.003		
trichloroethylene (79-01-6)	4000			
trichlorofluoromethane (75-69-4)			140	
1,1,2-trichloro-1,2,2-trifluoroethane (76-13-1)				240
vinyl chloride (75-01-4)	26			
vinylidene chloride (75-35-4)		2.5		
xylene (1330-20-7)		57		16.4

(b) For the following pollutants, the highest emissions occurring for any 15-minute period shall be multiplied by four and the product shall be compared to the value in Paragraph (a). These pollutants are:

- (1) acetaldehyde (75-07-0)
- (2) acetic acid (64-19-7)
- (3) acrolein (107-02-8)
- (4) ammonia (7664-41-7)
- (5) bromine (7726-95-6)
- (6) chlorine (7782-50-5)
- (7) formaldehyde (50-00-0)
- (8) hydrogen chloride (7647-01-0)
- (9) hydrogen fluoride (7664-39-3)
- (10) nitric acid (7697-37-2)

Authority G.S. 143-215.3(a)(1); 143-215.108; 143B-282; S L. 1989, c. 168, s. 45.

SECTION .0900 – PERMIT EXEMPTIONS

15A NCAC 02Q .0902 TEMPORARY CRUSHERS

(a) For the purposes of this Rule, "temporary crusher" means a crusher that will not be operated at any one facility or site for more than 12 months.

~~(a)(b)~~ This rule applies to ~~portable crushers~~ any temporary crusher that:

- (1) ~~crush~~ crushes no more than 300,000 tons at any one facility or site; ~~tons during any 12 months;~~
- (2) ~~burn~~ burns no more than 17,000 gallons of diesel fuel at any one facility or site during any 12 months if it uses:
 - (A) a diesel-fired generator, or
 - (B) a diesel engine to drive the crusher;
- ~~(3) do not operate at any one facility or site more than 12 months;~~
- ~~(4)(3)~~ ~~do~~ does not operate at a quarry that has an air permit issued under this Subchapter; ~~and~~
- ~~(5)(4)~~ continuously ~~use~~ uses water spray to control emissions from the ~~crushers~~ crusher; and

~~(5) does not operate at a facility that is required to have a mining permit issued by the Division of Land Resources.~~

~~(b)(c)~~ The owner or operator of a ~~portable temporary~~ crusher and any associated generators shall comply with ~~15A NCAC 2D Rules .0510 (Particulates From Sand, Gravel, Or Crushed Stone Operations), .0516 (Sulfur Dioxide Emissions From Combustion Sources), .0521 (Control Of Visible Emissions), .0524 (New Source Performance Standards), 40 CFR Part 60, Subpart OOO), OOO and Subpart IIII), .0535 (Excess Emissions Reporting And Malfunctions), .0540 (Particulates From Fugitive Non-Process Dust Emission Sources), and .1806 (Control And Prohibition Of Odorous Emissions).~~ Emissions) of Subchapter 02D.

~~(e)(d)~~ The owner or operator of a ~~portable temporary~~ crusher shall not cause or allow any material to be produced, handled, transported, or stockpiled without taking measures to reduce to a minimum any particulate matter from becoming airborne to ~~prevent exceeding~~ ensure that the ambient air quality standards beyond the property line for particulate matter (PM2.5, PM10, and total suspended particulate) are not exceeded beyond the property line. ~~particulates).~~

~~(d)(e)~~ The owner or operator of a ~~portable temporary~~ crusher shall maintain records of the amount of material crushed and the quantity of fuel burned in the diesel-fired generator or engine so that the Division can determine upon review of these records that the crusher qualifies to be covered under this Rule.

~~(e)(f)~~ The owner or operator of a ~~portable temporary~~ crusher shall clearly label each crusher, hopper, feeder, screen, conveyor, elevator, and generator with a permanent and unique identification number.

~~(f)(g)~~ If a source is covered under 15A NCAC 02D .0524 (40 CFR Part 60, Subpart OOO), the owner or operator of a ~~portable temporary~~ crusher shall submit to the Director notifications ~~are~~ required under 15A NCAC 02D .0524 (40 CFR Part 60, Subpart OOO).

~~(g)(h)~~ If the Director or his authorized representative requests copies of notifications or testing records required under 15A NCAC 2D .0524 (40 CFR Part 60, Subpart OOO), the owner or operator of a ~~portable temporary~~ crusher shall submit the requested notifications or testing records within two business days of such a request.

(i) If a source is covered under 15A NCAC 02D .0524 (40 CFR Part 60, Subpart IIII), the owner or operator of a compression ignition internal combustion engine (CI ICE) for a temporary crusher shall submit to the Director notifications required under 15A NCAC 02D .0524 (40 CFR Part 60, Subpart IIII).

(j) If the Director or his authorized representative requests copies of notifications or testing records required under 15A NCAC 02D .0524 (40 CFR Part 60, Subpart IIII), the owner or operator of a compression ignition internal combustion engine (CI ICE) for temporary crusher shall submit the requested notifications or testing records within two business days of such a request.

(k) If the owner or operator of a crusher plans or has the design potential to operate a crusher at a facility or site for more than 12 months, he shall apply for and shall have received an air quality permit issued under this Subchapter before beginning operations.

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

15A NCAC 02Q .0903 EMERGENCY GENERATORS

(a) For the purposes of this Rule, "emergency generator" means a stationary internal combustion engine used to generate electricity only during the loss of primary power at the facility that is beyond the control of the owner or operator of the facility or during maintenance. An emergency generator may be operated periodically to ensure that it will operate.

(b) This Rule applies to emergency generators at a facility whose only sources that would require a permit are emergency generators and whose emergency generators consume less than:

- (1) 322,000 gallons per calendar year of diesel fuel,
- (2) 48,000,000 cubic feet per calendar year of natural gas,
- (3) 1,200,000 gallons per calendar year of liquified petroleum gas,
- (4) 25,000 gallons per calendar year of gasoline for gasoline-powered generators, or
- (5) any combination of the fuels listed in this Paragraph provided the facility-wide actual emissions of each regulated air pollutant does not exceed 100 tons per calendar year.

(c) The owner or operator of emergency generators covered under this Rule shall comply with Rules .0516 (Sulfur Dioxide Emissions From Combustion Sources), .0521 (Control Of Visible Emissions), and .0524 (New Source Performance Standard) of Subchapter 02D.

(d) The owner or operator of an emergency generator covered under this Rule shall maintain records of the amount of fuel burned in the generator for each calendar year so that the Division can determine upon review of these records that the emergency generator qualifies to be covered under this Rule.

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

Notice is hereby given in accordance with G.S. 150B-21.2 that the Environmental Management Commission intends to amend the rules cited as 15A NCAC 02D .1402, .1404, .1407 - .1412,

.1418 and repeal the rules cited as 15A NCAC 02D .1416 - .1417, .1419 - .1422.

Proposed Effective Date: *January 1, 2009*

Public Hearing:

Date: *November 7, 2007*

Time: *7:00 p.m.*

Location: *Division of Air Quality Training Room AQ-526, 2728 Capital Blvd., Raleigh, NC 27604*

Reason for Proposed Action: *To transfer the nitrogen oxide trading program to the Clean Air Interstate Rule (CAIR) NO_x trading program that starts January 1, 2009. The current version of the rules will remain effective until January 1, 2009.*

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

Comments may be submitted to: *Michael Abraczinskas, Division of Air Quality, 1641 Mail Service Center, Raleigh, NC 27699-1641, phone (919) 715-3473, fax (919) 715-7476, email Michael.abraczinskas@ncmail.net*

Comment period ends: *December 14, 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 02 - ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 02D - AIR POLLUTION CONTROL REQUIREMENTS

SECTION .1400 – NITROGEN OXIDES

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 sources 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 sources 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.

~~(g)~~(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 Rule .1418 of this Section~~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).~~

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5), (7), (10).

15A NCAC 02D .1404 RECORDKEEPING: REPORTING: MONITORING:

(a) General requirements. The owner or operator of any source shall comply with the monitoring, recordkeeping and reporting requirements in Section .0600 of this Subchapter and shall maintain all records necessary for determining compliance with all applicable limitations and standards of this Section for five years.

(b) Submittal of information to show compliance status. The owner or operator of any source shall maintain and, when requested by the Director, submit any information required by these rules to determine the compliance status of an affected source.

(c) Excess emissions reporting. The owner or operator shall report excess emissions following the procedures under Rule .0535 of this Subchapter.

(d) Continuous emissions monitors.

- (1) The owner or operator shall install, operate, and maintain a continuous emission monitoring system according to 40 CFR Part 75, Subpart H, with such exceptions as may be allowed under 40 CFR Part 75, Subpart H or 40 CFR Part 96 if:
 - ~~(A) a the source is covered under Rules .1416, .1417, or Rule .1418 of this Section except internal combustion engines, engines, or~~
 - ~~(B) any source that opts into the nitrogen oxide budget trading program under Rule .1419 of this Section.~~

- (2) The owner or operator of a source that is subject to the requirements of this Section but not covered under Subparagraph (1) of this Paragraph and that uses a continuous emissions monitoring system to measure emissions of nitrogen oxides shall operate and maintain the continuous emission monitoring system according to 40 CFR Part 60, Appendix B, Specification 2, and Appendix F or Part 75, Subpart H. If diluent monitoring is required, 40 CFR Part 60, Appendix B,

Specification 3, shall be used. If flow monitoring is required, 40 CFR Part 60, Appendix B, Specification 6, shall be used.

- (3) The owner or operator of the following sources shall not be required to use continuous emission monitors unless the Director determines that a continuous emission monitor is necessary under Rule .0611 of this Subchapter to show compliance with the rules of this Section:

- (A) a boiler or indirect-fired process heater covered under Rule .1407 of this Section with a maximum heat input less than or equal to 250 million Btu per hour;
- (B) stationary internal combustion engines covered under Rule .1409 of this Section except for engines covered under Rules .1409(b) and .1418 of this Section.

(e) Missing data.

- (1) If data from continuous emission monitoring systems required to meet the requirements of 40 CFR Part 75 are not available at a time that the source is operated, the procedures in 40 CFR Part 75 shall be used to supply the missing data.

- (2) For continuous emissions monitors not covered under Subparagraph (1) of this Paragraph, data shall be available for at least 95 percent of the emission sources operating hours for the applicable averaging period, where four equally spaced readings constitute a valid hour. If data from continuous emission monitoring systems are not available for at least 95 percent of the time that the source is operated, the owner or operator of the monitor shall:

- (A) use the procedures in 40 CFR 75.33 through 75.37 to supply the missing data; or
- (B) document that the combustion source or process equipment and the control device were being properly operated (acceptable operating and maintenance procedures are being used, such as, compliance with permit conditions, operating and maintenance procedures, and preventative maintenance program, and monitoring results and compliance history) when the monitoring measurements were missing.

(f) Quality assurance for continuous emissions monitors.

- (1) The owner or operator of a continuous emission monitor required to meet 40 CFR Part 75, Subpart H, shall follow the quality

assurance and quality control requirements of 40 CFR Part 75, Subpart H.

- (2) For a continuous emissions monitor not covered under Subparagraph (1) of this Paragraph, the owner or operator of the continuous emissions monitor shall follow the quality assurance and quality control requirements of 40 CFR Part 60, Appendix F, if the monitor is required to be operated annually under another rule. If the continuous emissions monitor is being operated only to satisfy the requirements of this Section, then the quality assurance and quality control requirements of 40 CFR Part 60, Appendix F, shall apply except that:

- (A) A relative accuracy test audit shall be conducted after January 1 and before May 1 of each year;
- (B) One of the following shall be conducted at least once between May 1 and September 30 of each year:
 - (i) a linearity test, according to 40 CFR Part 75, Appendix A, Section 3.2, 6.2, and 7.1;
 - (ii) a relative accuracy audit, according to 40 CFR Part 60, Appendix F, Section 5 and 6; or
 - (iii) a cylinder gas audit according to 40 CFR Part 60, Appendix F, Section 5 and 6; and
- (C) A daily calibration drift test shall be conducted according to 40 CFR Part 60, Appendix F, Section 4.0.

~~(g) End of season reporting for large sources. The owner or operator of a source covered under Rules .1416, .1417, or .1418 of this Section shall report to the Director no later than October 30 of each year, the tons of nitrogen oxides emitted during the previous ozone season. The Division of Air Quality shall make this information publicly available.~~

~~(h) Recordkeeping and reporting requirements for large sources. The owner or operator of a source covered under Rules .1416, .1417, or .1418 of this Section shall comply with the recordkeeping and reporting requirements of 40 CFR Part 96, Budget Trading Program for State Implementation Plans.~~

~~(g)(i) Averaging time for continuous emissions monitors. When compliance with a limitation established for a source subject to the requirements of this Section is determined using a continuous emissions monitoring system, a 24-hour block average as described under Rule .0606 of this Subchapter shall be recorded for each day beginning May 1 through September 30 unless a specific rule requires a different averaging time or procedure. Sources covered under Rules .1416, .1417, or .1418 of this Section shall comply with the averaging time requirements of 40 CFR Part 75. A 24-hour block average described in Rule .0606 of this Subchapter shall be used when a continuous emissions monitoring system is used to determine compliance~~

with a short-term pounds-per-million-Btu standard in Rule .1418 of this Section.

~~(h)(i)~~ Heat input. Heat input shall be determined:

- (1) for sources required to use a monitoring system meeting the requirements of 40 CFR Part 75, using the procedures in 40 CFR Part 75; or
- (2) for sources not required to use a monitoring system meeting the requirements of 40 CFR Part 75 using:
 - (A) 40 CFR Part 75,
 - (B) a method in 15A NCAC 2D .0501, or
 - (C) the best available heat input data if approved by the Director (the Director shall grant approval if he finds that the heat input data is the best available).

~~(i)(k)~~ Source testing. When compliance with a limitation established for a source subject to the requirements of this Section is determined using source testing, the source testing shall follow the procedures of Rule .1415 of this Section.

~~(j)(l)~~ Alternative monitoring and reporting procedures. The owner or operator of a source covered under this Rule, ~~except for sources covered under Rule .1419 of this Section,~~ may request alternative monitoring or reporting procedures under Rule .0612, Alternative Monitoring and Reporting Procedures.

Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(5), (7), (10).

15A NCAC 02D .1407 BOILERS AND INDIRECT-FIRED PROCESS HEATERS

(a) This Rule applies according to Rule .1402 of this Section.

~~(b)(a)~~ The owner or operator of a boiler or indirect-fired process heater ~~subject to the requirements of this Section as determined by Rule .1402(d) of this Section~~ with a maximum heat input rate of less than or equal to 50 million Btu per hour shall comply with the annual tune-up requirements of Rule .1414 of this Section. The owner or operator of a boiler or indirect-fired process heater subject to the requirements of this Paragraph shall maintain records of all tune-ups performed for each source according to Rule .1404 of this Section.

~~(c)(b)~~ The owner or operator of a fossil fuel-fired boiler with a maximum heat input rate less than or equal to 250 million Btu per hour but greater than 50 million Btu per hour, a boiler with a maximum heat input greater than 50 million Btu per hour that is not a fossil fuel-fired boiler, or an indirect-fired process heater with a maximum heat input greater than 50 million Btu per hour shall comply by:

- (1) installation of, if necessary, combustion modification technology or other NO_x control technology and maintenance, including annual tune-ups and recordkeeping; and
- (2) demonstration through source testing or continuous emission monitoring that the

source complies with the following applicable limitation:

**MAXIMUM ALLOWABLE NO_x EMISSION RATES FOR BOILERS AND INDIRECT PROCESS HEATERS
(POUNDS PER MILLION BTU)**

Fuel/Boiler Type	Firing Method		
	Tangential	Wall	Stoker or Other
Coal (Wet Bottom)	1.0	1.0	N/A
Coal (Dry Bottom)	0.45	0.50	0.40
Wood or Refuse	0.20	0.30	0.20
Oil	0.30	0.30	0.30
Gas	0.20	0.20	0.20

~~(d)(e)~~ If this Rule becomes applicable to a boiler or indirect-fired process heater pursuant to Rule .1402(d), and the emissions are greater than the applicable limitation in Paragraph ~~(c)(b)~~ of this Rule after reasonable effort as defined in Rule .1401 of this Section, or if the requirements of this Rule are not RACT, the owner or operator may petition the Director for an alternative limitation or standard in accordance with Rule .1412 of this Section.

~~(e)(d)~~ Compliance with the limitation established for a boiler or indirect-fired process heater under this Rule shall be determined:

- ~~(1)~~ using a continuous emissions monitoring system for boilers or indirect-fired process heaters with a maximum heat input rate greater than 250 million Btu per hour;
- ~~(2)(1)~~ using a continuous emission monitoring system if the boiler or indirect-fired process heater is required to use a continuous emissions monitoring system under Rule .0524 of this Section or 40 CFR Part 60 to measure emissions of nitrogen oxides; or
- ~~(3)(2)~~ using annual source testing according to Rule .1415 of this Section for boilers or indirect-fired process heaters with a maximum heat input rate less than or equal to 250 million Btu per hour but greater than 50 million BTU per hour with the exception allowed under Paragraph ~~(e)(f)~~ of this Rule.

~~(f)(e)~~ If a source covered under this rule can burn more than one fuel, the owner or operator of the source may choose not to burn one or more of these fuels during the ozone season. If the owner or operator chooses not to burn a particular fuel, the sources testing required under Subparagraph ~~(d)(3)(e)(2)~~ this Rule shall not be required for that fuel.

~~(g)(f)~~ If two consecutive annual source tests show compliance, the Director may reduce the frequency of testing up to once every five years. In years that a source test is not done, the boiler or indirect-fired process heater shall comply with the annual tune-up requirements of Rule .1414 of this Section. If after the Director reduces the frequency of testing, a source test shows that the emission limit under this Rule is exceeded, the Director shall require the boiler or indirect-fired process heater to be tested annually until two consecutive annual tests show compliance. Then the Director may again reduce the frequency of testing.

Authority G.S. 143-215.3(a)(1); 143-215.66; 143-215.107(a)(5), (7), (10).

15A NCAC 02D .1408 STATIONARY COMBUSTION TURBINES

(a) This Rule applies according to Rule .1402 of this Section.

~~(a)(b)~~ Unless the owner or operator chooses the option of emission averaging under Rule .1410 of this Section, the owner or operator of a stationary combustion turbine with a heat input rate greater than 100 million Btu per hour but less than or equal to 250 million Btu per hour shall comply with the following limitations:

- (1) Emissions of NO_x shall not exceed 75 ppm by volume corrected to 15 percent oxygen for gas-fired ~~turbines-turbines~~, or
- (2) Emissions of NO_x shall not exceed 95 ppm by volume corrected to 15 percent oxygen for oil-fired turbines.

If necessary, the owner or operator shall install combustion modification technology or other NO_x control technology to comply with the applicable limitation set forth in this Paragraph.

~~(b)(c)~~ If this Rule becomes applicable to a stationary combustion turbine pursuant to Rule .1402(d), and the emissions are greater than the applicable limitation in Paragraph ~~(b)(a)~~ of this Rule after reasonable effort as defined in Rule .1401 of this Section, or if the requirements of this Rule are not RACT for the particular stationary combustion turbine, the owner or operator may petition the Director for an alternative limitation or standard according to Rule .1412 of this Section.

~~(d)(e)~~ Compliance with the limitation established for a stationary combustion turbine under this Rule shall be determined:

- (1) using a continuous emissions monitoring ~~system-system~~, or
- (2) using annual source testing according to Rule .1415 of this Section.

~~(e)(d)~~ If a source covered under this rule can burn more than one fuel, the owner or operator of the source may choose not to burn one or more of these fuels during the ozone season. If the owner or operator chooses not to burn a particular fuel, the sources testing required under this Rule shall not be required for that fuel.

Authority G.S. 143-215.3(a)(1); 143-215.66; 143-215.107(a)(5), (7), (10).

15A NCAC 02D .1409 STATIONARY INTERNAL COMBUSTION ENGINES

(a) This Rule applies according to Rule .1402 of this Section.

~~(a)(b)~~ The owner or operator of a stationary internal combustion engine having a rated capacity of 650 horsepower or more that is not covered under Paragraph ~~(c)(b)~~ of this Rule or Rule .1418 of this Section shall not allow emissions of NO_x from the stationary internal combustion engine to exceed the following limitations:

MAXIMUM ALLOWABLE NO_x EMISSION RATES FOR
STATIONARY INTERNAL COMBUSTION ENGINES
(GRAMS PER HORSEPOWER HOUR)

Engine Type	Fuel Type	Limitation
Rich-burn	Gaseous	2.5
Lean-burn	Gaseous	2.5
Compression Ignition	Liquid	8.0

~~(b)(c)~~ Engines identified in the table in this Paragraph shall not exceed the emission limit in the table during the ozone ~~season~~ season; for the 2002 and 2003 ozone season, there shall not be any restrictions on emissions of nitrogen oxides from these engines under this Rule.

SUM OF MAXIMUM ALLOWABLE OZONE SEASON NO_x EMISSIONS
(tons per ozone season)

FACILITY	REGULATED SOURCES	ALLOWABLE EMISSIONS 2004	ALLOWABLE EMISSIONS 2005	ALLOWABLE EMISSIONS 2006 and later
Transcontinental Gas Pipeline Station 150	Mainline engines #12, 13, 14, and 15	311	189	76
Transcontinental Gas Pipeline Station 155	Mainline engines #2, 3, 4, 5, and 6	509	314	127
Transcontinental Gas Pipeline Station 160	Mainline engines #11, 12, 13, 14, and 15	597	367	149

Compliance shall be determined by summing the actual emissions from the engines listed in the table at each facility for the ozone season and comparing those sums to the limits in the table. Compliance may be achieved through trading under Paragraph ~~(g)~~ (h) of this Rule if the trades are approved before the ozone season.

~~(e)(d)~~ If this Rule becomes applicable to a stationary internal combustion engine pursuant to Rule .1402(d), then, if after reasonable effort as defined in Rule .1401 of this Section, the emissions from that stationary internal combustion engine are greater than the applicable limitation in Paragraph ~~(a)(b)~~ of this Rule, Rule after reasonable effort as defined in Rule .1401 of this Section, or if the requirements of this Rule are not RACT for the particular stationary internal combustion engine, the owner or operator may petition the Director for an alternative limitation or standard according to Rule .1412 of this Section.

~~(d)(e)~~ For the engines identified in Paragraph ~~(b)(c)~~ of this Rule and any engine involved in emissions trading with one or more of the engines identified in Paragraph ~~(b)(c)~~ of this Rule, the owner or operator shall determine compliance using:

- (1) a continuous emissions monitoring system which meets the applicable requirements of

Appendices B and F of 40 CFR part 60 and Rule .1404 of this Section; or

- (2) an alternate monitoring and recordkeeping procedure based on actual emissions testing and correlation with operating parameters.

The installation, implementation, and use of this alternate procedure allowed under Subparagraph ~~(d)(2)~~ (e)(2) of this Paragraph shall be approved by the Director before it may be used. The Director may approve the alternative procedure if he finds that it can show the compliance status of the engine.

~~(e)(f)~~ If a stationary internal combustion engine is permitted to operate more than 475 hours during the ozone season, compliance with the limitation established for a stationary internal combustion engine under Paragraph ~~(a)(b)~~ of this Rule shall be determined using annual source testing according to Rule .1415 of this Section. If a source covered under this rule can burn more than one fuel, then the owner or operator of the source may choose not to burn one or more of these fuels during the ozone season. If the owner or operator chooses not to burn a particular fuel, the source testing required under this Rule shall not be required for that fuel.

~~(f)(g)~~ If a stationary internal combustion engine is permitted to operate no more than 475 hours during the ozone season, the

owner or operator of the stationary internal combustion engine shall show compliance with the limitation under Paragraph ~~(a)(b)~~ of this Rule with source testing during the first ozone season of operation according to Rule .1415 of this Section. Each year after that, the owner or operator of the stationary internal combustion engine shall comply with the annual tune-up requirements of Rule .1414 of this Section.

~~(g)(h)~~ The owner or operator of a source covered under Paragraph ~~(b)(c)~~ of this Rule may offset part or all of the emissions of that source by reducing the emissions of another stationary internal combustion engine at that facility by an amount equal to or greater than the emissions being offset. Only actual decreased emissions that have not previously been relied on to comply with Subchapter 2D or 2Q of this Title or Title 40 of the Code of Federal Regulations can be used to offset the emissions of another source. The person requesting the offset shall submit the following information to the Director:

- (1) identification of the source, including permit number, providing the offset and what the new allowable emission rate for the source will be;
- (2) identification of the source, including permit number, receiving the offset and what the new allowable emission rate for the source will be;
- (3) the amount of allowable emissions in tons per ozone season being offset;
- (4) a description of the monitoring, recordkeeping, and reporting that shall be used to show compliance; and
- (5) documentation that the offset is an actual decrease in emissions that has not previously been relied on to comply with Subchapter 02D or 02Q of this Title or Title 40 of the Code of Federal Regulations.

The Director may approve the offset if he finds that all the information required by this Paragraph has been submitted and that the offset is an actual decrease in emissions that have not previously been relied on to comply with Subchapter 02D or 02Q of this Title or Title 40 of the Code of Federal Regulations. If the Director approves the offset, he shall put the new allowable emission rates in the respective permits.

Authority G.S. 143-215.3(a)(1); 143-215.66; 143-215.107(a)(5), (7), (10).

15A NCAC 02D .1410 EMISSIONS AVERAGING

(a) This Rule shall not apply to sources covered under Rule ~~.1416, .1417, or .1418~~ of this Section. Sources that have obtained an alternative limitation as provided by Rule .1412 of this Section or that apply seasonal fuel switching as provided by Rule .1411 of this Section are not eligible to participate in an emissions averaging plan under this Rule.

(b) With the exceptions in Paragraph (a) of this Rule, the owner or operator of a facility with two or more sources with comparable plume rise and subject to the requirements of this Section for all such sources as determined by Rule .1402 of this Section may elect to apply an emissions averaging plan according to Paragraph (c) of this Rule. An emission averaging plan may be used if the total NO_x emissions from the averaged set of sources based on the total heat input are equal to or less

than the NO_x emissions that would have occurred if each source complied with the applicable limitation.

(c) To request approval of an emissions averaging plan to comply with the requirements of this Section, the owner or operator of a facility shall submit a written request to the Director including the following information:

- (1) the name and location of the facility;
- (2) information identifying each source to be included under the averaging plan;
- (3) the maximum heat input rate for each source;
- (4) the fuel or fuels combusted in each source;
- (5) the maximum allowable NO_x emission rate proposed for each averaging source;
- (6) a demonstration that the nitrogen oxide emissions of the sources being averaged when operated together at the maximum daily heat input rate, will be less than or equal to the total NO_x emissions if each source complied with the applicable limitation of this Section individually;
- (7) an operational plan to provide reasonable assurance that the sources being averaged will satisfy Subparagraph (5) of this Paragraph when the combined maximum daily heat input rate is less than the permitted maximum heat input rate; and
- (8) the method to be used to determine the actual NO_x emissions from each source.

Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.107(a)(5), (7), (10).

15A NCAC 02D .1411 SEASONAL FUEL SWITCHING

(a) This Rule shall not apply to sources covered under Rule ~~.1416, .1417, or .1418~~ of this Section.

(b) The owner or operator of a coal-fired or oil-fired boiler subject to the requirements of Rule .1407 of this Section may elect to comply by applying seasonal combustion of natural gas according to Paragraph (c) of this Rule. This option is not available to a boiler that used natural gas as its primary fuel in or since 1990. Compliance with this Section according to this Rule does not remove or reduce any applicable requirement of the Acid Rain Program.

(c) The owner or operator electing to comply with the requirements of this Section through the seasonal combustion of natural gas shall establish a NO_x emission limit beginning October 1 and ending April 30 that will result in annual NO_x emissions of less than or equal to the NO_x that would have been emitted if the source complied with the applicable limitation for the combustion of coal for the entire calendar year. Compliance with this Section according to this Rule does not remove or reduce any applicable requirement of the Acid Rain Program.

(d) To comply with the requirements of this Section through the seasonal combustion of natural gas, the owner or operator shall submit to the Director the following information:

- (1) the name and location of the facility;
- (2) information identifying the source to use seasonal combustion of natural gas for compliance;

- (3) the maximum heat input rate for each source;
- (4) a demonstration that the source will comply with the applicable limitation for the combustion of coal during the ozone ~~season~~ season;
- (5) a demonstration that the source will comply with the NO_x emission limitation established under Paragraph (c) of this Rule beginning October 1 and ending April 30; and
- (6) a written statement from the natural gas supplier providing reasonable assurance that the fuel will be available beginning during the ozone season.

Authority G.S. 143-215.3(a)(1) 143-215.65; 143-215.107(a)(5), (7), (10).

15A NCAC 02D .1412 PETITION FOR ALTERNATIVE LIMITATIONS

(a) If the owner or operator of a source subject to the requirements of Rule .1407, .1408, or ~~.1409(a)~~ .1409(b) of this Section:

- (1) cannot achieve compliance with the applicable limitation after reasonable effort to satisfy the requirements of Rules .1407, .1408, or .1409 of this Section or if the requirements of Rules .1407, .1408, or .1409 of this Section are not RACT for the particular source; and
- (2) cannot provide reasonable assurance for overall compliance at a facility through the implementation of an emissions averaging plan as provided for in Rule .1410 of this Section;

the owner or operator may petition the Director for an alternative limitation according to Paragraph (b) or (c) of this Rule.

(b) To petition the Director for an alternative limitation, the owner or operator of the source shall submit;

- (1) the name and location of the facility;
- (2) information identifying the source for which an alternative limitation is being requested;
- (3) the maximum heat input rate for the source;
- (4) the fuel or fuels combusted in the source;
- (5) the maximum allowable NO_x emission rate proposed for the source for each fuel;
- (6) a demonstration that the source has satisfied the requirements to apply for an alternative limitation under Paragraph (a) of this Rule; and
- (7) a demonstration that the proposed alternative limitation is RACT for that source.

(c) If the source is required to comply with best achievable control technology under Rule .0530, Prevention of Significant Deterioration, of this Subchapter, the owner or operator of the source shall provide the information required under Subparagraphs (b)(1) through (6) of this Rule and documentation that the source is required to use best available control technology and is complying with that requirement. For this source, its best available control technology shall be considered RACT without any further demonstrations.

(d) The Director shall approve the alternative limitation if he finds that:

- (1) all the information required by Paragraph (b) of this Rule has been submitted,
- (2) the requirements of Paragraph (a) of this Rule have been satisfied, and
- (3) the proposed alternative limitation is RACT for that source.

Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.107(a)(5), (7), (10).

15A NCAC 02D .1416 EMISSION ALLOCATIONS FOR UTILITY COMPANIES

~~(a) After November 1, 2000 but before the EPA promulgation of revisions to 40 CFR Part 51, Subpart G, revising the nitrogen oxide budget for North Carolina, the following limits apply:~~

- ~~(1) Carolina Power & Light. The total emissions from all the coal-fired boilers and combustion turbines that are not listed in Rule .1417 of this Section at Carolina Power & Light Company's Asheville, Cape Fear, Lee, Mayo, Roxboro, Sutton, and Weatherspoon facilities shall not exceed:~~
 - ~~(A) 12,019 tons per ozone season for 2004;~~
 - ~~(B) 15,566 tons per ozone season for 2005;~~
 - ~~(C) 14,355 tons per ozone season for 2006 and each year thereafter until revised according to Rule .1420 of this Section; and~~

~~Furthermore, except as allowed under Paragraph (d) of this Rule, individual sources at these facilities named in the table in this Subparagraph shall not exceed during the ozone season the nitrogen oxide emission allocations in the table.~~

FACILITY	SOURCE	EMISSION ALLOCATIONS (tons/ozone season) 2004	EMISSION ALLOCATIONS (tons/ozone season) 2005	EMISSION ALLOCATIONS (tons/ozone season) 2006 and later
Asheville, Buncombe Co.	1	551	714	659
	2	538	697	643

PROPOSED RULES

FACILITY	SOURCE	EMISSION ALLOCATIONS (tons/ozone season) 2004	EMISSION ALLOCATIONS (tons/ozone season) 2005	EMISSION ALLOCATIONS (tons/ozone season) 2006 and later
Cape Fear Chatham Co.	5	286	371	342
	6	406	526	485
Lee Wayne Co.	1	145	188	173
	2	159	206	190
	3	465	603	556
Mayo Person Co.	1	1987	2572	2373
Roxboro Person Co.	1	861	1115	1028
	2	1602	2075	1914
	3	1773	2295	2116
	4	1698	2199	2028
L V Sutton New Hanover Co.	1	182	236	217
	2	198	256	236
	3	806	1044	962
Weatherspoon Robeson Co.	1	85	110	102
	2	97	125	116
	3	180	234	215

(2) ~~Duke Power. The total emissions from all the coal-fired boilers and combustion turbines that are not listed in Rule .1417 of this Section at Duke Power Company's Allen, Belews Creek, Buck, Cliffside, Dan River, Marshall, and Riverbend facilities shall not exceed:~~

~~(A) 17,816 tons per ozone season for 2004;~~

~~(B) 23,072 tons per ozone season for 2005;~~

~~(C) 21,278 tons per ozone season for 2006 and each year thereafter until revised according to Rule .1420 of this Section; and~~

Furthermore, except as allowed under Paragraph (d) of this Rule, individual sources at these facilities named in the table in this Subparagraph shall not exceed during the ozone season the nitrogen oxide emission allocations in the table.

FACILITY	SOURCE	EMISSION ALLOCATIONS (tons/ozone season) 2004	EMISSION ALLOCATIONS (tons/season) 2005	EMISSION ALLOCATIONS (tons/season) 2006 and later
G G Allen Gaston Co.	1	350	453	418
	2	355	460	424
	3	590	764	705
	4	528	683	630
	5	678	748	690
Belews Creek Stokes Co.	1	2591	3356	3095
	2	3020	3911	3608
Buck Rowan Co.	5	66	86	79
	6	73	95	87
	7	78	101	93
	8	319	413	381
	9	337	437	403
Cliffside Cleveland and Rutherford Co.	1	76	98	91
	2	82	106	98
	3	107	138	128
	4	120	156	144
	5	1326	1717	1584
Dan River Rockingham Co.	1	132	171	157
	2	144	186	172

PROPOSED RULES

FACILITY	SOURCE	EMISSION ALLOCATIONS (tons/ozone season) 2004	EMISSION ALLOCATIONS (tons/season) 2005	EMISSION ALLOCATIONS (tons/season) 2006 and later
	3	304	394	363
Marshall Catawba Co.	1	1011	1309	1207
	2	1056	1367	1261
	3	1784	2311	2131
	4	1764	2285	2107
Riverbend Gaston Co.	10	299	387	357
	7	216	280	258
	8	225	291	268
	9	285	369	340

(b) After November 1, 2000, and after any EPA promulgation of revisions to 40 CFR Part 51, Subpart G, revising the nitrogen oxide budget for North Carolina, the following limits apply:

(1) ~~Carolina Power & Light. The total emissions from all the coal fired boilers and combustion turbines that are not listed in Rule .1417 of this Section at Carolina Power & Light Company's Asheville, Cape Fear, Lee, Mayo, Roxboro, Sutton, and Weatherspoon facilities shall not exceed:~~

(A) ~~12,019 tons per ozone season in 2004;~~

(B) ~~15,024 tons per ozone season for 2005;~~

(C) ~~11,320 tons per ozone season for 2006 and each year thereafter until revised according to Rule .1420 of this Section; and~~

Furthermore, except as allowed under Paragraph (d) of this Rule, individual sources at these facilities named in the table in this Subparagraph shall not exceed during the ozone season the nitrogen oxide emission allocations in the table.

FACILITY	SOURCE	EMISSION ALLOCATIONS (tons/ozone season) 2004	EMISSION ALLOCATIONS (tons/ozone season) 2005	EMISSION ALLOCATIONS (tons/ozone season) 2006 and later
Asheville Buncombe Co.	1	551	689	519
	2	538	672	507
Cape Fear Chatham Co.	5	286	358	270
	6	406	508	382
Lee Wayne Co.	1	145	182	137
	2	159	199	150
	3	465	582	438
Mayo Person Co.	1	1987	2483	1872
Roxboro Person Co.	1	861	1076	811
	2	1602	2003	1509
	3	1773	2215	1669
	4	1698	2122	1599
L V Sutton New Hanover Co.	1	182	228	171
	2	198	247	186
	3	806	1007	759
Weatherspoon Robeson Co.	1	85	107	80
	2	97	121	91
	3	180	225	170

(2) ~~Duke Power. The total emissions from all the coal fired boilers and combustion turbines that are not listed in Rule .1417 of this Section at Duke Power Company's Allen, Belews Creek, Buck, Cliffside, Dan River, Marshall, and Riverbend facilities shall not exceed:~~

(A) ~~17,816 tons per ozone season;~~

(B) ~~22,270 tons per ozone season for 2005;~~

PROPOSED RULES

(C) — 16,780 tons per ozone season for 2006 and each year thereafter until revised according to Rule .1420 of this Section; and

Furthermore, except as allowed under Paragraph (d) of this Rule, individual sources at these facilities named in the table in this Subparagraph shall not exceed during the ozone season the nitrogen oxide emission allocations in the table.

FACILITY	SOURCE	EMISSION ALLOCATIONS (tons/ozone season) 2004	EMISSION ALLOCATIONS (tons/ozone season) 2005	EMISSION ALLOCATIONS (tons/ozone season) 2006 and later
G-G Allen Gaston Co.	1	350	437	329
	2	355	444	334
	3	590	737	556
	4	528	660	497
	5	578	722	544
Belews Creek Stokes Co.	1	2591	3239	2441
	2	3020	3775	2846
Buck Rowan Co.	5	66	83	63
	6	73	91	69
	7	78	97	73
	8	319	399	300
	9	337	422	318
Cliffside Cleveland and Rutherford Co.	1	76	95	71
	2	82	102	77
	3	107	134	101
	4	120	150	113
	5	1326	1658	1249
Dan River Rockingham Co.	1	132	165	124
	2	144	180	135
	3	304	380	286
Marshall Catawba Co.	1	1011	1263	952
	2	1056	1320	994
	3	1784	2230	1680
	4	1764	2206	1662
Riverbend Gaston Co.	10	299	374	282
	7	216	270	204
	8	225	281	212
	9	285	356	268

(e) Posting of emission allocation. The Director shall post the emission allocations for sources covered under this Rule on the Division's web page.

(d) Trading. Sources shall comply with the requirements of this Rule using the nitrogen oxide budget trading program set out in Rule .1419 of this Section.

(e) Monitoring. The owner or operator of a source subject to this Rule shall show compliance using a continuous emission monitor that meets the requirements of 40 CFR Part 75, Subpart H, with such exceptions as allowed under 40 CFR Part 75, Subpart H or 40 CFR Part 96.

(f) Operation of control devices. All emission control devices and techniques installed to comply with this Rule shall be operated during the ozone season in the manner in which they are designed and permitted to be operated.

(g) Days of violations. For the purposes of this Rule, the number of days of violation for a source shall be determined after the end of the ozone season as follows:

- (1) — To the source's allocation in this Rule, the allocations acquired before December 1 of that year under Rule .1419 of this Section are added and the allocations transferred before December 1 of that year under Rule .1419 of this Section are subtracted.
- (2) — The value calculated under Subparagraph (1) of this Paragraph is compared to the actual emissions from the source for the ozone season. If the value calculated under Subparagraph (1) of this Paragraph is greater than or equal to the actual emissions from the source for the ozone season, the source is in compliance. If the value calculated under

Subparagraph (1) of this Paragraph is less than the actual emissions from the source for the ozone season, the source is not in compliance.

- (3) If the source is not in compliance, beginning with September 30, the actual emissions for that day and each preceding day are subtracted from the actual emissions for the ozone season until the value calculated under Subparagraph (1) of this Paragraph is greater than or equal to the actual emissions. Each day that the source operated after this day to September 30 is a day of violation.

(h) ~~Modification and reconstruction.~~ The modification or reconstruction of a source covered under this Rule shall not make that source a "new" source under this Rule. A source that is modified or reconstructed shall retain its emission allocations under Paragraph (a) or (b) of this Rule.

(i) ~~Additional controls.~~ The Environmental Management Commission may specify through rulemaking a specific emission limit lower than that established under this Rule for a specific source if compliance with the lower emission limit is required as part of the State Implementation Plan to attain or maintain the ambient air quality standard for ozone.

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5), (7), (10).

15A NCAC 02D .1417 EMISSION ALLOCATIONS FOR LARGE COMBUSTION SOURCES

ELECTRICAL GENERATING UNITS

FACILITY	SOURCE	NO _x EMISSION ALLOCATIONS (tons/ozone season) 2004	NO _x EMISSION ALLOCATIONS (tons/ozone season) 2005	NO _x EMISSION ALLOCATIONS (tons/ozone season) 2006 and later
Butler Warner Generating, Cumberland Co.	Combustion Turbine 1	27	33	49
	Combustion Turbine 2	27	33	49
	Combustion Turbine 3	27	33	49
	Combustion Turbine 6	28	35	52
	Combustion Turbine 7	27	33	49
	Combustion Turbine 8	27	33	49
	Combustion Turbine 4	34	43	63
	Combustion Turbine 5	35	43	63
Cogentrix Rocky Mount, Edgecombe Co.	Boiler ST-unt	319	398	351
Cogentrix Elizabethtown, Bladen Co.	Coal boiler ST-own	115	143	126

(a) ~~Applicability.~~ This rule applies to the sources listed in Paragraph (b) of this Rule or to the following types of sources that are permitted before November 1, 2000, and are not covered under Rule .1416 of this Section:

- (1) fossil fuel fired stationary boilers, combustion turbines, or combined cycle systems serving a generator with a nameplate capacity greater than 25 megawatts electrical and selling any amount of electricity; or
- (2) fossil fuel fired stationary boilers, combustion turbines, or combined cycle systems having a maximum design heat input greater than 250 million Btu per hour that are not covered under Subparagraph (1) of this Paragraph.

(b) ~~Initial emission allocations.~~

- (1) After November 1, 2000 but before the EPA promulgation of revisions to 40 CFR Part 51, Subpart G, revising the nitrogen oxide budget for North Carolina, the emission allocations in the tables in this Subparagraph shall apply. Except as allowed under Paragraph (d) of this Rule, sources named in the tables in this Subparagraph shall not exceed during the ozone season the nitrogen oxide (NO_x) emission allocations in the tables until revised according to Rule .1420 of this Section:

PROPOSED RULES

FACILITY	SOURCE	NO _x EMISSION ALLOCATIONS (tons/ozone season) 2004	NO _x EMISSION ALLOCATIONS (tons/ozone season) 2005	NO _x EMISSION ALLOCATIONS (tons/ozone season) 2006 and later
Cogentrix Kenansville, Duplin Co.	Stoker boiler ST LLE	103	128	113
Cogentrix Lumberton, Robeson Co.	Coal boiler ST TON	114	142	125
Cogentrix Roxboro, Person Co.	ST ORO	175	218	192
Cogentrix Southport, Brunswick Co.	ST ORT	356	443	391
Duke Power, Lincoln	Combustion Turbine 1	18	23	23
	Combustion Turbine 2	18	23	23
	Combustion Turbine 3	18	23	23
	Combustion Turbine 4	18	23	23
	Combustion Turbine 5	18	23	23
	Combustion Turbine 6	18	23	23
	Combustion Turbine 7	18	23	23
	Combustion Turbine 8	18	23	23
	Combustion Turbine 9	18	23	23
	Combustion Turbine 10	18	23	23
	Combustion Turbine 11	18	23	23
	Combustion Turbine 12	18	23	23
	Combustion Turbine 13	18	23	23
	Combustion Turbine 14	18	23	23
	Combustion Turbine 15	18	23	23
	Combustion Turbine 16	19	24	24
Panda-Rosemary, Halifax Co.	CT-ary	35	43	32
	CW ary	25	31	23
Roanoke Valley, Halifax Co.	1	447	557	492
	2	142	178	167
RJ Reynolds Tobaccoville Facility, Forsyth Co.	Boiler 1	194	243	64
	Boiler 2	218	273	64
	Boiler 3	178	223	64
	Boiler 4	190	238	64
UNC CH, Orange Co.	Boiler no. 5, 6, and 7	116	145	128
	Boiler no. 8	120	150	113

PROPOSED RULES

FACILITY	SOURCE	NO _x EMISSION ALLOCATIONS (tons/ozone season) 2004	NO _x EMISSION ALLOCATIONS (tons/ozone season) 2005	NO _x EMISSION ALLOCATIONS (tons/ozone season) 2006 and later
CP&L, Lee Plant, Wayne County	Combustion Turbine 10	25	31	31
	Combustion Turbine 11	25	31	31
	Combustion Turbine 12	92	115	115
	Combustion Turbine 13	92	115	115
Dynergy, Rockingham County	Combustion Turbine 1	34	42	42
	Combustion Turbine 2	33	42	42
	Combustion Turbine 3	33	42	42
	Combustion Turbine 4	33	41	41
	Combustion Turbine 5	33	41	41
CP&L, Woodleaf, Rowan County	Combustion Turbine 1	22	27	27
	Combustion Turbine 2	22	27	27
	Combustion Turbine 3	22	27	27
	Combustion Turbine 4	21	27	27
	Combustion Turbine 5	22	27	27
CP&L, Mark's Creek, Richmond County	Combustion Turbine 1	22	27	27
	Combustion Turbine 2	22	27	27
	Combustion Turbine 3	22	27	27
	Combustion Turbine 4	22	27	27
	Combustion Turbine 5	21	27	27
	Combustion Turbine 6	21	27	27
	Combustion Turbine 7	22	28	28
CP&L, Asheville, Buncombe County	Combustion Turbine	60	75	75
	Combustion Turbine	60	75	75

NON ELECTRICAL GENERATING UNITS

PROPOSED RULES

FACILITY	SOURCE	NO _x EMISSION ALLOCATIONS (tons/ozone season) 2004	NO _x EMISSION ALLOCATIONS (tons/ozone season) 2005	NO _x EMISSION ALLOCATIONS (tons/ozone season) 2006 and later
Weyerhaeuser Paper Co., Martin Co.	Riley boiler	566	709	379
	Package boiler	20	25	25
Blue Ridge Paper Products, Haywood Co.	Pulverized coal dry bottom boiler — Big Bill	212	265	141
	Pulverized coal dry bottom boiler — Peter G	187	234	125
	Pulverized coal dry bottom boiler — Riley Coal	358	447	239
	Pulverized coal, wet bottom boiler — No. 4	365	456	244
	Boiler — Riley Bark	135	169	90
International Paper Corp., Halifax Co.	Wood/ bark, no. 6 oil, pulverized coal dry bottom boiler	518	648	346
Weyerhaeuser Co. New Bern Mill, Craven Co.	#1 power boiler	181	226	121
	#2 power boiler	58	72	72
International Paper, Columbus Co.	No. 3 Power Boiler	126	158	84
	No. 4 Power Boiler	334	418	223
Fieldcrest Cannon, Plant 1 Cabarrus Co.	Boiler	174	217	116

- (2) — After November 1, 2000, and after any EPA promulgation of revisions to 40 CFR Part 51, Subpart G, revising the nitrogen oxide budget for North Carolina, the emission allocations in the tables in this Subparagraph shall apply. Except as allowed under Paragraph (d) of this Rule, sources named in the tables in this Subparagraph shall not exceed during the ozone season the nitrogen oxide (NO_x) emission allocations in the tables until revised according to Rule 1420 of this Section:

ELECTRIC GENERATING UNITS

FACILITY	SOURCE	NO _x EMISSION ALLOCATIONS (tons/ozone season) 2004	NO _x EMISSION ALLOCATIONS (tons/ozone season) 2005	NO _x EMISSIONS ALLOCATIONS((tons/ozone season) 2006 and later
Butler Warner Generating, Cumberland	Combustion Turbine 1	27	33	49

PROPOSED RULES

FACILITY	SOURCE	NO _x EMISSION ALLOCATIONS (tons/ozone season)-2004	NO _x EMISSION ALLOCATIONS (tons/ozone season) 2005	NO _x EMISSIONS ALLOCATIONS(tons/ozone season) 2006 and later
Co.	Combustion Turbine 2	27	33	49
	Combustion Turbine 3	27	33	49
	Combustion Turbine 6	28	35	52
	Combustion Turbine 7	27	33	49
	Combustion Turbine 8	27	33	49
	Combustion Turbine 4	34	43	63
	Combustion Turbine 5	35	43	63
Cogentrix-Rocky Mount, Edgecombe Co.	Boiler ST-unt	319	398	351
Cogentrix-Elizabethtown, Bladen	Coal boiler ST-OWN	115	143	126
Cogentrix-Kenansville, Duplin Co.	Stoker boiler ST-LLE	103	128	113
Cogentrix-Lumberton, Robeson Co.	Coal boiler ST-TON	114	142	125
Cogentrix-Roxboro, Person Co.	ST-ORO	175	218	192
Cogentrix-Southport, Brunswick Co.	ST-ORT	356	444	392
Duke Power, Lincoln	Combustion Turbine 1	18	23	26
	Combustion Turbine 2	18	23	26
	Combustion Turbine 3	18	23	26
	Combustion Turbine 4	18	23	26
	Combustion Turbine 5	18	23	26
	Combustion Turbine 6	18	23	26
	Combustion Turbine 7	18	23	26
	Combustion Turbine 8	18	23	26
	Combustion Turbine 9	18	23	26
	Combustion Turbine 10	18	23	26
	Combustion Turbine 11	18	23	26
	Combustion Turbine 12	18	23	26

PROPOSED RULES

FACILITY	SOURCE	NO _x EMISSION ALLOCATIONS (tons/ozone season) 2004	NO _x EMISSION ALLOCATIONS (tons/ozone season) 2005	NO _x EMISSIONS ALLOCATIONS(tons/ozone season) 2006 and later
	Combustion Turbine 13	18	23	26
	Combustion Turbine 14	18	23	26
	Combustion Turbine 15	18	23	26
	Combustion Turbine 16	19	24	27
Panda Rosemary, Halifax Co.	CT ary	35	43	32
	CW ary	25	31	23
Roanoke Valley, Halifax Co.	1	447	558	493
	2	142	178	167
RJ Reynolds Tobacco Co. Facility, Forsyth Co.	Boiler 1	194	243	64
	Boiler 2	218	273	64
	Boiler 3	178	223	64
	Boiler 4	190	238	64
UNC CH, Orange Co.	Boiler no. 5, 6, and 7	116	145	128
	Boiler no. 8	120	150	113
CP&L, Lee Plant, Wayne County	Combustion Turbine 10	25	31	31
	Combustion Turbine 11	25	31	31
	Combustion Turbine 12	92	115	115
	Combustion Turbine 13	92	115	115
Dynegy, Rockingham County	Combustion Turbine 1	34	42	42
	Combustion Turbine 2	33	42	42
	Combustion Turbine 3	33	42	42
	Combustion Turbine 4	33	41	41
	Combustion Turbine 5	33	41	41
CP&L, Woodleaf, Rowan County	Combustion Turbine 1	22	27	27
	Combustion Turbine 2	22	27	27
	Combustion Turbine 3	22	27	27
	Combustion Turbine 4	21	27	27
	Combustion Turbine 5	22	28	28
CP&L, Mark's Creek, Richmond County	Combustion Turbine 1	22	27	27

PROPOSED RULES

FACILITY	SOURCE	NO _x EMISSION ALLOCATIONS (tons/ozone season) 2004	NO _x EMISSION ALLOCATIONS (tons/ozone season) 2005	NO _x EMISSIONS ALLOCATIONS(tons/ozone season) 2006 and later
	Combustion Turbine 2	22	27	27
	Combustion Turbine 3	22	27	27
	Combustion Turbine 4	22	27	27
	Combustion Turbine 5	21	27	27
	Combustion Turbine 6	21	27	27
	Combustion Turbine 7	22	28	28
	Combustion Turbine 7	22	28	28
CP&L, Asheville, Buncombe County	Combustion Turbine	60	75	75
	Combustion Turbine	60	75	75

NON-ELECTRIC GENERATING UNITS

FACILITY	SOURCE	NO _x EMISSION ALLOCA- TIONS (tons/ozone season) 2004	NO _x EMISSION ALLOCATIONS (tons/ozone season) 2005	NO _x EMISSION ALLOCA- TIONS (tons/ozone season) 2006 and later
Weyerhaeuser Paper Company, Martin Co.	Riley boiler	566	708	379
	Package boiler	20	25	25
Blue Ridge Paper Products, Haywood Co.	Pulverized coal dry bottom boiler — Big Bill	212	265	141
	Pulverized coal dry bottom boiler — Peter G	187	234	125
	Pulverized coal dry bottom boiler — Riley Coal	358	447	239
	Pulverized coal, wet bottom boiler — No. 4	365	456	244
	boiler Riley Bark	135	169	90
International Paper Corp., Halifax Co.	Wood/bark, no. 6 oil, pulverized coal dry	518	648	346

FACILITY	SOURCE	NO _x EMISSION ALLOCA- TIONS (tons/ozone season) 2004	NO _x EMISSION ALLOCATIONS (tons/ozone season) 2005	NO _x EMISSION ALLOCA- TIONS (tons/ozone season) 2006 and later
	bottom boiler			
Weyerhaeuser Co. New Bern Mill, Craven Co.	#1 power boiler	181	226	121
	#2 power boiler	58	72	72
International Paper, Columbus Co.	No. 3 Power Boiler	126	158	84
	No. 4 Power Boiler	334	418	223
Fieldcrest Cannon, Plant 1, Cabarrus Co.	Boiler	174	217	116

(3) Any source covered under this Rule but not listed in Subparagraph (b)(1) or (2) of this Paragraph shall have a nitrogen oxide emission allocation of zero tons per season during the ozone season.

(e) Posting of emission allocations. The Director shall post the emission allocations for sources covered under this Rule on the Division's web page.

(d) Trading. Sources shall comply with the requirements of this Rule using the nitrogen oxide budget trading program set out in Rule .1419 of this Section.

(e) Monitoring. The owner or operator of a source subject to this Rule shall show compliance using a continuous emission monitor that meets the requirements of Rule .1404(d) of this Section.

(f) Operation of control devices. All emission control devices and techniques installed to comply with this Rule shall be operated beginning May 1 through September 30 in the manner in which they are designed and permitted to be operated.

(g) Days of violations. For the purposes of this Rule, the number of days of violation for a source shall be determined after the end of the ozone season as follows:

(1) To the source's allocation in this Rule, the allocations acquired before December 1 of that year under Rule .1419 of this Section are added and the allocations transferred before December 1 of that year under Rule .1419 of this Section are subtracted.

(2) The value calculated under Subparagraph (1) of this Paragraph is compared to the actual emissions from the source for the ozone season. If the value calculated under Subparagraph (1) of this Paragraph is greater than or equal to the actual emissions from the source for the ozone season, the source is in compliance. If the value calculated under Subparagraph (1) of this Paragraph is less than

the actual emissions from the source for the ozone season, the source is not in compliance.

(3) If the source is not in compliance, beginning with September 30, the actual emissions for that day and each preceding day are subtracted from the actual emissions for the ozone season until the value calculated under Subparagraph (1) of this Paragraph is greater than or equal to the actual emissions. Each day that the source operated after this day to September 30 is a day of violation.

(h) Modification and reconstruction, replacement, retirement, or change of ownership. The modification or reconstruction of a source covered under this Rule shall not make that source a "new" source under this Rule. A source that is modified or reconstructed shall retain its emission allocation under Paragraph (b) of this Rule. If one or more sources covered under this Rule is replaced, the new source shall receive the allocation of the source, or sources, that it replaced instead of an allocation under Rule .1421 of this Section. If the owner of a source changes, the emission allocations under this Rule and revised emission allocations made under Rule .1420 of this Section shall remain with the source. If a source is retired, the owner or operator of the source shall follow the procedures in 40 CFR 96.5. The allocations of a retired source shall remain with the owner or operator of the retired source until a reallocation occurs under Rule .1420 of this Section when the allocation shall be removed and given to other sources if the retired source is still retired.

(i) Additional controls. The Environmental Management Commission may specify through rulemaking a specific emission limit lower than that established under this Rule for a specific source if compliance with the lower emission limit is required as part of the State Implementation Plan to attain or maintain the ambient air quality standard for ozone.

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5), (7), (10).

15A NCAC 02D .1418 NEW ELECTRIC GENERATING UNITS, LARGE BOILERS, AND LARGE I/C ENGINES

(a) Electric generating units. Emissions of nitrogen oxides from any fossil fuel-fired stationary boiler, combustion turbine, or combined cycle system permitted after October 31, 2000, serving a generator with a nameplate capacity greater than 25 megawatts electrical and selling any amount of electricity shall not exceed:

- (1) 0.15 pounds per million Btu for gaseous and solid fuels and 0.18 pounds per million Btu for liquid fuels if it is not covered under Rule .0530 (prevention of significant deterioration) or .0531 (nonattainment area major new source review) of this Subchapter;
- (2) 0.15 pounds per million Btu for gaseous and solid fuels and 0.18 pounds per million Btu for liquid fuels or best available control technology requirements of Rule .0530 of this Subchapter, whichever requires the greater degree of reduction, if it is covered under Rule .0530 of this Subchapter; or
- (3) lowest available emission rate technology requirements of Rule .0531 of this Subchapter if it is covered under Rule .0531 of this Subchapter.

(b) Large boilers. Emissions of nitrogen oxides from any fossil fuel-fired stationary boiler, combustion turbine, or combined cycle system having a maximum design heat input greater than 250 million Btu per hour which is permitted after October 31, 2000, and not covered under Paragraph (a) of this Rule, shall not exceed:

- (1) 0.17 pounds per million Btu for gaseous and solid fuels and 0.18 pounds per million Btu for liquid fuels if it is not covered under Rule .0530 (prevention of significant deterioration) or .0531 (nonattainment area major new source review) of this Subchapter;
- (2) 0.17 pounds per million Btu for gaseous and solid fuels and 0.18 pounds per million Btu for liquid fuels or best available control technology requirements of Rule .0530 of this Subchapter, whichever requires the greater degree of reduction, if it is covered under Rule .0530 of this Subchapter; or
- (3) lowest available emission rate technology requirements of Rule .0531 of this Subchapter if it is covered under Rule .0531 of this Subchapter.

(c) Internal combustion engines. The following reciprocating internal combustion engines permitted after October 31, 2000, shall comply with the applicable requirements in Rule .1423 of this Section if the engine is not covered under Rule .0530 (prevention of significant deterioration) or .0531 (nonattainment area major source review) of this Subchapter:

- (1) rich burn stationary internal combustion engines rated at equal to or greater than 2,400 brake horsepower,

- (2) lean burn stationary internal combustion engines rated at equal to or greater than 2,400 brake horsepower,
- (3) diesel stationary internal combustion engines rated at equal to or greater than 3,000 brake horsepower, or
- (4) dual fuel stationary internal combustion engines rated at equal to or greater than 4,400 brake horsepower,

If the engine is covered under Rule .0530 of this Subchapter, it shall comply with the requirements of Rule .1423 of this Section or the best available control technology requirements of Rule .0530 of this Subchapter, whichever requires the greater degree of reduction. If the engine is covered under Rule .0531 of this Subchapter, it shall comply with lowest available emission rate technology requirements of Rule .0531 of this Subchapter.

(d) Monitoring. The owner or operator of a source subject to this Rule except internal combustion engines shall show compliance using a continuous emission monitor that meets the requirements of Rule .1404(d) of this Section. Internal combustion engines shall comply with the monitoring requirements in Rule .1423 of this Section. Monitors shall be installed before the first ozone season in which the source will operate and shall be operated each day during the ozone season that the source operates.

~~(e) Offsets. If emission allocations are not granted under Rule .1421 of this Section or are not equal to or greater than the emissions of nitrogen oxides of the source for that ozone season, until revised under Rule .1420 of this Section, the owner or operator of the source shall acquire emission allocations of nitrogen oxides under Rule .1419 of this Section from other sources sufficient to offset its emissions. Sources shall comply with the requirements of this Rule using the nitrogen oxide budget trading program set out in Rule .1419 of this Section. The owner or operator of internal combustion engines covered under Paragraph (c) of this Rule shall not be required to obtain emission allocations or emission reductions.~~

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5), (7), (10).

15A NCAC 02D .1419 NITROGEN OXIDE BUDGET TRADING PROGRAM

~~(a) Definitions. For the purposes of this Rule, the definitions in 40 CFR 96.2 shall apply except that:~~

- ~~(1) "Permitting agency" means the North Carolina Division of Air Quality.~~
- ~~(2) "Fossil fuel fired" means fossil fuel fired as defined under Rule .1401 of this Section instead of the definition in 40 CFR 96.2.~~

~~(b) Existing sources. Sources covered under Rule .1416 or .1417 of this Section shall comply with the requirements of Rule .1416 or .1417 of this Section using the procedures of and complying with the requirements of 40 CFR Part 96, Nitrogen Oxide Budget Trading Program for State Implementation Plans, with the following exceptions:~~

- ~~(1) Permit applications shall be submitted following the procedures and schedules in this Section and in Subchapter 2Q of this Title~~

instead of the procedures and schedules in 40 CFR Part 96; and

- (2) ~~The dates and schedules for monitoring systems in 40 CFR Part 96 shall not apply; however, if a source operates during the ozone season, it shall have installed and begun operating by May 1, 2004, a continuous emissions monitoring system that complies with 40 CFR Part 96.~~

(e) ~~New sources. Except for internal combustion engines, sources covered under Rule .1418 of this Section shall comply with the requirements of Rule .1418 of this Section using the procedures of and complying with the requirements of 40 CFR Part 96, Budget Trading Program for State Implementation Plans, with the following exceptions:~~

- (1) ~~Permit applications shall be submitted following the procedures and schedules in this Section and in Subchapter 2Q of this Title instead of the procedures and schedules in 40 CFR Part 96; and~~
- (2) ~~The dates and schedules for monitoring systems in 40 CFR Part 96 shall not apply; however, a source shall not operate during the ozone season until it has installed and is operating a continuous emissions monitoring system that complies with 40 CFR Part 96.~~

(d) ~~Opt-in provisions. Boilers, turbines, and combined cycle systems not covered under Rule .1416, .1417, or .1418 of this Section or internal combustion engines may opt into the budget trading program of 40 CFR Part 96 by following the procedures and requirements of 40 CFR Part 96, Subpart I, including using continuous emission monitors that meet the requirements of 40 CFR Part 75, Subpart H. Before an internal combustion engine opts into the budget trading program, the owner or operator of the engine shall demonstrate that the continuous emissions monitor on the engine can comply with the requirements of 40 CFR Part 75, Subpart H, by operating monitor on the engine under the conditions specified in 40 CFR Part 75 for at least one ozone season before opting into the budget trading program.~~

(e) ~~Divisional requirements. The Director and the Division of Air Quality shall follow the procedures of 40 CFR Part 96 in reviewing permit applications and issuing permits for NO_x Budget sources, in approving or disapproving monitoring systems for NO_x Budget sources, and in taking enforcement action against NO_x Budget sources. The Director may issue permits after May 1, 2003, for sources covered under this Section that are participating in the nitrogen oxide budget trading program under this Section. The provisions of 40 CFR Part 96 pertaining to early reduction credits shall not apply.~~

(f) ~~Submitting emission allocations to the EPA. For sources covered under Rule .1416, .1417, or .1418, the Director shall submit to the Administrator of the Environmental Protection Agency NO_x emission allocations according to 40 CFR Part 96. The Environmental Management Commission and the Director shall follow Rules .1416, .1417, and .1420 for emission allocations instead of the methodology specified in 40 CFR Part 96. The Environmental Management Commission and the Director shall follow, Rule .1421 of this Section for set asides and new source allocations instead of the provisions of 40 CFR~~

~~Part 96. The Environmental Management Commission and the Director shall follow Rule .1422 of this Section for distributing the compliance supplement pool instead of the provisions of 40 CFR Part 96.~~

(g) ~~EPA to administer. The United States Environmental Protection Agency (EPA) shall administer the budget trading program of 40 CFR Part 96 on behalf of North Carolina. The Director shall provide the EPA the information necessary under 40 CFR Part 96 for the EPA to administer 40 CFR Part 96 on behalf of North Carolina. The owner or operator of each source covered under Rule .1416, .1417, or .1418, except internal combustion engines, of this Section shall establish an account, designate an authorized account representative, and comply with the other requirements of 40 CFR Part 96 as necessary for the EPA to administer the nitrogen oxide budget trading program on behalf of North Carolina.~~

(h) ~~Restrictions on trading. NO_x emission allocations obtained under this Rule shall not be used to meet the emission limits for a source if compliance with that emission limit is required as part of the State Implementation Plan to attain or maintain the ambient air quality ozone standard. Sources covered under Rule .0531 (nonattainment area major new source review) of this Subchapter shall not use the nitrogen oxide budget trading program to comply with Rule .0531 of this Subchapter.~~

Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(5), (7), (10).

15A NCAC 02D .1420 PERIODIC REVIEW AND REALLOCATIONS

(a) ~~Periodic Review. In 2006 and every five years thereafter, the Environmental Management Commission shall review the emission allocations of sources covered under Rules .1416, .1417, or .1418 of this Section and decide if any revisions are needed. In making this decision the Environmental Management Commission shall consider the following:~~

- (1) ~~the size of the allocation pool for new source growth under Rule .1421 of this Section;~~
- (2) ~~the amount of emissions allocations requested under Rule .1421 of this Section;~~
- (3) ~~the amount of emissions allocations available through nitrogen oxide budget trading program;~~
- (4) ~~the impact of reallocation on existing sources;~~
- (5) ~~the impact of reallocations on sources covered under Rule .1421 of this Section;~~
- (6) ~~impact on future growth; and~~
- (7) ~~other relevant information on the impacts of reallocation.~~

(b) ~~If the Environmental Management Commission decides to revise emission allocations, it shall propose for each source that has been permitted for and has complied with an emission rate of 0.10 pounds per million Btu or less, emission allocations greater than or equal to the greater of:~~

- (1) ~~the source's current allocation, or~~
- (2) ~~an allocation calculated by multiplying the average of the source's two highest seasonal energy inputs for the four most recent years by~~

0.15 pounds per million Btu and dividing by 2000.

(e) Posting of emission allocations. The Director shall post the new emission allocations once they are adopted on the Division's web page.

Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(5), (7), (10).

15A NCAC 02D .1421 ALLOCATIONS FOR NEW GROWTH OF MAJOR POINT SOURCES

(a) Purpose. The purpose of this Rule is to establish an allocation pool from which emission allocations of nitrogen oxides may be allocated to sources permitted after October 31, 2000.

(b) Eligibility. This Rule applies only to the following types of sources covered under Rule .1418 of this Section, and permitted after October 31, 2000:

- (1) fossil fuel fired stationary boilers, combustion turbines, or combined cycle systems serving a generator with a nameplate capacity greater than 25 megawatts electrical and selling any amount of electricity; or
- (2) fossil fuel fired stationary boilers, combustion turbines, or combined cycle systems having a maximum design heat input greater than 250 million Btu per hour that are not covered under Subparagraph (1) of this Paragraph;

(c) Requesting allocation. To receive emission allocations under this Rule, the owner or operator of the source shall provide the following written documentation to the Director before January 1 of the year preceding the ozone season for which the emission allocation is sought:

- (1) a description of the combustion source or sources including heat input;
- (2) evidence that the source complies with the emission limit under Rule .1418 of this Section;
- (3) an estimate of the actual emissions of nitrogen oxides in tons per ozone season;
- (4) the expected hours of operation during the ozone season;
- (5) the date on which the source is expected to begin operating if it is not already operating;
- (6) the tons per ozone season of emission allocations being requested (the amount requested shall be the lesser of the estimated actual emissions under Subparagraph (3) of this Paragraph or the product of the emission limit under Rule .1418 of this Section times the maximum design heat input in millions of Btu per hour times the number of hours that the source is projected to operate (not to exceed 3672 hours) divided by 2000); and
- (7) a description of the monitoring, recordkeeping, and reporting plan that will assure continued compliance.

(d) Approving requests. The Director shall approve a request for emissions allocation if he finds that:

- (1) All the information and documentation required under Paragraph (c) of this Rule has been submitted;
- (2) The request was received before January 1;
- (3) The source is eligible for emission allocations under this Rule;
- (4) The source complies with Rule .1418 of this Section;
- (5) The requested emission allocations do not exceed the estimated actual emissions of nitrogen oxides;
- (6) The source has or is likely to have an air quality permit before the end of the upcoming ozone season; and
- (7) The source is operating or is scheduled to begin operating before the end of the upcoming ozone season.

(e) Preliminary allocations. By March 1 before each ozone season, the Director shall have calculated and posted on the Division's web page preliminary emission allocations for sources whose requests under this Rule he has approved. Preliminary emission allocations shall be determined as follows:

- (1) If the emission allocations requested do not exceed the amount in the pool, each source shall have a preliminary allocation equal to its request.
- (2) If the emission allocations requested exceed the amount in the pool, each source's emission allocations shall be calculated as follows:
 - (A) For each source, its maximum design heat input in millions of Btu per hour is multiplied by the number of hours that the source is projected to operate not to exceed 3672 hours; this product is the source's seasonal heat input.
 - (B) The seasonal heat inputs calculated under Part (A) of this Subparagraph are summed.
 - (C) For each source, its seasonal heat input calculated under Part (A) of this Subparagraph is multiplied by the tons of emission allocations in the allocation pool and divided by the sum of seasonal heat inputs calculated under Part (B) of this Subparagraph; this amount is the source's preliminary emission allocations.

The preliminary emission allocations computed under this Paragraph may be revised under Paragraph (f) of this Rule after the ozone season. Emissions allocations issued under this Paragraph are solely for planning purposes and are not reported to the EPA to be recorded in allowance tracking system account. The emission allocations granted under Paragraph (f) of this Rule shall be the emission allocations granted the source to offset its emissions.

(f) Final allocations. According to Paragraph (g) of this Rule, the Director shall grant emission allocations for each source for

which he has approved an allocation from the allocation pool as follows:

- (1) For each individual source, its allowable emission rate under Rule .1418 of this Section is multiplied by its heat input during the ozone season. This product is divided by 2000.
- (2) The lesser of the source's actual emissions of nitrogen oxides, the value calculated under Subparagraph (1) of this Paragraph, or the preliminary emission allocations determined under Paragraph (e) of this Rule shall be the source's emission allocation from the allocation pool. Emissions allocations granted under this Paragraph are reported to the EPA to be recorded in allowance tracking system account.

(g) Issuance of final allocations. By November 1 following each ozone season, the Director shall issue final allocations according to Paragraph (f) of this Rule and shall notify each source that receives an allocation of the amount of allocation that it has been granted. By November 1 following the ozone season, the Director shall also notify the EPA of allocations issued and to whom they have been issued and the amount issued to each source. The Director shall post the final allocations on the Division's web page.

(h) Allocation pool.

- (1) Before the EPA promulgation of revisions after November 1, 2000, to 40 CFR Part 51, Subpart G, revising the nitrogen oxide budget for North Carolina, the allocation pool shall contain the following:
 - (A) in 2004, 122 tons;
 - (B) in 2005, 599 tons plus emission allocations carried over from the previous year;
 - (C) in 2006, 505 tons plus emission allocations carried over from the previous year; and
 - (D) in 2007, 1,058 tons plus emission allocations carried over from the previous year.
- (2) After the EPA promulgates revisions after November 1, 2000, to 40 CFR Part 51, Subpart G, revising the nitrogen oxide budget for North Carolina, the allocation pool shall contain the following:
 - (A) in 2004, 122 tons;
 - (B) in 2005, 78 tons plus emission allocations carried over from the previous year;
 - (C) in 2006, 1117 tons plus emission allocations carried over from the previous year; and
 - (D) in 2007, 1670 tons plus emission allocations carried over from the previous year.

(i) Changes in the allocation pool. By July 1, 2006, the Commission shall begin to develop and adopt through rulemaking allocations for 2008 and later years.

(j) Carryover. Emission allocations remaining in the allocation pool at the end of the year shall be carried over into the next year for use during the next ozone season.

(k) Future requests. Once the owner or operator of a source has made a request under this Rule for emission allocations from the allocation pool, he does not have to request emission allocations under this Rule in future years. The request shall automatically be included in following years as long as the source remains eligible for emission allocations under this Rule.

(l) Loss of eligibility. Once a source receives emission allocations under Rule .1420 of this Section, it shall no longer be eligible for emission allocations under this Rule.

(m) Use of allocation. Allocations granted under this rule apply only to the ozone season immediately preceding the issuance of final allocations under Paragraph (g) of this Rule. Allocations issued under Paragraph (g) of this Rule for use in one year do not carry forward into any following ozone season. Allocations granted under this Rule shall be calculated for each ozone season.

Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(5), (7), (10).

15A NCAC 02D .1422 COMPLIANCE SUPPLEMENT POOL CREDITS

(a) Purpose. The purpose of this Rule is to regulate North Carolina's eligibility for and use of the Compliance Supplement Pool under 40 CFR 51.121(e)(3).

(b) Eligibility. Sources covered under Rule .1416 of this Section may earn Compliance Supplement Pool Credits for those nitrogen oxide emissions reductions required by Rule .1416 of this Section that are achieved during the ozone season after September 30, 1999 and are demonstrated using baseline and current emissions determined according to 40 CFR Part 75 before May 1, 2003, and are beyond the total emission reductions required under 40 CFR Part 76 or any other provision of the federal Clean Air Act.

(c) Credits. The Compliance Supplement Pool Credits earned under this Rule shall be tabulated in tons of nitrogen oxides reduced per ozone season. The control device, modification, or change in operational practice that enables the combustion source or sources to achieve the emissions reductions shall be permitted. The facility shall provide the Division of Air Quality with written notification certifying the installation and operation of the control device or the modification or change in operational practice that enables the combustion source or sources to achieve the emissions reduction. Only emission reductions that are beyond emission reductions required under 40 CFR Part 76 or any other provision of the federal Clean Air Act are creditable Compliance Supplement Pool Credits. Credits are counted in successive seasons through May 1, 2003. Seasonal credits shall be recorded in a Division of Air Quality database and will accumulate in this database until May 1, 2003. At that point a cumulative total of all the Compliance Supplement Pool Credits earned during the entire period shall be tabulated. These credits will then be available for use by the State of North Carolina to achieve compliance with the State ozone season NOx budget.

(d) ~~Requesting credits. In order to earn Compliance Supplement Pool Credits, the owner or operator of the facility shall provide the following written documentation to the Director before January 1, 2003.~~

- ~~(1) the combustion source or sources involved in the emissions reduction;~~
- ~~(2) the start date of the emissions reduction;~~
- ~~(3) a description of the add-on control device, modification, or change in operational practice that enables the combustion source or sources to achieve the emissions reduction;~~
- ~~(4) the current and baseline emissions of nitrogen oxides of the combustion source or sources involved in this reduction in terms of tons of nitrogen oxides per season;~~
- ~~(5) the amount of reduction of emissions of nitrogen oxides achieved by this action in tons of nitrogen oxides per season per combustion source involved;~~
- ~~(6) the total reduction of nitrogen oxides achieved by this action in tons of nitrogen oxides per season for all the combustion sources involved;~~
- ~~(7) a demonstration that the proposed action has reduced the emissions of nitrogen oxides from the combustion sources involved by the amount specified in Subparagraphs (d)(5) and (d)(6) of this Rule; and~~
- ~~(8) a description of the monitoring, recordkeeping, and reporting plan used to ensure continued compliance with the proposed emissions reduction activity; continuous emissions monitors shall be used to monitor emissions.~~

(e) ~~Approving requests. Before any Compliance Supplement Pool Credits can be allocated, the Director shall have to approve them. The Director shall approve credits if he finds that:~~

- ~~(1) early emissions reductions are demonstrated using baseline and current emissions determined according to 40 CFR Part 75 to be beyond the reductions required under 40 CFR Part 76, Acid Rain Nitrogen Oxides Emission Reduction Program and any other requirement of the federal Clean Air Act;~~
- ~~(2) the emission reductions are achieved after September 30, 1999, and before May 1, 2003, and~~
- ~~(3) all the information and documentation required under Paragraph (d) of this Rule have been submitted.~~

~~The Director shall notify the owner or operator of the source and EPA of his approval or disapproval of a request and of the amount of Compliance Supplement Pool Credits approved. If the Director disapproves a request or part of a request, he shall explain in writing to the owner or operator of the source the reasons for disapproval.~~

(f) ~~Compliance supplement pool. The Director shall verify that the Compliance Supplement Pool Credits do not exceed a statewide total of 10,737 tons for all the ozone seasons of the years 2003, 2004, and 2005.~~

(g) ~~Interim report. The owner or operators of the facility shall submit to the Director by January 1, 2001 and January 1, 2002 an interim report that contains the information in Paragraph (d) of this Rule for the previous ozone season.~~

(h) ~~Recording credits. Based on the interim reports submitted under Paragraph (g) of this Rule, the Division shall record the Compliance Supplement Pool Credits earned under this Rule in a central database. The Division of Air Quality shall maintain this database. These credits shall be recorded in tons of emissions of nitrogen oxides reduced per season with the actual start date of the reduction activity. Based on the final formal request submitted under Paragraph (d) of this Rule as approved under Paragraph (e) of this Rule, the Director shall finalize the Compliance Supplement Pool Credits earned and record the final earned credits in the Division's database.~~

(i) ~~Use of credits. Final earned Compliance Supplement Pool Credits shall be available for Carolina Power & Light Co. and Duke Power Co. to use in 2003. The allocations of Carolina Power & Light Co.'s sources and Duke Power Co.'s sources in Rule .1416 of this Section shall be reduced for 2004 or 2005 by the amount of Compliance Supplement Pool Credits used in 2003 using the procedures in Paragraph (k) of this Rule. Compliance Supplement Pool Credits not used in 2003 shall be available for use by the Director of the Division of Air Quality to offset excess emissions of nitrogen oxides in order to achieve compliance with the North Carolina ozone season NOx budget after May 30, 2004, but no later than September 30, 2005. The credits shall be used on a one for one basis, that is, one ton per season of credit can be used to offset one ton, or less, per season of excess emissions to achieve compliance with the requirements of Rule .1416 or .1417 of this Section. All credits shall expire and will no longer be available for use after November 30, 2005.~~

(j) ~~Reporting. The Director shall report:~~

~~(1) to the EPA, Carolina Power & Light Co. and Duke Power Co. by:~~

- ~~(A) March 1, 2003 the Compliance Supplement Pool Credits earned by Carolina Power & Light Co. and by Duke Power Co.; and~~
- ~~(B) March 1, 2004 the reductions in allocations calculated under Paragraphs (k) and (l) of this Rule; and~~

~~(2) to the EPA by:~~

- ~~(A) December 1, 2003, the Compliance Supplement Pool Credits used beginning May 1 through September 30, 2003;~~
- ~~(B) December 1, 2004, the Compliance Supplement Pool Credits used beginning May 31 through September 30, 2004; and~~
- ~~(C) December 1, 2005, the Compliance Supplement Pool Credits used beginning May 1 through September 30, 2005.~~

(k) ~~Using Compliance Supplement Pool Credits in 2003. Carolina Power & Light Co. and Duke Power Co. may use Compliance Supplement Pool Credits in 2003. If they do use~~

~~Compliance Supplement Pool Credits in 2003, then the allocations for their sources in Rule .1416 of this Section shall be reduced for 2004 or 2005 by the amount of Compliance Supplement Pool Credits used in 2003. Before the Director approves the use of Compliance Supplement Pool Credits in 2003, the company shall identify the sources whose allocations are to be reduced to offset the Compliance Supplement Pool Credits requested for 2003 and the year (2004 or 2005) in which the allocation is reduced. The Director shall approve no more than 4,295 tons for Carolina Power & Light Co. and no more than 6,442 tons for Duke Power Co. The Director shall approve no more than 5,771 tons being offset by reductions in allocations in 2004 and no more than 4,966 tons being offset by reductions in allocations in 2005.~~

~~(1) Failure to receive sufficient credits. If the sum of Compliance Supplement Pool Credits received by Carolina Power & Light Co. and Duke Power Co. are less than 10,737 tons, the following procedure shall be used to reduce the allocations in Rule .1416 of this Section:~~

~~(1) If the Compliance Supplement Pool Credits received by Carolina Power & Light Co. are less than 4,295 tons, and the Compliance Supplement Pool Credits received by Duke Power Co. are greater than or equal to 6,442 tons, the allocation for Carolina Power & Light Co.'s sources shall be reduced by the amount obtained by subtracting from 10,737 tons the sum of Compliance Supplement Pool Credits received by Carolina Power & Light Co. and Duke Power Co. The allocations of Carolina Power & Light Co.'s sources shall be reduced using the procedure in Subparagraph (4) of this Paragraph.~~

~~(2) If the Compliance Supplement Pool Credits received by Duke Power Co. are less than 6,442 tons, and the Compliance Supplement Pool Credits received by Carolina Power & Light Co. are greater than or equal to 4,295 tons, the allocation for Duke Power Co.'s sources shall be reduced by the amount obtained by subtracting from 10,737 tons the sum of Compliance Supplement Pool Credits received by Carolina Power & Light Co. and Duke Power Co. The allocations of Duke Power Co.'s sources shall be reduced using the procedure in Subparagraph (4) of this Paragraph.~~

~~(3) If the Compliance Supplement Pool Credits received by Carolina Power & Light Co. are less than 4,295 tons, and the Compliance Supplement Pool Credits received by Duke Power Co. are less than 6,442 tons:~~

~~(A) The allocation for Carolina Power & Light Co.'s sources shall be reduced by the amount obtained by subtracting from 4,295 tons the Compliance Supplement Pool Credits received by Carolina Power & Light Co. The allocations of Carolina~~

~~Power & Light Co.'s sources shall be reduced using the procedure in Subparagraph (4) of this Paragraph; and~~

~~(B) The allocation for Duke Power Co.'s sources shall be reduced by the amount obtained by subtracting from 6,442 tons the Compliance Supplement Pool Credits received by Duke Power Co. The allocations of Duke Power Co.'s sources shall be reduced using the procedure in Subparagraph (4) of this Paragraph.~~

~~(4) When the allocations in Rule .1416 of this Section for Carolina Power & Light Co.'s sources or for Duke Power Co.'s sources are required to be reduced, the following procedure shall be used:~~

~~(A) If the reduction required is less than or equal to 4,966 tons, then following procedure shall be used:~~

~~(i) The allocation of all sources listed in Rule .1416 of this Section for 2005 for Carolina Power & Light Co. or Duke Power Co. are summed.~~

~~(ii) The reduction required under Subparagraph (1), (2), or (3) of this Paragraph is subtracted from the sum computed under Subpart (i) of this Part.~~

~~(iii) The allocation of each source listed in Rule .1416 of this Section for 2005 for Carolina Power & Light Co. or Duke Power Co. is multiplied by the value computed under Subpart (ii) of this Part and divided by the value computed under Subpart (i) of this Part. The result is the revised allocation for that source.~~

~~(B) If the reduction required is more than 4,966 tons, then the following procedure shall be used:~~

~~(i) The reduction for the allocations for 2005 is determined using the procedure under Part (A) of this Subparagraph and substituting 4,966 as the reduction required under Subpart (A)(ii) of this Subparagraph.~~

~~(ii) The reduction for the allocations for 2004 shall be~~

determined using the following procedure:

(I) The reduction required under Subparagraph (1), (2), or (3) of this Paragraph is subtracted from 4,966.

(II) The allocations of all sources listed in Rule 1416 of this Section for 2004 for Carolina Power & Light Co. or Duke Power Co. for 2004 are summed.

(III) The allocation of each source listed in Rule 1416 of this Section for 2004 for Carolina Power & Light Co. or Duke Power Co. is multiplied by the value computed under Sub-Subpart (I) of this Subpart and divided by the value computed Sub-Subpart (II) of this Subpart. The result is the revised allocation for that source

(m) If allocations are reduced in 2004 or 2005 for Carolina Power & Light Co. or Duke Power Co. under Paragraph (k) or (l) of this Rule, the company whose allocations are reduced shall reduce its allocations by returning allowances through the use of allowance transfers to the State following the procedures in 40 CFR Part 96. These allowances shall be retired.

Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(5), (7), (10).

Notice is hereby given in accordance with G.S. 150B-21.2 that the Coastal Resources Commission intends to amend the rule cited as 15A NCAC 07H .0308.

Proposed Effective Date: February 1, 2008

Public Hearing:

Date: November 29, 2007

Time: 5:00 p.m.

Location: City Hotel & Bistro, 203 S.W. Greenville Blvd., Greenville, NC 27834

Reason for Proposed Action: The purpose of this action is to add language to 07H .0308(a)(1), which would codify the Commission's authority to renew permits for erosion control structures issued pursuant to a variance granted by the Commission prior to July 1, 1995. In addition, the rule needs to be amended to reflect that the Commission may authorize the replacement of permanent erosion control structures permitted pursuant to a variance granted by the Commission prior to July 1, 1995. The replacement of permanent structures remains conditional, based on several statutory conditions.

Procedure by which a person can object to the agency on a proposed rule: Objections may be filed in writing and addressed to the Director, NC Division of Coastal Management, 400 Commerce Ave., Morehead City, NC 28557.

Comments may be submitted to: Jim Gregson, 400 Commerce Avenue, Morehead City, NC 28557, phone (252) 808-2808, fax (252) 247-3330

Comment period ends: December 14, 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 07 - COASTAL MANAGEMENT

SUBCHAPTER 07H - STATE GUIDELINES FOR AREAS OF ENVIRONMENTAL CONCERN

SECTION .0300 - OCEAN HAZARD AREAS

15A NCAC 07H .0308 SPECIFIC USE STANDARDS FOR OCEAN HAZARD AREAS

(a) Ocean Shoreline Erosion Control Activities:

- (1) Use Standards Applicable to all Erosion Control Activities:
 - (A) All oceanfront erosion response activities shall be consistent with the

- general policy statements in 15A NCAC 07M .0200.
- (B) Permanent erosion control structures may cause significant adverse impacts on the value and enjoyment of adjacent properties or public access to and use of the ocean beach, and, therefore, are prohibited. Such structures include bulkheads, seawalls, revetments, jetties, groins and breakwaters.
 - (C) Rules concerning the use of oceanfront erosion response measures apply to all oceanfront properties without regard to the size of the structure on the property or the date of its construction.
 - (D) All permitted oceanfront erosion response projects, other than beach bulldozing and temporary placement of sandbag structures, shall demonstrate sound engineering for their planned purpose.
 - (E) Shoreline erosion response projects shall not be constructed in beach or estuarine areas that sustain substantial habitat for fish and wildlife species, as identified by natural resource agencies during project review, unless mitigation measures are incorporated into project design, as set forth in Rule .0306(i) of this Section.
 - (F) Project construction shall be timed to minimize adverse effects on biological activity.
 - (G) Prior to completing any erosion response project, all exposed remnants of or debris from failed erosion control structures must be removed by the permittee.
 - (H) Erosion control structures that would otherwise be prohibited by these standards may be permitted on finding that:
 - (i) the erosion control structure is necessary to protect a bridge which provides the only existing road access on a barrier island, that is vital to public safety, and is imminently threatened by erosion as defined in provision (a)(2)(B) of this subchapter;
 - (ii) the erosion response measures of relocation, beach nourishment or temporary stabilization are not adequate to protect public health and safety; and the proposed erosion control structure will have no adverse impacts on adjacent properties in private ownership or on public use of the beach.
 - (I) Structures that would otherwise be prohibited by these standards may also be permitted on finding that:
 - (i) the structure is necessary to protect a state or federally registered historic site that is imminently threatened by shoreline erosion as defined in provision (a)(2)(B) of this subchapter; and
 - (ii) the erosion response measures of relocation, beach nourishment or temporary stabilization are not adequate and practicable to protect the site; and
 - (iii) the structure is limited in extent and scope to that necessary to protect the site; and
 - (iv) any permit for a structure under this Part (I) may be issued only to a sponsoring public agency for projects where the public benefits outweigh the short or long range adverse impacts. Additionally, the permit shall include conditions providing for mitigation or minimization by that agency of any unavoidable adverse impacts on adjoining properties and on public access to and use of the beach.
 - (J) Structures that would otherwise be prohibited by these standards may also be permitted on finding that:
 - (i) the structure is necessary to maintain an existing commercial navigation channel of regional significance within federally authorized limits; and
 - (ii) dredging alone is not practicable to maintain safe access to the affected channel; and
 - (iii) the structure is limited in extent and scope to that

- necessary to maintain the channel; and
 - (iv) the structure shall not adversely impact fisheries or other public trust resources; and
 - (v) any permit for a structure under this Part (J) may be issued only to a sponsoring public agency for projects where the public benefits outweigh the short or long range adverse impacts. Additionally, the permit shall include conditions providing for mitigation or minimization by that agency of any unavoidable adverse impacts on adjoining properties and on public access to and use of the beach.
 - (K) The Commission may renew a permit for an erosion control structure issued pursuant to a variance granted by the Commission prior to 1 July 1995. The Commission may authorize the replacement of a permanent erosion control structure that was permitted by the Commission pursuant to a variance granted by the Commission prior to 1 July 1995 if the Commission finds that:
 - (i) the structure will not be enlarged beyond the dimensions set out in the permit;
 - (ii) there is no practical alternative to replacing the structure that will provide the same or similar benefits; and
 - (iii) the replacement structure will comply with all applicable laws and with all rules, other than the rule or rules with respect to which the Commission granted the variance, that are in effect at the time the structure is replaced.
 - ~~(K)~~(L) Proposed erosion response measures using innovative technology or design shall be considered as experimental and shall be evaluated on a case-by-case basis to determine consistency with 15A NCAC 07M .0200 and general and specific use standards within this Section.
- (2) Temporary Erosion Control Structures:
 - (A) Permittable temporary erosion control structures shall be limited to sandbags placed above mean high water and parallel to the shore.
 - (B) Temporary erosion control structures as defined in Part (A) of this Subparagraph shall be used to protect only imminently threatened roads and associated right of ways, and buildings and associated septic systems. A structure shall be considered to be imminently threatened if its foundation, septic system, or right-of-way in the case of roads, is less than 20 feet away from the erosion scarp. Buildings and roads located more than 20 feet from the erosion scarp or in areas where there is no obvious erosion scarp may also be found to be imminently threatened when site conditions, such as a flat beach profile or accelerated erosion, increase the risk of imminent damage to the structure.
 - (C) Temporary erosion control structures shall be used to protect only the principal structure and its associated septic system, but not such appurtenances as gazebos, decks or any amenity that is allowed as an exception to the erosion setback requirement.
 - (D) Temporary erosion control structures may be placed seaward of a septic system when there is no alternative to relocate it on the same or adjoining lot so that it is landward of or in line with the structure being protected.
 - (E) Temporary erosion control structures shall not extend more than 20 feet past the sides of the structure to be protected. The landward side of such temporary erosion control structures shall not be located more than 20 feet seaward of the structure to be protected or the right-of-way in the case of roads.
 - (F) A temporary erosion control structure may remain in place for up to two years after the date of approval if it is protecting a building with a total floor area of 5000 sq. ft. or less, or, for up to five years if the building has a total floor area of more than 5000 sq. ft. A temporary erosion control structure may remain in place for up to five years if it is protecting a bridge or a road. The property owner shall be

responsible for removal of the temporary structure within 30 days of the end of the allowable time period. A temporary sandbag erosion control structure with a base width not exceeding 20 feet and a height not exceeding 6 feet may remain in place for up to five years or until May 2008, whichever is later regardless of the size of the structure if the community in which it is located is actively pursuing a beach nourishment project as of October 1, 2001. For purposes of this Rule, a community is considered to be actively pursuing a beach nourishment project if it has:

- (i) been issued a CAMA permit, where necessary, approving such project; or
- (ii) been deemed worthy of further consideration by a U.S. Army Corps of Engineers' Beach Nourishment Reconnaissance Study, or an ongoing feasibility study by the U.S. Army Corps of Engineers and a commitment of local money, when necessary; or
- (iii) received a favorable economic evaluation report on a federal project approved prior to 1986. If beach nourishment is rejected by the sponsoring agency or community, or ceases to be actively planned for a section of shoreline, the time extension is void and existing sandbags are subject to all applicable time limits set forth in Parts (A) through (N) of this Subparagraph. Sandbag structures within nourishment project areas that exceed the 20 foot base width and 6 foot height limitation may be reconstructed to meet the size limitation and be eligible for this time extension: otherwise they shall be removed by May 1, 2000 pursuant to Part (N) of this Subparagraph.

(G) Once the temporary erosion control structure is determined to be

unnecessary—~~due to~~ relocation or removal of the threatened structure or beach nourishment, it shall be removed by the property owner within 30 days of official notification from the Division.

- (H) Removal of temporary erosion control structures shall not be required if they are covered by dunes with stable and natural vegetation.
- (I) The property owner shall be responsible for the removal of remnants of all portions of any damaged temporary erosion control structure.
- (J) Sandbags used to construct temporary erosion control structures shall be tan in color and three to five feet wide and seven to 15 feet long when measured flat. Base width of the structure shall not exceed 20 feet, and the height shall not exceed six feet.
- (K) Soldier pilings and other types of devices to anchor sandbags shall not be allowed.
- (L) An imminently threatened structure may be protected only once, regardless of ownership. In the case of a building, a temporary erosion control structure may be extended, or new segments constructed, if additional areas of the building become imminently threatened. Where temporary structures are installed or extended incrementally, the time period for removal under Part (F) of this Subparagraph shall begin at the time the initial erosion control structure is installed. For the purpose of this Rule:
 - (i) a building and septic system shall be considered as separate structures.
 - (ii) a road or highway shall be allowed to be incrementally protected as sections become imminently threatened. The time period for removal of each section of sandbags shall begin at the time that section is installed in accordance with Part (F) of this Subparagraph.
- (M) Existing sandbag structures may be repaired or replaced within their originally permitted dimensions during the time period allowed under Part (F) of this Subparagraph.

- (N) Existing sandbag structures that have been properly installed prior to May 1, 1995 shall be allowed to remain in place according to the provisions of Parts (F), (G) and (H) of this Subparagraph with the pertinent time periods beginning on May 1, 1995.
- (3) Beach Nourishment. Sand used for beach nourishment shall be compatible with existing grain size and type. Sand to be used for beach nourishment shall be taken only from those areas where the resulting environmental impacts will be minimal.
- (4) Beach Bulldozing. Beach bulldozing (defined as the process of moving natural beach material from any point seaward of the first line of stable vegetation to create a protective sand dike or to obtain material for any other purpose) is development and may be permitted as an erosion response if the following conditions are met:
 - (A) The area on which this activity is being performed shall maintain a slope of adequate grade so as to not endanger the public or the public's use of the beach and shall follow the pre-emergency slope as closely as possible. The movement of material utilizing a bulldozer, front end loader, backhoe, scraper, or any type of earth moving or construction equipment shall not exceed one foot in depth measured from the pre-activity surface elevation;
 - (B) The activity shall not exceed the lateral bounds of the applicant's property unless he has permission of the adjoining land owner(s);
 - (C) Movement of material from seaward of the mean low water line will require a CAMA Major Development and State Dredge and Fill Permit;
 - (D) The activity shall not increase erosion on neighboring properties and shall not have an adverse effect on natural or cultural resources;
 - (E) The activity may be undertaken to protect threatened on-site waste disposal systems as well as the threatened structure's foundations.
- (b) Dune Establishment and Stabilization. Activities to establish dunes shall be allowed so long as the following conditions are met:
 - (1) Any new dunes established shall be aligned to the greatest extent possible with existing adjacent dune ridges and shall be of the same general configuration as adjacent natural dunes.
 - (2) Existing primary and frontal dunes shall not, except for beach nourishment and emergency situations, be broadened or extended in an oceanward direction.
 - (3) Adding to dunes shall be accomplished in such a manner that the damage to existing vegetation is minimized. The filled areas shall be immediately replanted or temporarily stabilized until planting can be successfully completed.
 - (4) Sand used to establish or strengthen dunes shall be of the same general characteristics as the sand in the area in which it is to be placed.
 - (5) No new dunes shall be created in inlet hazard areas.
 - (6) Sand held in storage in any dune, other than the frontal or primary dune, may be redistributed within the AEC provided that it is not placed any farther oceanward than the crest of a primary dune or landward toe of a frontal dune.
 - (7) No disturbance of a dune area shall be allowed when other techniques of construction can be utilized and alternative site locations exist to avoid unnecessary dune impacts.
- (c) Structural Accessways:
 - (1) Structural accessways shall be permitted across primary dunes so long as they are designed and constructed in a manner that entails negligible alteration on the primary dune. Structural accessways shall not be considered threatened structures for the purpose of Paragraph (a) of this Rule.
 - (2) An accessway shall be conclusively presumed to entail negligible alteration of a primary dune provided that:
 - (A) The accessway is exclusively for pedestrian use;
 - (B) The accessway is less than six feet in width;
 - (C) The accessway is raised on posts or pilings of five feet or less depth, so that wherever possible only the posts or pilings touch the frontal dune. Where this is deemed impossible, the structure shall touch the dune only to the extent absolutely necessary. In no case shall an accessway be permitted if it will diminish the dune's capacity as a protective barrier against flooding and erosion; and
 - (D) Any areas of vegetation that are disturbed are revegetated as soon as feasible.
 - (3) An accessway which does not meet Part (2)(A) and (B) of this Paragraph shall be permitted only if it meets a public purpose or need which cannot otherwise be met and it meets Part (2)(C) of this Paragraph. Public fishing piers

shall not be deemed to be prohibited by this Rule, provided all other applicable standards are met.

- (4) In order to avoid weakening the protective nature of primary and frontal dunes a structural accessway (such as a "Hatteras ramp") shall be provided for any off-road vehicle (ORV) or emergency vehicle access. Such accessways shall be no greater than 10 feet in width and shall be constructed of wooden sections fastened together over the length of the affected dune area.

(d) Building Construction Standards. New building construction and any construction identified in .0306(a)(5) and 07J .0210 shall comply with the following standards:

- (1) In order to avoid danger to life and property, all development shall be designed and placed so as to minimize damage due to fluctuations in ground elevation and wave action in a 100-year storm. Any building constructed within the ocean hazard area shall comply with relevant sections of the North Carolina Building Code including the Coastal and Flood Plain Construction Standards and the local flood damage prevention ordinance as required by the National Flood Insurance Program. If any provision of the building code or a flood damage prevention ordinance is inconsistent with any of the following AEC standards, the more restrictive provision shall control.
- (2) All building in the ocean hazard area shall be on pilings not less than eight inches in diameter if round or eight inches to a side if square.
- (3) All pilings shall have a tip penetration greater than eight feet below the lowest ground elevation under the structure. For those structures so located on or seaward of the primary dune, the pilings shall extend to five feet below mean sea level.
- (4) All foundations shall be adequately designed to be stable during applicable fluctuations in ground elevation and wave forces during a 100-year storm. Cantilevered decks and walkways shall meet this standard or shall be designed to break-away without structural damage to the main structure.

Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b)(6)a.,b.,d.; 113A-124.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Commission for Public Health intends to adopt the rules cited as 15A NCAC 18A .3801 - .3805.

Proposed Effective Date: July 1, 2008

Public Hearing:

Date: October 30, 2007

Time: 2:00 p.m.

Location: 2728 Capital Blvd., Room 1H120, Raleigh, NC

Date: November 14, 2007

Time: 2:00 p.m.

Location: NCDENR Washington Office, 943 Washington Square Mall, Washington, NC

Date: November 29, 2007

Time: 2:00 p.m.

Location: NCDENR Asheville Regional Office, 2090 US Hwy 70, Swannanoa, NC

Reason for Proposed Action: *To meet the requirement in Session Law 2006-202 for the Commission for Health Services to adopt drinking water testing rules pursuant to G.S. 87-97 effective July 1, 2008. These rules are to govern the sampling and testing of well water and reporting of test results for new private drinking water wells.*

Procedure by which a person can object to the agency on a proposed rule: *Any objections to these rules may be submitted in writing via mail, delivery service, hand deliver or email to: Jim Hayes, Division of Environmental Health, 1632 Mail Service Center, Raleigh, NC 27699-1632, (for hand delivery), 2728 Capital Blvd., Raleigh, NC 27602, jim.hayes@ncmail.net.*

Comments may be submitted to: *Jim Hayes, Division of Environmental Health, 1632 Mail Service Center, Raleigh, NC 27699-1632, phone (919) 715-0924, email jim.hayes@ncmail.net*

Comment period ends: December 14, 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: A copy of the fiscal note can be obtained from the agency.

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

CHAPTER 18 - ENVIRONMENTAL HEALTH

SUBCHAPTER 18A - SANITATION

SECTION .3800 - PRIVATE DRINKING WATER WELL SAMPLING

15A NCAC 18A .3801 DEFINITIONS

The following definitions shall apply throughout this Section:

- (1) "Certified laboratory" means the North Carolina State Laboratory of Public Health certified by the US Environmental Protection Agency or a laboratory certified by the Certification Section of the North Carolina Public Health Laboratory pursuant to 10A NCAC 42D to determine the presence of coliform bacteria or the chemical constituents to be tested.
- (2) "Coliform bacteria" or "total coliform" means aerobic or facultative anaerobic, gram-negative, non-spore forming, rod shaped bacteria included in the genera *Klebsiella*, *Enterobacter*, *Escherichia* and *Citrobacter*. Coliform bacteria originate in soil, vegetation or the intestinal tract of warm-blooded animals. The presence of coliform bacteria in a water sample indicate the presence of a pathway for bacteria and possibly pathogens to gain entry into a water supply system.
- (3) "Department of Environment and Natural Resources" or "Department" means the North Carolina Department of Environment and Natural Resources. The term also means the authorized representative of the Department. For the purposes of any notices required pursuant to the rules of this Section, notice shall be mailed to "Division of Environmental Health, On-Site Water Protection Section, North Carolina Department of Environment and Natural Resources," 1642 Mail Service Center, Raleigh, NC 27699-1642.
- (4) "Fecal coliform bacteria" or "fecal coliform" means a sub-group of coliform bacteria that are present in the gut and feces of warm-blooded animals. The presence of fecal coliform bacteria in a water sample indicate fecal contamination and the presumed presence of pathogens in the water supply.
- (5) "Local Health Department" means the county or district health department or its successor.
- (6) "Practical Quantitation Limit" or "PQL" means the lowest reliable level that can be detected within specified limits of methods and equipment during routine laboratory operations.
- (7) "Private drinking water well" means a private drinking water well as defined in G.S. 87-85 (10a).

- (8) "Water supply" means any source of drinking water.
- (9) "Water supply system" means pump and pipe used in connection with or pertaining to the operation of a private drinking water well including pumps, distribution service piping, pressure tanks and fittings.

Authority G.S. 87-97.

15A NCAC 18A .3802 SAMPLE COLLECTION

- (a) Within 30 days after it issues a certificate of completion for a newly constructed private drinking water well, the local health department shall obtain water samples and submit them to a certified laboratory for analyses or ensure that the water obtained from the well has been sampled and tested by a certified laboratory, in accordance with the rules of this Section. Samples collected from private drinking water wells pursuant to the rules of this Section shall be collected by an Environmental Health Specialist employed by a local health department, an authorized agent of the Department, or an employee of a certified laboratory. The sample collector shall be trained in aseptic sampling techniques for collection of coliform bacteria and shall be knowledgeable in the sampling techniques and containers for chemical constituents following methods described in 40 Code of Federal Regulations 141.23 Inorganic Chemical Sampling and Analytical Requirements and 40 Code of Federal Regulations 143.4 Monitoring, which are incorporated by reference including any subsequent amendments or editions. A copy may be obtained from the National Archives and Records Administration through their website at <http://www.gpoaccess.gov/cfr/index.html>.
- (b) Water samples shall be collected from the sample tap at the well or the closest accessible collection point to the water source with a tap capable of being disinfected, provided the sampling point shall precede any water treatment devices.
- (c) It is the responsibility of the well owner to provide access and a source of power for the purpose of collecting the required water sample.
- (d) Samples for determination of the presence of total coliform and fecal coliform bacteria and chemical constituents shall be collected in bottles supplied by the State Laboratory of Public Health or a third party certified laboratory.
- (e) For all new private drinking water wells, samples for total coliform and fecal coliform bacteria shall be collected not less than 24 hours after chlorine or disinfectant agents have been flushed from the well and water supply system. The water shall be tested for chlorine or other disinfectants used in that well to verify removal of disinfectants before collection of samples for bacteria. Required water samples shall not be collected from:
 - (1) Water supply systems that contain chlorine or other disinfectant chemicals;
 - (2) New water supply systems that have not been disinfected; or
 - (3) Water supply wells that are not constructed and located in accordance with the rules of 15A NCAC 02C .0100 and .0300.
- (f) Samples shall be shipped to the laboratory following the procedures for sample preservation and within holding times

required in 40 Code of Federal Regulations 141.21(f) Analytical Methodology, 141.23 Inorganic Chemical Sampling and Analytical Requirements, and 143.4 Monitoring, which are hereby incorporated by reference including any subsequent amendments or editions. Copies may be obtained from the National Archives and Records Administration through their website at <http://www.gpoaccess.gov/cfr/index.html>.

(g) Additional or retest samples may be collected if:

- (1) the initial field inspection or historical information indicates there is the potential for other contaminants to be present in the groundwater source; or
- (2) a retest sample is deemed necessary based on the analytical results or data review of the initial testing.

Authority G.S. 87-97.

15A NCAC 18A .3803 SAMPLE ANALYSIS

(a) Water samples shall be analyzed by the North Carolina State Laboratory of Public Health or a certified laboratory.

(b) A water sample shall be tested for total coliform bacteria and if present, further tested for the presence of fecal coliform bacteria or E. coli.

(c) A water sample shall be analyzed for Arsenic, Barium, Cadmium, Chromium, Copper, Fluoride, Lead, Iron, Magnesium, Manganese, Mercury, Nitrate, Nitrite, Selenium, Silver, Sodium, Zinc and pH.

(d) Testing protocols shall follow EPA methods as published in the applicable sections of the most recent 40 CFR 141 and 143, Federal Register updates and the North Carolina Drinking Water Laboratory Certification rules of 10A NCAC 42D. Copies may be obtained from the National Archives and Records Administration through their website at <http://www.gpoaccess.gov/cfr/index.html>.

Authority G.S. 87-97.

15A NCAC 18A .3804 REPORTING

(a) The results of chemical and bacteriological water sample analyses for each new private drinking water well shall be reported to:

- (1) the Environmental Health Specialist at the local health department;
- (2) the DENR Private Water Supply Protection Branch; and
- (3) the DHHS Division of Public Health, Epidemiology Section, Occupational and Environmental Epidemiology Branch.

(b) Certified laboratories reporting results of sampling required by the rules of this Section shall use the reporting format developed by the North Carolina State Laboratory of Public Health for reporting private well-water sample results and shall include well identification information and a guide for interpreting sample results.

Authority G.S. 87-97.

15A NCAC 18A .3805 DATA REVIEW

For all private well sampling data where chemical or biological contaminants are detected at or above the practical quantitation limit, the North Carolina Occupational and Environmental Epidemiology Branch (OEEB) shall provide the following to the local health department from which the sample was collected:

- (1) information about the contaminant(s) detected;
- (2) recommendations for uses of the water; and
- (3) recommendations about the need for and the frequency of repeat sampling.

Authority G.S. 87-97.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Well Contractors Certification Commission intends to adopt the rules cited as 15A NCAC 27 .0702 - .0704, amend the rules cited as 15A NCAC 27 .0110, .0201, .0301, .0401, .0410, .0703, .0830, .0901, and repeal the rule cited as 15A NCAC 27 .0501.

Proposed Effective Date: May 1, 2008

Public Hearing:

Date: November 9, 2007

Time: 10:00 a.m.

Location: Archdale Bldg., Ground Floor Hearing Room, 512 N. Salisbury St., Raleigh, NC

Date: November 14, 2007

Time: 10:00 a.m.

Location: Asheville Regional Office – APS, 2090 US Hwy 70, Swannanoa, NC 28778

Date: November 16, 2007

Time: 10:00 a.m.

Location: Washington Regional Office – APS, 943 Washington Square Mall, Washington, NC 27889

Reason for Proposed Action: *These rules are intended to protect the public health and safety by ensuring the integrity and competence of well contractors, to protect and beneficially develop the groundwater resources of the state, to require the examination of well contractors and the certification of their competency to supervise or conduct well contractor activity, and to establish procedures for the examination and certification of well contractors. The enabling legislation is North Carolina General Statute 143B-301.*

Procedure by which a person can object to the agency on a proposed rule: *Verbally at one of the Public Hearings or in writing to the contact address noted below.*

Comments may be submitted to: Joanne Rutkofske, 1618 Mail Service Center, Raleigh, NC 27699-1618, phone (919) 733-0026 extension 315, fax (919) 733-1338

Comment period ends: December 14, 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: A copy of the fiscal note can be obtained from the agency.

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

CHAPTER 27 - WELL CONTRACTOR CERTIFICATION RULES

SECTION .0100 - DUTIES AND DEFINITIONS

15A NCAC 27 .0110 TYPES OF CERTIFICATION

(a) ~~A Certified well contractor must be present at all times when well contractor activities are being conducted. The following types of certification for well contractors are established:~~

- (1) Level A certification: this level of certification includes all well contractor activities;
- (2) Level B certification: this level of certification includes all Level C well contractor activities and all well construction and all well drilling techniques except air and mud rotary drilling;
- (3) Level C certification: this level of certification includes all Level D well contractor activities and grouting; well abandonment; hydrofracturing; rehabilitating a well due to biofouling; well development (eg.-pumping or surging); packer and liner installations; and extending casing above land surface; and
- (4) Level D certification: this level of certification includes breaking a well seal to perform well contractor activities such as pump repair, well chlorination, and using a down-hole camera in a well.

~~(b) A person who has satisfactorily met the requirements of the Commission relating to well contractor activities is entitled to recognition as a Certified Well Contractor certified to practice as a well contractor in the State of North Carolina.~~

~~(1)(b)~~ Each certified well contractor shall be assigned a permanent certification number and shall be issued a certificate with that certification number. Certification numbers are not transferable and shall not be used by another well contractor.

~~(2)(c)~~ The certification number shall be carried by the well contractor on a card issued by the Commission at all times when performing well contractor activities.

Authority G.S. 87-98.2; 87-98.4; 87-98.12; 143B-301.11.

SECTION .0200 – WELL CONTRACTOR FEES

15A NCAC 27 .0201 SCHEDULE OF CERTIFICATION FEES

The following fees are required for well contractor certification applications, renewals and temporary certifications:

- (1) Annual Fee: ~~A This fee of two hundred dollars (\$200.00) shall accompany each new application for certification or renewal of certification. The annual fees are as follows:~~
Level A: two hundred dollars (\$200.00)
Level B: one hundred fifty dollars (\$150.00)
Level C: one hundred twenty five dollars (\$125.00)
Level D: one hundred dollars (\$100.00)
- (2) Examination Fee: A fee of fifty dollars (\$50.00) shall accompany each request for examination. Where an applicant requests an examination to be administered at a time other than a regularly scheduled examination, the fee shall be one hundred dollars (\$100.00).
- (3) Temporary Certification: A fee of one hundred dollars (\$100.00) shall accompany each application for temporary certification.

Authority G.S. 87-98.9.

SECTION .0300 - CERTIFICATION OF WELL CONTRACTORS

15A NCAC 27 .0301 APPLICATION FOR CERTIFICATION

(a) The Commission shall accept applications ~~and renewal requests~~ for certification as a well contractor from any person who is at least 18 years of age and whose application meets all the following conditions:

- (1) Each application shall be submitted on forms provided by the Commission, which are designed for requesting certification as a well contractor by way of examination, reexamination, or temporary certification and must be ~~properly and accurately~~ completed and submitted with an appropriate fee to the office of the chairman of the Commission.
- (2) Each application has been determined to be complete by the Commission. Incomplete applications and applications not accompanied by an appropriate fee and attachments shall not be processed and shall be returned to the applicant.
- (3) Each application shall contain proof of experience as provided in Paragraph (f) of this Rule.

- (4) Except for those applications where renewal of certification is requested, each application shall include a request for the well contractor examination.

(b) Applicants who have intentionally supplied false information must wait 12 months before resubmitting an application for certification.

(c) The Commission shall not schedule an applicant to take the required examination until his application has been reviewed and the applicant has met all other conditions for certification. The applicant must pass the examination within three consecutive attempts or within a one year period of time after application submittal, whichever expires first, or a new application shall be required. An applicant who has failed the examination after three consecutive attempts shall be required to obtain eight PDH units prior to resubmittal of an application for certification.

(d) A certification shall not be issued until the applicant passes the required examination, passes the field observation for Level A if required, and all applicable fees have been received, and pays the appropriate fee.

(e) ~~A certification issued by the Commission shall be valid in every county in the state.~~

~~(f)(e)~~ Proof of ~~18 months of full-time experience meeting the requirements specified in 15A NCAC 27 .0701~~ in well contractor activities shall be demonstrated by providing one of the following:

- (1) An affidavit on a form provided by the Commission from at least one currently North Carolina certified well contractor, who has not committed any violation of 15A NCAC 02C or 15A NCAC 27 within the past two years, attesting that the applicant has been working in well contractor activities under the supervision of a certified well contractor of the desired level or higher for the equivalent of a minimum of 18 months full-time the required quantity of experience; or and submits appropriate payroll records as proof.

- (2) Any other proof of working in well contractor activities for a minimum of ~~18 months, the required quantity of experience.~~ At a minimum, the proof submitted shall demonstrate that the applicant has received a level of instruction in well construction techniques and practices found in publications used as the basis for a course of study or apprenticeship program, as shown in Paragraph ~~(h)(1-4)~~ (g) of this Rule. Proof submitted must also show that the applicant has a working knowledge of the 15A NCAC 02C .0100 (Well Construction Rules), the 15A NCAC 27 (Well Contractor Certification Rules) and applicable statutes.

~~(g) An affidavit from at least one currently certified well contractor, who has not committed any 15A NCAC 02C or 15A NCAC 27 violations within the past two years, attesting that the applicant has been working in well contractor activities under the supervision of a certified well contractor for an equivalent of six months full time and supplies appropriate payroll records,~~

~~shall be accepted in lieu of meeting the requirements of Paragraph (f) of this Rule, if the applicant also furnishes proof of completion of one of the following:~~

- ~~(1) Completion of a course of study in well construction techniques approved by the Well Contractor's Certification Commission and offered by a community college within the N.C. Department of Community Colleges with a passing grade; or~~
- ~~(2) Completion of an apprenticeship program approved by the Well Contractor's Certification Commission and approved by the N.C. Department of Labor in well construction; or~~
- ~~(3) Completion of a similar course of study or apprenticeship program as approved by the Well Contractor's Certification Commission.~~

~~(h)(g)~~ The WCCC shall approve a course of study or apprenticeship program whose educational materials or program meets technical aspects of well construction. The course of study or apprenticeship program shall provide the level of instruction in well construction techniques and practices found in publications recognized by the National Ground Water Association (NGWA) or other publications determined by the Commission to be equivalent to those recognized by NGWA. Examples of equivalent publications include the following:

- ~~(1) "Manual of Water Well Construction Practices" by the National Groundwater Association;~~
- ~~(2) "Well Drilling Manual" by the National Groundwater Association;~~
- ~~(3) "Ground Water Handbook" by Keith E. Anderson; or~~
- ~~(4) Any other peer reviewed published document on well construction activities.~~

Authority G.S. 87-98.5; 87-98.6; 87-98.9; 143B-301.11; S.L. 2001-440.

SECTION .0400 - CERTIFICATION BY EXAMINATION

15A NCAC 27 .0401 SUBMITTAL AND PROCESSING OF APPLICATIONS FOR EXAMINATIONS

~~(a) An application being filed for examination shall be postmarked by the United States Postal Service, or otherwise received by the Commission, at least 30 days prior to the date upon which the examination is scheduled to be administered and the appropriate fee must accompany the application.~~

(b) Upon receipt of the application by the Commission, the application shall be reviewed by the designee(s) of the Commission for eligibility to take the examination. The applicant ~~must~~ shall be notified of ~~their~~ his or her ~~eligibility by letter in writing and shall be~~ advised of the date, time and place of the examination. A receipt for the examination fee must accompany the letter. In cases where the applicant is ineligible for examination

(c) If the designee(s) of the Commission determines that the applicant is not eligible for examination, the applicant shall also be notified by letter in writing and advised of the reason for

ineligibility. ~~The examination fee shall be refunded in~~ In the event that the applicant is determined to be ineligible for the examination, the annual fee and examination fee shall be refunded, minus a 50 percent processing fee. Upon learning of ineligibility, the applicant may request a ~~hearing before meeting with~~ the Commission ~~at the next regularly scheduled meeting,~~ relative to the ineligibility, if the applicant so desires. Such requests must be in writing and shall be submitted ~~at least no later than 30 days prior to the next regularly scheduled meeting,~~ following the date of receipt of the letter of notification. The Commission shall review the request and grant or deny it no later than the second Commission meeting following receipt of the request. The applicant shall be given written notice of the decision to grant or deny the request and the reasons therefore.

~~(e)(d)~~ Any applicant who ~~intentionally knowingly~~ supplies false information on the application for certification for the purpose of gaining eligibility, shall be ineligible for the examination and must forfeit the examination fee.

Authority G.S. 87-98.6; 87-98.9; 143B-301.11.

15A NCAC 27 .0410 WELL CONTRACTOR EXAMINATIONS

(a) Well contractor examinations shall be ~~written,~~ comprehensive examinations that are standardized statewide. The examinations shall be designed to determine the applicant's knowledge of applicable rules; ~~the ability to construct, repair and abandon a well; perform well contractor activities;~~ and the ability to supervise, direct, manage and control the contracting activities of the well contracting business.

(b) The Commission ~~may~~ shall administer ~~an~~ a written examination orally or on an individual basis upon submission by the applicant of a ~~notarized request~~ form provided by the commission wherein the applicant states that he or she does not read, does not read well, or has a medical condition necessitating oral examination.

(c) If any other request for an accommodation in taking the examination is based on a medical condition, the applicant shall submit, in addition to a ~~notarized request~~ form, supporting documentation from a physician.

(d) A grade on the examination of 70 percent or more shall be passing. Results of the examination shall be reported as either passing or failing.

(e) The eligible applicant shall show photo identification for admittance to the exam.

Authority G.S. 87-98.6; 143B-301.11.

SECTION .0500 - CERTIFICATION WITHOUT EXAMINATION

15A NCAC 27 .0501 CERTIFICATION BY LEGISLATIVE EXEMPTION

~~(a) Unless an applicant is found to have engaged in an act that would constitute grounds for disciplinary action, the Commission shall issue a certificate without examination to any person who since July 1, 1992 has been actively and continuously engaged in well contractor activity, and:~~

- ~~(1) Has been continuously registered with the Department; or~~
- ~~(2) Employed by a firm or corporation that has been continuously registered with the Department.~~

~~(b) To obtain certification under this Section, a person must submit an application to the Commission and pay the annual fee prior to January 1, 1999.~~

~~(c) A well contractor who is certified under this Section must continuously maintain the certification in good standing in order to remain certified.~~

~~(d) If a certificate issued under this Section is not renewed under G.S. 87-98.7, is suspended, or is revoked, the well contractor must apply for certification by examination in order to be recertified.~~

Authority G.S. 87-98.7; 143B-301.11; S.L. 1997, c. 358, s. 9.

SECTION .0700 - TYPES OF CERTIFICATION

15A NCAC 27 .0702 REQUIREMENTS OF CERTIFICATION

(a) Level A- To obtain Level A certification, an applicant must:

- (1) Submit proof of 18 months of well contractor experience as specified in 15A NCAC 27 .0301;
- (2) Satisfactorily complete the well contractor certification field observation; and
- (3) Pass the Level A exam.

(b) Level B- To obtain Level B certification, an applicant must:

- (1) Submit proof of 12 months experience in related well contractor activities as specified in 15A NCAC 27 .0301; and
- (2) Pass the Level B exam.

(c) Level C- To obtain Level C certification, an applicant must:

- (1) Submit proof of six months experience in related well contractor activities as specified in 15A NCAC 27 .0301; and
- (2) Pass the Level C exam.

(d) Level D- To obtain Level D certification, an applicant must:

- (1) Submit proof of six months experience in related well contractor activities as specified in 15A NCAC 27 .0301; and
- (2) Pass the Level D exam.

(e) If a certificate issued under this Section is not renewed under G.S. 87-98.7, or is revoked, the well contractor must apply for certification by examination in order to be recertified.

Authority G.S. 87-98.5; 143B-301.11.

15A NCAC 27 .0703 LEVEL D CERTIFICATION WITHOUT EXAMINATION

Unless an applicant is found to have engaged in an act that would constitute grounds for disciplinary action, the Commission shall issue a Level D certificate without examination to any person who since April 1, 2003 has been actively and continuously engaged in well contractor activities including breaking the well seal, and has been continuously registered as a pump installer with the Department; or employed

by a firm or corporation that has been continuously registered with the Department.

- (1) To obtain certification under this Section, a person must submit an application for Level D to the Commission and pay the annual fee prior to June 30, 2008.
- (2) A well contractor who is certified under this Section must continuously maintain the certification in good standing in order to remain certified.
- (3) If a certificate issued under this Section is not renewed under G.S. 87-98.7, is suspended, or is revoked, the well contractor must apply for certification by examination in order to be recertified.

Authority G.S. 87-98.5; 143B-301.11.

15A NCAC 27 .0704 CERTIFICATION WITHOUT EXAMINATION IN 2008

The Commission shall issue a certificate to the level appropriate to the applicants' experience without additional examination to any person currently certified as a well contractor as of June 30, 2008 upon receipt of their annual renewal request with fee and required PDH for that renewal.

Authority G.S. 87-98.5; 143B-301.11.

SECTION .0800 - CONTINUING EDUCATION REQUIREMENTS

15A NCAC 27 .0830 RECORDKEEPING

The responsibility of maintaining records to be used to support credits claimed is the responsibility of the contractor. Records required include, but are not limited to:

- (1) A log showing the type of activity claimed, sponsoring organization, location, duration, instructors or speakers name and PDH credits earned; ~~or and~~
- (2) Attendance verification records in the form of completion certificates or other documents supporting evidence of attendance.

Authority G.S. 87-98.12; 143B-301.11.

SECTION .0900 - PROCEDURES FOR DISCIPLINARY ACTIONS

15A NCAC 27 .0901 REVOCATION, RELINQUISHMENT OR EXPIRATION OF CERTIFICATION

(a) The Commission may issue a letter of reprimand, suspend, or revoke ~~or suspend~~ the certification of a well contractor in accordance with the provisions of G.S. 87-98.8, G.S. 150B-3, and G.S. Chapter 150B, Article 3A. ~~Prior to the Commission's taking action on a proposed revocation or suspension, the well contractor shall be given an opportunity to submit a written statement and present oral argument before the Commission at a regularly scheduled meeting. Notice of the meeting shall be~~

~~delivered personally or by certified mail at least 15 days prior to the meeting.~~

~~(b) Notice of the revocation or suspension shall be delivered to the well contractor personally or by certified mail at least 20 days prior to the effective date of the revocation or suspension. The notice shall contain the alleged facts or conduct upon which the revocation or suspension is based and shall inform the well contractor of the opportunity to contest the action under G.S. 150B before the effective date of revocation or suspension.~~

(b) The disciplinary committee is delegated the authority to propose disciplinary action of suspension or revocation of the certification of a well contractor. The Chairman shall convene a disciplinary committee to review the circumstances of any proposed revocation or suspension. Written notice of the meeting of the committee shall be served on the well contractor personally or by certified mail at least 15 days prior to the meeting, and shall contain the following: the date, time, and place of the meeting; the disciplinary action proposed; notice of the reasons for the proposed disciplinary action; and an invitation to attend the committee meeting and present facts and reasons why the disciplinary action should not be taken. If served by mail, the notice shall be addressed to the well contractor at his or her last business address on file with the Commission.

(c) The disciplinary committee shall consist of the following:

- (1) The Chairman;
- (2) Two members of the Commission, appointed by the Chairman:
 - (A) a member who is a certified well contractor; and
 - (B) a member who is an environmental health professional actively engaged in well inspection and permitting.

(d) The disciplinary committee members shall consider the facts and reasons in support of or against the proposed disciplinary action, and within 10 working days of the conclusion of the committee meeting, the committee shall make and issue a decision. The disciplinary committee shall report the decision to the Commission at its next scheduled meeting.

(e) The well contractor shall be informed of the disciplinary committee's decision in writing, which shall contain the following: the disciplinary action, if any, which is proposed to be taken; notice of the reasons for the action; and a statement giving the well contractor the opportunity for a hearing under G.S. Chapter 150B, Article 3A.

(f) The notice shall be served on the well contractor personally or by certified mail. If notice cannot be given personally or by certified mail, then notice shall be given in the manner provided in G.S. 1A-1, Rule 4(j1). The notice shall also state that, to obtain a hearing, the well contractor must file a written request for a hearing with the Commission at its business address no later than the 30th day following the date of receipt of the disciplinary committee's written decision. A hearing request which is mailed satisfies the 30 days' filing requirement if the hearing request is postmarked no later than the thirtieth day following the date of the receipt of the written decision.

(g) The disciplinary action shall become the final action of the Commission if the well contractor does not request a hearing in 30 days.

(e)(h) Certification may be relinquished by submission to the Certification Commission of the original certificate and a notarized statement of relinquishment.

(d)(i) The Certification Commission or its delegate(s) may issue a written reprimand to a well contractor in accordance with G.S. 87-98.8. The reprimand shall be delivered personally or by certified mail. A copy of the letter shall be kept in the well contractor's file and a copy must be sent to the well contractor's employer of record. The well contractor shall be given the opportunity to put a letter of rebuttal into the file when a reprimand has been issued.

Authority G.S. 87-98.8; 143B-300; 150B-3; 150B-38; 150B-40; 150B-43.

21 NCAC 16Z .0102 - .0103 are proposed for adoption to regulate the practice of dental hygiene outside the direct supervision of a dentist.

Procedure by which a person can object to the agency on a proposed rule: *By filing written objections directed to Bobby D. White, Chief Operations Officer, N.C. State Board of Dental Examiners, 507 Airport Blvd., Ste. 105, Morrisville, N.C. 27560.*

Comments may be submitted to: *Bobby D. White, N.C. State Board of Dental Examiners, 507 Airport Blvd., Ste. 105, Morrisville, N.C. 27560*

Comment period ends: *December 14, 2007*

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 16 – DENTAL EXAMINERS

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina State Board of Dental Examiners intends to adopt the rules cited as 21 NCAC 16B .0801; 16Z .0101 - .0103 and amend the rules cited as 21 NCAC 16A .0104; 16B .0402; 16C .0402; 16I .0101, .0105 - .0107; 16J .0103; 16M .0101; 16P .0102; 16Q .0201; 16R .0101 - .0102, .0107.

Proposed Effective Date: *February 1, 2008*

Public Hearing:

Date: *November 15, 2007*

Time: *7:00 p.m.*

Location: *The N.C. State Board of Dental Examiners, 507 Airport Blvd., Ste. 105, Morrisville, N.C. 27560*

Reason for Proposed Action:

21 NCAC 16A .0104 is proposed for amendment to reflect the Board's new office address.

21 NCAC 16B .0801 is proposed for adoption to permit the temporary licensing of volunteer dentists.

21 NCAC 16B .0402; 16C .0402; 16I .0101, .0106 - .0107; 16R .0101 - .0102 have been amended to make receipt in the Board office, rather than the date of postmark, the deadline for submission of various documents.

21 NCAC 16I .0105 and 16R .0107 are proposed for amendments to effect grammatical changes.

21 NCAC 16J .0103 is proposed for amendment to identify the ADA as the source of guidelines for infection control.

21 NCAC 16M .0101 and 16P .0102 are proposed for amendment to permit the use of trade names and to require dentists using trade names to pay a registration fee and obtain Board approval before using the trade name in an advertisement.

21 NCAC 16Q .0201 is proposed for amendment to increase the fee from \$50 to \$100 for dentists applying for a general anesthesia permit.

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**

SUBCHAPTER 16A – ORGANIZATION

21 NCAC 16A .0104 LOCATION

(a) The Board maintains its offices at ~~15100 Weston Parkway, Suite 101, Cary, North Carolina 27513.~~ 507 Airport Boulevard, Suite 105, Morrisville, N.C. 27560.

(b) The Board's telephone number is (919) 678-8223. The Board's offices are open from 8:30 a.m. to 5:30 p.m., Monday through Friday.

Authority G.S. 90-26; 90-43; 90-48.

SUBCHAPTER 16B - LICENSURE DENTISTS

SECTION .0400 – LICENSURE BY BOARD CONDUCTED EXAMINATION

21 NCAC 16B .0402 TIME FOR FILING

The completed application, fee, photographs, and undergraduate college and dental school transcripts must be ~~postmarked or delivered to~~ received in the Board's office at least 90 days prior

to the date of examination. Dental school transcripts for those still in dental school must be sent upon graduation. All data received by the Board concerning the applicant shall be part of the application and shall be retained as part of the record.

Authority G.S. 90-28; 90-30; 90-48.

SECTION .0800 – TEMPORARY VOLUNTEER DENTAL LICENSE

21 NCAC 16B .0801 TEMPORARY VOLUNTEER DENTAL LICENSE

(a) An applicant for a Temporary Volunteer Dental License shall submit to the Board:

- (1) A completed, notarized application form provided by the Board;
- (2) A certificate of licensure from all jurisdictions in which the applicant has ever been licensed, certifying that the applicant holds a valid unrestricted license to practice general dentistry, is currently in good standing, and has never been disciplined;
- (3) A statement signed by a N.C. licensed dentist agreeing to provide supervision or direction to the temporary volunteer dentist, stating where, within the next calendar year, such supervision or direction will occur, and affirming that no fee or monetary compensation of any kind will be paid to the applicant for dental services performed; and
- (4) A statement signed by the applicant stating where the applicant will practice, the type of facility where the practice will occur, the duration of the practice, the name of the supervising dentist, and affirming that no fee will be charged or accepted. The applicant must update the information within five days of any changes in the practice location or facility.

(b) All information required must be completed and received in the Board office as a complete package at least two weeks prior to the issuance of the license. If all required information is not received, the application shall be returned to the applicant. The applicant must report any changes to submitted information within five days of when the applicant knew or should have known of the changes.

(c) To renew the Temporary Volunteer Dental License the licensee must:

- (1) Submit an affidavit stating that all information on the original application is correct and requires no update or correction;
- (2) A certificate of licensure from all jurisdictions in which the applicant has ever been licensed certifying that the applicant holds a valid unrestricted license to practice general dentistry, is currently in good standing, and has never been disciplined;
- (3) A statement signed by a N.C. licensed dentist agreeing to provide supervision or direction to

the temporary volunteer dentist, where, within the next calendar year, such supervision or direction is to occur, and affirming that no fee or monetary compensation of any kind will be paid to the licensee for dental services performed; and

- (4) A statement signed by the applicant disclosing the location where the applicant will practice, the type of facility where the practice will occur, the duration of the practice, the name of the supervising dentist, and affirming that no fee will be charged or accepted. This information must be updated immediately if there are any changes in the practice location or facility.

(d) All required information must be completed and received in the Board office as a complete package at least two weeks prior to the renewal of the license. If all required information is not received, the renewal application shall be returned to the applicant. The licensee must report any changes to submitted information within five days of when the licensee knew or should have known of the changes.

Authority G.S. 90-29; 90-37.1.

SUBCHAPTER 16C - LICENSURE DENTAL HYGIENISTS

SECTION .0400 – LICENSURE BY EXAMINATION CONDUCTED BY THE BOARD

21 NCAC 16C .0402 TIME FOR FILING

The completed application, fee, photographs, and sealed proof of graduation from the school as required by G.S. 90-224(a) must be ~~postmarked or delivered to~~ received in the Board's office at least 90 days prior to the date of the examination conducted by the Board. Sealed proof of graduation from dental hygiene school for those still in dental hygiene school at the time of the application must be sent in upon graduation. All data received by the Board concerning the applicant shall be part of the application and shall be retained as part of the record.

Authority G.S. 90-223; 90-224.

SUBCHAPTER 16I - ANNUAL RENEWAL OF DENTAL HYGIENIST LICENSE

SECTION .0100 – ANNUAL RENEWAL

21 NCAC 16I .0101 APPLICATIONS

An application form for a dental hygiene renewal certificate shall be adopted from time to time by the Board and shall be designed to obtain information that the Board deems necessary and requisite as required by law. A renewal application must be ~~postmarked or delivered to~~ received in the Board's office ~~before~~ by the close of business on January 31 of each year for renewal without a fee for late filing. All applications submitted to the Board must be completed in full.

Authority G.S. 90-227.

21 NCAC 16I .0105 PENALTY/NON-COMPLIANCE/CONTINUING EDUCATION REQUIREMENT

If the applicant for a renewal certificate fails to provide proof of completion of reported continuing education hours for the current year as required by 21 NCAC 16 I .0102 and .0104 of this Subchapter, the Board may refuse to issue a renewal certificate for the year for which renewal is sought, until such time as the licensee completes the required hours of education for the current year and meets all other qualifications for renewal. Should the applicant fail to meet the qualifications for renewal, including completing the required hours of continuing education, by March 31st, the license becomes void and must be reinstated. If the applicant applies for credit for continuing education hours or a reduction of continuing education hours and fails to provide the required documentation upon request, the Board may refuse to issue a certificate of renewal until such time as the applicant meets the qualifications for credit. If the required documentation is not received in the Board's office before the close of business on March 31, the license becomes void and must be reinstated. ~~Should the applicant fail to provide the required documentation by March 31st, the license becomes void and must be reinstated.~~

Authority G.S. 90-225.1.

21 NCAC 16I .0106 FEE FOR LATE FILING AND DUPLICATE LICENSE

(a) If the application for a renewal certificate, accompanied by the fee required, is not ~~postmarked nor delivered to~~ received in the Board's office before the close of business on January 31 of each year, an additional fee of fifty dollars (\$50.00) shall be charged for the renewal certificate.

(b) A fee of twenty-five dollars (\$25.00) shall be charged for each duplicate of any license or certificate issued by the Board.

Authority G.S. 90-227; 90-232; 150B-19(5).

21 NCAC 16I .0107 LICENSE VOID UPON FAILURE TO RENEW

If an application for a renewal certificate accompanied by the renewal fee, plus the additional late filing fee, is not ~~postmarked nor delivered to~~ received in the Board's office before the close of business on March 31 of each year, the license becomes void. Should the license become void due to failure to timely renew, the applicant must apply for reinstatement.

Authority G.S. 90-227.

SUBCHAPTER 16J - SANITATION

21 NCAC 16J .0103 STERILIZATION

All instruments or equipment used in the treatment of dental patients shall be sterilized according to usage. All dental offices shall follow the most current guidelines on infection control ~~recommendations~~ for the dental office and the dental laboratory adopted by the American Dental Association. ~~following councils of the American Dental Association: the Council on~~

~~Dental Materials, Instruments, and Equipment; the Council on Dental Practice; and the Council on Dental Therapeutics as published in the Journal of the American Dental Association, Volume 116, February 1988, which is adopted herein by reference. This adoption is in accordance with the provisions of G.S. 150B-14(e).~~ Effective control techniques and precautions to prevent the cross contamination and transmission of infection to all persons is the professional responsibility of all dentists. Dentists are required to maintain and provide a safe, therapeutic environment for patients and employees and to follow a comprehensive and practical infection control program at all times.

Authority G.S. 90-28; 90-41(a)(23); 90-48.

SUBCHAPTER 16M - FEES PAYABLE

SECTION .0100 – FEES PAYABLE

21 NCAC 16M .0101 DENTISTS

(a) The following fees shall be payable to the Board:

- (1) Application for general dentistry license \$ 395.00
- (2) Renewal of general dentistry license \$ 189.00
- (3) Application for instructor's license or renewal thereof \$ 140.00
- (4) Application for provisional license \$ 100.00
- (5) Application for intern permit or renewal thereof \$ 150.00
- (6) Certificate of license to a resident dentist desiring to change to another state or territory \$ 25.00
- (7) Duplicate license \$ 25.00
- (8) Reinstatement of license \$ 225.00
- (9) Fee for late renewal of any license or permit \$ 50.00
- (10) Application for license by credentials \$2000.00
- (11) Application for limited volunteer dental license \$ 100.00
- (12) Renewal of limited volunteer dental license \$ 25.00
- (13) Board conducted examination processing fee \$ 805.00
- (14) Registration of trade name \$ 50.00
- (15) Amendment or change to trade name \$ 25.00

(b) Each dentist renewing a license to practice dentistry in North Carolina shall be assessed a fee of forty dollars (\$40.00), in addition to the annual renewal fee, to be contributed to the operation of the North Carolina Caring Dental Professionals.

Authority G.S. 90-28; 90-39; 90-48; 150B-19(5).

SUBCHAPTER 16P - ADVERTISEMENT OF DENTAL SERVICES

21 NCAC 16P .0102 ADS MUST INCLUDE DENTIST'S NAME AND AREA OF PRACTICE

(a) All advertisements of dental services, including those using a trade name, shall contain the name or names of the dentist or dentists whose services are being advertised and shall state whether each dentist is a general dentist or, if qualified, a specialist in the named area of specialization. The dentist's name and designation as a general dentist or specialist shall be stated prominently in the advertisement. The dentist whose services are being advertised shall be personally responsible for determining that the content of the advertisement complies with this not contrary to North Carolina law and the Board's or Board rules.

(b) Dentists may use truthful, non-misleading trade names that comply with Paragraph (a) of this Rule. Every trade name shall first be registered with and approved by the Board. Any name or designation that includes a phrase, description or term other than the dentist's actual name, dental degrees and designation as a general dentist or specialist shall constitute a trade name. All requests for registration of trade names and amendments thereto shall be made in writing on a form provided by the Board.

Authority G.S. 90-41(a)(16),(17),(18); 90-48.

SUBCHAPTER 16Q - GENERAL ANESTHESIA AND SEDATION

SECTION .0200 - GENERAL ANESTHESIA

21 NCAC 16Q .0201 GENERAL ANESTHESIA CREDENTIALS AND PERMIT

(a) No dentist shall employ or use general anesthesia on an outpatient basis for dental patients unless the dentist possesses a permit issued by the Board. A dentist holding a permit shall be subject to review and shall only employ or use general anesthesia at a facility located in the State of North Carolina in accordance with 21 NCAC 16Q .0202. Such permit must be renewed annually and shall be displayed with the current renewal at all times in a conspicuous place in the office of the permit holder.

(b) Any dentist who wishes to administer general anesthesia to patients must apply to the Board for the required permit on a prescribed application form, submit an application fee of ~~five~~ one hundred dollars (\$100.00) and produce evidence showing that ~~he~~ he or she:

- (1) Has completed a minimum of one year of advanced training in anesthesiology and related academic subjects (or its equivalent) beyond the undergraduate dental school level; or
- (2) Has graduated from a program certified by the American Dental Association in Oral and Maxillofacial Surgery; or
- (3) Is a Diplomate of or eligible for examination by the American Board of Oral and Maxillofacial Surgery; or

- (4) Is a Fellow of the American Dental Society of Anesthesiology; or
- (5) Is a dentist who has been administering general anesthetics in a competent manner for the five years preceding the effective date of this Rule.

(c) A dentist who is qualified to administer general anesthesia in accordance with this Section and holds a general anesthesia permit is also authorized to administer any level of sedation~~parenteral or enteral conscious sedation~~ without obtaining a separate sedation permit.

(d) The dentist involved with the administration of general anesthesia shall document current, successful completion of advanced cardiac life support (ACLS) training, or its age-specific equivalent or other Board-approved equivalent course and auxiliary personnel shall document annual, successful completion of basic life support (BLS) training.

Authority G.S. 90-28; 90-30.1.

SUBCHAPTER 16R - CONTINUING EDUCATION REQUIREMENTS: DENTISTS

SECTION .0100 – CONTINUING EDUCATION

21 NCAC 16R .0101 APPLICATIONS

An application form for a dental license renewal certificate shall be adopted from time to time by the Board and shall be designed to obtain information that the Board deems necessary and requisite as required by law. A renewal application must be ~~postmarked or delivered or received in~~ received in the Board's office ~~before~~ by the close of business on January 31 of each year for renewal without a fee for late filing. All applications submitted to the Board must be completed in full.

Authority G.S. 90-31.

21 NCAC 16R .0102 FEE FOR LATE FILING

If the application for a renewal certificate, accompanied by the fee required, is not ~~postmarked or delivered or received in~~ received in to the Board's office ~~before~~ by the close of business on January 31 of each year, an additional fee of fifty dollars (\$50.00) shall be charged for the renewal certificate.

Authority G.S. 90-31; 90-39.

21 NCAC 16R .0107 PENALTY/NON-COMPLIANCE/CONTINUING EDUCATION

If the applicant for a renewal certificate fails to provide proof of completion of reported continuing education hours for the current year as required by Rules .0103 and .0105 of this Section, the Board may refuse to issue a renewal certificate for the year for which renewal is sought, until such time as the licensee completes the required hours of education for the current year and meets all other qualifications for renewal. Should the applicant fail to meet the qualifications for renewal, including completing the required hours of continuing education, before March 31 of each year, the license becomes void and must be reinstated. If the applicant applies for credit for or

exemption from continuing education hours and fails to provide the required documentation upon request, the Board shall refuse to issue a certificate of renewal until such time as the applicant meets the qualifications for exemption or credit. If the applicant fails to deliver the required documentation to the Board's office before the close of business on~~Should the applicant fail to provide the required documentation before~~ March 31 of each year, then the license becomes void and must be reinstated.

Authority G.S. 90-31.1.

SUBCHAPTER 16Z – LIMITED SUPERVISION HYGIENISTS

21 NCAC 16Z .0101 ELIGIBILITY TO PRACTICE HYGIENE OUTSIDE DIRECT SUPERVISION

(a) To be eligible to perform the clinical hygiene procedures set out in G.S. 90-221(a) without the direct supervision of a dentist, a dental hygienist must:

- (1) maintain an active license to practice dental hygiene in this State;
- (2) have no prior disciplinary history in any State;
- (3) complete at least three years of experience in clinical dental hygiene or at least 2,000 hours of performing primarily prophylaxis or periodontal debridement under the supervision of a dentist licensed in this State within the five calendar years immediately preceding initial approval to work without direct supervision; and
- (4) successfully complete annual CPR certification.

(b) To retain eligibility to perform the clinical hygiene procedures set out in G.S. 90-221(a) without direct supervision of a dentist, a dental hygienist must:

- (1) successfully complete at least six hours of Board approved continuing education in dental office medical emergencies each year, in addition to the requirements of G.S. 90-225.1;
- (2) successfully complete annual CPR certification;
- (3) comply with all provisions of the N.C. Dental Practice Act and all rules of the Dental Board applicable to dental hygienists; and
- (4) cooperate fully with all lawful Board inspections of any facility at which the hygienist provides dental hygiene services without direct supervision of a dentist.

Authority G.S. 90-221; 90-233.

21 NCAC 16Z .0102 RECORD KEEPING

(a) A dentist who designates a dental hygienist employee as capable of providing clinical dental hygiene procedures without direct supervision of the dentist must keep and maintain the following records for at least ten years:

- (1) names of all hygienists who provide clinical dental hygiene procedures without direct supervision;

- (2) proof that each hygienist, at the time of initial approval, met the experience requirements set out in Rule .0101(a) of this Subchapter;
- (3) names and locations of all facilities at which each hygienist has provided clinical dental hygiene procedures without direct supervision;
- (4) work schedules reflecting all locations at which each hygienist is scheduled to provide clinical dental hygiene procedures without direct supervision in the next 120 days;
- (5) work schedules of all hygienists indirectly supervised by the dentist, with sufficient detail to demonstrate that a single dentist does not supervise more than two hygienists employed in clinical dental hygiene positions at any given time;
- (6) records reflecting the personal examination of the patient and the procedures directed by the dentist; and
- (7) proof that the dentist and hygienist complied with the requirements of G.S. 90-233(a1)(1) – (3).

(b) The dentist shall produce all records required to be kept under this Rule to the Dental Board or its employees upon request and shall provide an annual report to the Board in compliance with G.S. 90-233(a4).

Authority G.S. 90-221; 90-233.

21 NCAC 16Z .0103 INSPECTIONS

All locations at which a hygienist performs clinical dental hygiene procedures without direct supervision of a dentist shall be subject to random, unannounced inspection by the Dental Board and/or its agents for the purpose of determining if services are provided in compliance with the Center for Disease Control and OSHA standards for infection control and patient treatment.

Authority G.S. 90-221; 90-233.

CHAPTER 32 – NORTH CAROLINA MEDICAL BOARD

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Medical Board intends to amend the rule cited as 21 NCAC 32U .0101.

Proposed Effective Date: February 1, 2008

Public Hearing:

Date: December 14, 2007

Time: 5:00 p.m.

Location: North Carolina Board of Pharmacy, 6015 Farrington Road, Suite 201, Chapel Hill, NC 27517

Reason for Proposed Action: *To add the zoster vaccine to the list of vaccines that may be administered by pharmacists pursuant to the standards set forth in the rule.*

Procedure by which a person can object to the agency on a proposed rule: *Any person may object to the proposed amendment by attending the public hearing on December 14, 2007 and/or by submitting a written objection by December 14, 2007, to R. David Henderson, Executive Director, North Carolina Medical Board, 1203 Front Street, Raleigh, NC 27609, fax (919) 326-1131, e-mail david.henderson@ncmedboard.org. The North Carolina Medical Board is interested in all comments pertaining to the proposed rule. All persons interested and potentially affected by the proposal are strongly encouraged to read this entire notice and make comments on the proposed rule.*

Comments may be submitted to: *R. David Henderson, 1203 Front Street, Raleigh, NC 27609, phone (919) 326-1100, fax (919) 326-1131, david.henderson@ncmedboard.org*

Comment period ends: *December 14, 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

SUBCHAPTER 32U – PHARMACISTS VACCINATIONS

SECTION .0100 – PHARMACISTS VACCINATIONS

21 NCAC 32U .0101 ADMINISTRATION OF VACCINES BY PHARMACISTS

(a) Purpose. The purpose of this Rule is to provide standards for pharmacists engaged in the administration of ~~influenza and~~ influenza, pneumococcal and zoster vaccines as authorized in G.S. 90-85.3(r) of the North Carolina Pharmacy Practice Act.

(b) Definitions. The following words and terms, when used in this Rule, shall have the following meanings, unless the context indicates otherwise.

- (1) "ACPE" means Accreditation Council for Pharmacy Education.
- (2) "Administer" means the direct application of a drug to the body of a patient by injection, inhalation, ingestion, or other means by:

- (A) a pharmacist, an authorized agent under his/her supervision, or other person authorized by law; or
 - (B) the patient at the direction of a physician or pharmacist.
- (3) "Antibody" means a protein in the blood that is produced in response to stimulation by a specific antigen. Antibodies help destroy the antigen that produced them. Antibodies against an antigen usually equate to immunity to that antigen.
 - (4) "Antigen" means a substance recognized by the body as being foreign; it results in the production of specific antibodies directed against it.
 - (5) "Board" means the North Carolina Board of Pharmacy.
 - (6) "Confidential record" means any health-related record that contains information that identifies an individual and that is maintained by a pharmacy or pharmacist such as a patient medication record, prescription drug order, or medication order.
 - (7) "Immunization" means the act of inducing antibody formation, thus leading to immunity.
 - (8) "Medical Practice Act" means G.S. 90-1, et seq.
 - (9) "Physician" means a currently licensed M.D. or D.O. with the North Carolina Medical Board who is responsible for the on-going, continuous supervision of the pharmacist pursuant to written protocols between the pharmacist and the physician.
 - (10) "Vaccination" means the act of administering any antigen in order to induce immunity; is not synonymous with immunization since vaccination does not imply success.
 - (11) "Vaccine" means a specially prepared antigen, which upon administration to a person may result in immunity.
 - (12) Written Protocol—A physician's written order, standing medical order, or other order or protocol. A written protocol must be prepared, signed and dated by the physician and pharmacist and contain the following:
 - (A) the name of the individual physician authorized to prescribe drugs and responsible for authorizing the written protocol;
 - (B) the name of the individual pharmacist authorized to administer vaccines;
 - (C) the immunizations or vaccinations that may be administered by the pharmacist;
 - (D) procedures to follow, including any drugs required by the pharmacist for treatment of the patient, in the event of an emergency or severe adverse

- reaction following vaccine administration;
- (E) the reporting requirements by the pharmacist to the physician issuing the written protocol, including content and time frame;
- (F) locations at which the pharmacist may administer immunizations or vaccinations; and
- (G) the requirement for annual review of the protocols by the physician and pharmacist.

(c) Policies and Procedures.

- (1) Pharmacists must follow a written protocol as specified in Subparagraph (b)(12) of this Rule for administration of ~~influenza and influenza~~ pneumococcal and zoster vaccines and the treatment of severe adverse events following administration.
- (2) The pharmacist administering vaccines must maintain written policies and procedures for handling and disposal of used or contaminated equipment and supplies.
- (3) The pharmacist or pharmacist's agent must give the appropriate, most current vaccine information regarding the purpose, risks, benefits, and contraindications of the vaccine to the patient or legal representative with each dose of vaccine. The pharmacist must ensure that the patient or legal representative is available and has read, or has had read to him or her, the information provided and has had his or her questions answered prior to administering the vaccine.
- (4) The pharmacist must report adverse events to the primary care provider as identified by the patient.
- (5) The pharmacist shall not administer vaccines to patients under 18 years of age.
- (6) The pharmacist shall not administer the pneumococcal or zoster vaccines~~vaccine~~ to a patient unless the pharmacist first consults with the patient's primary care provider. The pharmacist shall document in the patient's profile the primary care provider's order to administer the pneumococcal or zoster vaccines. In the event the patient does not have a primary care provider, the pharmacist shall not administer the pneumococcal or zoster vaccines~~vaccine~~ to the patient.
- (7) The pharmacist shall report all vaccines administered to the patient's primary care provider and report all vaccines administered to all entities as required by law, including any State registries which may be implemented in the future.

(d) Pharmacist requirements. Pharmacists who enter into a written protocol with a physician to administer vaccines shall:

- (1) hold a current provider level cardiopulmonary resuscitation (CPR) certification issued by the American Heart Association or the American Red Cross or equivalent;
- (2) successfully complete a certificate program in the administration of vaccines accredited by the Centers for Disease Control, the ACPE or a similar health authority or professional body approved by the Board;
- (3) maintain documentation of:
 - (A) completion of the initial course specified in Subparagraph (2) of this Paragraph;
 - (B) three hours of continuing education every two years beginning January 1, 2006, which are designed to maintain competency in the disease states, drugs, and administration of vaccines;
 - (C) current certification specified in Subparagraph (1) of this Paragraph;
 - (D) original written physician protocol;
 - (E) annual review and revision of original written protocol with physician;
 - (F) any problems or complications reported; and
 - (G) items specified in Paragraph (g) of this Rule.

(e) Supervising Physician responsibilities. Pharmacists who administer vaccines shall enter into a written protocol with a supervising physician who agrees to meet the following requirements:

- (1) be responsible for the formulation or approval and periodic review of the physician's order, standing medical order, standing delegation order, or other order or written protocol and periodically review the order or protocol and the services provided to a patient under the order or protocol;
- (2) be accessible to the pharmacist administering the vaccines or be available through direct telecommunication for consultation, assistance, direction, and provide back-up coverage;
- (3) review written protocol with pharmacist at least annually and revise if necessary; and
- (4) receive a periodic status report on the patient, including any problem or complication encountered.

(f) Drugs. The following requirements pertain to drugs administered by a pharmacist:

- (1) Drugs administered by a pharmacist under the provisions of this Rule shall be in the legal possession of:
 - (A) a pharmacy, which shall be the pharmacy responsible for drug accountability, including the maintenance of records of administration of the immunization or vaccination; or

- (B) a physician, who shall be responsible for drug accountability, including the maintenance of records of administration of the immunization or vaccination;
 - (2) Drugs shall be transported and stored at the proper temperatures indicated for each drug;
 - (3) Pharmacists while engaged in the administration of vaccines under written protocol, may have in their custody and control the vaccines identified in the written protocol and any other drugs listed in the written protocol to treat adverse reactions; and
 - (4) After administering vaccines at a location other than a pharmacy, the pharmacist shall return all unused prescription medications to the pharmacy or physician responsible for the drugs.
- (g) Record Keeping and Reporting.
- (1) A pharmacist who administers any vaccine shall maintain the following information, readily retrievable, in the pharmacy records regarding each administration:
 - (A) The name, address, and date of birth of the patient;
 - (B) The date of the administration;
 - (C) The administration site of injection (e.g., right arm, left leg, right upper arm);
 - (D) Route of administration of the vaccine;
 - (E) The name, manufacturer, lot number, and expiration date of the vaccine;
 - (F) Dose administered;
 - (G) The name and address of the patient's primary health care provider, as identified by the patient; and
 - (H) The name or identifiable initials of the administering pharmacist.
 - (2) A pharmacist who administers vaccines shall document annual review with physician of written protocol in the records of the pharmacy that is in possession of the vaccines administered.
- (h) Confidentiality.
- (1) The pharmacist shall comply with the privacy provisions of the federal Health Insurance Portability and Accountability Act of 1996 and any rules adopted pursuant to this act.
 - (2) The pharmacist shall comply with any other confidentiality provisions of federal or state laws.
 - (3) Violations of this Rule by a pharmacist shall constitute grounds by the Board to initiate disciplinary action against the pharmacist.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Perfusionist Advisory Committee of the North Carolina Medical Board intends to adopt the rule cited as 21 NCAC 32V .0115.

Proposed Effective Date: February 1, 2008

Public Hearing:

Date: December 14, 2007

Time: 10:00 a.m.

Location: North Carolina Medical Board, 1203 Front St., Raleigh, NC 27609

Reason for Proposed Action: To establish fees for perfusion and provisional license application, biennial and annual renewal of licenses and the late fees.

Procedure by which a person can object to the agency on a proposed rule: Any person may object to the proposed adoption by attending the public hearing on December 14, 2007 and/or by submitting a written objection by December 14, 2007, to R. David Henderson, Executive Director, North Carolina Medical Board, 1203 Front St., Raleigh, NC 27609, fax (919) 326-1131, e-mail david.henderson@ncmedboard.org. The North Carolina Medical Board is interested in all comments pertaining to the proposed rule. All persons interested and potentially affected by the proposal are strongly encouraged to read this entire notice and make comments on the proposed rule.

Comments may be submitted to: R. David Henderson, 1203 Front Street, Raleigh, NC 27609, phone (919) 326-1100, fax (919) 326-1131, email david.henderson@ncmedboard.org

Comment period ends: December 14, 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

SUBCHAPTER 32V – PERFUSIONIST REGULATIONS

Authority G.S. 90-85.3(r).

21 NCAC 32V .0115 FEES

(a) A fee of three hundred and fifty dollars (\$350.00) is due at the time of application for a perfusion license and a fee of one hundred and seventy five dollars (\$175.00) is due at the time of application for a provisional perfusion license. No portion of the application fee is refundable.

(b) A fee of three hundred and fifty dollars (\$350.00) shall be paid to the North Carolina Medical Board for biennial renewal of a perfusion license and a fee of one hundred and seventy five dollars (\$175.00) for annual renewal of a provisional perfusion license.

(c) A late fee of one hundred dollars (\$100.00) shall be charged to those who fail to renew either a perfusion license or a provisional perfusion license within thirty days after the expiration date of the license.

Authority G.S. 90-685(7); 90-688; 90-689; 90-690.

CHAPTER 34 - BOARD OF FUNERAL SERVICE

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Board of Funeral Service intends to amend the rules cited as 21 NCAC 34B .0407, .0409, .0411, .0413 - .0414.

Proposed Effective Date: *March 1, 2008*

Public Hearing:

Date: *November 14, 2007*

Time: *9:00 a.m.*

Location: *1033 Wade Avenue, Suite 108, Raleigh, NC 27605*

Reason for Proposed Action: *To make technical changes to the published rules; to change course application requirements; to eliminate certain advance notice requirements for continuing education, to modify course decorum and attendance verification requirements; to allow individuals to obtain temporary cards to attend continuing education courses to reinstate a license.*

Procedure by which a person can object to the agency on a proposed rule: *Persons may file written comments or attend the public hearing.*

Comments may be submitted to: *Paul Harris, Rulemaking Coordinator, 1033 Wade Avenue, Suite 108, Raleigh, NC 27605*

Comment period ends: *December 14, 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** ($\geq \$3,000,000$)
- ☒ **None**

SUBCHAPTER 34B - FUNERAL SERVICE

SECTION .0400 – CONTINUING EDUCATION

21 NCAC 34B .0407 DEFINITIONS

For purposes of Section .0400, the following definitions shall apply:

- (1) "Accredited sponsor" shall mean an organization whose entire continuing education program has been accredited by the Board.
- (2) "Approved activity" shall mean a specific, individual continuing education activity presented by an accredited sponsor or presented by other than an accredited sponsor if such activity is approved as a continuing education activity under the Rules in this Section by the Continuing Education Committee of the Board.
- (3) "Continuing education" or "CE" is any educational activity accredited by the Board. CE includes educational activities designed principally to maintain or advance the professional competence of licensees or to expand an appreciation and understanding of the professional responsibilities of licensees.
- (4) "Continuing Education Committee" shall mean the Continuing Education Committee of the North Carolina Board of Funeral Service.
- (5) "Credit hour" means an increment of time of 50 minutes which may be divided into segments of 25 minutes, but no smaller.
- (6) "Inactive licensee" shall mean a licensee of the North Carolina State Board of Funeral Service who is on inactive status.
- (7) "Licensee" shall include any person who is licensed by the Board to practice funeral directing, embalming, or funeral service in the state of North Carolina and whose license is currently active.
- (8) "Participatory CE" shall mean courses or segments of courses that encourage the participation of attendees in the educational experience through, for example, the analysis

- of hypothetical situations, role playing, mock trials, roundtable discussions, or debates.
- (9) "Self-study" shall mean the reading of professional articles, journals, magazines, and books or the watching of programs on the topics of funeral directing, embalming and funeral services that will increase the licensee's professional competence and proficiency as a licensee.
 - (10) "Sponsor" is any person or entity presenting or offering to present one or more continuing education programs, whether or not an accredited sponsor.
 - (11) "Year" shall mean calendar year.
 - (12) "Course" shall mean the instructional content of the material being presented.
 - (13) "CE Program" shall mean the date, time, and location of the presentation of a CE course.

Authority G.S. 90-210.23(a); 90-210.25(a)(5).

21 NCAC 34B .0409 COURSE ACCREDITATION STANDARDS

(a) The content of a CE activity must have intellectual or practical content designed to increase the participant's professional competence and proficiency as a licensee. The activity shall constitute an organized ~~program~~ course of learning dealing with matters directly related to the practice of funeral directing, embalming, or funeral service. The activity shall include an opportunity for the participants to ask questions of the presenter about its content. ~~Programs~~ Courses that cross academic lines, such as insurance seminars, may be considered for approval by the Board. However, the Board must be satisfied that the content of the activity is directly related to preneed or would otherwise enhance funeral directing and funeral service skills.

(b) Credit may be given for continuing education activities where live instruction is used or mechanically or electronically recorded or reproduced material is used, including videotape or satellite transmitted programs. Subject to the limitations set forth in 21 NCAC 34B ~~.0408(b)(3)~~ .0408(a) and 21 NCAC 34B .0414, credit may also be given for continuing education activities on CD-ROM and on a computer website accessed via the Internet.

(c) Continuing education materials shall be prepared, and activities conducted, by an individual or group able to lead the CE activity and to answer questions from the participants about its content. Examples of individuals and groups able to lead the CE activity and to answer questions from the participants about its content include:

- (1) Funeral professionals licensed by the Board or by the authority of another jurisdiction who are actively engaged full time in a capacity consistent with the individual's license designation for at least three years immediately preceding the date of the CE activity.
- (2) Instructors employed by a program or college of mortuary science in a capacity consistent with the courses of study required as a

prerequisite to licensing, as defined in G.S. 90-210.25(a)(1)(e)1., (a)(2)(e)1., and (a)(3)(e)1. and 2.

- (3) Instructors employed by academic institutions in a capacity consistent with the instruction of the courses of study required as a prerequisite to licensing, as defined by G.S. 90-210.25(a)(1)(e)1., (a)(2)(e)1., and (a)(3)(e)1. and 2.

(d) Continuing education activities shall be conducted in a setting physically suitable to the educational activity of the program and equipped with suitable writing surfaces and sufficient space for taking notes.

(e) Thorough, high quality, and carefully prepared, written materials must be distributed to all attendees at or before the time the course is presented. As used in this Paragraph, "thorough, high quality, and carefully prepared written materials" means materials that correspond to the content of the CE activity and are free from errors, including written materials printed from a computer website or CD-ROM, but excluding any materials that refer to a product of a specific manufacturer or to a service offered by a specific provider. The Board may waive the requirement that written materials be provided if written materials would not be suitable or readily available for the CE activity.

Authority G.S. 90-210.23(a); 90-210.25(a)(5).

21 NCAC 34B .0411 GENERAL COURSE APPROVAL

(a) Mortuary Science College Courses – Courses covering subjects required by G.S. 90-210.25(a)(1)(e)1., (2)(e)(1), and (3)(e)(1) and (2) that are offered for academic credit by a mortuary science college approved by the Board or accredited by the American Board of Funeral Service Education shall be approved activities unless the course is taken to obtain a funeral director, embalmer, or funeral service license. Computation of CE credit for such courses shall be as prescribed in 21 NCAC 34B .0415. No more than five CE hours in any year may be earned by such courses; except in the case of an inactive licensee who is seeking to earn enough CE credit to return to active ~~status~~ status or an individual whose license has lapsed and who is seeking to re-instate the license. No credit is available for mortuary science college courses attended prior to becoming an active licensee of the North Carolina Board of Funeral Service, except in the case of an inactive licensee who is seeking to earn enough CE credits to return to an active status.

(b) Approval – CE activities shall be approved upon the written application of a sponsor, other than an accredited sponsor, or of an active licensee on an individual program basis. An application for the approval of such CE courses and programs ~~course approval~~ shall meet the following requirements:

- (1) ~~If advance approval is requested by a sponsor, the~~ The application and supporting documentation, including ~~two~~ one complete sets of the written materials to be distributed at the course or program, shall be submitted at least 30 days prior to the date on which the course is scheduled.

~~(2) In all other cases, the application and supporting documentation shall be submitted not later than 30 days after the date the course or program was presented or prior to the end of the calendar year in which the course or program was presented, whichever is earlier.~~

~~(2)(3)~~ The application shall be submitted on a form furnished by the Board. The form shall require the applicant to furnish the name and address of the course sponsor, the title, date, length, and location of the course, and any other information the Board deems necessary as required by law.

~~(3)(4)~~ The application shall be accompanied by a course outline or brochure that describes the content, identifies the teachers, lists the time devoted to each topic and shows each date and location at which the course or program will be offered.

~~(4)(5)~~ The application shall include a detailed calculation of the total CE hours.

(c) Course Quality – The application and written materials provided shall reflect that the program to be offered meets the requirements of 21 NCAC 34B .0409. Written materials consisting merely of an outline without citation or explanatory notations shall not be sufficient for approval. Any sponsor, including an accredited sponsor, who expects to conduct a CE activity for which suitable written materials will not be made available to all attendees may obtain approval for that activity only by application to the Board at least 30 days in advance of the presentation showing why written materials are not suitable or readily available for such a program.

(d) Records – Sponsors, including accredited sponsors, shall within 30 days after the course is concluded:

- (1) furnish to the Board a list in alphabetical order, on magnetic tape if available, of the names of all North Carolina attendees and their North Carolina Board of Funeral Service license numbers;
- (2) furnish to the Board a complete set of all written materials distributed to attendees at the course or program.

(e) Announcement – Accredited sponsors and other sponsors who have ~~advance~~ approval for courses may include in their brochures or other course descriptions the information contained in the following illustration:

This course [or seminar or program] has been approved by the North Carolina Board of Funeral Service for continuing education credit in the amount of ____ hours. This course is not sponsored by the Board.

(f) Notice - Sponsors not having ~~advance~~ approval shall make no representation concerning the approval of the course for CE credit by the Board. The Board shall mail a notice of its decision on CE activity approval requests within 15 days of their receipt. ~~receipt when the request for approval is submitted before the program and within 30 days when the request is submitted after the program.~~ Approval thereof shall be deemed if the notice is not mailed within 30 days. This automatic approval will not operate if the sponsor contributes to the delay by failing

to provide the complete information requested by the Board or if the Board notifies the sponsor that the matter has been tabled and the reason therefore.

(g) Facilities - Sponsors must provide a facility conducive to learning with sufficient space for taking notes. Sponsors must also ensure the following requirements are met:

- (1) Access to the facility shall be controlled so that attendees actually attend the entire program or portion of the program for which they are seeking credit. Attendees who are late or who leave early shall not be given credit for the portion of the program that they missed.
- (2) All licensees who attend a program and desire credit for attendance must present their license pocket card to gain admission to the program.
- (3) The individual or organization conducting the continuing education program must ~~pass out sign up sheets at least once per hour of instruction to ensure continued attendance by all participants use registration sign in/sign out sheets to ensure attendance by all participants.~~
- (4) The reading of outside material, such as newspapers and magazines, is prohibited during a CE program.
- (5) Cell phones and other disruptive devices must be turned off or switched to a silent mode of operation during instructional periods of the CE program.
- (6) Persons obtaining CE hours for license reinstatement shall be provided a temporary card, valid for one year from the date of issue, from the Board in order to be allowed entrance to CE programs.

(h) Course Materials - In addition to the requirements of 21 NCAC 34B .0411(d) and (f) above, sponsors, including accredited sponsors, and active licensees seeking credit for an approved activity shall furnish upon request of the Board a copy of all materials presented and distributed at a CE course or program.

(i) Non-funeral service Educational Activities - Approval of courses shall not be given for general and personal educational activities. For example, the following types of courses shall not receive approval:

- (1) courses within the normal college curriculum such as English, history, and social studies;
- (2) courses that deal with sales and advertising only and would not further educate a licensee as to his or her product knowledge and development of funeral procedures and management models designed to increase the level of service provided to the consumer.

Authority G.S. 90-210.23(a); 90-210.25(a)(5).

**21 NCAC 34B .0413 ACCREDITATION OF
PRERECORDED PROGRAMS AND LIVE PROGRAMS
BROADCAST TO REMOTE LOCATIONS BY
TELEPHONE, SATELLITE, OR VIDEO
CONFERENCING EQUIPMENT**

(a) A licensee may receive up to one hour of CE credit each year for attendance at, or participation in, a presentation where prerecorded material is used.

(b) A licensee may receive credit for participation in a live presentation which is simultaneously broadcast by telephone, satellite, or video conferencing equipment. The licensee may participate in the presentation by listening to or viewing the broadcast from a location that is remote from the origin of the broadcast.

(c) A licensee attending a prerecorded presentation is entitled to credit hours if

- (1) the presentation from which the program is recorded would, if attended by an active licensee, be an accredited course;
- (2) all other conditions imposed by the rules in this Subchapter are met.

(d) A licensee attending a presentation broadcast by telephone, satellite, or video conferencing equipment is entitled to credit if:

- (1) the live presentation of the program would, if attended by a licensee, be an accredited course;
- (2) there is a question and answer session with the presenter or presenters subject to the limitations set forth in 21 NCAC 34B .0415(b)(5); and
- (3) all other conditions imposed by the rules in this Subchapter are met.

(e) To receive approval for attendance at programs described in Paragraphs (a) and (b) of this Rule, the following conditions must be met:

- (1) Unless the entire program was produced by an accredited sponsor, the person or organization sponsoring the program must receive advance approval and accreditation from the Board.
- (2) The person or organization sponsoring the program must have a method for recording and verifying attendance. Attendance at a telephone broadcast may be verified by assigning a personal identification number to a licensee. ~~If attendance is recorded by a person, the person may not earn credit hours by virtue of attendance at that presentation.~~ The person or organization sponsoring the program must forward a copy of the record of attendance of active licensees to the Board within 30 days after the presentation of the program is completed. Proof of attendance may be made by the verifying person on a form provided by the Board.
- (3) Unless inappropriate for the particular course, detailed papers, manuals, study materials, or written outlines are presented to the persons attending the program which only pertain to the subject matter of the program. Any

materials made available to persons attending the original or live program must be made available to those persons attending the prerecorded or broadcast program who desire to receive credit under the rules in this Section.

(4) A room suitable for viewing the program and taking notes must be available.

(f) A minimum of five licensees must physically attend the presentation of a prerecorded program. This requirement does not apply to participation from a remote location in the presentation of a live broadcast by telephone, satellite, or video conferencing equipment.

(g) **EXAMPLES:**

EXAMPLE (1): Licensee X attends a videotape seminar sponsored by an accredited sponsor. If a person attending the program from which the videotape is made would receive credit, Licensee X is also entitled to receive credit, if the additional conditions under this Rule are also met.

EXAMPLE (2): Licensee Y desires to attend a videotape program. However, the proposed videotape program (a) is not presented by an accredited sponsor, and (b) has not received individual course approval from the Board. Licensee Y may not receive any credit hours for attending that videotape presentation.

EXAMPLE (3): Licensee Z attends a videotape program. The presentation of the program from which the videotape was made has already been held and approved by the Board for credit. However, no person is present at the videotape program to record attendance. Licensee Z may not obtain credit for viewing the videotape program unless it is viewed in the presence of a person who is not attending the videotape program for credit and who verifies the attendance of Licensee Z and of other licensees at the program. All other conditions of this Rule must also be met.

EXAMPLE (4): Licensee A listens to a live telephone seminar using the telephone in the conference room of her funeral establishment. To record her attendance, Licensee A was assigned a person identification number (PIN) by the seminar sponsor. Once connected, Licensee A punched in the PIN number on her touch tone phone and her attendance was recorded. The seminar received individual course approval from the Board. Licensee A shall receive credit if the additional conditions under this Rule are also met.

Authority G.S. 90-210.23(a); 90-210.25(a)(5).

**21 NCAC 34B .0414 ACCREDITATION OF
COMPUTER-BASED CE**

(a) Effective for courses attended on or after July 1, 2004, a licensee may receive up to one hour of credit each year for participation in a course on CD-ROM or on-line. A CD-ROM course is an educational seminar on a compact disk that is accessed through the CD-ROM drive of the user's personal computer. An on-line course is an educational seminar available on a provider's website reached via the Internet.

(b) A licensee may apply up to one credit hour of computer-based CE to a CE deficit from a preceding calendar year. A computer-based CE credit hour applied to a deficit from a preceding year will be included in calculating the maximum of

one hour of computer-based CE allowed in the preceding calendar year. A licensee may carry over to the next calendar year no more than one credit hour of computer-based CE pursuant to 21 NCAC 34B .0408 .0408(b)(2). A credit hour carried-over pursuant to 21 NCAC 34B .0408 .0408(b)(2) shall not be included in calculating the one hour of computer-based CE allowed in any one calendar year.

(c) To be accredited, a computer-based CE course must meet all of the conditions imposed by the rules in this Subchapter, except where otherwise noted, and be interactive, permitting the participant to communicate, via telephone, electronic mail, or a website bulletin board, with the presenter or other participants.

(d) The sponsor of an on-line course must have a reliable method for recording and verifying attendance. The sponsor of a CD-ROM course must demonstrate that there is a reliable method for the user or the sponsor to record and verify participation in the course. A participant may log on and off of a computer-based CE course provided the total time spent participating in the course is equal to or exceeds the credit hours assigned to the program. A copy of the record of attendance must be forwarded to the Board within 30 days after a licensee completes his or her participation in the course.

Authority G.S. 90-210.23(a); 90-210.25(a)(5);

CHAPTER 46 - BOARD OF PHARMACY

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Board of Pharmacy intends to amend the rule cited as 21 NCAC 46 .2507.

Proposed Effective Date: *February 1, 2008*

Public Hearing:

Date: *December 14, 2007*

Time: *5:00 p.m.*

Location: *North Carolina Board of Pharmacy, 6015 Farrington Road, Suite 201, Chapel Hill, NC*

Reason for Proposed Action: *To add the zoster vaccine to the list of vaccines that may be administered by pharmacists pursuant to the standards set forth in the rule.*

Procedure by which a person can object to the agency on a proposed rule: *Any person may object to the proposed amendment by attending the public hearing on December 14, 2007 and/or by submitting a written objection by December 14, 2007, to Jay Campbell, Executive Director, North Carolina Board of Pharmacy, 6015 Farrington Road, Suite 201, Chapel Hill, NC 27517, fax (919) 246-1056, e-mail jcampbell@ncbop.org. The North Carolina Board of Pharmacy is interested in all comments pertaining to the proposed rule. All persons interested and potentially affected by the proposal are strongly encouraged to read this entire notice and make comments on the proposed rule.*

Comments may be submitted to: *Jay Campbell, 6015 Farrington Road, Suite 201, Chapel Hill, NC 27517, fax (919) 246-1056, email jcampbell@ncbop.org*

Comment period ends: *December 14, 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 (\geq \$3,000,000)**
- ☒ **None**

SECTION .2500 - MISCELLANEOUS PROVISIONS

21 NCAC 46 .2507 ADMINISTRATION OF VACCINES BY PHARMACISTS

(a) Purpose. The purpose of this Rule is to provide standards for pharmacists engaged in the administration of ~~influenza and~~ influenza, pneumococcal and zoster vaccines as authorized in G.S. 90-85.3(r) of the North Carolina Pharmacy Practice Act.

(b) Definitions. The following words and terms, when used in this Rule, shall have the following meanings, unless the context indicates otherwise.

- (1) "ACPE" means Accreditation Council for Pharmacy Education.
- (2) "Administer" means the direct application of a drug to the body of a patient by injection, inhalation, ingestion, or other means by:
 - (A) a pharmacist, an authorized agent under his/her supervision, or other person authorized by law; or
 - (B) the patient at the direction of a physician or pharmacist.
- (3) "Antibody" means a protein in the blood that is produced in response to stimulation by a specific antigen. Antibodies help destroy the antigen that produced them. Antibodies against an antigen usually equate to immunity to that antigen.
- (4) "Antigen" means a substance recognized by the body as being foreign; it results in the production of specific antibodies directed against it.

- (5) "Board" means the North Carolina Board of Pharmacy.
 - (6) "Confidential record" means any health-related record that contains information that identifies an individual and that is maintained by a pharmacy or pharmacist such as a patient medication record, prescription drug order, or medication order.
 - (7) "Immunization" means the act of inducing antibody formation, thus leading to immunity.
 - (8) "Medical Practice Act" means G.S. 90-1, et seq.
 - (9) "Physician" means a currently licensed M.D. or D.O. with the North Carolina Medical Board who is responsible for the on-going, continuous supervision of the pharmacist pursuant to written protocols between the pharmacist and the physician.
 - (10) "Vaccination" means the act of administering any antigen in order to induce immunity; is not synonymous with immunization since vaccination does not imply success.
 - (11) "Vaccine" means a specially prepared antigen, which upon administration to a person may result in immunity.
 - (12) Written Protocol—A physician's written order, standing medical order, or other order or protocol. A written protocol must be prepared, signed and dated by the physician and pharmacist and contain the following:
 - (A) the name of the individual physician authorized to prescribe drugs and responsible for authorizing the written protocol;
 - (B) the name of the individual pharmacist authorized to administer vaccines;
 - (C) the immunizations or vaccinations that may be administered by the pharmacist;
 - (D) procedures to follow, including any drugs required by the pharmacist for treatment of the patient, in the event of an emergency or severe adverse reaction following vaccine administration;
 - (E) the reporting requirements by the pharmacist to the physician issuing the written protocol, including content and time frame;
 - (F) locations at which the pharmacist may administer immunizations or vaccinations; and
 - (G) the requirement for annual review of the protocols by the physician and pharmacist.
- (c) Policies and Procedures.
- (1) Pharmacists must follow a written protocol as specified in Subparagraph (b)(12) of this Rule for administration of ~~influenza and~~ influenza, pneumococcal and zoster vaccines and the treatment of severe adverse events following administration.
 - (2) The pharmacist administering vaccines must maintain written policies and procedures for handling and disposal of used or contaminated equipment and supplies.
 - (3) The pharmacist or pharmacist's agent must give the appropriate, most current vaccine information regarding the purpose, risks, benefits, and contraindications of the vaccine to the patient or legal representative with each dose of vaccine. The pharmacist must ensure that the patient or legal representative is available and has read, or has had read to him or her, the information provided and has had his or her questions answered prior to administering the vaccine.
 - (4) The pharmacist must report adverse events to the primary care provider as identified by the patient.
 - (5) The pharmacist shall not administer vaccines to patients under 18 years of age.
 - (6) The pharmacist shall not administer the pneumococcal or zoster vaccines~~vaccine~~ to a patient unless the pharmacist first consults with the patient's primary care provider. The pharmacist shall document in the patient's profile the primary care provider's order to administer the pneumococcal or zoster vaccines. In the event the patient does not have a primary care provider, the pharmacist shall not administer the pneumococcal or zoster vaccines~~vaccine~~ to the patient.
 - (7) The pharmacist shall report all vaccines administered to the patient's primary care provider and report all vaccines administered to all entities as required by law, including any State registries which may be implemented in the future.
- (d) Pharmacist requirements. Pharmacists who enter into a written protocol with a physician to administer vaccines shall:
- (1) hold a current provider level cardiopulmonary resuscitation (CPR) certification issued by the American Heart Association or the American Red Cross or equivalent;
 - (2) successfully complete a certificate program in the administration of vaccines accredited by the Centers for Disease Control, the ACPE or a similar health authority or professional body approved by the Board;
 - (3) maintain documentation of:
 - (A) completion of the initial course specified in Subparagraph (2) of this Paragraph;
 - (B) three hours of continuing education every two years beginning January 1, 2006, which are designed to maintain

- (C) competency in the disease states, drugs, and administration of vaccines; current certification specified in Subparagraph (1) of this Paragraph;
- (D) original written physician protocol;
- (E) annual review and revision of original written protocol with physician;
- (F) any problems or complications reported; and
- (G) items specified in Paragraph (g) of this Rule.

(e) Supervising Physician responsibilities. Pharmacists who administer vaccines shall enter into a written protocol with a supervising physician who agrees to meet the following requirements:

- (1) be responsible for the formulation or approval and periodic review of the physician's order, standing medical order, standing delegation order, or other order or written protocol and periodically review the order or protocol and the services provided to a patient under the order or protocol;
- (2) be accessible to the pharmacist administering the vaccines or be available through direct telecommunication for consultation, assistance, direction, and provide back-up coverage;
- (3) review written protocol with pharmacist at least annually and revise if necessary; and
- (4) receive a periodic status report on the patient, including any problem or complication encountered.

(f) Drugs. The following requirements pertain to drugs administered by a pharmacist:

- (1) Drugs administered by a pharmacist under the provisions of this Rule shall be in the legal possession of:
 - (A) a pharmacy, which shall be the pharmacy responsible for drug accountability, including the maintenance of records of administration of the immunization or vaccination; or
 - (B) a physician, who shall be responsible for drug accountability, including the maintenance of records of administration of the immunization or vaccination;
- (2) Drugs shall be transported and stored at the proper temperatures indicated for each drug;

- (3) Pharmacists while engaged in the administration of vaccines under written protocol, may have in their custody and control the vaccines identified in the written protocol and any other drugs listed in the written protocol to treat adverse reactions; and
- (4) After administering vaccines at a location other than a pharmacy, the pharmacist shall return all unused prescription medications to the pharmacy or physician responsible for the drugs.

(g) Record Keeping and Reporting.

- (1) A pharmacist who administers any vaccine shall maintain the following information, readily retrievable, in the pharmacy records regarding each administration:
 - (A) The name, address, and date of birth of the patient;
 - (B) The date of the administration;
 - (C) The administration site of injection (e.g., right arm, left leg, right upper arm);
 - (D) Route of administration of the vaccine;
 - (E) The name, manufacturer, lot number, and expiration date of the vaccine;
 - (F) Dose administered;
 - (G) The name and address of the patient's primary health care provider, as identified by the patient; and
 - (H) The name or identifiable initials of the administering pharmacist.
- (2) A pharmacist who administers vaccines shall document annual review with physician of written protocol in the records of the pharmacy that is in possession of the vaccines administered.

(h) Confidentiality.

- (1) The pharmacist shall comply with the privacy provisions of the federal Health Insurance Portability and Accountability Act of 1996 and any rules adopted pursuant to this act.
- (2) The pharmacist shall comply with any other confidentiality provisions of federal or state laws.
- (3) Violations of this Rule by a pharmacist shall constitute grounds by the Board to initiate disciplinary action against the pharmacist.

Authority G.S. 90-85.3; 90-85.6.

RULES REVIEW COMMISSION

This Section contains information for the meeting of the Rules Review Commission on Thursday September 20 & October 18, 2007, 10:00 a.m. at 1307 Glenwood Avenue, Assembly Room, Raleigh, NC. Anyone wishing to submit written comment on any rule before the Commission should submit those comments to the RRC staff, the agency, and the individual Commissioners. Specific instructions and addresses may be obtained from the Rules Review Commission at 919-733-2721. Anyone wishing to address the Commission should notify the RRC staff and the agency at least 24 hours prior to the meeting.

RULES REVIEW COMMISSION MEMBERS

Appointed by Senate

Jim R. Funderburke - 1st Vice Chair
David Twiddy - 2nd Vice Chair
Keith O. Gregory
Jerry R. Crisp
Jeffrey P. Gray

Appointed by House

Jennie J. Hayman - Chairman
John B. Lewis
Mary Beach Shuping
Clarence E. Horton, Jr.
Daniel F. McLawhorn

RULES REVIEW COMMISSION MEETING DATES

October 18, 2007 November 15, 2007
December 20, 2007 January 17, 2008

RULES REVIEW COMMISSION

September 20, 2007

MINUTES

The Rules Review Commission met on Thursday, September 20, 2007, in the Assembly Room of the Methodist Building, 1307 Glenwood Avenue, Raleigh, North Carolina. Commissioners present were: Jerry Crisp, Jim Funderburk, Jeff Gray, Keith Gregory, Clarence Horton, Dan McLawhorn, Mary Shuping.

Staff members present were: Joseph DeLuca and Bobby Bryan, Commission Counsel and Dana Vojtko, Publications Coordinator.

The following people were among those attending the meeting:

Felicia Williams	Office of Administrative Hearings
Molly Masich	Office of Administrative Hearings
Nancy Pate	Department of Environment and Natural Resources
Julie Edwards	Office of Administrative Hearings
Barry Gupton	NCDOT-Building Code Council
Jonathan Womer	Office of State Budget and Management
Mike Lopazansky	DENR/Division of Coastal Management
Karen Cochrane-Brown	NC General Assembly Staff
Kevin Leonard	Womble Carlyle Sandridge and Rice
Wallace Finlator	Attorney General's Office
Becky Garrett	Board of Recreational Therapy Licensure
Carolin Bakewell	Dental Board
Bobby D. White	Dental Board
John Hoomani	Department of Labor
Art Britt	Department of Labor
Jennifer Haigwood	Department of Labor
Clint Pinyan	Board of Pharmacy
Karen A. Blum	Department of Justice
Grant Pair	DENR/Division of Coastal Resources
Stephen G. Sherman	DHHS/Division of Public Health
Jimmy O. Miller	Cemetery Commission
J. Marion Eaddy, III	DENR/Radiation Protection Commission
Scott Geis	DENR/Division of Coastal Management

Barbara Williams	Bd of Massage and Bodywork Therapy/Bd of Occupational Therapy
Palmer Sugg	Bd of Massage and Bodywork Therapy/Bd of Occupational Therapy
Nadine Pfeiffer	DHHS/Division of Health Service Regulation
Chris Hoke	DHHS/Division of Public Health
Jeff Horton	DHHS/Division of Public Health
Sandra Good	Real Estate Commission
Tom Newsome	Office of State Budget and Management
Angela Houston	Office of State Budget and Management
John Powers	Department of Environment and Natural Resources
Delonda Alexander	Department of Environment and Natural Resources
Bayard Alcorn	Department of Environment and Natural Resources
Rose Williams	Department of Insurance
Johanna Reese	Department of Transportation
Sherry Gray	Kennedy Covington
Tom Miller	DOJ/Real Estate Commission

The Honorable Barbara Jackson from the N.C. Court of Appeals swore in the new Commissioners.

APPROVAL OF MINUTES

The meeting was called to order at 10:07 a.m. with Mr. Funderburk presiding. He reminded the Commission that all members have a duty to avoid conflicts of interest and the appearances of conflicts as required by NCGS 138A-15(e). Chairman Funderburk asked for any discussion, comments, or corrections concerning the minutes of the August 23, 2007 meeting. There were none and the minutes were approved as distributed.

FOLLOW-UP MATTERS

04 NCAC 05B .0105 – Cemetery Commission. The Commission approved the rewritten rule submitted by the agency.

15A NCAC 02S .0102 – Environmental Management Commission. The Commission approved the rewritten rule submitted by the agency.

21 NCAC 26 .0207, .0301 – Board of Landscape Architects. No rewritten rules have been submitted and no action was taken.

21 NCAC 65 .0301, .0302 – Board of Recreational Therapy Licensure. The Commission approved the rewritten rules submitted by the agency.

903.2.1.2 - Building Code Council. The Commission approved the rewritten rule submitted by the agency. The Commission has received 10 letters of objection to the rule and the rule is submitted to legislative review.

R324 – Building Code Council. The Commission had previously extended the period of review on this rule, so this was actually the first review of the rule by the Commission. The Commission heard from rule opponents as well as the agency. After a period of discussion the Commission objected to this rule based on ambiguity. It is unclear to what types of occupancies and to what types of elevators the rule is intended to apply.

LOG OF FILINGS

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

15A NCAC 07J .0703: Coastal Resources Commission - The Commission objected to this rule based on lack of statutory authority. Even if Paragraph (g) is a correct statement of law, agencies have no authority to adopt rules establishing burden of proof. Establishing who has the burden of proof is a function of the legislative and judicial branches of government.

15A NCAC 11 .0321: Radiation Protection Commission - The Commission objected to this rule due to ambiguity. In (h), it is not clear what is meant by "hospitalized for compliance with Rule .0358 of this Section." That rule deals with the release of patients from a licensee's control, not with hospitalization.

15A NCAC 11 .0322: Radiation Protection Commission - The Commission objected to this rule due to ambiguity. In (a)(1), it is not clear what would constitute "specialized" training in the diagnostic or therapeutic use (of sealed sources). It is also not clear how much experience would be considered equivalent.

15A NCAC 11 .0333: Radiation Protection Commission - The Commission objected to this rule due to ambiguity. In (2), it is not clear what is equivalent to Section 32.72 of 10 CFR Part 32.

15A NCAC 11 .0359: Radiation Protection Commission - The Commission objected to this rule due to ambiguity. In (a)(2), it is not clear what constitutes "nationally recognized standards."

15A NCAC 11 .1611: Radiation Protection Commission - The Commission objected to this rule based on lack of statutory authority. There is no authority cited for paragraph (d) of this rule which would allow the agency to impose additional restrictions without going through rulemaking.

21 NCAC 30 .0611: Board of Massage and Bodywork Therapy - The Commission objected to this rule based on lack of statutory authority. The specific qualifications that "other key administrative staff members" in (c) must possess, while not onerous, appear to be outside the rulemaking authority cited by the board. The board has broad rulemaking authority and does have specific authority to "set standards for faculty ..." as found in G.S. 90-631(a)(2). However the definition of "key administrative staff members" found in rule .0602(5) includes persons who might not be considered faculty members, such as directors of operations, admissions, and financial aid. Unless these persons are considered faculty members, then the board has exceeded its cited authority. Note that I would consider the program director or program chair and a director of education as faculty members or their equivalent and subject to the requirements in (a) and (b). If they are not normally considered part of the faculty of a school, then the board has exceeded its cited authority here as well.

21 NCAC 30 .0613: Board of Massage and Bodywork Therapy - The Commission objected to this rule based on lack of statutory authority. Since there is no authority cited to set staff qualifications for all "key administrative staff" (which is required by Rule .0611) there is no authority for (d) that requires schools to "demonstrate that each ... meets the qualifications" set in rule .0611.

21 NCAC 30 .0614: Board of Massage and Bodywork Therapy - The Commission objected to this rule based on lack of statutory authority. While the board does have broad rulemaking authority over massage and bodywork therapy schools and programs, it seems that the requirement in (b) that schools have a "written employment agreement with each staff member" exceeds the authority cited. The authority cited refers in G.S. 90-631(a)(1) - (4) to the board's authority to make rules in the following areas: "(1) basic curriculum standards, ... (2) standards for faculty and learning resources ... (3) requirements for reporting changes in instructional staff and curriculum ... [and] (4) ... the process used by the Board to approve a school." None of those pertain to how a school prefers to maintain and operate a staff. It should also be noted that staff goes beyond the faculty and includes persons who the board has no direct rulemaking authority over or the ability to set their qualifications.

21 NCAC 30 .0615: Board of Massage and Bodywork Therapy - The Commission objected to this rule based on lack of statutory authority. There is no authority cited for the provision in (c) that would apparently require a governmental agency the board has no authority over to conduct annual inspections. The inspections required are all of a type that would be performed by city, county, or state inspectors to determine compliance with various state regulations. Even though the rule is written in the form "the school shall have," the school has no ability to compel one of these state inspectors to perform such an inspection if they choose not to. Even if the inspection is otherwise required by law the school still does not have the authority or ability to compel such inspection, at least not easily. So in reality the rule is actually directed towards other governmental agencies outside the control of the board.

21 NCAC 30 .0619: Board of Massage and Bodywork Therapy - The Commission objected to this rule based on lack of statutory authority. There is no specific authority cited to require the school to maintain a certain refund policy as set out in (d). The board may have at least implied authority to require that a school maintain sound financial quality and to review the school's financial stability. But that authority would not extend to requiring that a school refund a certain amount of money under certain conditions.

COMMISSION PROCEDURES AND OTHER BUSINESS

The State Ethics Commission evaluations of the statement of economic interest filed by the new Commissioners were entered into the record for this meeting. The full text of each letter is found in the notebook for this month.

The meeting adjourned at 11:38 a.m.

The next scheduled meeting of the Commission is Thursday, October 18, 2007. The schedule currently provides for an orientation and training session for the Commissioners at 9:30 a.m. with the business portion of the meeting beginning at 1:30 or 2:00 p.m.

Respectfully,
Dana Vojtko

LIST OF APPROVED PERMANENT RULES
September 20, 2007 Meeting

CEMETERY COMMISSION

Declaratory Rulings 04 NCAC 05B .0105

CULTURAL RESOURCES, DEPARTMENT OF

Qualifications for Grants Eligibility 07 NCAC 02E .0301

STATE BUDGET AND MANAGEMENT, OFFICE OF

Purpose 09 NCAC 03M .0101

Definitions 09 NCAC 03M .0102

Office of the State Controller Responsibilities 09 NCAC 03M .0301

MEDICAL CARE COMMISSION

In-Home Aide Services 10A NCAC 13J .1107

MENTAL HEALTH, COMMISSION FOR

Waiver of Licensure Rules 10A NCAC 27G .0813

PUBLIC HEALTH, COMMISSION FOR

Determination of Financial Eligibility 10A NCAC 45A .0202

ENVIRONMENTAL MANAGEMENT COMMISSION

Definitions 15A NCAC 02S .0102

COASTAL RESOURCES COMMISSION

Staff Review of Variance Petitions 15A NCAC 07J .0702

RADIATION PROTECTION COMMISSION

Definitions 15A NCAC 11 .0104

Incorporation By Reference 15A NCAC 11 .0117

Specific Licenses: General Requirements for Human Use 15A NCAC 11 .0318

Specific Licenses: Human Use By Individual Physicians 15A NCAC 11 .0320

Records and Reports of Misadministration 15A NCAC 11 .0350

Procedures for Administrations Requiring a Written Directive 15A NCAC 11 .0356

Surveys of Radiopharmaceutical Areas for Radiation Exposu... 15A NCAC 11 .0360

Medical Use of Unsealed Radioactive Material 15A NCAC 11 .0361

Provisions for the Protection of Human Research Subjects 15A NCAC 11 .0363

Medical Events 15A NCAC 11 .0364

Report and Notification of a Dose to an Embryo/Fetus or a... 15A NCAC 11 .0365

Manual Brachytherapy 15A NCAC 11 .0702

Teletherapy 15A NCAC 11 .0703

PARKS AND RECREATION AUTHORITY

Site Control and Dedication 15A NCAC 12K .0109

DENTAL EXAMINERS, BOARD OF

General Anesthesia and Sedation Definitions 21 NCAC 16Q .0101
Credentials and Permits for Moderate Conscious Sedation, ... 21 NCAC 16Q .0301
Clinical Requirements and Equipment 21 NCAC 16Q .0302
Temporary Approval Prior to Site Inspection 21 NCAC 16Q .0303
Minimal Conscious Sedation Credentials, Evaluation and Pe... 21 NCAC 16Q .0401
Minimal Conscious Sedation Permit Requirements, Clinical ... 21 NCAC 16Q .0402
Temporary Approval Prior to Site Inspection 21 NCAC 16Q .0403
Annual Renewal Required 21 NCAC 16Q .0501

MASSAGE AND BODYWORK THERAPY, BOARD OF

Board Approval 21 NCAC 30 .0601
Definitions 21 NCAC 30 .0602
Documentation of Successful Completion 21 NCAC 30 .0603
Verification of Compliance 21 NCAC 30 .0607
School Approval Fees 21 NCAC 30 .0608
Disciplinary Sanctions; Reporting Requirements 21 NCAC 30 .0609
Authority to Operate 21 NCAC 30 .0610
Instructional Staff Qualifications 21 NCAC 30 .0612
Financial Management Systems and Economic Stability 21 NCAC 30 .0616
Student Recruitment 21 NCAC 30 .0617
Admissions 21 NCAC 30 .0618
Program Requirements 21 NCAC 30 .0620
Student Records and Academic Progress 21 NCAC 30 .0621
Educational Credential Issued; Graduates' Pass Rate on Na... 21 NCAC 30 .0622
Learning Resources 21 NCAC 30 .0623
Standards of Professional Conduct 21 NCAC 30 .0624
School Complaint Policy 21 NCAC 30 .0625
Student Compensation Prohibited 21 NCAC 30 .0626
Transfer of Credit; Advanced Placement 21 NCAC 30 .0627
Ethical Requirements in Advertising 21 NCAC 30 .0628
Student Enrollment Agreement 21 NCAC 30 .0629
School Catalog 21 NCAC 30 .0630
Board Approval Not Transferable 21 NCAC 30 .0631
Initial application for Board Approval 21 NCAC 30 .0632
Application for Board Approval of Additional Programs 21 NCAC 30 .0633
Closure of School; Termination of a Program 21 NCAC 30 .0634
School Staff Members as Students 21 NCAC 30 .0635

OCCUPATIONAL THERAPY, BOARD OF

Fees 21 NCAC 38 .0204

<u>Limited Permits</u>	21	NCAC 38	.0303
 PHARMACY, BOARD OF			
<u>Hours Records Providers Correspondence Reciprocity</u>	21	NCAC 46	.2201
 REAL ESTATE COMMISSION			
<u>Agency Agreements and Disclosure</u>	21	NCAC 58A	.0104
<u>Advertising</u>	21	NCAC 58A	.0105
<u>Broker-In-Charge</u>	21	NCAC 58A	.0110
<u>Reporting Criminal Convictions and Disciplinary Actions</u>	21	NCAC 58A	.0113
<u>Residential Property Disclosure Statement</u>	21	NCAC 58A	.0114
<u>Disclosure of Offers Prohibited</u>	21	NCAC 58A	.0115
<u>Business Entities</u>	21	NCAC 58A	.0502
<u>Reinstatement of Expired License, Revoked, Surrendered or...</u>	21	NCAC 58A	.0505
<u>Continuing Education Required of Nonresident Licensees</u>	21	NCAC 58A	.1711
<u>Administration</u>	21	NCAC 58C	.0206
<u>Bulletins</u>	21	NCAC 58C	.0208
<u>Enrollment Procedure and Contracts</u>	21	NCAC 58C	.0209
<u>Admissions Policy and Practice</u>	21	NCAC 58C	.0210
<u>Program Structuring and Admission Requirements</u>	21	NCAC 58C	.0302
<u>Course Completion Reporting</u>	21	NCAC 58C	.0309
<u>Notice of Scheduled Courses</u>	21	NCAC 58C	.0313
<u>Application and Criteria for Original Approval</u>	21	NCAC 58C	.0603
<u>Application and Criteria for Original Approval</u>	21	NCAC 58E	.0203
 RECREATIONAL THERAPY LICENSURE, BOARD OF			
<u>Minimum Level of Education and Competency for Licensed Re...</u>	21	NCAC 65	.0301
<u>Minimum Level of Education and Competency for Licensed Re...</u>	21	NCAC 65	.0302
 BUILDING CODE COUNCIL			
<u>NC Fire Code/Group A-2 Sprinklers</u>			903.2.1.2

AGENDA
RULES REVIEW COMMISSION
Thursday, October 18, 2007, 9:30 A.M.

- I. Ethics reminder by the chair as set out in G.S. 138A-15(e)
- II. Approval of the minutes from the last meeting
- III. Follow-Up Matters:
 - A. Coastal Resources Commission – 15A NCAC 07J .0703 (Bryan)
 - B. Radiation Protection Commission – 15A NCAC 11 .0321, .0322, .0333, .0359, .1611 (Bryan)
 - C. Board of Landscape Architects – 21 NCAC 26 .0207, .0301 (DeLuca)
 - D. Board of Massage and Bodywork Therapy – 21 NCAC 30 .0611, .0613, .0614, .0615,

.0619 (DeLuca)

E. Building Code Council – R324 (DeLuca)

IV Review of Log of Permanent Rule filings for RRC review filed between August 21 and September 20, 2007 (attached)

V. Review of Temporary Rules

VI. Commission Business

- Next meeting: November 15, 2007

Commission Review
Log of Permanent Rule Filings
August 21, 2007 through September 20, 2007

* Approval Recommended, ** Objection Recommended, *** Other

AGRICULTURE, BOARD OF

The rules in Chapter 9 are from the food and drug protection division.

The rules in Subchapter 09E concern feed.

Unpasteurized Milk
 Adopt/*

02 NCAC 09E .0116

ALCOHOLIC BEVERAGE CONTROL COMMISSION

The rules in Chapter 2 are from the Alcoholic Beverage Control Commission.

The rules in Subchapter 2S concern retail beer, wine, mixed beverages, brownbagging, advertising, and special permits. The rules include definitions and permit application procedures (.0100); general rules affecting retailers and brownbagging permittees (.0200); malt beverages and the wine retailer/wholesaler relationship (.0300); additional requirements for brownbagging permittees (.0400); additional requirements for mixed beverages permittees (.0500); special requirements for convention centers, community theatres, sports clubs, and nonprofit and political organizations (.0600); special occasions permits (.0700); culinary permits (.0800); wine and beer tastings (.0900); advertising (.1000); and effect of administrative action, fines, and offers in compromise (.1100).

Keg Registration Transportation Permit
 Adopt/*

04 NCAC 02S .0237

CHILD CARE COMMISSION

The rules in Chapter 9 concern child care rules and include definitions (.0100); general provisions related to licensing (.0200); procedures for obtaining a license (.0300); issuance of provisional and temporary licenses (.0400); age appropriate activities for centers (.0500); safety requirements for child care centers (.0600); health and other standards for center staff (.0700); health standards for children (.0800); nutrition standards (.0900); transportation standards (.1000); building code requirements for child care centers (.1300); space requirements (.1400); temporary care requirements (.1500); requirements for voluntary enhanced program standards (.1600); family child care home requirements (.1700); discipline (.1800); special procedures concerning abuse/neglect in child care (.1900); rulemaking and contested case procedures (.2000); religious-sponsored child care center requirements (.2100); administrative actions and civil penalties (.2200); forms (.2300); child care for mildly ill children (.2400); care for school-age children (.2500); child care for children who are medically fragile (.2600); criminal records checks (.2700); and voluntary rated licenses (.2800).

Definitions
 Amend/*

10A NCAC 09 .0102

Off Premise Activities

10A NCAC 09 .0512

Adopt/*				
<u>General Safety Requirements</u>	10A NCAC	09		.0604
Amend/**				
<u>Condition of Outdoor Learning Environment</u>	10A NCAC	09		.0605
Amend/*				
<u>In-Service Training Approval</u>	10A NCAC	09		.0708
Amend/*				
<u>Sanitary Food Service</u>	10A NCAC	09		.0805
Amend/**				
<u>Safe Procedures</u>	10A NCAC	09		.1003
Amend/*				
<u>Aquatic Activities</u>	10A NCAC	09		.1403
Amend/*				
<u>Staff Qualifications</u>	10A NCAC	09		.2510
Amend/*				
<u>Application for Permits</u>	10A NCAC	09		.2701
Amend/*				
<u>Criminal Record Check Requirements for Child Care Providers</u>	10A NCAC	09		.2702
Amend/*				
<u>Criminal Record Check Requirements for Nonlicensed Home P...</u>	10A NCAC	09		.2704
Amend/**				

PUBLIC HEALTH, COMMISSION FOR

The rules in Chapter 41 concern epidemiology health.

The rules in Subchapter 41A deal with communicable disease control and include reporting of communicable diseases (.0100); control measures for communicable diseases including special control measures (.0200-.0300); immunization (.0400); purchase and distribution of vaccine (.0500); special program/project funding (.0600); licensed nursing home services (.0700); communicable disease grants and contracts (.0800); and biological agent registry (.0900).

<u>Reportable Diseases and Conditions</u>	10A NCAC	41A		.0101
Amend/*				
<u>Method of Reporting</u>	10A NCAC	41A		.0102
Amend/*				
<u>Control Measures HIV</u>	10A NCAC	41A		.0202
Amend/*				
<u>Control Measures - Sexually Transmitted Diseases</u>	10A NCAC	41A		.0204
Amend/*				

HEALTH AND HUMAN SERVICES, DEPARTMENT OF

The rules in Subchapter 41B concern injury control including definitions (.0100); blood alcohol test regulations (.0200); breath alcohol test regulations (.0300); controlled drinking programs (.0400); and alcohol screening test devices (.0500).

<u>Definitions</u>	10A NCAC	41B		.0101
Amend/*				
<u>Log</u>	10A NCAC	41B		.0311
Repeal/*				
<u>Intoxilyzer: Model 5000</u>	10A NCAC	41B		.0320
Amend/*				
<u>Preventative Maintenance: Intoxilyzer: Model 5000</u>	10A NCAC	41B		.0321
Amend/*				
<u>Intoximeter: Model: EC/IR II</u>	10A NCAC	41B		.0322

Adopt/*

Preventative Maintenance: Intoximeter: Model EC/IR II

10A NCAC 41B .0323

Adopt/*

SOCIAL SERVICES COMMISSION

The rules in Chapter 67 concern social services procedures.

The rules in Subchapter 67A concern general administration including administration (.0100); and hearing policy (.0200).

Forms

10A NCAC 67A .0107

Amend/**

Exceptions for Notification

10A NCAC 67A .0202

Amend/*

The rules in Chapter 71 concern Adult and Family Support.

The rules in Subchapter 71R concern the social services block grant including services to be provided (.0100); administrative requirements (.0200); general conditions for provision of services (.0300); application for social services (.0400); conditions of eligibility (.0500); eligibility determination (.0600-.0700); notice to applicant, recipient, or authorized representative (.0800); and service definitions (.0900).

Social Services Block Grant Funded Services

10A NCAC 71R .0101

Amend/*

Mandated and Optional Services

10A NCAC 71R .0103

Amend/*

Fiscal Management

10A NCAC 71R .0201

Amend/*

Family Services Manual and Policy Directives

10A NCAC 71R .0302

Repeal/*

Recipient Service Records

10A NCAC 71R .0303

Amend/*

Application Requirement

10A NCAC 71R .0401

Amend/*

Opportunity to Apply

10A NCAC 71R .0402

Amend/*

Who May Apply

10A NCAC 71R .0403

Amend/*

Residency

10A NCAC 71R .0404

Amend/*

Application Documentation Requirements

10A NCAC 71R .0405

Adopt/*

Basic Eligibility Criteria

10A NCAC 71R .0501

Amend/*

Income Maintenance Status

10A NCAC 71R .0502

Amend/*

Income Eligible Status

10A NCAC 71R .0503

Amend/*

Definition of Established

10A NCAC 71R .0504

Repeal/*

Maximum Income Levels for Services

10A NCAC 71R .0505

Amend/*

Without Regard to Income Status

10A NCAC 71R .0506

Amend/*				
<u>Eligibility Determination</u>	10A NCAC	71R	.0601	
Amend/*				
<u>Basis for Establishing</u>	10A NCAC	71R	.0602	
Amend/*				
<u>Basis for Denial or Termination of Services</u>	10A NCAC	71R	.0603	
Amend/*				
<u>Redetermination of Eligibility</u>	10A NCAC	71R	.0604	
Amend/*				
<u>Documentation of Eligibility Decision</u>	10A NCAC	71R	.0605	
Adopt/*				
<u>Quarterly Review</u>	10A NCAC	71R	.0606	
Adopt/*				
<u>Methods of Eligibility Determination</u>	10A NCAC	71R	.0701	
Amend/*				
<u>Verification Method</u>	10A NCAC	71R	.0702	
Amend/*				
<u>Declaration Method</u>	10A NCAC	71R	.0703	
Amend/*				
<u>Method of Determining Need for Services</u>	10A NCAC	71R	.0704	
Amend/*				
<u>Notification Time Frames</u>	10A NCAC	71R	.0801	
Amend/*				
<u>Requirements for Prompt Provision</u>	10A NCAC	71R	.0803	
Amend/*				
<u>Foster Care Services for Children</u>	10A NCAC	71R	.0907	
Amend/*				
<u>Health Support Services</u>	10A NCAC	71R	.0908	
Amend/*				
<u>Protective Services for Children</u>	10A NCAC	71R	.0916	
Amend/*				

The rules in Subchapter 71V concern the low income energy assistance program.

<u>Benefit Levels</u>	10A NCAC	71V	.0202	
Amend/*				

PRIVATE PROTECTIVE SERVICES BOARD

The rules in Subchapter 7D cover general provisions (.0100); licenses and trainee permits (.0200); guard dog services (.0300); counterintelligence (.0400); polygraphs (.0500); psychological stress evaluators (PSE) (.0600); unarmed and armed security guards (.0700-.0800); firearms certificate (.0900); recovery funds (.1000); private investigator associates (.1100); firearms instructor trainers (.1200); and continuing education (.1300).

<u>Renewal or Reissue of Licenses and Trainee Permits</u>	12	NCAC	07D	.0203
Amend/*				
<u>Experience Requirements for A P.S.E. License</u>	12	NCAC	07D	.0601
Amend/**				
<u>Requirements for a Firearms Trainer Certificate</u>	12	NCAC	07D	.0901
Amend/*				
<u>Post-Delivery Report for Firearms Training Courses</u>	12	NCAC	07D	.0908
Amend/*				
<u>Unarmed Guard Trainer Certificate</u>	12	NCAC	07D	.0909

Amend/*

CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION

The rules in Chapter 9 are from the Criminal Justice Education and Training Standards Commission. This Commission has primary responsibility for setting statewide education, training, employment, and retention standards for criminal justice personnel (not including sheriffs).

The rules in Subchapter 9A cover the Commission organization and procedure (.0100) and enforcement of the rules (.0200).

Summary Suspension

12 NCAC 09A .0206

Amend/**

The rules in Subchapter 9B cover minimum standards for: employment (.0100); schools and training programs (.0200); criminal justice instructors (.0300); completion of training (.0400); school directors (.0500); and certification of post-secondary criminal justice education programs (.0600).

Responsibilities of the School Director

12 NCAC 09B .0202

Amend/*

Time-Distance Instructor Training Course

12 NCAC 09B .0211

Amend/*

Supplemental SMI Training

12 NCAC 09B .0215

Amend/*

Re-Certification Training for Radar Instructors

12 NCAC 09B .0218

Amend/*

Re-Certification Training for Time-Distance Instructors

12 NCAC 09B .0219

Amend/*

Re-Certification Course for Radar Operators

12 NCAC 09B .0220

Amend/*

Re-Certification Course for Radar/Time-Distance Operators

12 NCAC 09B .0221

Amend/*

Re-Certification Course for Time-Distance Operators

12 NCAC 09B .0222

Amend/*

Lidar Instructor Training Course

12 NCAC 09B .0237

Amend/*

Certification Training for Lidar Operators

12 NCAC 09B .0238

Amend/*

Re-Certification Training for Lidar Instructors

12 NCAC 09B .0239

Amend/*

Re-Certification Training Course for Lidar Operators

12 NCAC 09B .0240

Amend/*

Certification Training for Radar/Lidar Operators

12 NCAC 09B .0242

Adopt/*

Re-Certification Training Course for Radar/Lidar Operators

12 NCAC 09B .0243

Adopt/*

Certification Training for Radar/Time-Distance/Lidar Oper...

12 NCAC 09B .0244

Adopt/*

Re-Certification Training Course for Radar/Time-Distance/...

12 NCAC 09B .0245

Adopt/*

Terms and Conditions of General Instructor Certification

12 NCAC 09B .0303

Amend/*

Terms and Conditions of Specialized Instructor Certification

12 NCAC 09B .0305

Amend/*

RULES REVIEW COMMISSION

<u>Terms and Conditions - SMI Instructors</u> Amend/*	12	NCAC	09B	.0310
<u>Comprehensive Written Examination - Basic SMI Certification</u> Amend/*	12	NCAC	09B	.0408
<u>Satisfaction of Training - SMI Operators</u> Amend/*	12	NCAC	09B	.0409
<u>Satisfaction of Minimum Training - SMI Instructor</u> Amend/*	12	NCAC	09B	.0416

The rules in Subchapter 9C concern the administration of criminal justice education and training standards including responsibilities of the criminal justice standards division (.0100); forms (.0200); certification of criminal justice officers (.0300); accreditation of criminal justice schools and training courses (.0400); minimum standards for accreditation of associate of applied science degree programs incorporating basic law enforcement training (.0500); and equipment and procedures (.0600).

<u>Speed Measurement Instrument (SMI) Operators Certificatio...</u> Amend/*	12	NCAC	09C	.0308
<u>Approved Speed-Measuring Instruments</u> Amend/*	12	NCAC	09C	.0601
<u>Speed-Measuring Instrument Operating Procedures</u> Amend/*	12	NCAC	09C	.0608

ENVIRONMENTAL MANAGEMENT COMMISSION

The rules in Chapter 2 concern environmental management and are promulgated by the Environmental Management Commission or the Department of Environment and Natural Resources.

The rules in Subchapter 2B pertain to surface water standards and monitoring including procedures for assignment of water quality standards (.0100); the standards and classifications themselves (.0200); stream classifications (.0300); effluent limitations (.0400); and monitoring and reporting requirements (.0500).

<u>Little Tennessee River Basin and Savannah River Drainage ...</u> Amend/*	15A	NCAC	02B	.0303
<u>French Broad River Basin</u> Amend/*	15A	NCAC	02B	.0304
<u>Watauga River Basin</u> Amend/*	15A	NCAC	02B	.0305
<u>New River Basin</u> Amend/*	15A	NCAC	02B	.0307
<u>Yadkin-Pee Dee River Basin</u> Amend/*	15A	NCAC	02B	.0309
<u>Lumber River Basin</u> Amend/*	15A	NCAC	02B	.0310
<u>Cape Fear River Basin</u> Amend/*	15A	NCAC	02B	.0311
<u>White Oak River Basin</u> Amend/*	15A	NCAC	02B	.0312
<u>Roanoke River Basin</u> Amend/*	15A	NCAC	02B	.0313
<u>Neuse River Basin</u> Amend/*	15A	NCAC	02B	.0315
<u>Tar-Pamlico River Basin</u> Amend/*	15A	NCAC	02B	.0316
<u>Pasquotank River Basin</u> Amend/*	15A	NCAC	02B	.0317

The rules in Subchapter 2R concern the wetlands restoration program including purpose and definitions (.0100); basinwide restoration plans (.0200); compensatory mitigation (.0300); and wetlands restoration fund (.0400).

<u>Purpose</u>	15A NCAC 02R .0101
Amend/*	
<u>Purpose</u>	15A NCAC 02R .0201
Amend/*	
<u>Public Involvement, Availability</u>	15A NCAC 02R .0203
Amend/*	
<u>Wetlands Restoration Fund, Purpose</u>	15A NCAC 02R .0401
Amend/*	
<u>Schedule of Fees</u>	15A NCAC 02R .0402
Amend/*	

MARINE FISHERIES COMMISSION

The rules in Subchapter 3I are general and miscellaneous rules.

<u>Definitions</u>	15A NCAC 03I .0101
Amend/*	

The rules in Subchapter 3J concern the use of nets in general (.0100) and in specific areas (.0200); the use of pots, dredges, and other fishing devices (.0300); and fishing gear (.0400).

<u>Gill Nets, Seines, Identification, Restrictions</u>	15A NCAC 03J .0103
Amend/*	
<u>Pound Net Sets</u>	15A NCAC 03J .0107
Amend/*	
<u>Albemarle Sound/Chowan River Herring Management Areas</u>	15A NCAC 03J .0209
Amend/*	

The rules in Subchapter 3M cover harvesting of finfish including general rules (.0100); striped bass (.0200); mackerel (.0300); menhaden and Atlantic herring (.0400); and other finfish (.0500).

<u>Prohibited Trawling</u>	15A NCAC 03M .0205
Amend/*	
<u>River Herring and Shad</u>	15A NCAC 03M .0513
Amend/*	

The rules in Subchapter 3N concern fish habitat areas.

<u>Scope and Purpose</u>	15A NCAC 03N .0101
Amend/*	
<u>Nursery Areas Defined</u>	15A NCAC 03N .0102
Repeal/*	
<u>Nursery Area Boundaries</u>	15A NCAC 03N .0103
Amend/*	
<u>Anadromous Fish Spawning Area Boundaries</u>	15A NCAC 03N .0106
Adopt/*	

The rules in Subchapter 3O cover various licenses (.0100); leases and franchises (.0200); license appeal procedures (.0300); Standard Commercial Fishing License Eligibility Board (.0400); and licenses, leases and franchises (.0500).

<u>Procedures and Requirements to Obtain Permits</u>	15A NCAC 03O .0501
Amend/*	
<u>Permit Conditions Specific</u>	15A NCAC 03O .0503
Amend/**	

The rules in Subchapter 3R specify boundaries for various areas (.0100); and fishery management areas (.0200).

<u>Anadromous Fish Spawning Areas</u>	15A NCAC 03R .0115
Adopt/*	

COASTAL RESOURCES COMMISSION

The rules in Chapter 7 pertain to coastal management and are promulgated by the Division of Coastal Management or the Coastal Resources Commission.

The rules in Subchapter 7J concern procedures for handling major development permits, variance requests, appeals from minor development permit decisions and declaratory rulings. They include definitions (.0100); permit application and procedures (.0200); hearing procedures (.0300); final approval and enforcement (.0400); general permits (.0500); declaratory rulings and petitions for rulemaking (.0600); procedures for considering variance petitions (.0700); and general permit procedure (.1100).

<u>Variance Petitions</u>	15A NCAC 07J .0701
Amend/**	

WILDLIFE RESOURCES COMMISSION

The rules in Subchapter 10C cover inland fishing including jurisdictional issues involving the Marine Fisheries Commission (.0100); general rules (.0200); game fish (.0300); non-game fish (.0400); and primary nursery areas (.0500).

<u>Descriptive Boundaries</u>	15A NCAC 10C .0503
Amend/*	

The rules in Subchapter 10F cover motorboats and water safety including boat registration (.0100); safety equipment and accident reports (.0200); and local water safety regulations covering speed limits, no-wake restrictions, restrictions on swimming and other activities, and placement of markers for designated counties or municipalities (.0300).

<u>Cherokee County</u>	15A NCAC 10F .0359
Amend/*	
<u>Transylvania County</u>	15A NCAC 10F .0373
Adopt/*	

PUBLIC HEALTH, COMMISSION FOR

The rules in Chapter 13 cover hazardous and solid waste management, inactive hazardous substances, and waste disposal sites.

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

<u>STDS Applicable to Generators of Hazardous Waste-Part 262</u>	15A NCAC 13A .0107
Amend/*	

The rules in Chapter 18 cover environmental aspects of health such as sanitation (18A), mosquito control (18B), water supplies (18C), and water treatment facility operators (18D).

The rules in Subchapter 18A deal with sanitation and include handling, packing and shipping of crustacean meat (.0100) and shellfish (.0300 and .0400); operation of shellstock plants and reshippers (.0500); shucking and packing plants (.0600); depuration

mechanical purification facilities (.0700); wet storage of shellstock (.0800); shellfish growing waters (.0900); summer camps (.1000); grade A milk (.1200); hospitals, nursing homes, rest homes, etc. (.1300); mass gatherings (.1400); local confinement facilities (.1500); residential care facilities (.1600); protection of water supplies (.1700); lodging places (.1800); sewage treatment and disposal systems (.1900); migrant housing (.2100); bed and breakfast homes (.2200); delegation of authority to enforce rules (.2300); public, private and religious schools (.2400); public swimming pools (.2500); restaurants, meat markets, and other food handling establishments (.2600); child day care facilities (.2800); restaurant and lodging fee collection program (.2900); bed and breakfast inns (.3000); lead poisoning prevention (.3100); tattooing (.3200); adult day service facilities (.3300); primitive camps (.3500); and rules governing the sanitation of resident camps (.3600).

<u>Refrigeration Thawing and Preparation of Food</u>	15A NCAC	18A	.2609
Amend/*			
<u>Storage and Handling of Utensils and Equipment</u>	15A NCAC	18A	.2620
Amend/*			
<u>General Requirements for Pushcarts and Mobile Food Units</u>	15A NCAC	18A	.2638
Amend/*			

SECRETARY OF STATE, DEPARTMENT OF

The rules in Chapter 12 concern lobbying including general provisions (.0100); forms completion (.0200); submission, review, amendment, and correction of documents (.0300); fees (.0400); economic information confidentiality protection (.0500); registration requirements and ending of lobbyist-principal relationship (.0600); disclosure of lobbyist and principal identity (.0700); lobbyist reporting (.0800); reporting by principal (.0900); solicitors and the solicitation of others (.1000); liaison personnel (.1100); confidentiality and records (.1200); preservation of records by lobbyists, principals, solicitors and liaisons (.1300); and department provision of lists to designated individuals (.1400).

<u>Scope</u>	18	NCAC	12	.0101
Adopt/*				
<u>Calculation of Time Periods</u>	18	NCAC	12	.0102
Adopt/*				
<u>Calculation of Quarterly Reporting Period</u>	18	NCAC	12	.0103
Adopt/*				
<u>Calculation of Monthly Reporting Period</u>	18	NCAC	12	.0104
Adopt/*				
<u>Waiver</u>	18	NCAC	12	.0105
Adopt/*				
<u>Factors for Waivers</u>	18	NCAC	12	.0106
Adopt/*				
<u>Mandatory Use of Departmental Forms</u>	18	NCAC	12	.0201
Adopt/*				
<u>Filing May Be Electronic or Paper</u>	18	NCAC	12	.0202
Adopt/*				
<u>Document Completion Requirements</u>	18	NCAC	12	.0203
Adopt/*				
<u>Signature Required</u>	18	NCAC	12	.0204
Adopt/*				
<u>Legal Name of Person or Entity Required</u>	18	NCAC	12	.0205
Adopt/*				
<u>Document Signature Required</u>	18	NCAC	12	.0206
Adopt/*				
<u>Signature for Entity</u>	18	NCAC	12	.0207
Adopt/*				
<u>Electronic Signature</u>	18	NCAC	12	.0208
Adopt/*				

<u>For Preparer Signature Required</u> Adopt/*	18	NCAC	12	.0209
<u>When Form Preparer Signature Not Required</u> Adopt/*	18	NCAC	12	.0210
<u>Signing Pursuant to Power of Attorney</u> Adopt/*	18	NCAC	12	.0211
<u>Signing and Executing a Form Under Oath</u> Adopt/*	18	NCAC	12	.0212
<u>Signature Verifies Information is True</u> Adopt/*	18	NCAC	12	.0213
<u>Signature and Execution Under Oath of an Electronically Fi...</u> Adopt/*	18	NCAC	12	.0214
<u>Contents of Affidavit for Electronic Filing Without Elect...</u> Adopt/*	18	NCAC	12	.0215
<u>Consequence of Failure to Deliver Affidavit</u> Adopt/*	18	NCAC	12	.0216
<u>General Submission Locations and Methods</u> Adopt/*	18	NCAC	12	.0301
<u>Filing by United States Mail</u> Adopt/*	18	NCAC	12	.0302
<u>Filing by Hand-Delivery or by Designated Delivery Service</u> Adopt/*	18	NCAC	12	.0303
<u>Filing by Electronic Mail</u> Adopt/*	18	NCAC	12	.0304
<u>Filing Electronically on the Department's Website</u> Adopt/*	18	NCAC	12	.0305
<u>No Filing by Facsimile if Fee Required</u> Adopt/*	18	NCAC	12	.0306
<u>Circumstances in Which Filing by Fax Permitted</u> Adopt/*	18	NCAC	12	.0307
<u>Submission of Original After Filing by Fax</u> Adopt/*	18	NCAC	12	.0308
<u>Rejection of Incomplete Forms</u> Adopt/*	18	NCAC	12	.0309
<u>Document Submission Date and Time</u> Adopt/*	18	NCAC	12	.0310
<u>Document Received</u> Adopt/*	18	NCAC	12	.0311
<u>Proof of Submission</u> Adopt/*	18	NCAC	12	.0312
<u>Grounds for Department Rejection of Submitted Document</u> Adopt/*	18	NCAC	12	.0313
<u>Principal's Authorization Statement Omissions Requiring ...</u> Adopt/*	18	NCAC	12	.0314
<u>Omissions From Report Under Oath Requiring Correction Wit...</u> Adopt/*	18	NCAC	12	.0315
<u>Omissions Requiring Correction Within Seven Days</u> Adopt/*	18	NCAC	12	.0316
<u>Effective Date of Complete Submission or Document</u> Adopt/*	18	NCAC	12	.0317
<u>Rejected Documents</u> Adopt/*	18	NCAC	12	.0318

<u>Effective Date of Late Document</u> Adopt/*	18	NCAC	12	.0319
<u>Process for Amending a Document</u> Adopt/*	18	NCAC	12	.0320
<u>Notarization of Amended Quarterly Document</u> Adopt/*	18	NCAC	12	.0321
<u>Effect of Amended Document</u> Adopt/*	18	NCAC	12	.0322
<u>General</u> Adopt/*	18	NCAC	12	.0401
<u>Form of Payment</u> Adopt/*	18	NCAC	12	.0402
<u>Return of Fee Instrument by Issuing Institution</u> Adopt/*	18	NCAC	12	.0403
<u>Limitation on Fee Reduction or Waiver</u> Adopt/*	18	NCAC	12	.0404
<u>Non-Profits to Which No Fee Reduction or Waiver Shall be ...</u> Adopt/*	18	NCAC	12	.0405
<u>Non-Profit Fee Reduction Procedure</u> Adopt/*	18	NCAC	12	.0406
<u>Submission of Reduced Fee</u> Adopt/*	18	NCAC	12	.0407
<u>Submission of Documentation Supporting Fee Reduction Request</u> Adopt/*	18	NCAC	12	.0408
<u>Fee Reduction Applies to Both Lobbyist and Principal</u> Adopt/*	18	NCAC	12	.0409
<u>Payment of Remainder of Fee if Reduction Denied</u> Adopt/*	18	NCAC	12	.0410
<u>Consequences of Failure to Pay Remainder of Fee</u> Adopt/*	18	NCAC	12	.0411
<u>Nonprofit Fee Waiver Procedure</u> Adopt/*	18	NCAC	12	.0412
<u>Submission of Fee With Request for Waiver</u> Adopt/*	18	NCAC	12	.0413
<u>Refund of Fee if Request for Waiver Granted</u> Adopt/*	18	NCAC	12	.0414
<u>Submission of Documentation Supporting Fee Waiver Request</u> Adopt/*	18	NCAC	12	.0415
<u>Fee Waiver Applies to Both Lobbyist and Principal</u> Adopt/*	18	NCAC	12	.0416
<u>General Proof of Nonprofit Status</u> Adopt/*	18	NCAC	12	.0417
<u>Officer Authorized to Demonstrate Non-Profit Status of No...</u> Adopt/*	18	NCAC	12	.0418
<u>Officer Authorized to Sign on Behalf of Nonprofit Corpora...</u> Adopt/*	18	NCAC	12	.0419
<u>Officer Authorized to Sign on Behalf of Unincorporated As...</u> Adopt/*	18	NCAC	12	.0420
<u>Submission of Federal Tax-Exempt Determination Letter</u> Adopt/*	18	NCAC	12	.0421
<u>Documents to be Submitted by Nonprofit Principals Without...</u> Adopt/*	18	NCAC	12	.0422

<u>Additional Information for Fee Reduction for Nonprofit Wi...</u> Adopt/*	18	NCAC	12	.0423
<u>Additional Information for Fee Reduction for Nonprofit Wi...</u> Adopt/*	18	NCAC	12	.0424
<u>Contents for Fee Reduction Request for Nonprofit Without ...</u> Adopt/*	18	NCAC	12	.0425
<u>Additional Information for Fee Waiver</u> Adopt/*	18	NCAC	12	.0426
<u>Request for Protection of Confidentiality</u> Adopt/*	18	NCAC	12	.0501
<u>Timing of Submission of Request for Protection of Confide...</u> Adopt/*	18	NCAC	12	.0502
<u>Consequences of Failure to Request Protection of Confiden...</u> Adopt/*	18	NCAC	12	.0503
<u>One Designation Form per Activity</u> Adopt/*	18	NCAC	12	.0504
<u>Economic Information Protection Forms Shall be Used to Re...</u> Adopt/*	18	NCAC	12	.0505
<u>Principal's Economic Information Protection Authorizatio...</u> Adopt/*	18	NCAC	12	.0506
<u>Principal's Economic Information Protection Registration ...</u> Adopt/*	18	NCAC	12	.0507
<u>Principal's Economic Information Protection Monthly or Qu...</u> Adopt/*	18	NCAC	12	.0508
<u>Lobbyist's Economic Information Protection Monthly or Qua...</u> Adopt/*	18	NCAC	12	.0509
<u>Principal's Authorization for Lobbying Unrelated to Econo...</u> Adopt/*	18	NCAC	12	.0510
<u>Lobbyist Registration for Lobbying Unrelated to Economic ...</u> Adopt/*	18	NCAC	12	.0511
<u>Principal's Documents Unrelated to Economic Information P...</u> Adopt/*	18	NCAC	12	.0512
<u>Lobbyist's Documents Unrelated to Economic Information Pr...</u> Adopt/*	18	NCAC	12	.0513
<u>Rejection of Non-Economic Designation Information - General</u> Adopt/*	18	NCAC	12	.0514
<u>Correction Within Seven Business Days of Economic Informa...</u> Adopt/*	18	NCAC	12	.0515
<u>Method of Correcting Document Containing Information Not ...</u> Adopt/*	18	NCAC	12	.0516
<u>Rejection of Uncorrected Document Containing Information...</u> Adopt/*	18	NCAC	12	.0517
<u>Contents of Economic Information Protection Request</u> Adopt/*	18	NCAC	12	.0518
<u>Description of the Economic Development Activity Entitled...</u> Adopt/*	18	NCAC	12	.0519
<u>Identification of Authorized Individual</u> Adopt/*	18	NCAC	12	.0520
<u>Designation of Authorized State or Local Government Emplo...</u> Adopt/*	18	NCAC	12	.0521
<u>Confirmation Signature</u> Adopt/*	18	NCAC	12	.0522

<u>Verification by Government Official Signature</u> Adopt/*	18	NCAC	12	.0523
<u>Verification by Authorized Official Signature</u> Adopt/*	18	NCAC	12	.0524
<u>Department Action Upon Receipt of Release</u> Adopt/*	18	NCAC	12	.0525
<u>Department Action Upon Receipt of Information Indicating ...</u> Adopt/*	18	NCAC	12	.0526
<u>Principal and Authorized Government Official Response</u> Adopt/*	18	NCAC	12	.0527
<u>Confirmation of Announcement by Principal and Authorized ...</u> Adopt/*	18	NCAC	12	.0528
<u>Confirmation that Release is Authorized</u> Adopt/*	18	NCAC	12	.0529
<u>Conditions When Response to Department Contact Results in...</u> Adopt/*	18	NCAC	12	.0530
<u>Conditions When Response to Department Contact Results in...</u> Adopt/*	18	NCAC	12	.0531
<u>Conditions when Response to Department Contact May Result...</u> Adopt/*	18	NCAC	12	.0532
<u>Secretary of Commerce Designation by Principal</u> Adopt/*	18	NCAC	12	.0533
<u>Authorized Local Government Official May Delegate Designa...</u> Adopt/*	18	NCAC	12	.0534
<u>Secretary of Commerce Default Designation</u> Adopt/*	18	NCAC	12	.0535
<u>Continuation of Economic Information Protection from Prem...</u> Adopt/*	18	NCAC	12	.0536
<u>Release of Information to the Department of Commerce</u> Adopt/*	18	NCAC	12	.0537
<u>Certification Process Involving the Department of Commerce</u> Adopt/*	18	NCAC	12	.0538
<u>Department of Commerce Certification of Status</u> Adopt/*	18	NCAC	12	.0539
<u>Continuation Shall Include Certification</u> Adopt/*	18	NCAC	12	.0540
<u>Annual Certification of Economic Protection Designation</u> Adopt/*	18	NCAC	12	.0541
<u>Extension of Recertification Without Re-registration</u> Adopt/*	18	NCAC	12	.0542
<u>Authorized Government Official can Extend Certification</u> Adopt/*	18	NCAC	12	.0543
<u>Authorized Government Official File Release Form</u> Adopt/*	18	NCAC	12	.0544
<u>Contents of Release</u> Adopt/*	18	NCAC	12	.0545
<u>Change in Information</u> Adopt/*	18	NCAC	12	.0546
<u>Calculation of Time to Determine Registration Requirements</u> Adopt/*	18	NCAC	12	.0601
<u>Reporting Changes in Matters on Which the Registrant Expec...</u> Adopt/*	18	NCAC	12	.0602

<u>End of Lobbyist and Principal Relationship</u> Adopt/*	18	NCAC	12	.0603
<u>Termination of Registration</u> Adopt/*	18	NCAC	12	.0604
<u>Resignation</u> Adopt/*	18	NCAC	12	.0605
<u>Ending of Lobbyist-Principal Relationship Does Not End Re...</u> Adopt/*	18	NCAC	12	.0606
<u>Lobbyist Disclosure of Identity of Principal to Department</u> Adopt/*	18	NCAC	12	.0701
<u>Lobbyist Shall not Identify Intermediary Entity at Principal</u> Adopt/*	18	NCAC	12	.0702
<u>Consequences of Failure to Disclose the Principal in Fact...</u> Adopt/*	18	NCAC	12	.0703
<u>Principal Concealment of Identity</u> Adopt/*	18	NCAC	12	.0704
<u>Lobbyist Identification</u> Adopt/*	18	NCAC	12	.0705
<u>Disclosure to a Designated Individual of the Identity of ...</u> Adopt/*	18	NCAC	12	.0706
<u>Disclosure to a Designated Individual of the Identity of ...</u> Adopt/*	18	NCAC	12	.0707
<u>Contents of Disclosure of the Identity of the Specific Pr...</u> Adopt/*	18	NCAC	12	.0708
<u>Quarterly Report May Include Last Month of Quarter</u> Adopt/*	18	NCAC	12	.0801
<u>Quarterly Report may Incorporate Separately Filed Monthly...</u> Adopt/*	18	NCAC	12	.0802
<u>Quarterly Report Verification of Monthly Report Information</u> Adopt/*	18	NCAC	12	.0803
<u>Invitation not Submitted</u> Adopt/*	18	NCAC	12	.0804
<u>Reporting of Contracts in the Normal Conduct of Daily Life</u> Adopt/*	18	NCAC	12	.0805
<u>Method of Reporting Compensation</u> Adopt/*	18	NCAC	12	.0901
<u>Compensation</u> Adopt/*	18	NCAC	12	.0902
<u>Separate Lobbyist Compensation Reports may be Included on...</u> Adopt/*	18	NCAC	12	.0903
<u>Lobbyist Compensation shall be Separately Reported</u> Adopt/*	18	NCAC	12	.0904
<u>Quarterly Report May Include Last Month of Quarter Report</u> Adopt/*	18	NCAC	12	.0905
<u>Quarterly Report May Incorporate Separately Filed Monthly...</u> Adopt/*	18	NCAC	12	.0906
<u>Quarterly Report Verification of Monthly Report Information</u> Adopt/*	18	NCAC	12	.0907
<u>Attendee List Submission Not Required</u> Adopt/*	18	NCAC	12	.0908
<u>Invitations not Submitted</u> Adopt/*	18	NCAC	12	.0909

<u>Reporting of Contracts in the Normal Conduct of Daily Life</u> Adopt/*	18	NCAC	12	.0910
<u>Solicitor Registration</u> Adopt/*	18	NCAC	12	.1001
<u>When Registration with the Department is Required</u> Adopt/*	18	NCAC	12	.1002
<u>Calculation of Production Costs in Order to Determine Reg...</u> Adopt/*	18	NCAC	12	.1003
<u>Calculation of Transmission Costs in Order to Determine R...</u> Adopt/*	18	NCAC	12	.1004
<u>Calculation of Event Costs in Order to Determine Registra...</u> Adopt/*	18	NCAC	12	.1005
<u>Reporting for Remainder of Year of Registration as Solicitor</u> Adopt/*	18	NCAC	12	.1006
<u>Report Contents</u> Adopt/*	18	NCAC	12	.1007
<u>Contracts Reportable</u> Adopt/*	18	NCAC	12	.1008
<u>Reporting</u> Adopt/*	18	NCAC	12	.1101
<u>Reporting of Confidential Information</u> Adopt/*	18	NCAC	12	.1201
<u>General Requirements Relating to Protective Order Payees ...</u> Adopt/*	18	NCAC	12	.1202
<u>Confidentiality Request Contents</u> Adopt/*	18	NCAC	12	.1203
<u>Disclosure of Confidential Information for which There is...</u> Adopt/*	18	NCAC	12	.1204
<u>Confidentiality of Investigative Records</u> Adopt/*	18	NCAC	12	.1205
<u>General Requirements</u> Adopt/*	18	NCAC	12	.1301
<u>Record Retention Requirement if Investigation Open</u> Adopt/*	18	NCAC	12	.1302
<u>Three Year Time Period for Maintenance of Records Related...</u> Adopt/*	18	NCAC	12	.1303
<u>Requirement for Original or Equivalent</u> Adopt/*	18	NCAC	12	.1304
<u>Lobbyist's Compensation Records</u> Adopt/*	18	NCAC	12	.1305
<u>Principal's Records of Lobbyist's Compensation</u> Adopt/*	18	NCAC	12	.1306
<u>Maintenance of Method of Principal's Records Related to E...</u> Adopt/*	18	NCAC	12	.1307
<u>Lobbyist's Maintenance of Records Related to Expenditure ...</u> Adopt/*	18	NCAC	12	.1308
<u>Solicitor's Maintenance of Records Related to Expenditure ...</u> Adopt/*	18	NCAC	12	.1309
<u>Principal's Maintenance of Records Reallocation of Lobbyi...</u> Adopt/*	18	NCAC	12	.1310
<u>Lobbyist's Maintenance of Records Reallocation of Lobbyin...</u> Adopt/*	18	NCAC	12	.1311

<u>Liaison's Records</u>	18	NCAC	12	.1312
Adopt/*				
<u>Furnishing Lobbyist Lists to Designated Individuals for W...</u>	18	NCAC	12	.1401
Adopt/*				
<u>Furnishing of Lobbyist List to Designated Individuals by ...</u>	18	NCAC	12	.1402
Adopt/*				
<u>Rejection of Electronically Furnished List</u>	18	NCAC	12	.1403
Adopt/*				

The rules in Chapter 13 concern the state franchise for cable television service including general requirements (.0100); filing (.0200); fees (.0300); maps and descriptions of service areas (.0400); notice of franchise (.0500); notice of commencement of service (.0600); notice of withdrawal (.0700); annual service report (.0800); and records (.0900).

<u>Scope</u>	18	NCAC	13	.0101
Adopt/*				
<u>Definitions</u>	18	NCAC	13	.0102
Adopt/*				
<u>Time</u>	18	NCAC	13	.0103
Adopt/*				
<u>Filing Locations and Methods</u>	18	NCAC	13	.0201
Adopt/*				
<u>Filing Using Department's Forms</u>	18	NCAC	13	.0202
Adopt/*				
<u>Form Completion Requirements</u>	18	NCAC	13	.0203
Adopt/*				
<u>Filing Submission Date and Time</u>	18	NCAC	13	.0204
Adopt/*				
<u>Rejection of Incomplete Filing</u>	18	NCAC	13	.0205
Adopt/*				
<u>Department Refusal to File</u>	18	NCAC	13	.0206
Adopt/*				
<u>Expedited Review of Filing</u>	18	NCAC	13	.0207
Adopt/*				
<u>Effective Date of Filing</u>	18	NCAC	13	.0208
Adopt/*				
<u>Department's Delivery of Copy to Filer</u>	18	NCAC	13	.0209
Adopt/*				
<u>General Requirements</u>	18	NCAC	13	.0301
Adopt/*				
<u>Purpose</u>	18	NCAC	13	.0401
Adopt/*				
<u>Content Sufficiency Requirements for Submitted Maps</u>	18	NCAC	13	.0402
Adopt/*				
<u>Descriptions of Service Areas</u>	18	NCAC	13	.0403
Adopt/*				
<u>Required Map Components</u>	18	NCAC	13	.0405
Adopt/*				
<u>General Requirements for Map</u>	18	NCAC	13	.0406
Adopt/**				
<u>General Requirements for Service Area</u>	18	NCAC	13	.0407
Adopt/*				
<u>Map Boundary Detail Requirements for Service Areas Coveri...</u>	18	NCAC	13	.0408

Adopt/*				
<u>Map Boundary Detail Requirements for Service Areas Coveri...</u>	18	NCAC	13	.0409
Adopt/*				
<u>Increased Map Boundary Detail Requirements for Service Ar...</u>	18	NCAC	13	.0410
Adopt/*				
<u>Map Sources</u>	18	NCAC	13	.0411
Adopt/*				
<u>Date Last Updated Required for Certain Maps</u>	18	NCAC	13	.0412
Adopt/**				
<u>Additional Map Information Permitted</u>	18	NCAC	13	.0413
Adopt/*				
<u>Filing of Maps</u>	18	NCAC	13	.0414
Adopt/*				
<u>Electronic Map Format Requirements</u>	18	NCAC	13	.0415
Adopt/*				
<u>Electronic Map Media Requirements</u>	18	NCAC	13	.0416
Adopt/*				
<u>Amendments to Service Areas Prohibited</u>	18	NCAC	13	.0417
Adopt/*				
<u>Permitted Map and Description Amendments</u>	18	NCAC	13	.0418
Adopt/*				
<u>Annual Service Report Map Submission</u>	18	NCAC	13	.0419
Adopt/*				
<u>Schedules</u>	18	NCAC	13	.0501
Adopt/*				
<u>Notice of Commencement of Service</u>	18	NCAC	13	.0601
Adopt/*				
<u>Minimum Requirements</u>	18	NCAC	13	.0701
Adopt/*				
<u>Withdrawal Notice Covers Entire Service Area</u>	18	NCAC	13	.0702
Adopt/*				
<u>One Annual Service Report Per Franchise</u>	18	NCAC	13	.0801
Adopt/*				
<u>One Annual Service Report Description and Map Information</u>	18	NCAC	13	.0802
Adopt/*				
<u>Annual Service Report Schedule</u>	18	NCAC	13	.0803
Adopt/*				
<u>Required Customer Service Information</u>	18	NCAC	13	.0804
Adopt/*				
<u>Annual Service Report Percentage of Households Passed</u>	18	NCAC	13	.0805
Adopt/*				
<u>Accessing Public Records</u>	18	NCAC	13	.0901
Adopt/*				

CHIROPRACTIC EXAMINERS, BOARD OF

The rules in Chapter 10 include organization of the Board (.0100); the practice of chiropractic (.0200); rules of unethical conduct (.0300); rule-making procedures (.0400); investigation of complaints (.0500); contested cases and hearings in contested cases (.0600-.0700); and miscellaneous provisions (.0800).

<u>Advertising and Publicity</u>	21	NCAC	10	.0302
Amend/*				

<u>Designation of Specialties</u>	21 NCAC 10 .0304
<u>Adopt/*</u>	

LOCKSMITH LICENSING BOARD

The rules in Chapter 29 include general rules (.0100); rules about examinations (.0200); licensing requirements (.0400); code of ethics (.0500); administrative law procedures (.0600); license renewal requirements (.0700); and continuing education (.0800).

<u>Special Administration</u>	21 NCAC 29 .0206
<u>Adopt/*</u>	
<u>Exceptions</u>	21 NCAC 29 .0805
<u>Amend/*</u>	

OCCUPATIONAL THERAPY, BOARD OF

The rules in Chapter 38 cover organization and general provisions (.0100); application for license (.0200); licensing (.0300); business conduct (.0400); rules (.0500); administrative hearing procedures (.0600); professional corporations (.0700); continuing competence activity (.0800); supervision, supervisory roles, and clinical responsibilities of occupational therapist and occupational therapy assistants (.0900); supervision of limited permittees (.1000); and supervision of unlicensed personnel (.1100).

<u>Limited Permit Defined</u>	21 NCAC 38 .1001
<u>Repeal/*</u>	
<u>Supervision of Limited Permittee</u>	21 NCAC 38 .1002
<u>Repeal/*</u>	
<u>Service Competency of Limited Permittee</u>	21 NCAC 38 .1003
<u>Repeal/*</u>	
<u>Signature of Limited Permittee</u>	21 NCAC 38 .1004
<u>Repeal/*</u>	
<u>Board Notification</u>	21 NCAC 38 .1005
<u>Repeal/*</u>	

APPRAISAL BOARD

The rules in Subchapter 57A cover licensing, certification and practice rules for appraisers including application procedures (.0100); licensing and certification (.0200); examination (.0300); general practice requirements (.0400); and appraisal standards (.0500).

<u>Filing and Fees</u>	21 NCAC 57A .0102
<u>Amend/*</u>	
<u>Qualifications for Trainee Registration, Appraiser Licens...</u>	21 NCAC 57A .0201
<u>Amend/*</u>	
<u>Registration, License and Certificate Renewal</u>	21 NCAC 57A .0203
<u>Amend/*</u>	
<u>Continuing Education</u>	21 NCAC 57A .0204
<u>Amend/*</u>	
<u>Replacement Registration, License and Certificate Fees</u>	21 NCAC 57A .0208
<u>Amend/*</u>	
<u>National Appraiser Registry</u>	21 NCAC 57A .0209
<u>Amend/*</u>	
<u>Temporary Practice</u>	21 NCAC 57A .0210
<u>Amend/*</u>	
<u>Nonresident Trainee Registration, Appraiser Licensure and...</u>	21 NCAC 57A .0211
<u>Amend/*</u>	
<u>Time and Place</u>	21 NCAC 57A .0301

Amend/*				
<u>Use of Titles</u>	21	NCAC	57A	.0401
Amend/*				
<u>Advertising</u>	21	NCAC	57A	.0403
Amend/*				
<u>Appraisal Reports</u>	21	NCAC	57A	.0405
Amend/*				
<u>Supervision of Trainees</u>	21	NCAC	57A	.0407
Amend/*				
<u>Appraisal Standards</u>	21	NCAC	57A	.0501
Amend/*				

The rules in Subchapter 57B cover real estate appraisal education including the courses required for licensure or certification (.0100); course sponsor standards for pre-licensing or pre-certification courses (.0200); pre-licensing and pre-certification course standards (.0300); course sponsor fees (.0400); fees for private real estate appraisal education schools (.0500); and continuing education course standards (.0600).

<u>Registered Trainee and Licensed Residential Real Estate A...</u>	21	NCAC	57B	.0101
Amend/*				
<u>Certified Residential Real Estate Appraiser Course Requir...</u>	21	NCAC	57B	.0102
Amend/*				
<u>Certified General Real Estate Appraiser Course Requirements</u>	21	NCAC	57B	.0103
Amend/*				
<u>Facilities and Equipment</u>	21	NCAC	57B	.0204
Amend/*				
<u>Certificate of Course Completion</u>	21	NCAC	57B	.0209
Amend/*				
<u>Course Records</u>	21	NCAC	57B	.0210
Amend/*				
<u>Course Content</u>	21	NCAC	57B	.0302
Amend/*				
<u>Course Scheduling</u>	21	NCAC	57B	.0304
Amend/*				
<u>Instructor Requirements</u>	21	NCAC	57B	.0306
Amend/*				
<u>Criteria for Course Recognition</u>	21	NCAC	57B	.0307
Amend/*				
<u>Applicability</u>	21	NCAC	57B	.0401
Amend/*				
<u>Original Course Approval Fee</u>	21	NCAC	57B	.0402
Amend/*				
<u>Fee for Renewal of Course Approval</u>	21	NCAC	57B	.0403
Amend/*				
<u>Applicability</u>	21	NCAC	57B	.0501
Repeal/*				
<u>Original Course Approval Fee</u>	21	NCAC	57B	.0502
Repeal/*				
<u>Fee for Renewal of Course Approval</u>	21	NCAC	57B	.0503
Repeal/*				
<u>Application and Fee</u>	21	NCAC	57B	.0602
Amend/*				

<u>Criteria for Course Approval</u> Amend/*	21	NCAC	57B	.0603
<u>Course Operational Requirements</u> Amend/*	21	NCAC	57B	.0606
<u>Certification of Course Completion</u> Amend/*	21	NCAC	57B	.0607
<u>Sponsor Reporting of Continuing Education Credit</u> Amend/*	21	NCAC	57B	.0608
<u>Renewal of Approval and Fees</u> Amend/*	21	NCAC	57B	.0611
<u>Withdrawal or Denial of Approval</u> Amend/*	21	NCAC	57B	.0612

ADMINISTRATIVE HEARINGS, OFFICE OF

The rules in Chapter 2 are from the rules division and cover publication of The North Carolina Administrative Code (NCAC) and the North Carolina Register (NCR). The rules in Subchapter 2C are the submission procedures for rules and other documents to be published in the North Carolina Register and the North Carolina Administrative Code including general provisions (.0100); codification of rules (.0200); the Register (.0300); the Administrative Code (.0400); temporary rules (.0500); emergency rules (.0600); and publication on the OAH website (.0700).

<u>Availability of the North Carolina Register</u> Amend/*	26	NCAC	02C	.0303
<u>Other Notices for Publication</u> Amend/*	26	NCAC	02C	.0307

CONTESTED CASE DECISIONS

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

OFFICE OF ADMINISTRATIVE HEARINGS

Chief Administrative Law Judge
JULIAN MANN, III

Senior Administrative Law Judge
FRED G. MORRISON JR.

ADMINISTRATIVE LAW JUDGES

Sammie Chess Jr.
Selina Brooks
Melissa Owens Lassiter
Don Overby

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

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<u>ALCOHOL BEVERAGE CONTROL COMMISSION</u>				
ABC Commission v. La Fiesta Mexicana II, Inc., T/A La Fiesta Mexicana	07 ABC 0149	Gray	04/19/07	
ABC Commission v. NK Group, Inc., T/A NK Food Mart,	07 ABC 0163	Overby	04/18/07	
ABC Commission v. Jamal Kamel Hajeh, T/A Pleasant Grove Grocery	07 ABC 0883	Morrison	09/11/07	
A list of Child Support Decisions may be obtained by accessing the OAH Website: www.ncoah.com/decisions .				
<u>CRIME VICTIMS COMPENSATION</u>				
Robert White, Jr., v. Crime Victims Compensation Commission	07 CPS 0497	Webster	09/12/07	
Pricilla McAllister v. Crime Victims Compensation Commission	06 CPS 1166	Webster	06/14/07	
<u>DEPARTMENT OF HEALTH AND HUMAN SERVICES</u>				
Hanson Hill Rest Home and Faiger Blackwell v. DHHS, DFS, Adult Care Licensure Section	03 DHR 0945	Overby	04/16/07	
Kristen Valerie Kennedy v. Div. of Mental Health/Development Disabilities/ Substance Abuse Services at Dix	06 DHR 0984	Mann	05/08/07	
Eyvette Abbott, Robbie Wilson Community Services, Inc., v. DHHS (DMH/ DD/SAS)	06 DHR 1139	Webster	06/06/07	
Amran Hussein, Trading as Laurinburg Food Mart v. DHHS, Div. of Public Health	06 DHR 1569	Webster	04/17/07	
James Hampton for South Haven Assisted Living v. DHHS, DFS, Mental Health Licensure and Certification Section	06 DHR 1783	Gray	04/23/07	
Burnell Yancey, Jr. v. DHHS, Div. of Medical Assistance	06 DHR 1817	Elkins	05/29/07	22:01 NCR 82
Nidal Dahir, DHHS, Division of Public Health	06 DHR 1916	Lassiter	05/14/07	
Mary K. Short for Kathryn M. Short v. DHHS, Division of Mental Health, Developmental Disabilities and Substance Abuse	06 DHR 2282	Gray	05/18/07	
Egusta Ford v. DMA, Third Party Recovery	06 DHR 2364	Gray	05/14/07	
Annette L. Gwynn v. DHHS, Division of Medical Assistance	07 DHR 0030	Webster	06/08/07	
John A. Millan and Cornelia D. Millan v. DHHS	07 DHR 0031	Gray	05/23/07	
Doris Durden/MID #945-63-2642K v. DHHS	07 DHR 0055	Overby	06/04/07	
Rita Amirahmadi v. DHHS, Division of Medical Assistance	07 DHR 0250	Elkins	06/05/07	
Linda S. Little, Littles Day Care	07 DHR 0266	Overby	05/23/07	
Kareem S. Scott v. DHHS, DFS	07 DHR 0300	Webster	05/11/07	
Peter Emeka Nwankwo v. DHHS	07 DHR 0355	Overby	05/04/07	
Geraldine Fenner v. DHHS	07 DHR 0367	Overby	05/23/07	
Annette L. Gwyn v. DHHS/Division of Medical Assistance	07 DHR 0382	Lassiter	04/16/07	
Jessie Duncan v. DHHS	07 DHR 0424	Elkins	06/08/07	
Leonard Atkins Jr. v. Rowan County DSS (Ms. Tate)	07 DHR 0464	Gray	06/07/07	
Visitacion T Uy v. DHHS/Division of Medical Assistance	07 DHR 0489	Overby	05/10/07	
Dorothy Sue Johnson v. DHHS, DFS	07 DHR 0502	Webster	06/15/07	
Robin E. Peacock, Bridging to Success, Inc v. DHHS, DFS, Mental Health Licensure Section	07 DHR 0510	Gray	05/30/07	

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Samantha A. Amerson v. DHHS	07 DHR 0578	Overby	06/15/07
Anna Trask v. DHHS, Health Care Personnel Registry	07 DHR 0661	Overby	06/15/07
Carmalitta M. Taylor v. DHHS	07 DHR 0832	Lassiter	08/22/07
Carolyn Tolson v. DHHS	07 DHR 0850	Lassiter	08/22/07
Linda Thompson v. DHHS	07 DHR 0862	Lassiter	08/29/07
Tonya Thompson v. DHHS	07 DHR 1062	Gray	09/07/07

DEPARTMENT OF JUSTICE

Travis Dan Williams v. Criminal Justice Education and Training Standards Commission	06 DOJ 1198	Webster	04/26/07
Robert Anthony Wilson v. DOJ, Company Police Program	06 DOJ 1508	Gray	02/16/07
Jeremy Shayne Pearce v. DOJ, Campus Police Program	06 DOJ 2424	Overby	04/16/07
Andre Cornelius Patterson v. Private Protective Services Board	07 DOJ 0003	Gray	05/18/07
David Keith Shelton v. Private Protective Services Board	07 DOJ 0011	Morrison	03/29/07
Larry Talbert v. Private Protective Services Board	07 DOJ 0036	Morrison	04/05/07
Patricia Ann Davis v. Criminal Justice Education and Training Standards Commission			
Patricia Ann Davis v. Criminal Justice Education and Training Standards	07 DOJ 0045	Gray	04/03/07
Antonio Jose Coles v. Sheriffs' Education and Training Standards Comm.	07 DOJ 0142	Overby	04/03/07
Jeffrey S. Moore v. Private Protective Services Board	07 DOJ 0468	Morrison	06/08/07

DEPARTMENT OF TRANSPORTATION

Citizens for the Preservation of Willis Landing, Kenneth M. Seigler v. DOT	07 DOT 0175	Gray	03/27/07
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DEPARTMENT OF STATE TREASURER

Sparkle Nicole Jones v. DST and Denise Virginia Lee and Arthur E. Seay, III	05 DST 1612	Gray	05/23/07
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Charles R. Franklin, Jr. v. DST, Retirement Systems Division	06 DST 1672	Overby	05/14/07	22:01 NCR	85
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Billy Ray Brown v. Department of Public Instruction	02 EDC 1272	Webster	06/14/07		
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Karen Stallings v. Board of Education	06 EDC 1725	Elkins	05/08/07	22:01 NCR	90
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Ms. Victoria L. Ruffin v. Board of Education	06 EDC 2218	Overby	06/01/07		
Connie R. Austin v. Dept. of Public Instruction	06 EDC 2270	Elkins	04/02/07		
Merredith Page v. Board of Education	07 EDC 0056	Webster	04/19/07		

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George A. Jenkins, Jr, d/b/a Lake Juno Park, Inc., v. Dept. of Environmental Health	05 EHR 1161	Lassiter	02/16/07		
Robert D. Bryant v. DENR, Division of Coastal Management and Stanley L. McCauley	05 EHR 2185	Chess	02/16/07		
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		
Christopher Perry v. Caldwell County Health Department	06 EHR 1010	Elkins	06/05/07		
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		
Daniel R. Wroblewski v. DENR and Coastal Management	07 EHR 0217	Overby	05/08/07		
James Wallace v. DENR	07 EHR 0600	Elkins	09/18/07		

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Jerry W. Conner (NCDOC#0085045) and James A. Campbell (NCDOC# 0063592) v. Council of State	07 GOV 0238	Morrison	08/09/07	22:04 NCR	280
James Edwards Thomas and Marcus Robinson and Archie Lee Billings v. Council of State	07 GOV 0264	Morrison	08/09/07	22:04 NCR	280

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Toni W. Goodwin v. Teachers and State Employees Comprehensive Major Medical Plan	06 INS 1016	Overby	05/07/07		
Larry Miller v. Teachers' and State Employees' Comprehensive Major Medical Plan	06 INS 1236	Overby	04/11/07		
Randall A. Meder v. Teachers' and State Employees' Comprehensive Major Medical Plan	06 INS 1413	Overby	07/16/07	22:04 NCR	264
Barbara Smith Pearce v. State Health Plan	07 INS 0008	Overby	07/12/07	22:04 NCR	273

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Senora Kemp v. OAH	07 OAH 0776	Lassiter	09/06/07
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OFFICE OF STATE PERSONNEL

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Deona R. Hooper v. NCCU	06 OSP 1071	Lassiter	04/25/07
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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. Baltezore v. City of Brevard	07 OSP 0009	Gray	04/03/07
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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 Manager	07 OSP 0294	Lassiter	04/20/07
Shannon Harris Tadlock v. Wilson County, Department of Public Health	07 OSP 0491	Lassiter	05/07/07
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Tobias M. Guilluame v. FSU Police & Public Safety	07 OSP 0565	Overby	05/10/07
Archie Andrew Copeland v. Dept. of Juvenile Justice & Delinquency Prevention	07 OSP 0976	Lassiter	08/29/07
Patricia Bethea Williams v. NC A&T State University	07 OSP 1053	Overby	08/28/07

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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
Angela Dozier v. SOS	07 SOS 0912	Gray	08/30/07

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Kenneth Trivette v. UNC Hospitals	06 UNC 2014	Elkins	04/02/07
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Carolyn Parker v. UNC Hospitals	07 UNC 0924	Lassiter	09/06/07