

NORTH CAROLINA REGISTER

VOLUME 23 • ISSUE 21 • Pages 2045 - 2169

May 1, 2009

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Contact List for Rulemaking Questions or Concerns

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

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

Office of Administrative Hearings
Rules Division
1711 New Hope Church Road
Raleigh, North Carolina 27609
(919) 431-3000
(919) 431-3104 FAX

contact: Molly Masich, Codifier of Rules molly.masich@oah.nc.gov (919) 431-3071
Dana Vojtko, Publications Coordinator dana.vojtko@oah.nc.gov (919) 431-3075
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Angel Chen, Editorial Assistant angel.chen@oah.nc.gov (919) 431-3077

Rule Review and Legal Issues

Rules Review Commission
1711 New Hope Church Road
Raleigh, North Carolina 27609
(919) 431-3000
(919) 431-3104 FAX

contact: Joe DeLuca Jr., Commission Counsel joe.deluca@oah.nc.gov (919) 431-3081
Bobby Bryan, Commission Counsel bobby.bryan@oah.nc.gov (919) 431-3079

Fiscal Notes & Economic Analysis

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

contact: William Crumbley, Economic Analyst william.crumbley@ncmail.net (919) 807-4740

Governor's Review

Eddie Speas eddie.speas@nc.gov
Legal Counsel to the Governor (919) 733-5811
116 West Jones Street
Raleigh, North Carolina 27603

Legislative Process Concerning Rule-making

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

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

County and Municipality Government Questions or Notification

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

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

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

contact: Erin L. Wynia ewynia@nclm.org

NORTH CAROLINA REGISTER
Publication Schedule for January 2009 – December 2009

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 31st legislative day of the session beginning:	270 th day from publication in the Register
23:13	01/02/09	12/08/08	01/17/09	03/03/09	03/20/09	05/01/09	05/2010	09/29/09
23:14	01/15/09	12/19/08	01/30/09	03/16/09	03/20/09	05/01/09	05/2010	10/12/09
23:15	02/02/09	01/09/09	02/17/09	04/03/09	04/20/09	06/01/09	05/2010	10/30/09
23:16	02/16/09	01/26/09	03/03/09	04/17/09	04/20/09	06/01/09	05/2010	11/13/09
23:17	03/02/09	02/09/09	03/17/09	05/01/09	05/20/09	07/01/09	05/2010	11/27/09
23:18	03/16/09	02/23/09	03/31/09	05/15/09	05/20/09	07/01/09	05/2010	12/11/09
23:19	04/01/09	03/11/09	04/16/09	06/01/09	06/22/09	08/01/09	05/2010	12/27/09
23:20	04/15/09	03/24/09	04/30/09	06/15/09	06/22/09	08/01/09	05/2010	01/10/10
23:21	05/01/09	04/09/09	05/16/09	06/30/09	07/20/09	09/01/09	05/2010	01/26/10
23:22	05/15/09	04/24/09	05/30/09	07/14/09	07/20/09	09/01/09	05/2010	02/09/10
23:23	06/01/09	05/08/09	06/16/09	07/31/09	08/20/09	10/01/09	05/2010	02/26/10
23:24	06/15/09	05/22/09	06/30/09	08/14/09	08/20/09	10/01/09	05/2010	03/12/10
24:01	07/01/09	06/10/09	07/16/09	08/31/09	09/21/09	11/01/09	05/2010	03/28/10
24:02	07/15/09	06/23/09	07/30/09	09/14/09	09/21/09	11/01/09	05/2010	04/11/10
24:03	08/03/09	07/13/09	08/18/09	10/02/09	10/20/09	12/01/09	05/2010	04/30/10
24:04	08/17/09	07/27/09	09/01/09	10/16/09	10/20/09	12/01/09	05/2010	05/14/10
24:05	09/01/09	08/11/09	09/16/09	11/02/09	11/20/09	01/01/10	05/2010	05/29/10
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24:07	10/01/09	09/10/09	10/16/09	11/30/09	12/21/09	02/01/10	05/2010	06/28/10
24:08	10/15/09	09/24/09	10/30/09	12/14/09	12/21/09	02/01/10	05/2010	07/12/10
24:09	11/02/09	10/12/09	11/17/09	01/02/10	01/20/10	03/01/10	05/2010	07/30/10
24:10	11/16/09	10/23/09	12/01/09	01/15/10	01/20/10	03/01/10	05/2010	08/13/10
24:11	12/01/09	11/05/09	12/16/09	02/01/10	02/22/10	04/01/10	05/2010	08/28/10
24:12	12/15/09	11/20/09	12/30/09	02/15/10	02/22/10	04/01/10	05/2010	09/11/10

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.

NOTICE OF RULE MAKING PROCEEDINGS AND PUBLIC HEARING

NORTH CAROLINA BUILDING CODE COUNCIL

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

Citation to Existing Rule Affected by this Rule-Making: *North Carolina Building, Fire and Fuel Gas Codes.*

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

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

Public Hearing: *June 8, 2009, 1:00PM, NC Department of Insurance, First Floor Classroom, 322 Chapanoke Road, Raleigh, NC 27603*

Comment Procedures: *Written comments may be sent to Chris Noles, Secretary, NC Building Code Council, NC Department of Insurance, 322 Chapanoke Road, Suite 200, Raleigh, NC 27603. Comment period expires on June 30, 2009.*

Statement of Subject Matter:

1. Request by Lon McSwain, Mecklenburg, to amend the 2009 NC Building and Fire Codes.

1009.11 Stairway to roof. In buildings located four or more stories in height above grade plane, one stairway shall extend to the roof surface, unless the roof has a slope steeper than four units vertical in 12 units horizontal (33 percent slope). In buildings without an occupied roof, access to the roof from the top story shall be permitted to be by an alternating tread device or a ships ladder meeting the following, a pitch of 60 to 75 degrees, width of 30" to the outside of the handrails, tread depth of 5 3/16", riser height of 9 1/2" to 12", 1 1/4" pipe handrail. The height between the top landing of the stair and the roof shall not exceed 20'-0".

Motion – Mack Nixon/Second – Butch Simmons/Passed – The Petition was granted unanimously and was referred to the Building Committee for review.

2. Request by Jeff Soechting, Ward Manufacturing, to amend the 2009 NC Fuel Gas Code.

310.2 CSST Gas piping systems shall be bonded to the electrical service grounding electrode system at the point where the gas service enters the building. The bonding jumper shall not be smaller than 6 AWG copper wire or equivalent.

Motion – David Smith/Second – Ralph Euchner/Passed – The Petition was granted unanimously and was referred to the Mechanical and Electrical Committees for review.

3. Request by David Gardner, Mecklenburg, to amend the 2009 NC Building and Fire Codes.

903.2.7 Group R. An automatic sprinkler system installed in accordance with Section 903.3 shall be provided throughout all buildings with a Group R fire area.

Exception: An automatic sprinkler system is not required in ~~Group R-3 and R-4 adult and child day care facilities~~ new adult and child care facilities in existing Groups R-3 and R-4 occupancies.

Motion – Alan Perdue/Second – Butch Simmons/Passed – The Petition was granted unanimously and was referred to the Joint Building/Fire Committee for review.



STATE BOARD OF ELECTIONS

6400 Mail Service Center • Raleigh, North Carolina 27699-6400

GARY O. BARTLETT
Executive Director

MAILING ADDRESS:
P.O. BOX 27255
RALEIGH, NC 27611-7255

March 27, 2009

Mr. John Wallace
Wallace and Nordan L.L.P.
Post Office Box 12065
Raleigh, North Carolina 27612

Re: Request pursuant to N.C. Gen. Stat. § 163-278.23; campaign finance laws applicable to candidate political committees after elected official leaves office

Dear Mr. Wallace:

An advisory opinion is requested to provide guidance to a political committee of an elected official when that elected official completes their term of office and will no longer be serving as an elected official. More specifically, do campaign finance laws governing political committees change when an elected official leaves office, but continues to maintain an active political committee?

In accordance with N.C. Gen. Stat. § 163-278.6(14), an entity that qualifies as a political committee continues to be a political committee if it receives contributions or makes expenditures or maintains assets or liabilities. It is not until a political committee "winds up its operations, disposes of its assets, and files a final report" that it ceases to exist.

Contributors making contributions to candidate political committees in order to pay outstanding loans or retire campaign debt are subject to the contribution limitations described in N.C. Gen. Stat. § 163-278.13(a). As provided by statute, the contribution limitations are per election. In the case of a candidate who does not intend to be a candidate in the next election, the time period would still be from the day after the date of the last election for the office that candidate had been seeking until the day of the next primary or election for that same office. Is it not necessary for the candidate to actually be on the ballot for that next election.

With respect to reporting requirements, a candidate political committee may not be required to report as often as they were when actively seeking public office. For candidate political committees not established for a municipal office, N. C. Gen. Stat. § 163-278.9 provides that during even-numbered years during which there is an election for that candidate or in which the candidate committee is supporting or opposing a candidate, the treasurer shall file on the

LOCATION: 506 NORTH HARRINGTON STREET • RALEIGH, NORTH CAROLINA 27603 • (919) 733-7173

quarterly reporting schedule. However, if there is not an election for that candidate and their political committee is not supporting or opposing any other candidate during that year, then the candidate committee would only be required to file semi-annually.

It is also important to note the regulations regarding expenditures as provided in N.C. Gen. Stat. § 163-278.16B. Candidate political committees are only permitted to use their political committee funds for eight purposes. They are as follows:

1. Expenditures resulting from the campaign for public office by the candidate or the candidate's campaign committee.
2. Expenditures resulting from holding public office.
3. Contributions to an organization described in section 170(c) of the Internal Revenue Code of 1986 (26 U.S.C. § 170(c)), provided that the candidate or the candidate's spouse, children, parents, brothers, or sisters are not employed by the organization.
4. Contributions to a national, State, or district or county committee or a political party or a caucus of the political party.
5. Contributions to another candidate or candidate's campaign committee.
6. To return all or a portion of a contribution to the contributor.
7. Payment of any penalties against the candidate or candidate's campaign committee for violation of this Article imposed by a board of elections or a court of competent jurisdiction.
8. Payment to the Escheats Fund established by Chapter 116B of the General Statutes.

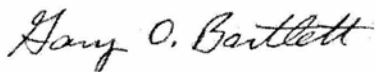
One question that may arise is whether candidate political committee funds can be used to explore running for office in the future. That would appear to be an appropriate expenditure under number one above.

Other questions may arise as a result of holding public office. Expenditures for staff, travel and correspondence with the public necessitated by an individual's service in public office would appear to be appropriate under number two.

Before making an expenditure, the committee should satisfy itself that the expenditure is for one of the above permissible purposes. If specific guidance is needed on the permissibility of a particular expenditure, this office is available to provide that guidance.

The guidance provided in this opinion is written in accordance with N.C. Gen. Stat. 163-278.23. This opinion will be filed with the Codifier of Rules to be published unedited in the North Carolina Register and the North Carolina Administrative Code.

Sincerely,



Gary O. Bartlett
Executive Director

cc: Julian Mann, III, Codifier of Rules



STATE BOARD OF ELECTIONS

6400 Mail Service Center • Raleigh, North Carolina 27699-6400

GARY O. BARTLETT
Executive Director

MAILING ADDRESS:
P.O. BOX 27255
RALEIGH, NC 27611-7255

April 2, 2009

The Honorable John Snow
105 Van Horn Street
Murphy, NC 28906

Re: Advisory Opinion

Dear Senator Snow:

You request guidance as to whether it would be permissible to use your campaign funds to help a constituent launch a website to provide public information regarding children with disabilities. The opinion expressed in this letter is provided pursuant to N.C. Gen. Stat. 163-278.23 and is based on the information you have provided to me.

As you are aware, prior to October 1, 2006, a candidate could spend their campaign funds for any purpose. Effective October 1, 2006, legislation provided only eight allowable purposes for campaign expenditures by candidate campaign committees. If the purpose of an expenditure by a candidate campaign committee is not one of the eight allowed by N. C. Gen. Stat. 163-278.16B(a), then the expenditure is prohibited. The permissible purposes are as follows:

- (1) Expenditures resulting from the campaign for public office by the candidate or candidate's campaign committee.
- (2) Expenditures resulting from holding public office.
- (3) Contributions to an organization described in section 170(c) of the Internal Revenue Code of 1986 (26 U.S.C. § 170(c)), provided that the candidate or the candidate's spouse, children, parents, brothers, or sisters are not employed by the organization.
- (4) Contributions to a national, State, or district or county committee of a political party or a caucus of the political party.
- (5) Contributions to another candidate or candidate's campaign committee.
- (6) To return all or a portion of a contribution to the contributor.
- (7) Payment of any penalties against the candidate or candidate's campaign committee for violation of this Article imposed by a board of elections or a court of competent jurisdiction.
- (8) Payment to the Escheat Fund established by Chapter 116B of the General Statutes.

LOCATION: 506 NORTH HARRINGTON STREET • RALEIGH, NORTH CAROLINA 27603 • (919) 733-7173

Letter to Senator Snow

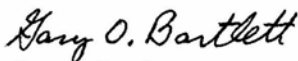
April 2, 2009

Page 2

Based on the information you have provided, the expenditure you wish to make does not appear to fall within seven of the eight permissible purposes. Contributions to charitable organizations are a permitted purpose as long as the organization is one that is described in section 170(c) of the Internal Revenue Code and no family members are employees of the organization. From our conversation, I don't believe you have information to suggest that the constituent has created such an organization. However, the second purpose allows expenditures resulting from holding public office. In order to determine if your expenditure meets this purpose, we ask the question "would you have this expense or make this expenditure if you were not holding public office?" If the answer to that question is "no" and the expenditure directly results from holding public office then your expenditure would be permissible. N. C. Gen. Stat. 163-278.23 provides a safe harbor for candidates and political committees that comply with the advice of advisory opinions, even if the advice is ultimately determined to be in error. Because this opinion is based solely on the facts provided in your communication, the opinion would not be binding if the facts or purpose changed. Therefore, if at any time the scope of your purpose should change, you will need to contact our office so that we could re-evaluate whether the expenditure would continue to be permissible.

If you should have any questions, please do not hesitate to contact me or Kim Strach, Deputy Director-Campaign Finance. As required by law, this opinion will be published unedited in the North Carolina Register by the Codifier of Rules.

Sincerely,



Gary O. Bartlett
Executive Director

cc: Julian Mann III, Codifier of Rules



U.S. Department of Justice

Civil Rights Division

CC:RPL:SMC:par
DJ 166-012-3
2009-0030
2009-0103
2009-0614

Voting Section - NWB
950 Pennsylvania Avenue, NW
Washington, DC 20530

March 25, 2009

Michael Crowell, Esq.
UNC School of Government
Knapp-Sanders Building
Campus Box 3330
Chapel Hill, North Carolina 27599-3330

Karen M. McDonald, Esq.
City Attorney
P.O. Box 1513
Fayetteville, North Carolina 28302-1513

Dear Mr. Crowell and Ms. McDonald:

This refers to eight annexations (Ordinance Nos. 2007-12-503, 2008-02-504, 2008-02-505, 2008-03-506, 2008-04-507, 2008-04-508, 2008-06-509 and 2008-06-510) and their designation to districts, Session Law 2008-74 (HB 2414) (2008), which annexes a portion of Fort Bragg, and the 2008 city council redistricting plan for the City of Fayetteville in Cumberland County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submissions on January 26 and March 6, 2009; supplemental information was received through February 18, 2009.

The Attorney General does not interpose any objection to the specified changes. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. In addition, as authorized by Section 5, we reserve the right to reexamine these submissions if additional information that would otherwise require an objection comes to our attention during the remainder of the sixty-day review period. Procedures for the Administration of Section 5 of the Voting Rights Act (28 C.F.R. 51.41 and 51.43).

Sincerely,

Christopher Coates
Chief, Voting Section

**SUMMARY OF NOTICE OF
INTENT TO REDEVELOP A BROWNFIELDS PROPERTY
SALT Investments, L.L.C.**

Pursuant to N.C.G.S. § 130A-310.34, SALT Investments, L.L.C. has filed with the North Carolina Department of Environment and Natural Resources ("DENR") a Notice of Intent to Redevelop a Brownfields Property ("Property") in Lenoir, Caldwell County, North Carolina. The Property consists of 4.52 acres and is located at 511 Creekway Drive, NW. Environmental contamination exists at the Property in groundwater. SALT Investments, L.L.C. has committed itself to make no use of the Property other than upfitting the existing building for manufacturing, office, warehousing and, with prior written DENR approval, other commercial purposes. The Notice of Intent to Redevelop a Brownfields Property includes: (1) a proposed Brownfields Agreement between DENR and SALT Investments, L.L.C., 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 Caldwell County Public Library, 120 Hospital Ave., Lenoir, NC 28645, by contacting Deborah Joyner at that address, at (828) 757-1270 or (828) 757-1271, or at djoyner@caldwellcountync.org; or at the offices of the N.C. Brownfields Program, 401 Oberlin Rd., Suite 150, Raleigh, NC 27605 (where DENR will provide auxiliary aids and services for persons with disabilities who wish to review the documents) by contacting Shirley Liggins at that address, at shirley.liggins@ncmail.net or at (919) 508-8411.

Written public comments may be submitted to DENR within 30 days after the date this Notice is published in a newspaper of general circulation serving the area in which the 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 SALT Investments, L.L.C., as it plans, publishes this Summary in the North Carolina Register after it publishes the Summary in a newspaper of general circulation serving the area in which the Property is located, and if it effects publication of this Summary in the North Carolina Register on the date it expects to do so, the periods for submitting written requests for a public meeting regarding this project and for submitting written public comments will commence on May 2, 2009. All such comments and requests should be addressed as follows:

Mr. Bruce Nicholson
Brownfields Program Manager
Division of Waste Management
NC Department of Environment and Natural Resources
401 Oberlin Road, Suite 150
Raleigh, North Carolina 27605

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

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

TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Division of Services for the Deaf and the Hard of Hearing intends to, amend the rules cited as 10A NCAC 17D .0205-.0207 and .0210.

Proposed Effective Date: September 1, 2009

Public Hearing:

Date: May 18, 2009

Time: 8:30 a.m. – 9:00 a.m.

Location: DSDHH Conference Room, Woodoak Building GL-3, 1100 Navaho Drive, Raleigh, NC

Reason for Proposed Action: These rules were approved by the Rules Review Commission in the spring of 2007. Implementation of these rules revealed unnecessary restrictions or gaps adversely affecting division operations/delivery of services. Therefore, the Division wishes to amend these rules to better reflect statutory requirements through more effective operations and service delivery.

Procedure by which a person can object to the agency on a proposed rule: A person can object to the agency on a proposed rule by sharing comments at the public hearing or by contacting the Division's rule-making coordinator (Jan Withers) or Director (Jan Withers) by e-mail, postal mail, or telephone.

Comments may be submitted to: Jan Withers, 2301 Mail Service Center, Raleigh, NC 27699-2301, phone 919-874-2212 (V/TTY), fax 919-855-6872, email Jan.Withers@ncmail.net

Comment period ends: June 30, 2009

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 919-431-3000.

Fiscal Impact:

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

CHAPTER 17 – DIVISION OF SERVICES FOR THE DEAF AND THE HARD OF HEARING

SUBCHAPTER 17D – ASSISTIVE EQUIPMENT DISTRIBUTION

SECTION .0200 – TELECOMMUNICATIONS EQUIPMENT DISTRIBUTION PROGRAM

10A NCAC 17D .0205 APPLICATION INFORMATION AND PROCEDURES

(a) ~~Interested persons~~ Any person interested in receiving an equipment set from the Program may request an application packet by calling or writing the Division at the Division Central Office, or by requesting one from any of the regional centers or downloading one from the Division website. The application packet shall include:

- (1) instructions for submitting reports and statements certifying that the applicant is deaf, hard of hearing, speech-impaired, or deaf-blind;
- (2) a Conditions of Acceptance form for the recipient to sign indicating that the recipient understands and agrees to the rights and responsibilities of the recipient and desires services of the program. This form includes information for recipients acting for minor users to sign indicating their agreement that equipment sets received under this program may be transferred to the user upon the user's 18th birthday at the request of the minor user; and
- (3) an application form calling for the following information:
 - (A) the full name, address, date of birth, and occupation of the recipient and all users of the equipment set;
 - (B) telephone number of the recipient;
 - (C) personal and financial information regarding all family members necessary to determine financial

- eligibility according to the provisions of Rule .0210 of this Section;
- (D) ~~copies of driver's license or other proof of identification and residence of the recipient; documentation required in Rule .0206 of this Section; and~~
- (E) the disability status of the applicant or the intended user.
- (b) To apply for equipment from the TEDP, an eligible applicant must:
- (1) answer all of the questions on the application form, sign it, and date it;
 - (2) make a copy of an item from Rule .0206(b)(1) offering proof of residence in North Carolina to include with the application;
 - (3) make a copy of an item from Rule ~~.0206(d)~~.0206(c) offering proof of household income to include with the application;
 - (4) read the Conditions of Acceptance form, sign and date the form, and include it with the application;
 - (5) give the Disability Determination form to a certified person listed in Rule .0206(b)(2) to fill out; ~~and~~
 - (6) read the Equipment Selection form, select the equipment that best fits the applicant's need, and include it with the ~~application~~ application;
- ~~(A) For Hearing Aid applications, submit the "Certification of Telecoil Candidacy and Hearing Aid Model Selection" form which is included in the application packet.~~
- ~~(B) For speech impaired applications, submit a written recommendation from a speech pathologist, speech therapist, or a professional trained to work with individuals with speech impairments.~~
- (7) submit the "Certification of Telecoil Candidacy and Hearing Aid Model Selection" form if applying for a hearing aid; and
- (8) submit a written equipment recommendation from a licensed speech and language pathologist or other individual who is qualified but exempt from licensure as a speech and language pathologist as defined in G.S. 90, Article 22 if applying for equipment for a speech impairment.
- (c) Providing false or misleading information on the application shall subject any applicant selected as a recipient to forfeiture of any equipment set provided.
- (d) The regional centers shall provide assistance in completing application forms upon request.
- (e) Applicants shall complete and sign all forms, attach all necessary documentation, and mail the completed application packet to the address specified on the application.
- (f) The Division shall determine an applicant's eligibility within 4560 days following receipt of the completed application; except

if the Division cannot determine eligibility within 4560 days, it shall inform the applicant in writing as soon as possible within the 4560-day period indicating the problem and solicit clarification and additional information in order to determine the applicant's eligibility.

Authority G.S. 62-157; 143B-216.34; 143B-216.33.

10A NCAC 17D .0206 ELIGIBILITY

(a) ~~Equipment sets shall be distributed~~The Division shall distribute equipment sets to eligible recipients within the limits of available funding.

(b) To be eligible for equipment from the TEDP, an individual must meet the following criteria:

- (1) be a resident of North Carolina as defined in Rule .0209 of this Section; an individual can ~~establish~~ document residency ~~by~~ by submitting a copy of one of the following items that shows the individual's name and address.
 - (A) ~~submitting a copy of a current North Carolina driver's license or North Carolina non-driver identification; A~~ document issued by an agency of the United States;
 - (B) ~~submitting a copy of the most recent utility bill (telephone, electricity, cable, water, sewage or gas); A~~ document issued by another state; or
 - (C) ~~submitting an official letter from a current landlord or residential management entity verifying residency; A~~ document issued by the State of North Carolina, or a political subdivision of the State;
 - (D) A preprinted bank or other corporate statement;
 - (E) A preprinted business letterhead; or
 - (F) Any other document that the Division determines provides equivalent reliability.
- (2) be certified as deaf, hard of hearing, deaf-blind, or speech-impaired. An individual must submit a Disability Determination form ~~authorized and~~ certified by one of the following:
 - (A) ~~licensed hearing-aid specialist; dealer and fitter as defined in G.S. 93D;~~
 - (B) ~~licensed audiologist; audiologist or other qualified individual who is exempt from licensure requirements in G.S. 90, Article 22;~~
 - (C) ~~licensed physician; physician as defined in G.S. 90, Article 1;~~
 - ~~(D) appropriate state or federal agency representative;~~
 - ~~(E)~~(D) licensed speech pathologist; and language pathologist or other qualified individual who is exempt

from licensure requirements in G.S. 90, Article 22; or

- (F)(E) ~~state certified teacher; individual licensed as teacher of the deaf and hard of hearing by the North Carolina Department of Public Instruction; or~~
(F) ~~employee of the Department of Health and Human Services that the Division determines possesses equivalent training and experience to certify disability for purposes of the Program.~~

- (3) not have another person with a similar disability from the same household receive similar equipment from TEDP. Those applying for hearing aids are exempt from this requirement; and
- (4) ~~have a limited household income. The income limit varies for individuals whose income is 250 percent above the Federal Poverty Level based on the number of individuals in the family be in a family whose income, based on family size, is at or below 250 percent of the Poverty Guidelines in effect on the date of application. The Poverty Guidelines are published annually by the United States Department of Health and Human Services.~~

(e) ~~If a minor applicant applies, proof of income for the minor applicant, including the minor's income and the minor's parents' income, is required.~~

(d)(c) ~~An applicant who does not receive public funds qualify under Rule .0210(b) of this Section ~~can~~may show proof of income by submitting a copy of ~~one~~any of the following forms for each source of income within the household:~~

- (1) ~~the most recent paycheck stub; document such as Form W-2, Form 1099, or pay stub prepared by an employer, bank or other entity responsible for reporting wages or earnings;~~
- (2) ~~the most recent W-2 form;~~
- (2) ~~a letter from an employer on business letterhead stating gross income;~~
- (3) ~~the most recent state or federal income tax return;~~
- (4) ~~the most recent retirement statement;~~
- (4) ~~a document issued by an agency of the United States, the State of North Carolina, or other state;~~
- (5) ~~the most recent Nursing Home statement;~~
- (5) ~~any other document that the Division determines provides equivalent reliability.~~
- (6) ~~a copy of the most recent Social Security check or a dated Social Security letter;~~
- (7) ~~the most recent bank statement that shows a Social Security direct deposit; or~~
- (8) ~~documentation from an outside income verification agency.~~

(e)(d) ~~There is no age limit to be eligible for equipment. An individual can apply for himself/herself or for a child or dependent adult who lives in the same household.~~

Authority G.S. 62-157; 143B-216.34; 143B-216.33.

10A NCAC 17D .0207 CERTIFICATION OF IMPAIRMENT

(a) A prospective user shall be certified as deaf, hard of hearing, speech impaired, or deaf-blind to be eligible to receive an equipment set.

(b) To be certified a recipient shall submit a Disability Determination form with the application, filled out by a licensed physician, licensed audiologist, licensed hearing aid specialist, licensed speech pathologist, disability service center representative, or an agent of a state or federal public agency certifying that the person is deaf, hard of hearing, speech-impaired, or deaf blind and stating the nature and degree of the impairment. The Disability Determination form shall be completed by an individual listed in Rule .0206(b)(2) of this Rule.

(e) ~~Applicants may submit copies of certification statements or reports that are on file with a state or federal agency if such statements or reports meet the requirements in (b) of this Rule.~~

(d) ~~The certification reports or statements shall be included with the application when it is submitted.~~

Authority G.S. 62-157; 143B-216.33(a)(7),(d); 143B-216.33.

10A NCAC 17D .0210 FINANCIAL ELIGIBILITY

(a) An applicant for an equipment set shall meet the Division's financial needs test, test to be eligible to receive an equipment set.

(b) Applicants for an equipment set who are recipients of public funds such as AFDC, Work First, SSDI, SSI, CSHS (Children's Special Health Services), Medicaid, Health Choice for Children, Section 8 Housing Choice Vouchers, or the Food Stamp Program shall automatically meet the financial needs test upon submission of official documentation from the publicly funded program, a document issued by the State of North Carolina or political subdivision of the State or an agency of the United States or any other document that the Division determines provides equivalent reliability that shows participation in one of the programs.

(c) Financial eligibility. Family income limits for applicants not included under (b) of this Rule shall be determined by applying the federal poverty level for family size and income of the applicant in effect on the date of application. are described in Rule .0206(b)(4) of this Section.

(d) An applicant's family shall include the user and the following persons living in the same household as the user if the user is 18 years of age or older or if the user is less than 18 years of age and is married:

- (1) the user's spouse;
- (2) the user's children under 18 years of age;
- (3) other individuals related to the user by blood, marriage, or adoption if the other individuals have no income and do not have a parent or spouse who has income living in the same household; and
- (4) the user's children of any age who are temporarily living away from the household while attending school if they are being

claimed as dependents by the user for tax purposes.

(e) An applicant's family shall include the user and the following persons living in the same household as the user if the user is less than 18 years of age and is not married:

- (1) the user's parents, not including step-parents;
- (2) siblings or half-siblings of the user, but not step-siblings, if the siblings are unmarried and less than 18 years of age;
- (3) siblings or half-siblings of the user, but not step-siblings, if the siblings are 18 years of age or older and have no income; and
- (4) other individuals related to the user by blood, marriage, or adoption if the other individuals have no income and do not have a parent or spouse who has income living in the same household.

(f) In (e)(2) and (3) of this Rule, siblings who are temporarily living away from the household while attending school ~~may be~~ are considered as living in the same household if they are being claimed as dependents by their parents for tax purposes and the parents are in the same household as the user.

(g) ~~Gross monthly~~ Monthly income of the family members shall be considered in the financial needs test. ~~If the applicant is married, the applicant must include his/her spouse's income. If the applicant is a minor, the applicant must include his/her parents' income. Examples of gross income include such items as~~ Income includes the following:

- (1) gross salaries and wages;
- (2) adjusted gross earnings from self-employment, except for income that children may earn from babysitting, lawn mowing, or other miscellaneous ~~tasks;~~ tasks. Adjusted gross income is calculated by subtracting the operational expenses from the gross receipts of the business in the time period described in Paragraph (i) of this Rule. Any salary or disbursements made to the individual from his business are disregarded in calculating adjusted gross earnings from self-employment;
- ~~(3) public assistance money;~~
- ~~(4)(3)~~ unemployment compensation;
- ~~(5)(4)~~ Social Security benefits;
- ~~(6)(5)~~ Veteran's Administration benefits;
- ~~(7)(6)~~ retirement and pension payments;
- ~~(8) supplemental security income benefits.~~
- ~~(7) worker's compensation payments;~~
- ~~(8) alimony;~~
- ~~(9) child support;~~
- ~~(10) tobacco buyout payments;~~
- ~~(11) On-the-job training (OJT);~~
- ~~(12) AmeriCorps stipends;~~
- ~~(13) Armed Forces pay;~~
- ~~(14) work release payments;~~
- ~~(15) rental income;~~
- ~~(16) annuities; and~~
- ~~(17) Cherokee Tribal Per Capita Income paid to adult family members.~~

(h) The following shall be excluded in the computation of ~~gross~~ monthly income:

- ~~(1) combined, available cash in the bank not to exceed six times the gross monthly income for the family size; and~~
- ~~(2) tax value of property held.~~
- (1) benefits from any program listed in Paragraph (b) of this Rule;
- (2) Adoption or Foster Care payments;
- (3) income from sale of personal assets;
- (4) loans;
- (5) tax refunds; and
- (6) Earned Income Tax Credits.

(i) The time period to be used as the basis for computing ~~gross~~ monthly income ~~shall be~~ is the month preceding the date of application. For income that is not received on a monthly basis, the monthly pro rata share of the most recent receipt of the income shall be included in the computation.

Authority G.S. 62-157; 143B-216.34; 143B-216.33.

TITLE 11 – DEPARTMENT OF INSURANCE

Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Insurance intends to adopt the rule cited as 11 NCAC 05A .0801 and repeal the rule cited as 11 NCAC 12 .0705.

Proposed Effective Date:

11 NCAC 05A .0801 - January 1, 2010

11 NCAC 12 .0705 – September 1, 2009

Public Hearing:

Date: *May 26, 2009*

Time: *10:00 a.m.*

Location: *4105 Dobbs Building, 430 N. Salisbury Street, Raleigh, NC 27603*

Reason for Proposed Action:

11 NCAC 05A .0801 – Adoption of Article 92 of Chapter 58 – Fire-Safety Standard and Firefighter Protection Act

11 NCAC 12 .0705 – Rule is no longer necessary.

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 June 30, 2009.

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

Comment period ends: *June 30, 2009*

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 919-431-3000.

Fiscal Impact:

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

CHAPTER 05 – OFFICE OF STATE FIRE MARSHAL

SUBCHAPTER 05A - FIRE AND RESCUE

SECTION .0800 – CIGARETTE FIRE-SAFETY STANDARDS

11 NCAC 05A .0801 CERTIFICATIONS

(a) Certifications and fees submitted pursuant to G.S. 58-92-20 shall be sent to:

NCDOI-OSFM
Attn: Fire Safety Program Administrator
1202 Mail Service Center
Raleigh, NC 27699-1202

(b) OSFM shall disapprove and return incomplete certifications. The submitter shall complete or correct the original submittal within 90 days after the date of disapproval. If the submitter fails to return a completed or corrected submittal within the 90-day period, the submitter shall pay the fee specified in G.S. 58-92-20(e) for each subsequent submittal.

Authority G.S. 58-2-40; 58-92-20; 58-92-35.

CHAPTER 12 - LIFE AND HEALTH DIVISION

SECTION .0700 - CREDIT INSURANCE AND CREDIT LIFE: ACCIDENT AND HEALTH INSURANCE

11 NCAC 12 .0705 REFUND OF UNEARNED PREMIUM AT DEATH: CREDIT LIFE/CREDIT ACCIDENT/HEALTH INSURANCE

~~A refund of unearned premium is required in the event of death of an insured debtor under a Credit Life or Credit Accident and Health certificate or policy and such refund shall be made in accordance with the provisions of G.S. 58-57-50.~~

Authority G.S. 58-2-40; 58-57-50.

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 amend the rules cited as 15A NCAC 02N .0901, .0903.

Proposed Effective Date: November 1, 2009

Public Hearing:

Date: May 28, 2009

Time: 2:00 – 4:00 p.m.

Location: Rm. 1H-120, 2728 Capital Blvd., Raleigh, NC 27604

Reason for Proposed Action: *On December 3, 2007, a petition to amend secondary containment rules for underground storage tank (UST) systems was submitted to the Environmental Management Commission (EMC). The petition proposed adding electronic liquid detecting sensor monitoring as an allowable method of monitoring the interstitial space of a double-walled tank for releases. DENR recommended that the EMC deny the petition because the proposed method does not continuously check the inner and outer walls of a double-walled tank for breaches of integrity like the methods already allowed by the rules. DENR contended that the proposed method is not as effective as those already allowed in detecting tank wall failures. However, on March 13, 2008, the EMC approved the petition, but requested that DENR staff prepare additional rule language incorporating standards for operation, maintenance and testing of USTs if electronic liquid detecting sensors are used for leak detection monitoring. On May 8, 2008, the EMC approved the language prepared by DENR and directed DENR to hold public hearings on the amendments. These amendments are the subject of this rule-making action.*

Procedure by which a person can object to the agency on a proposed rule: *A person may submit written objections concerning this rule to the UST Section of the Division of Waste Management of the Department of Environment and Natural Resources. Such correspondence should be submitted to the attention of Ruth A. Strauss, NCDENR/DWM/UST Section, 1637 Mail Service Center, Raleigh, NC 27699-1637, fax (919) 733-9413, email ruth.strauss@ncmail.net.*

Comments may be submitted to: *Ruth A. Strauss, NCDENR/DWM/UST, 1637 Mail Service Center, Raleigh, NC 27699-1637, phone (919) 733-8486, fax (919) 733-9413, email ruth.strauss@ncmail.net*

Comment period ends: June 30, 2009

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 919-431-3000.

Fiscal Impact:

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

CHAPTER 02 - ENVIRONMENTAL MANAGEMENT

**SUBCHAPTER 02N - UNDERGROUND STORAGE
TANKS**

**SECTION .0900 - PERFORMANCE STANDARDS FOR
UST SYSTEM OR UST SYSTEM COMPONENT
INSTALLATION OR REPLACEMENT COMPLETED ON
OR AFTER NOVEMBER 1, 2007**

15A NCAC 02N .0901 GENERAL REQUIREMENTS

- (a) This Section applies to an UST system or UST system component installation or replacement completed on or after November 1, 2007.
- (b) An UST system or UST system component shall not be installed or replaced within an area defined at 15A NCAC 02N .0301(b).
- (c) A tank shall meet the requirements for secondary containment including interstitial release detection monitoring in accordance with this Rule.
- (d) All UST system components other than tanks including connected piping, underground ancillary equipment, dispensers, line leak detectors, submersible pumps, spill buckets, siphon bars, and remote fill pipes shall meet the requirements for secondary containment including interstitial release detection monitoring in accordance with this Rule. Gravity-fed vertical fill pipes, vapor recovery, vent lines, and containment sumps are excluded from the secondary containment requirements in this Rule.
- (e) An UST system design is required for installation or replacement of an UST system, UST, or connected piping. If required by G.S. 89C, UST system designs must be prepared by a Professional Engineer licensed by the North Carolina Board of Examiners for Engineers and Surveyors.
 [Note: The North Carolina Board of Examiners for Engineers and Surveyors has determined via letter dated December 20, 1993, that preparation of a UST system design constitutes practicing engineering under G.S. 89C.]
- (f) If required by the equipment manufacturer, persons installing, replacing or repairing UST systems or UST system components must be trained and certified by the equipment manufacturer or the equipment manufacturer's authorized representative to install, replace or repair such equipment.

(g) UST systems or UST system components shall be installed, tested, operated, and maintained in accordance with the manufacturer's specifications and the codes of practice, and industry standards described at 15A NCAC 02N .0907.

(h) UST systems or UST system components shall not be installed or replaced in areas where they will be in contact with contaminated soil or free product.

(i) Secondary containment systems shall be designed, constructed, installed and maintained to:

- (1) Detect the failure of the inner wall and outer wall for UST system components with double wall construction;
- (2) Contain regulated substances released from an UST system until they are detected and removed;
- (3) Prevent a release of regulated substances to the environment outside of the containment system;
- (4) Direct releases to a monitoring point or points;
- (5) Provide a release detection monitoring device or monitoring method for the interstitial space;
- (6) Continuously monitor the ~~interstitial space~~ inner and outer walls of double-walled tanks for releases—breaches of integrity using pressure, vacuum or hydrostatic monitoring methods;—methods or monitor the interstitial space of double-walled tanks for releases using an electronic liquid detecting sensor method along with periodic testing as specified in Rule .0903(f) of this Section;
- (7) Continuously monitor the ~~interstitial space~~ inner and outer walls of double-walled non-tank components for releases—breaches of integrity using pressure, vacuum, or hydrostatic methods, or monitor a non-tank component for releases by using an electronic liquid detecting sensor placed in a containment sump and in the interstitial space of a double-walled spill bucket;—bucket along with periodic integrity testing as specified in Rule .0904(h), .0905(f), and .0906(e) of this Section; and
- (8) Provide a printed record of release detection monitoring results and an alarm history for each month.
- (9) Electronic liquid detecting sensors used to monitor the interstitial space of double-walled tanks and non-tank components shall meet the following requirements:
 - (1) Electronic liquid detecting sensors used for tanks and spill buckets must be located at the lowest point in the interstitial space. Electronic liquid detecting sensors used for containment sumps must be located as specified in Rule .0905(d) of this Section.
 - (2) A tank must have a method to verify that an electronic liquid detecting sensor is located at the lowest point

of the interstitial space. Verification of the sensor location must be readily available for inspection.

(3) Electronic liquid detecting sensors must detect the presence of any liquid in the interstitial space and shall not discriminate between liquid types.

(4) Any liquid detected in the interstitial space must be removed within 48 hours of discovery.

(j) New or replacement dispensers shall be provided with under dispenser containment sumps and shall meet the secondary containment requirements and performance standards of this Rule.

(k) All release detection monitoring equipment shall be installed, calibrated, operated and maintained in accordance with manufacturer's instructions. All release detection monitoring equipment shall be checked annually for operability, proper operating condition and proper calibration in accordance with the manufacturers written guidelines. The results of the last annual check must be recorded, maintained at the UST site or the tank owner or operator's place of business, and made available for inspection.

(l) Releases detected in an interstitial space shall be reported in accordance with .0601 and investigated in accordance with the manufacturers written guidelines. Any changes in the original physical characteristics or integrity of a piping system or a containment sump must also be reported in accordance with .0601 and investigated in accordance with the manufacturer's written guidelines.

(m) UST systems and UST system components shall also meet all of the installation requirements specified in 40 CFR 280.20(c), (d) and (e). In addition, overfill prevention equipment shall be checked annually for operability, proper operating condition and proper calibration in accordance with the manufacturer's written guidelines. The results of the last annual check must be recorded, maintained at the UST site or the tank owner or operator's place of business, and made available for inspection.

Authority G.S. 143-215.3(a)(15); 143B-282(a)(2)(h).

15A NCAC 02N .0903 TANKS

(a) Tanks must be protected from external corrosion in accordance with 40 CFR 280.20(a)(1), (3) or (5).

(b) The exterior surface of a tank shall bear a permanent marking, code stamp or label showing the following information:

- (1) The engineering standard used;
- (2) The diameter in feet;
- (3) The capacity in gallons;
- (4) The materials of construction of the inner and outer walls of the tank including any external or internal coatings;
- (5) Serial number or other unique identification number designated by the tank manufacturer;
- (6) Date manufactured; and
- (7) Identity of manufacturer.

(c) Whenever an existing tank is removed prior to installation of a new tank, piping that does not meet the standards of this Section shall also be removed. The replacement tank shall not be connected to piping that does not meet the standards of this Section.

(d) Tanks that will be reused must be certified by the tank manufacturer prior to re-installation and must meet all of the requirements of this Section. Proof of certification must be submitted to the Division along with a notice of intent (Rule .0902).

(e) Tanks shall be tested ~~for tightness~~ before and after installation in accordance with the following requirements:

- (1) ~~Pre- Installation Tightness Test~~ - Before installation, the primary containment and the interstitial space shall be tested in accordance with the manufacturers written guidelines and PEI/RP100, "Recommended Practice for Installation of Underground Liquid Storage Systems." PEI/RP100, "Recommended Practice for Installation of Underground Liquid Storage Systems" is hereby incorporated by reference including subsequent amendments and editions. A copy can be obtained from Petroleum Equipment Institute, P.O. Box 2380, Tulsa, Oklahoma 74101-2380 at a cost of ninety-five dollars (\$95.00). The presence of soap bubbles or water droplets during a pressure test, any change in vacuum beyond the limits specified by the tank manufacturer during a vacuum test, or any change in liquid level in an interstitial space liquid reservoir beyond the limits specified by the tank manufacturer, shall be considered a failure of the integrity of the tank.
- (2) ~~Post-installation Tightness Test~~ - The interstitial space shall be checked for a loss of pressure or vacuum, or a change in liquid level in an interstitial space liquid reservoir. Any loss of pressure or vacuum beyond the limits specified by the tank manufacturer, or a change in liquid level beyond the limits specified by the tank manufacturer, shall be considered a failure of the integrity of the tank.
- (3) If a tank fails a ~~tightness pre-installation or post-installation~~ test, tank installation shall be suspended until the tank is replaced or repaired in accordance with the manufacturer's specifications. Following any repair, the tank shall be re-tested ~~for tightness~~ in accordance with Subparagraph (e)(1) of this Rule if it failed the pre-installation ~~tightness~~ test and in accordance with Subparagraph (e)(2) of this Rule if it failed the post-installation ~~tightness~~ test.

(f) The interstitial spaces of tanks that are not monitored using vacuum, pressure or hydrostatic methods must be tested for tightness before UST system start-up, between six months and the first anniversary of start-up and every three years thereafter. The interstitial space shall be tested using an interstitial tank

tightness test method that is capable of detecting a 0.10 gallon per hour leak rate with a probability of detection (Pd) of at least 95 percent and a probability of false alarm (Pfa) of no more than five percent. The test method must have a written third-party performance claim that describes the procedure used to demonstrate that the test method can detect a 0.10 gallon per hour leak rate with a Pd of at least 95 percent and a Pfa of no more than five percent for the specific tank model being tested. If a tank fails an interstitial tank tightness test, it must be replaced or repaired by the manufacturer or the manufacturer's authorized representative in accordance with manufacturer's specifications. All failed interstitial tank tightness tests shall be reported to the Division within 24 hours. Following any repair, the tank interstitial space shall be re-tested for tightness. The most recent periodic tightness test record must be maintained at the UST site or the tank owner's place of business and must be readily available for inspection.

Authority G.S. 143-215.3(a)(15); 143B-282(a)(2)(h).

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 18C .2201, .2202 and amend the rules cited as 15A NCAC 18C .0714, .1301 - .1303, .2002, .2004, .2006 - .2008.

Proposed Effective Date: October 1, 2009

Public Hearing:

Date: June 15, 2009

Time: 1:00 p.m.

Location: Conference Room 1A224, 2728 Capital Blvd., Raleigh, NC 27604

Reason for Proposed Action:

15A NCAC 18C .0714 – This State rule became effective July 1, 1994 and contains outdated levels of treatment requirements that conflict with and are less stringent than the Federal Regulations that North Carolina later adopted by reference in the year 2000 under 15A NCAC 18C .2007. Therefore, the treatment requirement of 2.0 log removal of Giardia cysts is being changed to 3.0 log, and 0.5 NTU turbidity is being changed to 0.3 NTU to be consistent with the regulations that are currently being enforced.

15A NCAC 18C .2007 – In order to meet the conditions of the primacy agreement with the US Environmental Protection Agency, North Carolina must adopt rules that are no less stringent than the Federal Regulations as required in Section 1413 of the Safe Drinking Water Act. There are 134 public water systems in North Carolina which use surface water or ground water under the direct influence of surface water (GWUDI) as their source. These 134 systems serve approximately 5.7 million people. These water sources carry microbial contaminants, some of which pose significant risks to public health. The primary issue of concern addressed by this rule is the risk to public health from water supplies which do not provide adequate treatment for the microorganism,

Cryptosporidium. The US EPA is particularly concerned about Cryptosporidium because it is resistant to many commonly used drinking water disinfectants, such as chlorine, and it poses significant health risks, including death. Moreover, there is no effective drug available to cure cryptosporidiosis, the health condition caused by Cryptosporidium infection. The purposes of the rule are to improve control of microbial pathogens (specifically the protozoan Cryptosporidium) in drinking water and address risk trade-offs with disinfection byproducts. While systems make treatment plant changes to comply with newly applicable disinfection byproducts standards, existing levels of microbial protection in public water systems must also be maintained. The presence of microbiological pathogens in public water supplies is a health concern, and if finished water supplies contain microbiological contaminants, illnesses and disease outbreaks may result. This rule focuses on reducing the risk associated with disinfection-resistant pathogens, such as Cryptosporidium, however, other pathogens may also be removed more efficiently due to the implementation of this rule's provisions.

15A NCAC 18C .2008 – In order to meet the conditions of the primacy agreement with the US Environmental Protection Agency, North Carolina must adopt rules that are no less stringent than the Federal Regulations as required in Section 1413 of the Safe Drinking Water Act. The Stage 2 DBPR is one part of the Microbial and Disinfection Byproducts Rules (MDBPs), which are a set of interrelated regulations that address risks from microbial pathogens and disinfectants/disinfection byproducts. The Stage 2 DBPR will reduce potential cancer and reproductive and developmental health risks from disinfection byproducts (DBPs) in drinking water, which form when disinfectants are used to control microbial pathogens. This final rule strengthens public health protection for customers by tightening compliance monitoring requirements for two groups of DBPs, trihalomethanes (THM) and haloacetic acids (HAA5). The rule targets systems with the greatest risk and builds incrementally on existing rules. This regulation will reduce DBP exposure and related potential health risks and provide more equitable public health protection. The Stage 2 DBPR is being promulgated simultaneously with the Long Term 2 Enhanced Surface Water Treatment Rule to address concerns about risk tradeoffs between pathogens and DBPs.

15A NCAC 18C .2201 and .2202 – This new proposed Section to our Rules Governing Public Water Systems sets minimum disinfectant residual level requirements for systems that use ground water. This Section also adopts the federal Ground Water Rule with several exceptions. The most notable exception to the federal Ground Water Rule is that the State adopts Assessment Source Monitoring as a requirement for certain water systems that rank as high-risk in State's source water vulnerability assessments and have history of microbial contamination. Other factors will also be used to identify systems required to perform this assessment. Other exceptions specify State-allowed microbial indicators and introduce criteria for availability of 4-log treatment for viruses to systems with known fecal contamination.

15A NCAC 18C .1301, 1302, and .1303 – The proposed rule relaxes the existing rule requiring daily operator visits for all

systems by introducing schedules of required operator visits based on system type, size, and complexity of operation. The rule also specifies the required tests to be performed during each visit and emphasizes the required reporting format and timeframes. The proposed rule provides for balanced public health protection by ensuring that each public water system receives the level of operator oversight relative to the degree of risk that its drinking water may pose to the customers. The revisions also allow public water systems more flexibility in administering operator oversight.

15A NCAC 18C .2002, .2004, and .2006 – The proposed amendments clarify minimum disinfectant residual levels required at the entry point and within the distribution system. The locations within the distribution system where disinfectant residual levels are to be measured include coliform sampling locations required under Section .1534 (40 C.F.R. 141.21) and at maximum residence time locations required under the proposed amendments to Section .1302. Combined chlorine measurement is eliminated as a representation of system's disinfecting ability and is replaced with total chlorine measurement. At specific sampling locations, the minimum level for total chlorine is now set at 1.0 mg/L while the minimum level for free chlorine, for systems that use chlorine only in their disinfection process, is set at 0.2 mg/L.

Procedure by which a person can object to the agency on a proposed rule: *Objections on the proposed rules should be submitted to Linda F. Raynor, Public Water Supply Section, 1634 Mail Service Center, Raleigh, NC 27699-1634 or by email at Linda.Raynor@ncmail.net.*

Comments may be submitted to: *Linda F. Raynor, Public Water Supply Section, 1634 Mail Service Center, Raleigh, NC 27699-1634, phone (919) 715-3225, email at Linda.Raynor@ncmail.net*

Comment period ends: *June 30, 2009*

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 919-431-3000.

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

☒ **State** - 15A NCAC 18C .1301 - .1303, .2007, .2008, .2201, and .2202

- ☒ **Local** - 15A NCAC 18C .1301 - .1303, .2007, .2008, .2201, and .2202
- ☒ **Substantive** ($\geq \$3,000,000$) - 15A NCAC 18C .2007, .2008, and .1300 only
- ☒ **None** - 15A NCAC 18C .0714, .2002, .2004, and .2006

Fiscal Note Posted at

http://www.osbm.state.nc.us/files/pdf_files/DENR04232009.pdf.

CHAPTER 18 - ENVIRONMENTAL HEALTH

SUBCHAPTER 18C - WATER SUPPLIES

SECTION .0700 - SURFACE WATER TREATMENT FACILITIES

15A NCAC 18C .0714 PILOT PLANT STUDIES

(a) A pilot plant study proposal shall be submitted to the Department for approval before the study is conducted. The following conditions shall apply:

- (1) An engineering report shall describe the proposed study and shall include the information and data to justify use of the particular plant to treat the source water;
- (2) The proposed plant shall employ treatment techniques that are consistent with this Subchapter;
- (3) The pilot plant shall be of the same design and operation as the proposed plant;
- (4) A protocol for conducting the study shall be submitted which includes the duration, testing procedures, reporting procedures, plant scale and other factors which affect the proposed plant operation; and
- (5) The study shall be conducted over a time sufficient to treat all worst case source water conditions expected through the year.

(b) Pilot plant finished water shall not be introduced to a public water system unless approved by the Department.

(c) When the proposed plant or pilot plant has been tested under worst case conditions on similar water and achieved ~~2-0~~ 3.0 log removal of Giardia cysts and a maximum of ~~0-5~~ 0.3 NTU turbidity levels 95 percent of the time in filtered effluent, the particular model plant may be proposed without on-site testing.

(d) The pilot plant shall comply with the provisions of Section .2000 of this Subchapter.

Authority G.S. 130A-315; 130A-317; P.L. 93-523.

SECTION .1300 - OPERATION OF PUBLIC WATER SUPPLIES

15A NCAC 18C .1301 GENERAL REQUIREMENTS

~~(a) Operator in Charge. The operator in responsible charge of a public surface water system requiring disinfection shall be capable of computing chlorine dosages and other chemical dosages that may be applied to the water. The operator shall be familiar with the entire water system, including pipelines, chlorinators and other appurtenances pertaining to the operation~~

of the entire system. The operator shall hold a valid certificate issued by the North Carolina Water Treatment Facility Operators Certification Board.

~~(b) Tests; Reports. The operator shall make residual chlorine tests and other applicable tests at least daily and shall report the results of the tests to the Public Water Supply Section in a monthly report on forms provided by the Department. Copies of this report form indicating the required information may be obtained from the Public Water Supply Section. A copy of each monthly report shall be submitted by the tenth day of the following month to the Public Water Supply Section.~~

~~(a) For the purposes of this Section,~~

- ~~(1) A "facility" is defined as any individual operational unit or a combination of operational units that a public water system uses in the treatment or distribution of drinking water.~~
- ~~(2) Any "operator" referenced in this Section shall hold a valid certificate issued by the North Carolina Water Treatment Facility Operators Certification Board. An "Operator in Responsible Charge (ORC)" designated for each facility shall hold a grade of certification corresponding to or higher than the classification of the facility.~~

~~(b) Treatment facility. The supplier of water shall have the designated Operator in Responsible Charge (ORC), or a certified treatment facility operator working under the direction of the ORC, on site as frequently as necessary to ensure compliance with the requirements of this Section and Subchapter. In addition:~~

- ~~(1) At least one visit per week shall be performed by the designated ORC for the treatment facility or by an operator with a grade of certification corresponding to or higher than the classification of the facility.~~
- ~~(2) The ORC or certified treatment facility operator working under the direction of the ORC shall be familiar with the entire water system, including the chlorinators, piping and other appurtenances pertaining to the operation of the treatment plant and the distribution system.~~
- ~~(3) During the oversight visits required in Rule .1303 of this Section, the operator, at a minimum, shall conduct routine visual inspections of the system's treatment facility from source to the point where water is entering the distribution system; adjust equipment settings and fill chemical feed tanks as necessary; record dates and quantities of chemicals added; and perform the physical and chemical tests required on plant monthly operation reports.~~

~~(c) Distribution facility. The supplier of water shall have the designated Operator in Responsible Charge (ORC) on site as frequently as necessary to operate the facility, provide emergency response and ensure compliance with the requirements of this Section and Subchapter. The treatment~~

facility ORC or distribution system ORC may delegate the collection of distribution system samples and field measurements required on monthly operation reports, including residual disinfectant testing in the distribution system in accordance with Rule .1302(a)(1)(B) of this Section to a non-certified operator (designee) under his/her direction, subject to the following provisions:

- (1) The standard operating procedures plan prepared in accordance with 15A NCAC 18D .0701(f) shall include procedures for sampling and for performing residual disinfectant tests and other field measurements.
- (2) In order to report low residual disinfectant test readings or other problems, the designee shall, at all times, be able to contact the ORC or certified operator working under the direction of the ORC, who shall take corrective action as needed to keep the system in compliance.

Authority G.S. 130A-315; 90A-29; P.L. 93-523.

15A NCAC 18C .1302 TESTS, FORMS AND REPORTING

~~(a) Operator in Charge. The person in responsible charge of operation of a public water system filtration plant where raw water is obtained from a class WS I, WS II, WS III, WS IV, or WS V stream as classified by the Division of Environmental Management and removal of dissolved matter or suspended matter is required shall hold an appropriate valid certificate issued by the North Carolina Water Treatment Facility Operators Certification Board.~~

~~(b) Tests; Forms. Bacteriological and chemical tests and analysis of the water shall be made daily when the plant is operating and shall be reported to the Public Water Supply Section, in a monthly report on forms provided by the Department. Copies of report forms indicating the required information may be obtained from the Public Water Supply Section. A copy of each monthly report shall be submitted by the tenth day of the following month to the Public Water Supply Section.~~

~~(c) Operation. An operator shall be on duty at the treatment facility whenever the treatment facility is in operation.~~

~~(a) Required tests. If a public water system uses disinfectants or other chemicals for the treatment of water, residual disinfectant tests and other applicable water quality tests required by this Subchapter shall be made during every visit to the facility required by Rule .1303 of this Section. Residual disinfectant concentrations shall be maintained in accordance with 15A NCAC 18C .2002 and .2201 and shall be tested as follows:~~

- (1) Residual disinfectant tests at the entry point. For systems providing treatment, residual disinfectant concentrations shall be measured in the water entering the distribution system by the operator during every visit required by Rule .1303(a) of this Section.
- (2) Residual disinfectant tests in the distribution system.
 - (A) Residual disinfectant concentrations shall be measured at regular time

intervals throughout the month at locations that represent maximum residence time of the water in the distribution system or at other similar locations with high water age. These locations shall be designated on the sample siting plan required under 15A NCAC 18C .1534. The residual

disinfectant concentrations in the distribution system shall be measured by the operator or designee as shown in Table A below. Samples collected on the same day must be collected from different locations. Samples collected on different days may be collected from the same location.

Table A: Measurement Requirements for Residual Disinfectant Concentrations and Chloramine Operational Parameters

<u>Distribution System Classification according to 15A NCAC 18D .0205(b)</u>	<u>Minimum Number of Samples Per Month</u>	<u>Minimum Number of Samples Per Week</u>
<u>D</u>	<u>4</u>	<u>1</u>
<u>C</u>	<u>12</u>	<u>3</u>
<u>B</u>	<u>20</u>	<u>5</u>
<u>A</u>	<u>28</u>	<u>7</u>

(B) Distribution systems classified as C or D in Table A may request the Department to reduce the requirements for measuring residual disinfectant concentrations in the distribution system at the locations that represent maximum residence time sites or other similar locations with high water age as required in Part (a)(2)(A) of this Rule. The request shall be in writing and shall demonstrate to the Department that due to the limited nature of the distribution system, the residual disinfectant concentrations measured at the entry point in accordance with Subparagraph (a)(1) of this Rule are sufficient in providing the minimum residual disinfectant concentrations required under 15A NCAC 18C .2002 and .2201. The Department shall consider the presence of continuous monitoring, size and configuration of the distribution system, magnitude of disinfectant degradation and results of performance studies.

(3) Chloramine Operational Parameters. When ammonia and chlorine are applied disinfectants, the system shall measure analytical parameters pertinent to the operation as follows:

(A) Water entering the distribution system. Parameters to be measured shall, at a minimum, include total chlorine, monochloramine, free ammonia, and pH and shall be

performed daily, while the treatment facility is in operation.

(B) Water in the distribution system. Parameters to be measured shall, at a minimum, include total chlorine, monochloramine, free ammonia, pH, nitrate and nitrite and shall be measured no less often than denoted in Table A.

(b) Forms and Reporting. Tests performed at a public water system shall be reported to the Public Water Supply Section as follows:

(1) Test results shall be documented and reported monthly on forms and in a format provided by the Department and shall be signed by the ORC. Copies of report forms may be obtained from the Public Water Supply Section. The monthly report shall be submitted by the 10th day of the following month to the Public Water Supply Section.

(2) The forms and reports shall be in an electronic format provided by the Department for water systems owned and/or operated by local governments and all community water systems serving 1,000 or more service connections or 3,000 or more individuals, regardless of ownership, effective January 1, 2010. Community water systems serving less than 1,000 service connections and less than 3,000 individuals and all non-transient, non-community water systems shall report test results in an electronic format provided by the Department effective July 1, 2010. The Department may waive the requirement for electronic submission of a report if the water system demonstrates that it lacks the technical capability to report electronically.

To obtain this waiver, the water system shall submit a request in writing to the Department no less than two months prior to the deadline.

Authority G.S. 130A-315; 90A-29; P.L. 93-523.

15A NCAC 18C .1303 FREQUENCY OF OVERSIGHT

~~(a) Operator in Charge. The operator of a community and non-transient, non-community water system well shall be capable of computing chlorine dosages and other chemical dosages which are applied to the water when such treatment is required. The operator shall be familiar with the entire water system, including pipelines, pumps, chlorinators, and other appurtenances pertaining to the operation of the entire water system. The operator shall hold a valid certificate issued by the North Carolina Water Treatment Facility Operators Certification Board.~~

~~(b) Tests; Forms. When application of chlorine and other chemicals are required, the operator shall make required residual chlorine tests and other tests daily and shall report his results to the Public Water Supply Section, in a monthly report on forms provided by the Department. Copies of this report form indicating the required information may be obtained from the Public Water Supply Section. A copy of each monthly report shall be submitted by the tenth day of the following month to the Public Water Supply Section.~~

(a) Treatment Facility Oversight. The supplier of water shall provide oversight at a public water system treatment facility as follows:

- (1) Surface Water or Groundwater Under the Direct Influence (GWUDI) of Surface Water Treatment Facilities. Surface water or GWUDI systems shall have the ORC or an operator with a grade of certification corresponding to or higher than the classification of the facility on-site at least 20 percent of the time the facility is in operation. This requirement is in addition to the operator requirements of 15A NCAC 18D .0206, Rules Governing Water Treatment Facility Operators. Residual disinfectant concentration measurements and other applicable water quality tests shall be performed daily, while the treatment facility is in operation.
- (2) Ground Water Treatment Facilities.

(A) Ground water treatment facilities with any individual parameter rating value of 10 or higher as classified by 15A NCAC 18D .0203 shall be visited by an operator daily.

(B) Ground water treatment facilities with all individual parameter rating values less than 10 as classified 15A NCAC 18D .0203 shall be visited by an operator as often as necessary to ensure compliance with the requirements of this Subchapter but no less often than denoted in Table B below. For the standard frequency of three times per week, no more than two consecutive days shall pass between operator oversight visits.

(3) Supplemental Treatment Facilities.

(A) A supplemental treatment facility, including booster chlorination, is a facility designed to treat water that has previously been treated to meet standards of the "North Carolina Drinking Water Act." Supplemental treatment facilities with any individual parameter rating value of 10 or higher as designated by 15A NCAC 18D .0203 shall be visited by an operator daily.

(B) Supplemental treatment facilities with all individual parameter rating values less than 10 as designated by 15A NCAC 18D .0203 shall be visited by an operator as often as necessary to ensure compliance with the requirements of this Subchapter but no less often than denoted in Table B below. For the standard frequency of three times per week, no more than two consecutive days shall pass between operator oversight visits.

Table B: Standard Frequency of Oversight Visits for Ground Water and Supplemental Treatment Facilities

<u>SYSTEM TYPE</u>	<u>POPULATION SIZE</u>	<u>STANDARD FREQUENCY OF OVERSIGHT VISITS</u>
<u>Community</u>	<u>> 3,300</u> <u>101 to 3,300</u> <u>100 or fewer</u>	<u>Daily</u> <u>Five times per week</u> <u>Three times per week</u>
<u>Non-transient, non-community</u>	<u>> 1,000</u> <u>1,000 or fewer</u>	<u>Five times a week</u> <u>Three times per week</u>
<u>Transient, non-community</u>	<u>Any population size</u>	<u>Once per week, unless exempted by 15A NCAC 18D .0206</u>

(b) Distribution Facility Oversight. Distribution facilities have no specified standard frequency of oversight visits under this Section. The distribution facility shall be visited by the operator as frequently as necessary to operate the facility, provide emergency response and ensure compliance with the requirements of this Section and Subchapter.

(c) Increased Frequency of Oversight.

(1) A system that fails to maintain any operational parameter that would cause a violation of water quality or treatment standards of Section .1500 of this Subchapter or any failure of the system's treatment or distribution facility which may affect the system's ability to comply with Section .1500 of this Subchapter shall be visited by the operator daily until the system has returned to compliance. Daily visits shall be required for all systems failing to maintain minimum residual disinfectant concentrations under Rules .2002 or .2201 of this Subchapter or maximum residual disinfectant levels under Rule .2008 of this Subchapter until compliant disinfection levels are restored, regardless of the standard frequency of oversight visits for that system.

(2) The Department may increase the standard frequency of operator oversight visits required by this Rule for a system that has a violation of applicable rules, an equipment malfunction, a customer complaint, an emergency or other situation that may affect the ability of the system to comply with the requirements of this Subchapter.

(d) Reduced Frequency of Oversight. The Department may grant written approval to reduce the standard frequency of operator oversight visits of this Subchapter to not less than once per week if a system can document equivalent public health protection through use of remotely controlled continuous monitoring and recording technology. The recorded data must be reviewed at a minimum of five days a week. This technology must be capable of contacting the operator 24 hours a day, seven days a week in case of operational failure, including a loss of signal. The Department may also grant written approval to reduce the required oversight frequency when a system is not treating or distributing drinking water for an extended period of time. The system shall document its request and the date of State approval on the monthly operation report.

Authority G.S. 130A-315; 90A-29; P.L. 93-523.

SECTION .2000 – FILTRATION AND DISINFECTION

15A NCAC 18C .2002 DISINFECTION

The provisions of 40 C.F.R. 141.72 are hereby adopted by reference in accordance with G.S. 150B-14(c) with the following exceptions:

(1) ~~In addition to the requirements of 40 C.F.R. 141.72(a)(3) and (4) concerning residual disinfectant concentration, the following shall apply:~~

~~(a) When chlorine is the singular applied disinfectant, the residual disinfectant concentration entering the distribution system shall not be less than 0.2 mg/l free chlorine. When ammonia and chlorine are applied disinfectants the residual disinfectant concentration entering the distribution system shall not be less than 2.0 mg/l as combined chlorine; and~~

~~(b) When chlorine is the singular applied disinfectant, the residual disinfectant in the distribution system shall not be less than 0.2 mg/l as free chlorine in more than five percent of the samples each month and when ammonia and chlorine are applied disinfectants, the residual disinfectant shall not be less than 2.0 mg/l as combined chlorine in more than five percent of the sample each month.~~

(2) ~~In addition to the requirements of 40 C.F.R. 141.72(b)(2) and (3) the following shall apply:~~

~~(a) When chlorine is the singular applied disinfectant, the residual disinfectant concentration entering the distribution system shall not be less than 0.2 mg/l free chlorine. When ammonia and chlorine are applied disinfectants the residual disinfectant concentration entering the distribution system shall not be less than 2.0 mg/l as combined chlorine; and~~

~~(b) When chlorine is the singular applied disinfectant, the residual disinfectant in the distribution system shall not be less than 0.2 mg/l as free chlorine in more than five percent of the samples each month and when ammonia and chlorine are applied disinfectants, the residual disinfectant shall not be less than 2.0 mg/l as combined chlorine in more than five percent of the samples each month.~~

(1) Water entering the distribution system. In 40 C.F.R. 141.72 (a)(2), (a)(3) and (b)(2), "0.2 mg/l" of residual disinfectant concentration shall be replaced with "0.2 mg/l measured as free chlorine when chlorine is the singular applied disinfectant and 1.0 mg/l measured as total chlorine when ammonia and chlorine are applied disinfectants".

(2) Water in the distribution system at Coliform Sampling Sites. In 40 C.F.R. 141.72(a)(4) and (b)(3), "undetectable" shall be replaced with "less than 0.2 mg/l measured as free chlorine when

chlorine is the singular applied disinfectant and less than 1.0 mg/l measured as total chlorine when ammonia and chlorine are applied disinfectants".

- (3) Water in the distribution system at Maximum Residence Time Sites. For samples collected at maximum residence time sites or at other similar locations with high water age as required by 15A NCAC 18C .1302(a)(2), residual disinfectant concentrations shall be at detectable levels as set forth and calculated in 40 C.F.R. 141.72(a)(4) and (b)(3).

Authority G.S. 130A-315; P.L. 93-523; 40 C.F.R. 141.72.

15A NCAC 18C .2004 ANALYTICAL AND MONITORING REQUIREMENTS

The provisions of 40 C.F.R. 141.74 are hereby adopted by reference in accordance with G.S. 150B-14(c) ~~except that 40 C.F.R. 141.74(e)(2) shall read as follows: with the following exceptions:~~

- (1) The residual disinfectant concentration of the water entering the distribution system shall be monitored continuously, and the lowest value shall be recorded each day, except that if there is a failure in the continuous monitoring equipment, grab sampling every four hours may be conducted in lieu of continuously monitoring, but for no more than five working days following the failure of the equipment. Systems serving 3,300 or fewer persons may take grab samples in lieu of providing continuous monitoring on an ongoing basis at the frequency of every four hours that water is being treated.
- (2) In 40 C.F.R. 141.74, "0.2 mg/l" of residual disinfectant concentration shall be replaced with "0.2 mg/l measured as free chlorine when chlorine is the singular applied disinfectant and 1.0 mg/l measured as total chlorine when ammonia and chlorine are applied disinfectants".

Authority G.S. 130A-315; P.L. 93-523; 40 C.F.R. 141.74.

15A NCAC 18C .2006 REPORTING AND RECORD KEEPING REQUIREMENTS

The provisions of 40 C.F.R. 141.75 are hereby adopted by reference in accordance with G.S. ~~150B-14(e), 150B-14(c)~~ with the following exception: In 40 C.F.R. 141.75, "0.2 mg/l" of residual disinfectant concentration shall be replaced with "0.2 mg/l measured as free chlorine when chlorine is the singular applied disinfectant and 1.0 mg/l measured as total chlorine when ammonia and chlorine are applied disinfectants".

Authority G.S. 130A-315; P.L. 93-523; 40 C.F.R. 141.75.

15A NCAC 18C .2007 ENHANCED FILTRATION AND DISINFECTION

(a) Public water systems shall respond to the State in writing to significant deficiencies outlined in sanitary survey reports no later than 45 days after receipt of the report, indicating how and on what schedule the system will address significant deficiencies noted in the survey.

(b) Public water systems shall take necessary steps to address significant deficiencies identified in sanitary survey reports if such deficiencies are within the control of the public water system and its governing body.

(c) Sanitary survey means an onsite review by the State of the water source (identifying sources of contamination using results of source water assessments where available), facilities, equipment, operation, maintenance, and monitoring compliance of a public water system to evaluate the adequacy of the system, its sources and operations and the distribution of safe drinking water.

(d) A significant deficiency is a defect in a system's design, operation, or maintenance, as well as any failures or malfunctions of its treatment, storage, or distribution system, that is causing or has the potential to cause the introduction of contamination into water delivered to customers.

(e) When a public water system is required to conduct a comprehensive performance evaluation (CPE) pursuant to this Subchapter, the CPE shall include: assessment of water treatment plant performance, evaluation of major unit processes, identification and prioritization of performance limiting factors, assessment of the applicability of comprehensive technical assistance, and a written CPE report. The public water system shall participate in a comprehensive technical assistance (CTA) activity when the Department determines, based on the CPE results, there is a potential for improved water treatment performance and the public water system is able to receive and implement technical assistance. During the CTA phase, the public water system shall use the CPE results to identify and systematically address factors limiting performance of its water treatment plant; further, the public water system shall implement process control priority-setting techniques, and maintain long-term involvement in training staff and administrators.

(f) The provisions of 40 C.F.R. 141, Subpart P - Enhanced Filtration and Disinfection - (Systems Serving 10,000 or More People) and Subpart T - Enhanced Filtration and Disinfection - (Systems Serving Fewer than 10,000 People) and the provisions of 40 C.F.R. 141, Subpart W- Enhanced Treatment for *Cryptosporidium* are hereby incorporated by reference including any subsequent amendments and editions. This material is available for inspection at the Department of Environment and Natural Resources, Division of Environmental Health, 2728 Capital Boulevard, Raleigh, North Carolina. Copies may be obtained from the Environmental Protection Agency's (USEPA) Drinking Water Hotline at 1-800-426-4791 or from EPA's webpage at <http://www.epa.gov/ogwdw/regs.html>.

Authority G.S. 130A-315; P.L. 93-523; 40 C.F.R. 141.

**15A NCAC 18C .2008 DISINFECTANTS AND
DISINFECTION BYPRODUCTS**

(a) The provisions of 40 C.F.R. 141.53 are hereby incorporated by reference including any subsequent amendments and editions. This material is available for inspection at the Department of Environment and Natural Resources, Division of Environmental Health, 2728 Capital Boulevard, Raleigh, North Carolina. Copies may be obtained from the Environmental Protection Agency's (USEPA) Drinking Water Hotline at 1-800-426-4791 or from EPA's webpage at <http://www.epa.gov/ogwdw/regs.html>.

(b) The provisions of 40 C.F.R. 141.54 are hereby incorporated by reference including any subsequent amendments and editions. This material is available for inspection at the Department of Environment and Natural Resources, Division of Environmental Health, 2728 Capital Boulevard, Raleigh, North Carolina. Copies may be obtained from the Environmental Protection Agency's (USEPA) Drinking Water Hotline at 1-800-426-4791 or from EPA's webpage at <http://www.epa.gov/ogwdw/regs.html>.

(c) The provisions of 40 C.F.R. 141.64 are hereby incorporated by reference including any subsequent amendments and editions. This material is available for inspection at the Department of Environment and Natural Resources, Division of Environmental Health, 2728 Capital Boulevard, Raleigh, North Carolina. Copies may be obtained from the Environmental Protection Agency's (USEPA) Drinking Water Hotline at 1-800-426-4791 or from EPA's webpage at <http://www.epa.gov/ogwdw/regs.html>.

(d) The provisions of 40 C.F.R. 141.65 are hereby incorporated by reference including any subsequent amendments and editions. This material is available for inspection at the Department of Environment and Natural Resources, Division of Environmental Health, 2728 Capital Boulevard, Raleigh, North Carolina. Copies may be obtained from the Environmental Protection Agency's (USEPA) Drinking Water Hotline at 1-800-426-4791 or from EPA's webpage at <http://www.epa.gov/ogwdw/regs.html>.

(e) The provisions of 40 C.F.R. 141, Subpart L- Disinfectant Residuals, Disinfection Byproducts, and Disinfection Byproduct Precursors and the provisions of 40 C.F.R. 141, Subparts U- Initial Distribution System Evaluations and Subpart V - Stage 2 Disinfection Byproducts Requirements are hereby incorporated by reference including any subsequent amendments and editions. This material is available for inspection at the Department of Environment and Natural Resources, Division of Environmental Health, 2728 Capital Boulevard, Raleigh, North Carolina. Copies may be obtained from the Environmental Protection Agency's (USEPA) Drinking Water Hotline at 1-800-426-4791 or from EPA's webpage at <http://www.epa.gov/ogwdw/regs.html>.

(f) Travel trailer parks, campgrounds, and marina slips that are community water systems as defined by G.S. 130A-313(10), but do not serve 25 or more of the same persons more than six months per year shall be regulated as transient non-community water systems for the purpose of this Rule.

Authority G.S. 130A-315; P.L. 93-525; 40 C.F.R. 141.

SECTION .2200 – GROUND WATER SYSTEMS

15A NCAC 18C .2201 GENERAL REQUIREMENTS

(a) Applicability. The provisions of this Rule apply to all public water systems that use ground water except that it does not apply to public water systems that combine all of their ground water with surface water or with ground water under the direct influence of surface water prior to treatment under Subpart H. For the purposes of this Rule "ground water system" is defined as any public water system meeting this applicability statement, including consecutive systems receiving finished ground water.

(b) Disinfection.

(1) Water entering the distribution system.

Systems providing chemical disinfection in accordance with 15A NCAC 18C .0402(j) shall measure residual disinfectant concentrations in the water entering the distribution system. The residual disinfectant concentration shall not be less than 0.2 mg/l measured as free chlorine when chlorine is the singular applied disinfectant and shall not be less than 1.0 mg/l measured as total chlorine when ammonia and chlorine are applied disinfectants for more than two consecutive daily visits for systems that are collecting grab samples and not more than four hours for systems that perform continuous monitoring.

(2) Water in the distribution system at Maximum Residence Time Sites.

Systems providing chemical disinfection in accordance with 15A NCAC 18C .0402(j) shall measure residual disinfectant concentrations at maximum residence time sites or at other similar locations with high water age as required by 15A NCAC 18C .1302(a)(2). The residual disinfectant concentrations at these locations shall be at detectable levels as set forth and calculated in 40 C.F.R. 141.72(a)(4) and (b)(3).

Authority G.S. 130A-315; P.L. 93-523.

15A NCAC 18C .2202 GROUND WATER RULE

The provisions of 40 C.F.R. 141, Subpart S – Ground Water Rule are hereby incorporated by reference including any subsequent amendments and editions. This material is available for inspection at the Department of Environment and Natural Resources, Division of Environmental Health, 2728 Capital Boulevard, Raleigh, North Carolina. Copies obtained from the Environmental Protection Agency's (USEPA) Drinking Water Hotline at 1-800-426-4791 or from EPA's web page at <http://www.epa.gov/ogwdw/regs.html>. The provisions are incorporated with the following exceptions:

(1) Fecal indicator for source water monitoring.

When systems are required to conduct triggered source water monitoring or assessment source water monitoring under 40 C.F.R. 141.402 (a) and (b) respectively, any of

the following three fecal indicators can be used: *E. coli*, enterococci or coliphage.

(2) Corrective Action Alternatives.

Ground water systems that are required to implement corrective action in accordance with 40 C.F.R. 141.403(a)(6) must determine that alternatives (a)(6)(i), (a)(6)(ii) and (a)(6)(iii) are not feasible before implementing alternative (a)(6)(iv). The rationale for selection of alternative (a)(6)(iv) must be documented in accordance with 15A NCAC 18C .0307(b)(10).

(3) Assessment Source Water Monitoring.

The Department shall use information from the Public Water Supply Section's database and from its Source Water Assessment Program to identify sources subject to assessment source water monitoring. Systems notified by the Department must commence assessment source water monitoring for the sources identified by January 1, 2010. The system shall conduct assessment source water monitoring for any source that receives physical or chemical treatment and possesses any one of the following characteristics:

(a) Any source subject to the requirements of G.S. 130A-317(b) and applicable rules for which the public water system did not receive approval from the Department for construction or alteration.

(b) Source is deemed by the Source Water Assessment Program to have a "higher" Inherent Vulnerability Rating and the system has historical total and/or fecal coliform MCL violations during the compliance periods between January 1, 2005 and December 31, 2008.

(c) Source is deemed by the Source Water Assessment Program to have a "higher" Inherent Vulnerability Rating and the system has total and/or fecal coliform monitoring violations cited for more than 25 percent of the compliance periods between January 1, 2005 and December 31, 2008.

Any system shall perform assessment source water monitoring as directed by the Department in response to deficiencies identified by a sanitary survey that are related to source or treatment.

Assessment source water monitoring shall be conducted in accordance with the requirements specified in 40 C.F.R. 141.402(b)(1) through (6) using any of the following three fecal indicators: *E. coli*, enterococci or coliphage.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 32 – MEDICAL BOARD

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Medical Board intends to adopt the rules cited as 21 NCAC 32S .0201 - .0219 and repeal the rules cited as 21 NCAC 32O .0118 - .0121; 32S .0101, .0102, .0104 - .0113, .0115 - .0118.

Proposed Effective Date: *September 1, 2009*

Public Hearing:

Date: *June 30, 2009*

Time: *10:00 a.m.*

Location: *North Carolina Medical Board, 1203 Front St., Raleigh, NC 27609*

Reason for Proposed Action: *The proposed rules represent a comprehensive revision of already existing rules governing the practice of the physician assistant profession. These proposed rules reconfigure, update, and streamline the existing rules that were originally promulgated several decades ago. These do not reflect substantive changes to the existing rules.*

Procedure by which a person can object to the agency on a proposed rule: *A person may submit objections to these rules, in writing by June 30, 2009, to Rules Coordinator, North Carolina Medical Board, 1203 Front Street, Raleigh, NC 27609 or email at rules@ncmedicalboard.org.*

Comments may be submitted to: *Rules Coordinator, North Carolina Medical Board, 1203 Front St., Raleigh, NC 27609, phone (919) 326-1100, fax (919) 326-0036, email rules@ncmedboard.org*

Comment period ends: *June 30, 2009*

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 919-431-3000.*

Authority G.S. 130A-315; P.L. 93-523; 40 C.F.R. 141 Subpart S.

Fiscal Impact:

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

**SUBCHAPTER 32O - PHYSICIAN ASSISTANT
REGULATIONS**

21 NCAC 32O .0118 LOCUM TENENS PERMIT

~~Locum tenens means the temporary provision of services at a specific site by a substitute physician assistant provider. The Board may grant a locum tenens permit to any applicant who is approved by the State. The permit may be granted by an authorized representative of the Board. Such applications for locum tenens permits shall be reviewed at the next regularly scheduled Board meeting. The duration of a locum tenens permit shall be finite and shall not exceed six months.~~

Authority G.S. 90-18(13); 90-18.1.

**21 NCAC 32O .0119 TITLE AND PRACTICE
PROTECTION**

~~(a) Any person not approved under this Subchapter is in violation of G.S. 90-18 and is subject to penalties applicable to the unlicensed practice of medicine if he or she:~~

- ~~(1) holds himself or herself out as a physician assistant;~~
- ~~(2) uses any combination or abbreviation of the term "physician assistant" to indicate or imply that he or she is a physician assistant; or~~
- ~~(3) acts as a physician assistant without being approved by the Board.~~

~~(b) An unlicensed physician shall not be permitted to use the title of "physician assistant" or to practice as a physician assistant unless he or she fulfills the requirements of this Subchapter.~~

Authority G.S. 90-18(13); 90-18.1.

**21 NCAC 32O .0120 IDENTIFICATION
REQUIREMENTS**

~~Physician assistants approved under this Subchapter shall keep proof of current approval available for inspection at their primary place of practice and shall, when engaged in their professional activities, wear a name tag identifying themselves as a "physician assistant."~~

Authority G.S. 90-18(13); 90-18.1.

21 NCAC 32O .0121 FEES

~~The Board is empowered to charge the following fees:~~

- ~~(1) Physician Assistant License Fee one hundred and fifty dollars (\$150.00).~~
- ~~(2) Annual Registration Fee seventy five dollars (\$75.00).~~

Authority G.S. 90-18(13); 90-18.1.

**SUBCHAPTER 32S - PHYSICIAN ASSISTANT
REGULATIONS**

SECTION .0100 - REPEALED

21 NCAC 32S .0101 DEFINITIONS

~~The following definitions apply to this Subchapter:~~

- ~~(1) "Board" means the North Carolina Medical Board.~~
- ~~(2) "Physician Assistant" means a person licensed by and registered with the Board to perform medical acts, tasks, or functions under the supervision of a physician licensed by the Board, who performs tasks traditionally performed by the physician, and who has graduated from a physician assistant or surgeon assistant program accredited by the Commission on Accreditation of Allied Health Education Programs, or its predecessor or successor agencies.~~
- ~~(3) "Physician Assistant License" means the document issued by the Board showing approval for the physician assistant to perform medical acts, tasks, or functions under North Carolina law.~~
- ~~(4) "Registering" means paying the annual fee and providing the information requested by the Board as outlined in Rule .0105 of this Section.~~
- ~~(5) "Supervising Physician" means a physician who is licensed by the Board and who is not prohibited by the Board from supervising physician assistants. The physician may serve as a primary supervising physician or as a back up supervising physician.~~
 - ~~(a) The "Primary Supervising Physician" is the physician who accepts full responsibility for the physician assistant's medical activities and professional conduct at all times, whether the physician personally is providing supervision or the supervision is being provided by a Back up Supervising Physician. The Primary Supervising Physician shall assume responsibility for assuring the Board that the physician assistant is qualified by education and training to perform all medical acts required of the physician assistant and shall assume responsibility for the physician assistant's performance in the particular field or fields in which the physician assistant is expected to perform medical acts.~~
 - ~~(b) The "Back up Supervising Physician" means the physician who accepts the responsibility for supervision of the physician assistant's activities in the~~

~~absence of the Primary Supervising Physician. The Back up Supervising Physician is responsible for the activities of the physician assistant only when providing supervision.~~

- ~~(6) "Supervising" means overseeing the activities of, and accepting the responsibility for, the medical services rendered by a physician assistant.~~
- ~~(7) "Supervisory Arrangement" is the written statement that describes the medical acts, tasks and functions delegated to the physician assistant by the primary supervisory physician appropriate to the physician assistant's qualification, training, skill and competence.~~
- ~~(8) "Volunteer practice" means performance of medical acts, tasks, or functions without expectation of any form of payment or compensation.~~
- ~~(9) "Examination" means the Physician Assistant National Certifying Examination.~~

Authority G.S. 90-18(c)(13); 90-18.1.

21 NCAC 32S .0102 QUALIFICATIONS FOR LICENSE

~~(a) Except as otherwise provided in this Subchapter, an individual shall obtain a license from the Board before the individual may practice as a physician assistant. The Board may grant a license as a physician assistant to an applicant who has met all the following criteria:~~

- ~~(1) submits a completed application on forms provided by the Board;~~
- ~~(2) pays the fee established by Rule .0121(1) in this Section;~~
- ~~(3) has successfully completed an educational program for physician assistants or surgeon assistants accredited by the Commission on Accreditation of Allied Health Education Programs or its predecessor or successor agencies and; if licensed in North Carolina after June 1, 1994, has successfully completed the Physician Assistant National Certifying Examination;~~
- ~~(4) certifies that he or she is mentally and physically able to engage safely in practice as a physician assistant;~~
- ~~(5) has no license, certificate, or registration as a physician assistant currently under discipline, revocation, suspension or probation for cause resulting from the applicant's practice as a physician assistant;~~
- ~~(6) has good moral character;~~
- ~~(7) submits to the Board any other information the Board deems necessary to evaluate the applicant's qualifications; and~~
- ~~(8) if two years or more have passed since graduation from an approved program, as described in Subparagraph (3), the applicant~~

~~must affirm that he/she has successfully completed at least 100 hours of continuing medication education (CME) during the preceding two years. The Board may, require submission of documentation of CME as part of application process.~~

- ~~(b) An applicant may be required to appear, in person, for an interview with the Executive Director, a Board member, an agent of the Board, or the full Board upon completion of all credentials.~~

Authority G.S. 90-11; 90-18(c)(13); 90-18.1.

21 NCAC 32S .0104 INACTIVE LICENSE STATUS

~~(a) By notifying the Board in writing any physician assistant may elect to place his or her license on an inactive status. A physician assistant with an inactive license shall not practice as a physician assistant. Any physician assistant who engages in practice while his or her license is on inactive status shall be considered to be practicing without a license, which shall be grounds for discipline under G.S. 90-14(a)(7). A physician assistant requesting reactivation from inactive status shall pay the current renewal fee, to provide documentation to the Board verifying completion of continuing medical education during the preceding two years as required in Rule .0106 of this Section, and shall meet the criteria for renewal as specified in 21 NCAC 32S .0105.~~

~~(b) A physician assistant requesting reactivation from inactive status that is more than year after the date the license became inactive shall pay the current renewal fee, provide documentation to the Board verifying completion of continuing medical education during the preceding two years as required in Rule .0106 of this Section, complete forms provided by the Board, provide proof that he/she has successfully completed the Physician Assistant National Certifying Examination, and shall meet the criteria for renewal as specified in 21 NCAC 32S .0105.~~

Authority G.S. 90-13(c)(13); 90-18.1.

21 NCAC 32S .0105 ANNUAL REGISTRATION

~~(a) Each person who holds a license as a physician assistant in this state shall register his or her Physician Assistant license each year no later than 30 days after his or her birthday by:~~

- ~~(1) completing the Board's registration form;~~
- ~~(2) submitting the fee required in Rule .0117 of this Section.~~

~~(b) The license of any physician assistant who fails to register and who remains unregistered for a period of 30 days after certified notice of the failure is automatically inactive.~~

Authority G.S. 90-15; 90-18(c)(13); 90-18.1.

21 NCAC 32S .0106 CONTINUING MEDICAL EDUCATION

~~In order to maintain physician assistant licensure, documentation must be maintained by the physician assistant of 100 hours of continuing medical education (CME) completed for every two year period, at least 40 hours of which must be American~~

~~Academy of Physician Assistants Category I CME or the equivalent. CME documentation must be available for inspection by the Board or an agent of the Board upon request.~~

Authority G.S. 90-18(c)(13); 90-18.1.

21 NCAC 32S .0107 EXEMPTION FROM LICENSE

~~Nothing in this Subchapter shall be construed to require licensure under 21 NCAC 32S of:~~

- ~~(1) a physician assistant student enrolled in a physician assistant or surgeon assistant educational program accredited by the Commission on Accreditation of Allied Health Education Programs or its successor organizations; or~~
- ~~(2) a physician assistant employed in the service of the federal government while performing duties incident to that employment; or~~
- ~~(3) agents or employees of physicians who perform delegated tasks in the office of a physician but who are not rendering services as a physician assistant or identifying themselves as a physician assistant.~~

Authority G.S. 90-18(13); 90-18.1.

21 NCAC 32S .0108 SCOPE OF PRACTICE

~~(a) Physician assistants perform medical acts, tasks or functions with physician supervision pursuant to the supervisory arrangement as defined by Rule .0101(7) of this Section. Physician assistants perform those duties and responsibilities, including the prescribing and dispensing of drugs and medical devices, that are delegated by their supervising physician(s).~~

~~(b) Physician assistants shall be considered the agents of their supervising physicians in the performance of all medical practice-related activities, including the ordering of diagnostic, therapeutic and other medical services.~~

Authority G.S. 90-18(c)(13); 90-18.1.

21 NCAC 32S .0109 PRESCRIPTIVE AUTHORITY

~~A physician assistant is authorized to prescribe, order, procure, dispense and administer drugs and medical devices subject to the following conditions:~~

- ~~(1) The physician assistant and the supervising physician(s) shall acknowledge that each is familiar with the laws and rules regarding prescribing and shall agree to comply with these laws and rules by incorporating the laws and rules into the written prescribing instructions required for each approved practice site; and~~
- ~~(2) The physician assistant has received from the supervising physician written instructions for prescribing, ordering, and administering drugs and medical devices and a written policy for periodic review by the physician of these instructions and policy; and~~

- ~~(3) In order to compound and dispense drugs, the physician assistant must obtain approval from the Board of Pharmacy and must carry out the functions of compounding and dispensing by current Board of Pharmacy rules and any applicable federal guidelines; and~~
- ~~(4) In order to prescribe controlled substances, the physician assistant must have a valid DEA registration and the physician assistant shall prescribe in accordance with information provided by the Medical Board and the DEA. All prescriptions for substances falling within schedules II, IIN, III, and IIN, as defined in the federal Controlled Substances Act, shall not exceed a legitimate 30 day supply; and~~
- ~~(5) Each prescription issued by the physician assistant shall contain, in addition to other information required by law, the following:~~
 - ~~(a) the physician assistant's name, practice address, telephone number; and~~
 - ~~(b) the physician's assistant's license number and, if applicable, the physician assistant's DEA number for controlled substances prescription; and~~
 - ~~(c) the responsible supervising physician's (primary or back up) name and telephone number; and~~
- ~~(6) Documentation of prescriptions must be noted on the patient's record and must include the medication name and dosage, amount prescribed, directions for use, and number of refills.~~
- ~~(7) Physician Assistants who request, receive, and dispense professional medication samples to patients must comply with all applicable state and federal regulations.~~

Authority G.S. 90-18(c)(13); 90-18.1; 90-171.23(14); 58 Fed. Reg. 31,171(1993) (to be codified at 21 C.F.R. 301).

21 NCAC 32S .0110 SUPERVISION OF PHYSICIAN ASSISTANTS

~~(a) A physician assistant may perform medical acts, tasks, or functions only under the supervision of a physician. Supervision shall be continuous but, except as otherwise provided in the rules of this Subchapter, shall not be construed as requiring the physical presence of the supervising physician at the time and place that the services are rendered.~~

~~(b) Each team of physician(s) and physician assistant(s) shall ensure that the physician assistant's scope of practice is identified; that delegation of medical tasks is appropriate to the skills of the supervising physician(s) as well as the physician assistant's level of competence; that the relationship of, and access to, each supervising physician is defined; and that a process for evaluation of the physician assistant's performance is established. A primary supervising physician and a physician assistant in a new practice arrangement shall meet monthly for the first six months to discuss practice relevant clinical problems and quality improvement measures. Thereafter, regular~~

~~meetings between the primary supervising physician and the physician assistant shall occur no less than every six months. A record of these meetings shall be signed and dated by both the supervising physician and the physician assistant, and shall be available for inspection upon request by the Board's representative. A statement, as defined by Rule .0101(7) of this Section, describing these supervisory arrangements in all settings must be signed by each supervising physician and the physician assistant and shall be kept on file at all practice sites. This statement describing supervisory arrangements and instructions for prescriptive authority shall be available upon request by the Board or its representatives.~~

~~(c) Entries by a physician assistant into patient charts of inpatients (hospital, long term care institutions) must comply with the rules and regulations of the institution.~~

Authority G.S. 90-18(c)(13); 90-18.1.

21 NCAC 32S .0111 SUPERVISING PHYSICIANS

~~(a) A physician wishing to serve as a primary supervising physician must exercise supervision of the physician assistant in accordance with rules adopted by the Board. The physician shall retain professional responsibility for the care rendered by the physician assistant within the scope of the supervisory arrangements established pursuant to Rule .0110 of this Section.~~

~~(b) A physician wishing to serve as a back up supervising physician must be licensed to practice medicine by the Board, not prohibited by the Board from supervising a physician assistant, and approved by the primary supervising physician as a person willing and qualified to assume responsibility for the care rendered by the physician assistant in the absence of the primary supervising physician. An ongoing list of all approved back up supervising physicians, signed and dated by each back up supervising physician, the primary supervising physician, and the physician assistant, must be retained as part of the inspectable supervisory arrangements statement described in Rule .0110 of this Section.~~

~~(c) The supervising physicians shall ensure that the physician assistant has adequate back up for any procedure performed by the physician assistant in any practice location (office, home, hospital, etc.).~~

Authority G.S. 90-18(c)(13); 90-18.1.

21 NCAC 32S .0112 NOTIFICATION OF INTENT TO PRACTICE

~~(a) Prior to the performance of any medical acts, tasks, or functions under the supervision of any primary supervising physician, a physician assistant licensed by the Board shall submit notification of such intent on forms provided by the Board. The physician assistant shall not commence practice until acknowledgment of the notification of intent to practice form is received from the Board. Such notification of intent to practice shall include:~~

- ~~(1) the name, practice addresses, and telephone number of the physician assistant; and~~
- ~~(2) the name, practice addresses, and telephone number of the primary supervising physician(s).~~

~~(b) The physician assistant shall notify the Board of any changes or additions in a previously acknowledged practice setting within 15 days of the occurrence.~~

Authority G.S. 90-14(a)(11); 90-18(c)(13); 90-18.1.

21 NCAC 32S .0113 VIOLATIONS

~~The Board pursuant to G.S. 90-14 may deny, annul, suspend, or revoke the license, or other authority to function as a physician assistant in this State. The following acts constitute violations of G.S. 90-14:~~

- ~~(1) Failure to function in accordance with the rules of this Subchapter or with any provision of G.S. 90-14 shall constitute unprofessional or dishonorable conduct;~~
- ~~(2) Representing oneself as a physician constitutes dishonorable or unethical conduct.~~

Authority G.S. 90-14; 90-14.2.

21 NCAC 32S .0115 TITLE AND PRACTICE PROTECTION

~~(a) Any person not approved under this Subchapter is in violation of G.S. 90-18 and is subject to penalties applicable to the unlicensed practice of medicine if he or she:~~

- ~~(1) falsely identifies himself or herself as a physician assistant;~~
- ~~(2) use any combination or abbreviation of the term "physician assistant" to indicate or imply that he or she is a physician assistant; or~~
- ~~(3) acts as a physician assistant without being approved by the Board.~~

~~(b) An unlicensed physician shall not be permitted to use the title of "physician assistant" or to practice as a physician assistant unless he or she fulfills the requirements of this Subchapter.~~

Authority G.S. 90-18(13); 90-18.1.

21 NCAC 32S .0116 IDENTIFICATION REQUIREMENTS

~~A physician assistant licensed under this Subchapter shall keep proof of current licensure and registration available for inspection at the primary place of practice and shall, when engaged in professional activities, wear a name tag identifying the licensee as a "physician assistant."~~

Authority G.S. 90-18(13); 90-18.1.

21 NCAC 32S .0117 FEES

~~The Board requires the following fees:~~

- ~~(1) Physician Assistant License Fee two hundred dollars (\$200.00), except that an applicant for a physician assistant limited volunteer license need not submit an application fee.~~
- ~~(2) Annual Registration Fee one hundred and twenty dollars (\$120.00), except that a physician assistant who registers not later than 30 days after his or her birthday shall pay an~~

~~annual registration fee of one hundred dollars (\$100.00). Any physician assistant who holds a limited volunteer license or who submits a statement to the Board confirming that the physician assistant is currently exclusively engaged in volunteer practice and has engaged exclusively in volunteer practice during the preceding year shall submit a reduced registration fee of twenty five dollars (\$25.00).~~

Authority G.S. 90-12.1; 90-15; 90-18(c)(13); 90-18.1.

21 NCAC 32S .0118 PRACTICE DURING A DISASTER

~~A physician assistant licensed in this State or in any other state may perform acts, tasks, or functions as a physician assistant under the supervision of a physician licensed to practice medicine in North Carolina during a disaster within a county in which a state of disaster has been declared or counties contiguous to a county in which a state of disaster has been declared (in accordance with G.S. 166A-6). A team of physician(s) and physician assistant(s) practicing pursuant to this Rule shall not be required to maintain on site documentation describing supervisory arrangements and instructions for prescriptive authority as otherwise required in Rules .0109 and .0110 of this Section. The Board may waive other regulatory requirements regarding licensure and practice to facilitate a physician assistant practicing during a disaster consistent with G.S. 90-12.2.~~

Authority G.S. 90-12.2; 166A-6.

SECTION .0200 - PHYSICIAN ASSISTANT REGISTRATION

21 NCAC 32S .0201 DEFINITIONS

The following definitions apply to this Subchapter:

- (1) "Board" means the North Carolina Medical Board.
- (2) "Examination" means the Physician Assistant National Certifying Examination.
- (3) "Family member" means a spouse, parent, grandparent, child, grandchild, sibling, aunt, uncle or first cousin, or persons to the same degree by marriage.
- (4) "Physician Assistant" means a person licensed by the Board under the provisions of G.S. 90-9.3.
- (5) "Physician Assistant License" means approval for the physician assistant to perform medical acts, tasks, or functions under North Carolina law.
- (6) "Physician Assistant Educational Program" is the educational program set out in G.S. 90-9.3(a)(1).
- (7) "License Renewal" means paying the annual fee and providing the information requested by the Board as outlined in this Subchapter.

- (8) "Supervising" means overseeing the activities of, and accepting the responsibility for, the medical services rendered by a physician assistant.
- (9) "Supervisory Arrangement" is the written statement that describes the medical acts, tasks and functions delegated to the physician assistant by the primary supervising physician appropriate to the physician assistant's education, qualification, training, skill and competence.
- (10) "Supervising Physician" means a physician who is licensed by the Board and who is not prohibited by the Board from supervising physician assistants. The physician may serve as a primary supervising physician or as a back-up supervising physician.
 - (a) "Primary Supervising Physician" is the physician who accepts full responsibility for the physician assistant's medical activities and professional conduct at all times, whether the physician personally is providing supervision or the supervision is being provided by a Back-up Supervising Physician. The Primary Supervising Physician shall assure the Board that the physician assistant is qualified by education, training and competence to perform all medical acts required of the physician assistant and is responsible for the physician assistant's performance in the particular field or fields in which the physician assistant is expected to perform medical acts.
 - (b) "Back-up Supervising Physician" means the physician who is responsible for supervision of the physician assistant's activities in the absence of the Primary Supervising Physician and while actively supervising the physician assistant.
- (11) "Volunteer practice" means performance of medical acts, tasks, or functions without expectation of any form of payment or compensation.

Authority G.S.90-9.3; 90-18(c)(13); 90-18.1.

21 NCAC 32S .0202 QUALIFICATIONS AND REQUIREMENTS FOR LICENSE

(a) Except as otherwise provided in this Subchapter, an individual must obtain a license from the Board before practicing as a physician assistant. The Board may grant a physician assistant license to an applicant who:

- (1) submits a completed application to the Board;

- (2) meets the requirements set forth in G.S. 90-9.3 and has not committed any of the acts listed in 90-14;
- (3) submits to the Board proof that the applicant has completed an accredited Physician Assistant Educational Program; if a physician assistant was licensed in North Carolina after June 1, 1994, he/she must also show successful completion of the Physician Assistant National Certifying Examination;
- (4) pays to the Board a non-refundable fee of two hundred dollars (\$200.00) plus the cost of a criminal background check. There is no fee to apply for a physician assistant limited volunteer license;
- (5) submits National Practitioner Data Bank (NPDB) and Healthcare Integrity and Protection Data Bank (HIPDB) reports. These reports must be requested by the Applicant and submitted to the Board within 60 days of the request;
- (6) submits a Board Action Data Bank Inquiry from the Federation of State Medical Boards (FSMB). This report must be requested by the Applicant and submitted to the Board within 60 days of the request;
- (7) submits to the Board two complete original fingerprint record cards, on fingerprint record cards supplied by the Board;
- (8) submits to the Board a signed consent form allowing a search of local, state, and national files to disclose any criminal record;
- (9) discloses whether he/she has ever been suspended from, placed on academic probation, expelled or required to resign from any school, including a PA educational program;
- (10) attests that he/she has no license, certificate, or registration as a physician assistant currently under discipline, revocation, suspension or probation or any other adverse action resulting from a health care licensing board;
- (11) certifies that he or she is mentally and physically able to safely practice as a physician assistant and is of good moral character;
- (12) provides the Board with three original recommendation forms dated within six months of the application. These recommendations shall come from persons under whom the applicant has worked or trained who are familiar with the applicant's academic competence or clinical skills. At least one reference form must be from a physician a two reference forms must be from peers under whom the applicant has worked or trained. References must be able to evaluate the applicant's academic competence, clinical skills and character as a physician assistant.

References cannot be from any family member or in the case of new graduate applicants, references cannot be from fellow students of the applicant's Educational Program;

- (13) if two years or more have passed since graduation from a Physician Assistant Educational Program, documents that he/she has successfully completed at least 100 hours of continuing medical education (CME) during the preceding two years, at least 40 hours of which must be American Academy of Physician Assistants Category I CME; and
- (14) supplies any other information the Board deems necessary to evaluate the applicant's qualifications.

(b) An applicant may be required to appear in person for an interview with the Board.

Authority G.S. 90-3; 90-9.3; 90-11; 90-18(c)(13); 90-18.1.

21 NCAC 32S .0203 MANDATORY NOTIFICATION OF INTENT TO PRACTICE

(a) Prior to the performance of any medical acts, tasks, or functions under the supervision of a primary supervising physician, a physician assistant shall submit notification of such intent using the Board's Intent to Practice form located on the Board's website. The notification of intent to practice shall include:

- (1) the name, practice addresses, and telephone number of the physician assistant; and
- (2) the name, practice addresses, and telephone number of the primary supervising physician(s).

(b) The physician assistant shall not commence practice until he/she receives acknowledgment from the Board that the Board has received and processed the Intent to Practice Form. By checking the Board's website, the physician assistant can confirm that the primary supervising physician has been added to the physician assistant's personal information page on the Board's website.

(c) The physician assistant shall notify the Board of any changes to the information required in Paragraph (a) of this Rule within 15 days of the occurrence.

Authority G.S. 90-9.3; 90-14(a)(11); 90-18(c)(13); 90-18.1.

21 NCAC 32S .0204 ANNUAL RENEWAL

(a) A physician assistant shall renew his/her license each year no later than 30 days after his/her birthday by:

- (1) completing the Board's renewal form; and
- (2) submitting a nonrefundable fee of one hundred and twenty dollars (\$120.00), except that a physician assistant who renews not later than 30 days after his/her birthday shall pay an annual renewal fee of one hundred dollars (\$100.00);

(b) If a physician assistant fails to renew his/her license, the Board shall send a certified notice, return receipt requested. If the physician assistant does not renew his/her license within 30

days of the date of the mailing of that notice, his/her license automatically becomes inactive.

Authority G.S. 90-9.3(c).

21 NCAC 32S .0205 INACTIVE LICENSE STATUS

By notifying the board in writing, a physician assistant may elect to place his/ her license on inactive status. A physician assistant with an inactive license shall not practice as a physician assistant. A physician assistant who engages in practice while his/ her license is inactive is practicing without a license and is subject to discipline by the Board as well as criminal penalties.

Authority G.S. 90-9.3; 90-18(c)(13); 90-18.1.

21 NCAC 32S .0206 LICENSE REACTIVATION

(a) A physician assistant may apply to reactivate his/her license if:

- (1) he/she had a license in North Carolina;
- (2) the license was placed on inactive status within the past calendar year; and
- (3) the licensee did not become inactive as a result of disciplinary action or to avoid disciplinary action.

(b) A physician assistant requesting reactivation shall:

- (1) complete the Board's reactivation application;
- (2) pay to the Board a nonrefundable fee of one hundred and twenty dollars (\$120.00), plus the cost of a criminal background check;
- (3) submit to the Board two completed original fingerprint record cards, on fingerprint record cards provided by the Board;
- (4) submit to the Board a completed signed and dated original Authority for Release of Information Form allowing a search of local, state, and national files to disclose any criminal record;
- (5) submit National Practitioner Data Bank (NPDB) and Healthcare Integrity and Protection Data Bank (HIPDB) reports, dated within 60 days of their submission to the board;
- (6) submit a Board action data bank inquiry from the Federation of State Medical Boards (FSMB), dated within 60 days of its submission to the board;
- (7) provide documentation to the Board verifying completion of 100 hours of continuing medical education during the preceding two years; and
- (8) supply any other information the Board deems necessary to evaluate the applicant's qualifications.

(c) An applicant may be required to appear in person for an interview.

Authority G.S. 90-9.3; 90-18(c)(13); 90-18.1.

21 NCAC 32S .0207 LICENSE REINSTATEMENT

(a) A physician assistant may apply to reinstate his/her license if the license has been inactive for more than one calendar year, or if the inactive status resulted from disciplinary action or was taken to avoid disciplinary action.

(b) A physician assistant requesting reinstatement shall satisfy all the requirements set forth in 21 NCAC 32S .0202.

(c) An applicant may be required to appear in person for an interview with the Board.

Authority G.S. 90-9.3; 90-13(c)(13); 90-18.1.

21 NCAC 32S .0208 LIMITED VOLUNTEER LICENSE

(a) A physician assistant who holds a regular license may convert that license to a limited volunteer license by notifying the Board in writing. A physician assistant practicing under a limited volunteer license shall practice with no expectation of payment or compensation whatsoever for any medical services rendered. A physician assistant holding a limited volunteer license may not accept any compensation, either directly or indirectly, whether monetary, in-kind, or otherwise, for the provision of medical services.

(b) A physician assistant with an inactive license who wishes to return to practice on a volunteer basis must first reinstate or reactivate his/her license, whichever applies, by complying with 21 NCAC 32S .0206 or 21 NCAC 32S .0207. Once reinstated or reactivated, a physician assistant may convert that license to a limited volunteer license pursuant to Paragraph (a) of this Rule without paying an additional fee.

(c) There is an annual renewal fee of twenty five dollars (\$25.00).

Authority G.S. 90-9.3; 90-18(c)(13); 90-18.1.

21 NCAC 32S .0209 NON APPLICABILITY

This Subchapter does not apply to:

- (1) a student enrolled in a Physician Assistant Educational Program accredited by the Commission on Accreditation of Allied Health Education Programs or its successor organizations;
- (2) a physician assistant employed by the federal government while performing duties incident to that employment; or
- (3) an agent or employee of a physician who performs delegated tasks in the office of a physician but who is not rendering services as a physician assistant and identifying him/herself as a physician assistant.

Authority G.S. 90-9.3; 90-18(c)(13); 90-18.1.

21 NCAC 32S .0210 IDENTIFICATION REQUIREMENTS

A physician assistant shall keep proof of current licensure and renewal available for inspection at the primary place of practice and shall, when engaged in professional activities, wear a name tag consistent with G.S. 90-640.

Authority G.S. 90-9.3; 90-18(c)(13); 90-640.

21 NCAC 32S .0211 AGENCY

Physician assistants are the agents of their supervising physicians in the performance of all medical practice-related activities, including the ordering of diagnostic, therapeutic and other medical services.

Authority G.S. 90-9.3; 90-18(c)(13); 90-18.1.

21 NCAC 32S .0212 PRESCRIPTIVE AUTHORITY

A physician assistant may prescribe, order, procure, dispense and administer drugs and medical devices subject to the following conditions:

- (1) the physician assistant complies with all state and federal laws regarding prescribing including G.S. 90-18.1(b);
- (2) each supervising physician and physician assistant incorporates within their written supervisory arrangements, as defined in Rule .0201(8) of this Subchapter, instructions for prescribing, ordering, and administering drugs and medical devices and a policy for periodic review by the physician of these instructions and policy;
- (3) In order to compound and dispense drugs, the physician assistant complies with G.S. 90-18.1(c);
- (4) in order to prescribe controlled substances,
 - (a) the physician assistant must have a valid Drug Enforcement Administration (DEA) registration and prescribe in accordance with DEA rules;
 - (b) All prescriptions for substances falling within schedules II, IIN, III, and IIIN, as defined in the federal Controlled Substances Act, shall not exceed a legitimate 30 day supply;
 - (c) the supervising physician must possess the same schedule(s) of controlled substances as the physician assistant's DEA registration.
- (5) each prescription issued by the physician assistant contains, in addition to other information required by law, the following:
 - (a) the physician assistant's name, practice address and telephone number;
 - (b) the physician assistant's license number and, if applicable, the physician assistant's DEA number for controlled substances prescriptions; and
 - (c) the responsible supervising physician's (primary or back-up) name and telephone number;
- (6) the physician assistant documents prescriptions in writing on the patient's record,

including the medication name and dosage, amount prescribed, directions for use, and number of refills; and

- (7) a physician assistant who requests, receives, and dispenses medication samples to patients complies with all applicable state and federal regulations.

Authority G.S. 90-18(c)(13); 90-18.1; 90-18.2A; 90-171.23(14); 21 C.F.R. 301.

21 NCAC 32S .0213 SUPERVISION OF PHYSICIAN ASSISTANTS

(a) A physician assistant may perform medical acts, tasks, or functions only under the supervision of a physician. Supervision shall be continuous but, except as otherwise provided in the rules of this Subchapter, shall not be construed as requiring the physical presence of the supervising physician at the time and place that the services are rendered.

(b) Each team of physician(s) and physician assistant(s) shall ensure that the physician assistant's scope of practice is identified; that delegation of medical tasks is appropriate to the skills of the supervising physician(s) as well as the physician assistant's level of competence; that the relationship of, and access to, each supervising physician is defined; and that a process for evaluation of the physician assistant's performance is established.

(c) Each supervising physician and physician assistant shall sign a statement, as defined in Rule .0201(8) of this Subchapter, that describes the supervisory arrangements in all settings. Written prescribing instructions are required for each approved site. This statement shall be kept on file at all practice sites, and must be available upon request by the Board.

(d) A primary supervising physician and a physician assistant in a new practice arrangement shall meet monthly for the first six months to discuss practice relevant clinical issues and quality improvement measures. Thereafter, the primary supervising physician and the physician assistant shall meet at least once every six months. A written record of these meetings shall be signed and dated by both the supervising physician and the physician assistant, and shall be available for inspection upon request by the Board agent. The written record shall include a description of the relevant clinical issues discussed and the quality improvement measures taken.

Authority G.S. 90-9.3; 90-18(c)(13); 90-18.1.

21 NCAC 32S .0214 SUPERVISING PHYSICIAN

A physician wishing to serve as a primary supervising physician must exercise supervision of the physician assistant in accordance with rules adopted by the Board. The physician shall retain professional responsibility for the care rendered by the physician assistant within the scope of the supervisory arrangement.

Authority G.S. 90-9.3; 90-18(c)(13); 90-18.1.

**21 NCAC 32S .0215 RESPONSIBILITIES OF
PRIMARY SUPERVISING PHYSICIANS IN REGARD TO
BACK-UP SUPERVISING PHYSICIANS**

(a) The primary supervising physician shall ensure that a supervising physician, either primary or back-up, is readily accessible for the physician assistant to consult whenever the physician assistant is performing medical acts, tasks, or functions.

(b) A back-up supervising physician must be licensed to practice medicine by the Board, not prohibited by the Board from supervising a physician assistant, and approved by the primary supervising physician as a person willing and qualified to assume responsibility for the care rendered by the physician assistant in the absence of the primary supervising physician. An ongoing list of all approved back-up supervising physicians, signed and dated by each back-up supervising physician, the primary supervising physician, and the physician assistant, must be retained as part of the Supervisory Arrangement.

Authority G.S. 90-18(c)(13); 90-18.1.

**21 NCAC 32S .0216 CONTINUING MEDICAL
EDUCATION**

A physician assistant must complete at least 100 hours of continuing medical education (CME) every two years, at least 40 hours of which must be American Academy of Physician Assistants Category I CME. CME documentation must be available for inspection by the Board or its agent upon request. The two year period shall run from the physician assistant's birthday, beginning in the year 1999, or the first birthday following initial licensure, whichever occurs later.

Authority G.S. 90-9.3; 90-18(c)(13); 90-18.1.

21 NCAC 32S .0217 VIOLATIONS

The Board may take disciplinary action against a supervising physician or a physician assistant, pursuant to G.S. 90-14. It is unprofessional or dishonorable conduct for a physician assistant to violate the rules of this Subchapter, or to represent him/herself as a physician.

Authority G.S. 90-9.3; 90-14; 90-14.2.

**21 NCAC 32S .0218 TITLE AND PRACTICE
PROTECTION**

(a) Any person not licensed by the Board violates G.S. 90-18.1 if he or she:

- (1) falsely identifies him/herself as a physician assistant;
- (2) uses any combination or abbreviation of the term "physician assistant" to indicate or imply that he or she is a physician assistant; or
- (3) acts as a physician assistant without being licensed by the Board.

(b) An unlicensed physician may not use the title of "physician assistant" or practice as a physician assistant unless he/she fulfills the requirements of this Subchapter.

Authority G.S. 90-9.3; 90-18(c)(13); 90-18.1; 90-9.3.

**21 NCAC 32S .0219 PRACTICE DURING A
DISASTER**

A physician assistant licensed in this State or in any other state may perform acts, tasks, or functions as a physician assistant under the supervision of a physician licensed to practice medicine in North Carolina during a disaster within a county in which a state of disaster has been declared or counties contiguous to a county in which a state of disaster has been declared (in accordance with G.S. 166A-6). A team of physician(s) and physician assistant(s) practicing pursuant to this Rule is not required to maintain on-site documentation describing supervisory arrangements and instructions for prescriptive authority as otherwise required by 21 NCAC 32S .0212. The Board may waive other regulatory requirements regarding licensure and practice to facilitate a physician assistant practicing during a disaster consistent with G.S. 90-12.5.

Authority G.S. 90-9.3; 90-12.5; 90-18(c)(13); 166A-6.

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**CHAPTER 65 – BOARD OF RECREATIONAL THERAPY
LICENSURE**

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Board of Recreational Therapy Licensure intends to amend the rules cited as 21 NCAC 65 .0501 and .0602.

Proposed Effective Date: *September 1, 2009*

Public Hearing:

Date: *May 19, 2009*

Time: *6:00 p.m.*

Location: *Durham Regional Hospital, 3643 North Roxboro Road, Classroom C, Durham, NC 27704*

Reason for Proposed Action:

21 NCAC 65 .0501 – NCBRTL is unable to meet administrative costs under current budget.

21 NCAC 65 .0602 – The due date as December 15th has caused delays through holiday mail. Many licensees request to receive their notices via e-mail.

Procedure by which a person can object to the agency on a proposed rule: *A person may object by contacting the NCBRTL Office in writing, e-mail or by phone.*

Comments may be submitted to: *Becky Garrett, P. O. Box 67, Saxapahaw, NC 27340, phone 336-212-1133, e-mail beckyncbrtl@triad.rr.com*

Comment period ends: *June 30, 2009*

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 919-431-3000.

Fiscal Impact:

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

SECTION .0500 - FEES

21 NCAC 65 .0501 LICENSURE FEES

- (a) A cashier's check, money order, certified check or an employer's check is acceptable for the initial application licensure fees.
- (b) Fees are nonrefundable and payable to the North Carolina Board of Recreational Therapy Licensure. Personal checks shall be accepted for payment of renewal fee and record maintenance fee. Processing fee for returned checks shall be the maximum allowed by law.
- (c) The Board shall collect the following fees:
- (1) Initial Application for Licensure Fee
 - (A) Licensed Recreational Therapist (\$100.00)
 - (B) Licensed Recreational Therapy Assistant (\$ 50.00)
 - (2) Licensure renewal fees (due every two years)
 - (A) Licensed Recreational Therapist (~~\$ 50.00~~)(\$ 75.00)

- (B) Licensed Recreational Therapy Assistant (~~\$ 25.00~~)(~~\$ 35.00~~)
- (3) Inactive status (\$ 35.00)
- (4) Record Maintenance fee (due non-renewal yr)
 - (A) Licensed Recreational Therapist (~~\$ 50.00~~)(~~\$ 75.00~~)
 - (B) Licensed Recreational Therapy Assistant (~~\$ 25.00~~)(~~\$ 35.00~~)
- (5) Purchase of mailing labels to promote continuing education (\$ 50.00)

Authority G.S. 90C-24(a)(3); 90C-28.

SECTION .0600 - CONTINUING EDUCATION REQUIREMENTS

21 NCAC 65 .0602 RENEWAL REQUIREMENTS FOR LICENSED RECREATIONAL THERAPIST AND LICENSED RECREATIONAL THERAPY ASSISTANT

- (a) A renewal notice shall be mailed to the licensee 60 days prior to the expiration date at their last known address.
- (b) Licenses issued shall be subject to renewal every two years upon completion of continuing education requirements as defined in Rule .0601.
- (c) Each Licensee must complete and submit a renewal application package. All materials must be postmarked by December ~~15th~~ 1st of the year prior to the applicant's expiration date printed on their license. The renewal application package must be submitted to the Board and must be accompanied by the proper fees.
- (d) Unless a person has advised the Board that he or she does not intend to renew the license, a renewal notification shall be sent to the person's last known home ~~address.~~ address and or email address.

Authority G.S. 90C-2; 90C-24(a)(3).

APPROVED RULES

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

Rules approved by the Rules Review Commission at its meeting on March 19, 2009.

**REGISTER CITATION TO THE
NOTICE OF TEXT****ADMINISTRATION, DEPARTMENT OF**

<u>Definitions</u>	01	NCAC 43A	.0102	23:11 NCR
<u>Sensitive and Confidential Data</u>	01	NCAC 43A	.0201	23:11 NCR
<u>Compressed Gases, Flammable, Nuclear, Chemical, Biologicala...</u>	01	NCAC 43A	.0202	23:11 NCR
<u>Order of Priority in Disposition</u>	01	NCAC 43A	.0304*	23:11 NCR

PESTICIDE BOARD

<u>Proprietorship</u>	02	NCAC 09L	.0801	23:09 NCR
<u>Notification Prior to Delivery</u>	02	NCAC 09L	.0802	23:09 NCR
<u>Storage Tank Specifications</u>	02	NCAC 09L	.0803	23:09 NCR
<u>Labeling Requirements</u>	02	NCAC 09L	.0804	23:09 NCR
<u>Record Requirements</u>	02	NCAC 09L	.0805	23:09 NCR
<u>Location Requirements</u>	02	NCAC 09L	.0806	23:09 NCR
<u>Safety Requirements</u>	02	NCAC 09L	.0807	23:09 NCR
<u>Notification of Storage Tank Requirements</u>	02	NCAC 09L	.0808	23:09 NCR
<u>Compliance Requirements</u>	02	NCAC 09L	.0809	23:09 NCR
<u>Adoption by Reference</u>	02	NCAC 09L	.0810	23:09 NCR
<u>Record Keeping Requirements</u>	02	NCAC 09L	.1402	23:08 NCR
<u>Definitions</u>	02	NCAC 09L	.1901*	23:09 NCR
<u>Bulk Storage Requirements</u>	02	NCAC 09L	.1914	23:09 NCR

MEDICAL CARE COMMISSION

<u>Renewal Designation Process</u>	10A	NCAC 13P	.0905*	n/a G.S. 150B-21.5(a)(5)
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CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION

<u>Rule-Making and Administrative Hearing Procedures</u>	12	NCAC 09A	.0107*	23:09 NCR
<u>Suspension; Denial; or Revocation of Certification</u>	12	NCAC 09A	.0204*	23:09 NCR
<u>Minimum Standards for Law Enforcement Officers</u>	12	NCAC 09B	.0111*	23:09 NCR
<u>Responsibilities of the School Director</u>	12	NCAC 09B	.0202*	23:09 NCR
<u>Specialized Instructor Certification</u>	12	NCAC 09B	.0304*	23:09 NCR
<u>Terms and Conditions of School Director Certification</u>	12	NCAC 09B	.0502*	23:09 NCR
<u>Required Annual In-Service Training Topics</u>	12	NCAC 09E	.0102	23:09 NCR
<u>Minimum Training Specifications: Annual In-Service Training</u>	12	NCAC 09E	.0105	23:09 NCR
<u>Definitions</u>	12	NCAC 09G	.0102*	23:09 NCR
<u>Physical and Mental Standards</u>	12	NCAC 09G	.0205	23:09 NCR

APPROVED RULES

<u>Moral Character</u>	12	NCAC 09G	.0206*	23:09 NCR
<u>Suspension: Revocation: or Denial of Certification</u>	12	NCAC 09G	.0504*	23:09 NCR
<u>Purpose</u>	12	NCAC 09H	.0101*	23:09 NCR
<u>Instructors</u>	12	NCAC 09H	.0103*	23:09 NCR
<u>Sanctions</u>	12	NCAC 09H	.0104*	23:09 NCR
<u>Filing and Fees</u>	12	NCAC 09H	.0105*	23:09 NCR

LABOR, DEPARTMENT OF

<u>Incorporation by Reference</u>	13	NCAC 07F	.0902*	23:12 NCR
<u>Maintenance and Repair Employee Qualification</u>	13	NCAC 07F	.0906*	23:12 NCR
<u>Training</u>	13	NCAC 07F	.0907*	23:12 NCR
<u>Fall Protection</u>	13	NCAC 07F	.0908*	23:12 NCR
<u>Design, Construction and Testing</u>	13	NCAC 07F	.0909*	23:12 NCR
<u>Equipment With a Rated Hoisting/Lifting Capacity of 2,000 ...</u>	13	NCAC 07F	.0910*	23:12 NCR
<u>Equipment Modifications</u>	13	NCAC 07F	.0911*	23:12 NCR
<u>Assembly and Disassembly of Equipment</u>	13	NCAC 07F	.0912*	23:12 NCR
<u>Power Line Safety</u>	13	NCAC 07F	.0913*	23:12 NCR
<u>Wire Rope</u>	13	NCAC 07F	.0914*	23:12 NCR
<u>Inspections</u>	13	NCAC 07F	.0915*	23:12 NCR
<u>Operational Aids</u>	13	NCAC 07F	.0917*	23:12 NCR
<u>Safety Devices</u>	13	NCAC 07F	.0918*	23:12 NCR
<u>Derricks</u>	13	NCAC 07F	.0922*	23:12 NCR
<u>Floating Cranes/Derricks and Land Cranes/Derricks on Barges</u>	13	NCAC 07F	.0923*	23:12 NCR
<u>Overhead and Gantry Cranes</u>	13	NCAC 07F	.0924	23:12 NCR
<u>Dedicated Pile Drivers</u>	13	NCAC 07F	.0925*	23:12 NCR
<u>Sideboom Cranes</u>	13	NCAC 07F	.0926*	23:12 NCR
<u>Operator Certification - Written Examination - Technical ...</u>	13	NCAC 07F	.0927*	23:12 NCR

WILDLIFE RESOURCES COMMISSION

<u>Safety Equipment</u>	15A	NCAC 10F	.0201*	23:11 NCR
<u>Brunswick County</u>	15A	NCAC 10F	.0305	23:07 NCR
<u>Burke County</u>	15A	NCAC 10F	.0323*	23:08 NCR
<u>Mecklenburg and Gaston Counties</u>	15A	NCAC 10F	.0333	23:08 NCR
<u>Town of Emerald Isle</u>	15A	NCAC 10F	.0376*	n/a G.S. 150B-21.5(a)(5)

SECRETARY OF STATE, DEPARTMENT OF THE

<u>Administration</u>	18	NCAC 06	.1103	23:10 NCR
<u>Scope</u>	18	NCAC 06B	.0101	23:10 NCR
<u>Administration</u>	18	NCAC 06B	.0102*	23:10 NCR
<u>Letter of Inquiry</u>	18	NCAC 06C	.0101	23:10 NCR
<u>Investigative Subpoenas</u>	18	NCAC 06C	.0102*	23:10 NCR
<u>Administrative Hearings</u>	18	NCAC 06C	.0103*	23:10 NCR
<u>Settlement</u>	18	NCAC 06C	.0104*	23:10 NCR
<u>Article 3A Contested Case Procedures</u>	18	NCAC 06C	.0105*	23:10 NCR
<u>Temporary Orders</u>	18	NCAC 06C	.0106*	23:10 NCR

APPROVED RULES

<u>Conduct of Hearing</u>	18	NCAC 06C	.0107*	23:10 NCR
<u>Final Order</u>	18	NCAC 06C	.0108*	23:10 NCR
TRANSPORTATION, DEPARTMENT OF				
<u>Permits-Authority, Application and Enforcement</u>	19A	NCAC 02D	.0601*	23:11 NCR
<u>Permits-Weight, Dimensions and Limitations</u>	19A	NCAC 02D	.0607*	23:11 NCR
<u>Denial: Revocation: Refusal to Renew: Appeal: Invalidation</u>	19A	NCAC 02D	.0633*	23:11 NCR
<u>Oversize-Overweight Load Escort Vehicle Operator Certific...</u>	19A	NCAC 02D	.0644	23:11 NCR
MEDICAL BOARD				
<u>Definitions</u>	21	NCAC 32K	.0101*	23:10 NCR
<u>Authority</u>	21	NCAC 32K	.0102	23:10 NCR
<u>Peer Review Agreements</u>	21	NCAC 32K	.0103	23:10 NCR
<u>Due Process</u>	21	NCAC 32K	.0104	23:10 NCR
<u>Receipt and Use of Information of Potential Impairment</u>	21	NCAC 32K	.0201	23:10 NCR
<u>Assessment and Referral</u>	21	NCAC 32K	.0202	23:10 NCR
<u>Monitoring Treatment Sources</u>	21	NCAC 32K	.0203*	23:10 NCR
<u>Monitoring Rehabilitation and Performance</u>	21	NCAC 32K	.0204*	23:10 NCR
<u>Monitoring Post-Treatment Support</u>	21	NCAC 32K	.0205*	23:10 NCR
<u>Reports of Individual Cases to the Board</u>	21	NCAC 32K	.0206*	23:10 NCR
<u>Periodic Reporting of Statistical Information</u>	21	NCAC 32K	.0207	23:10 NCR
<u>Definitions</u>	21	NCAC 32Q	.0101	23:10 NCR
<u>Authority</u>	21	NCAC 32Q	.0102	23:10 NCR
<u>Peer Review Agreements</u>	21	NCAC 32Q	.0103	23:10 NCR
<u>Due Process</u>	21	NCAC 32Q	.0104	23:10 NCR
<u>Receipt and Use of Information of Suspected Impairment</u>	21	NCAC 32Q	.0201	23:10 NCR
<u>Intervention and Referral</u>	21	NCAC 32Q	.0202	23:10 NCR
<u>Monitoring Treatment</u>	21	NCAC 32Q	.0203	23:10 NCR
<u>Monitoring Rehabilitation and Performance</u>	21	NCAC 32Q	.0204	23:10 NCR
<u>Monitoring Post-Treatment Support</u>	21	NCAC 32Q	.0205	23:10 NCR
<u>Reports of Individual Cases to the Board</u>	21	NCAC 32Q	.0206	23:10 NCR
<u>Periodic Reporting of Statistical Information</u>	21	NCAC 32Q	.0207	23:10 NCR
NURSING, BOARD OF				
<u>Prerequisites for Incorporation</u>	21	NCAC 36	.0503*	23:01 NCR
COMMUNITY COLLEGES, BOARD OF				
<u>Expenditures of State Funds: Accreditation Expenses and Dues</u>	23	NCAC 02D	.0304*	23:06 NCR
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<u>Applicant Information and Application</u>	25	NCAC 01H	.0632*	23:09 NCR
ADMINISTRATIVE HEARINGS, OFFICE OF				
<u>Cost to Public</u>	26	NCAC 01	.0103*	23:12 NCR

<u>Agency Final Copy</u>	26	NCAC 02C .0114*	23:12 NCR
<u>Official Record</u>	26	NCAC 03 .0123*	23:12 NCR

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

LABOR, DEPARTMENT OF

<u>Scope</u>	13	NCAC 07F .0901*	23:12 NCR
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TITLE 01 – DEPARTMENT OF ADMINISTRATION

01 NCAC 43A .0102 DEFINITIONS

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

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

*History Note: Authority G.S. 143-64.01; 143-64.04;
Eff. July 1, 2007;
Amended Eff. April 1, 2009.*

01 NCAC 43A .0201 SENSITIVE AND CONFIDENTIAL DATA

The owning agency shall clear and destroy all data from surplus items prior to disposal.

*History Note: Authority G.S. 143-64.01; 143-64.04;
Eff. April 1, 2009.*

01 NCAC 43A .0202 COMPRESSED GASES, FLAMMABLE, NUCLEAR, CHEMICAL, BIOLOGICAL, RADIOACTIVE, AND OTHER HAZARDOUS MATERIALS

(a) The State Surplus Property Agency does not accept equipment or containers that contain compressed gases, or flammable, nuclear, chemical, biological, radioactive or other hazardous materials. Any container or equipment that has

contained any of these materials must be rendered and declared safe by the owning agency, and a statement to this effect included in the item description when a disposal or sale of the item is requested. Any container or equipment that has been rendered and certified safe shall have labeling removed that would indicate that the container or equipment is contaminated or contains any of these items.

(b) All laws and regulations must be followed and proper disposal documentation recorded with various regulatory federal, state and local agencies for the transport, sale or disposal of items described in Paragraph (a) of this Rule.

(c) Laboratory equipment may be sold with regulated or non-regulated amounts of materials described in Paragraph (a) of this Rule. When hazardous materials are contained in a piece of equipment, all pertinent information related to types, amounts and any regulatory requirements shall be included in the item description when entered into the SSP System. If the equipment contains amounts that are not regulated by any federal, state, or local agency, the description of the equipment shall include the statement "Non-Regulated." These items shall be sold at the agencies location and not transported to the State Surplus Property Agency. The owning agency shall ensure all applicable laws and regulations are followed in the transport, sale or disposal of such items. If a potential buyer is required to be registered with any regulatory agency prior to taking possession of the equipment, the selling agency shall include all requirements in the description of the item and review and approve any required documentation presented by the successful bidder within 48 hours of the opening of the bids.

(d) Each agency shall contact its safety office and ensure that all federal, state and local regulations have been followed prior to the transport or disposal of items described in Paragraph (a) of this Rule.

(e) This Rule does not apply to equipment, watercraft, aircraft or vehicles that may contain gasoline, diesel fuel, liquefied propane, liquefied natural gas or other fuels when it is contained within a fuel tank or fuel cell approved by the manufacturer of the equipment, watercraft, aircraft or vehicle.

*History Note: Authority G.S. 143-64.01; 143-64.04;
Eff. April 1, 2009.*

01 NCAC 43A .0304 ORDER OF PRIORITY IN DISPOSITION

(a) In the disposition of state surplus property, the State Surplus Property Agency shall give first priority to other agencies of the state for purchase or transfer. Second priority shall be given to sales to political subdivisions and non-profit tax exempt

organizations within the state. Property thus sold must be for the use of the recipient agency, political subdivision or non-profit tax exempt organization with title being in such agency, unit or organization.

(b) All titled vehicles transferred between state agencies must be processed through the State Surplus Property Agency with regard to titles and associated North Carolina Division of Motor Vehicles documents. Vehicles shall be transferred at fair market price.

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

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

History Note: Authority G.S. 143-64.01; 143-64.04;
Eff. July 1, 2007;
Amended Eff. April 1, 2009.

**TITLE 02 – DEPARTMENT OF AGRICULTURE AND
CONSUMER SERVICES**

02 NCAC 09L .0801	PROPRIETORSHIP
02 NCAC 09L .0802	NOTIFICATION PRIOR TO DELIVERY
02 NCAC 09L .0803	STORAGE TANK SPECIFICATIONS
02 NCAC 09L .0804	LABELING REQUIREMENTS
02 NCAC 09L .0805	RECORD REQUIREMENTS
02 NCAC 09L .0806	LOCATION REQUIREMENTS
02 NCAC 09L .0807	SAFETY REQUIREMENTS
02 NCAC 09L .0808	NOTIFICATION OF STORAGE TANK REQUIREMENTS
02 NCAC 09L .0809	COMPLIANCE REQUIREMENTS

History Note: Authority G.S. 143-434 through 143-470;
Eff. February 1, 1976;
Amended Eff. August 1, 1982; January 27, 1978; April 21, 1977;
Repealed Eff. April 1, 2009.

02 NCAC 09L .0810 ADOPTION BY REFERENCE

The North Carolina Pesticide Board hereby adopts by reference, including subsequent amendments, Part 165 of Title 40: Protection of Environment of the Code of Federal Regulations, entitled "Pesticide Management and Disposal Subpart E – Standards for Pesticide Containment Structures." Copies of this material may be obtained at no cost from the U.S. Government Printing Office website, www.gpoaccess.gov/cfr/index.html.

History Note: Authority G.S. 143-441; 143-461;
Eff. April 1, 2009.

**02 NCAC 09L .1402 RECORD KEEPING
REQUIREMENTS**

All licensed pesticide applicators, as defined in G.S. 143-460 which includes public operators, utilizing ground equipment shall keep for three years and make available to the commissioner for like period records of all applications of restricted use pesticides showing the following:

- (1) name of licensed pesticide applicator or licensed public operator;
- (2) name and address of the person for whom the pesticide was applied;
- (3) identification of farm or site(s) treated with pesticide(s);
- (4) name of crop, commodity, or object(s) which was treated with pesticide(s);
- (5) approximate number of acres or size or number of other object(s) treated;
- (6) the year, month, date and the specific time of day when each pesticide application was completed and each day of application shall be recorded as a separate record;
- (7) the brand name of the pesticide(s) and EPA registration number(s);
- (8) amount (volume or weight) of pesticide formulation(s) or active ingredient(s) applied per unit of measure; and
- (9) name(s) of person(s) applying pesticide(s).

History Note: Authority G.S. 143-458; 143-463; 143-466(a);
Eff. October 21, 1977;
Amended Eff. April 1, 2009.

02 NCAC 09L .1901 DEFINITIONS

All specific words or terms used in this Section other than those defined in this Rule shall have the same definitions as shown in the North Carolina Pesticide Law of 1971, G.S. 143-460. The rules contained in this Section shall be deemed to be minimum for storage.

- (1) **Storage.** The act of storing a pesticide or pesticide container unless the pesticide or pesticide container is being transported or used. It does not include:
 - (a) pesticide containers which are empty and triple-rinsed (or equivalent);
 - (b) pesticides which meet the requirements of a Resource Conservation and Recovery Act (RCRA) hazardous waste (40 CFR 261.33) and are in the possession of a person possessing a valid EPA RCRA identification number as a generator (40 CFR 261.12) or transporter (40 CFR 263.11) of hazardous waste or who owns or operates a facility for the treatment, storage, or disposal of hazardous waste (40 CFR 264.11);
- (2) **Commercial Storage.** Storage of a pesticide by any person from the time of manufacture, prior to possession by the end user;

- (3) Storage Facility. Any property or contiguous properties under the same ownership used for commercial storage of pesticides. Multiple storage areas in or on single or contiguous properties under the same ownership are considered to be in the same storage facility;
- (4) Large Storage Facility. Any storage facility that stores 10,000 pounds or more of restricted use pesticides at any time;
- (5) Storage Area. That portion of a storage facility actually used to store pesticides;
- (6) Contingency Plan. "Contingency Plan" shall be a description of a facility's plans and capabilities to deal with a pesticide emergency resulting from operational procedures, accidental releases, fires, or other emergencies. A contingency plan shall be deemed adequate by the North Carolina Pesticide Board if in the opinion of the Board such plan presents reasonable assurances that the facility will be able to contain or otherwise prevent the release of pesticides so as to minimize unreasonable adverse effects on public health or the environment.
- (7) Bulk Storage. Commercial Storage of any pesticide held in stationary pesticide containers designed to hold undivided quantities equal to or greater than 500 gallons (1,890 liters) of liquid pesticide or equal to or greater than 4,000 pounds (1,818 kilograms) of dry pesticide are subject to the regulations in this Rule unless any of the following conditions exists:
 - (a) The container is empty, that is, all pesticide that can be removed by the methods such as draining, pumping, or aspirating has been removed (whether or not the container has been rinsed or washed).
 - (b) The container holds only pesticide rinsates or wash waters, and is labeled accordingly.
 - (c) The container holds only pesticides which would be gaseous when released at atmospheric temperature and pressure.
 - (d) The container is dedicated to non-pesticide use, and is labeled accordingly.

History Note: Authority G.S. 143-437; 143-441; 143-461; 143-466;
Eff. January 1, 1984;
Amended Eff. April 1, 2009; November 1, 1989; November 1, 1988.

02 NCAC 09L .1914 BULK STORAGE REQUIREMENTS

- (a) Outlets, filler and access ports shall be locked at all times when not in use. Keys to the outlet, filler and access ports shall be in the possession of the purchaser and authorized employees only. Locks on ports are not required if bulk tanks are stored inside a facility utilizing security precautions that prevent unauthorized access to the bulk pesticide storage area.
- (b) All bulk pesticide storage tanks must display the appropriate signal word as shown on the label on all sides exposed to view. The words shall be either stenciled directly on the containers or storage tanks or placed on a sign of durable construction which is firmly attached to the containers and storage tanks. All letters of said words shall be a minimum of four inches in height and one inch in width, and shall be printed in contrasting colors to the containers and storage tanks which are readily visible.
- (c) All bulk storage areas shall be posted with a durable sign stating "PESTICIDE STORAGE," "AUTHORIZED PERSONNEL ONLY," "IN CASE OF EMERGENCY CALL _____"
- (d) Pesticide applicators utilizing bulk storage containers shall be subject to the same requirements as set forth in this Rule.

History Note: Authority G.S. 143-441; 143-461;
Eff. April 1, 2009.

TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

10A NCAC 13P .0905 RENEWAL DESIGNATION PROCESS

- (a) Hospitals may utilize one of two options to achieve Trauma Center renewal:
 - (1) Undergo a site visit conducted by OEMS to obtain a four-year renewal designation; or
 - (2) Undergo a verification visit arranged by the ACS, in conjunction with OEMS, to obtain a four-year renewal designation.
- (b) For hospitals choosing Subparagraph (a)(1) of this Rule:
 - (1) Prior to the end of the designation period, the OEMS shall forward to the hospital an RFP for completion. The hospital shall, within 10 days of receipt of the RFP, define for OEMS the Trauma Center's trauma primary catchment area. Upon this notification, OEMS shall notify the respective Board of County Commissioners in the applicant's trauma primary catchment area of the request for renewal to allow for comment.
 - (2) Hospitals shall complete and submit one paper copy and an electronic copy of the RFP to the OEMS and the specified site surveyors at least 30 days prior to the site visit. The RFP shall include information that supports compliance with the criteria contained in Rule .0901, .0902, or .0903 of this Section as it relates to the Trauma Center's level of designation.

- (3) All criteria defined in Rule .0901, .0902, or .0903 of this Section, as relates to the Trauma Center's level of designation, shall be met for renewal designation.
 - (4) A site visit shall be conducted within 120 days prior to the end of the designation period. The site visit shall be scheduled on a date mutually agreeable to the hospital and the OEMS.
 - (5) The composition of a Level I or II site survey team shall be the same as that specified in Rule .0904(k) of this Section.
 - (6) The composition of a Level III site survey team shall be the same as that specified in Rule .0904(l) of this Section.
 - (7) On the day of the site visit the hospital shall make available all requested patient medical charts.
 - (8) The primary reviewer of the site review team shall give a verbal post-conference report representing a consensus of the site review team at the summary conference. A written consensus report shall be completed, to include a peer review report, by the primary reviewer and submitted to OEMS within 30 days of the site visit.
 - (9) The report of the site survey team and a staff recommendation shall be reviewed by the State Emergency Medical Services Advisory Council at its next regularly scheduled meeting which is more than 30 days following the site visit. Based upon the site visit report and the staff recommendation, the State Emergency Medical Services Advisory Council shall recommend to the OEMS that the request for Trauma Center renewal be approved; approved with a contingency(ies) due to a deficiency(ies) requiring a focused review; approved with a contingency(ies) not due to a deficiency(ies) requiring a consultative visit; or denied.
 - (10) Hospitals with a deficiency(ies) have up to 10 working days prior to the State EMS Advisory Council meeting to provide documentation to demonstrate compliance. If the hospital has a deficiency that cannot be corrected in this period prior to the State EMS Advisory Council meeting, the hospital, instead of a four-year renewal, shall be given 12 months by the OEMS to demonstrate compliance and undergo a focused review, that may require an additional site visit. The hospital shall retain its Trauma Center designation during the focused review period. If compliance is demonstrated within the prescribed time period, the hospital shall be granted its designation for the four-year period from the previous designation's expiration date. If compliance is not demonstrated within the time period, as specified by OEMS, the Trauma Center designation shall not be renewed. To become redesignated, the hospital shall submit an updated RFP and follow the initial applicant process outlined in Rule .0904 of this Section.
- (11) The final decision regarding trauma center renewal shall be rendered by the OEMS.
 - (12) The OEMS shall notify the hospital of the State Emergency Medical Services Advisory Council's and OEMS' final recommendation within 30 days of the Advisory Council meeting.
 - (13) The four-year renewal date that may be eventually granted shall not be extended due to the focused review period.
- (c) For hospitals choosing Subparagraph (a)(2) of this Rule:
- (1) At least six months prior to the end of the Trauma Center's designation period, the trauma center must notify the OEMS of its intent to undergo an ACS verification visit. It must simultaneously define in writing to the OEMS its trauma primary catchment area. Trauma Centers choosing this option must then comply with all the ACS' verification procedures, as well as any additional state criteria as outlined in Rule .0901, .0902, or .0903, as apply to their level of designation.
 - (2) When completing the ACS' documentation for verification, the Trauma Center must ensure access to the ACS on-line PRQ (pre-review questionnaire) to OEMS. The Trauma Center must simultaneously complete documents supplied by OEMS to verify compliance with additional North Carolina criteria (i.e., criteria that exceed the ACS criteria) and forward these to OEMS and the ACS.
 - (3) The OEMS shall notify the Board of County Commissioners within the trauma center's trauma primary catchment area of the Trauma Center's request for renewal to allow for comments.
 - (4) The Trauma Center must make sure the site visit is scheduled to ensure that the ACS' final written report, accompanying medical record reviews and cover letter are received by OEMS at least 30 days prior to a regularly scheduled State Emergency Medical Services Advisory Council meeting to ensure that the Trauma Center's state designation period does not terminate without consideration by the State Emergency Medical Services Advisory Council.
 - (5) The composition of the Level I or Level II site team must be as specified in Rule .0904(k) of this Section, except that both the required trauma surgeons and the emergency physician may be from out-of-state. Neither North Carolina Committee on Trauma nor North Carolina College of Emergency Physician

- membership is required of the surgeons or emergency physician, respectively, if from out-of-state. The date, time, and all proposed site team members of the site visit team must be submitted to the OEMS for review at least 45 days prior to the site visit. The OEMS shall approve the site visit schedule if the schedule does not conflict with the ability of attendance by required OEMS staff. The OEMS shall approve the proposed site team members if the OEMS determines there is no conflict of interest, such as previous employment, by any site team member associated with the site visit.
- (6) The composition of the Level III site team must be as specified in Rule .0904(1) of this Section, except that the trauma surgeon, emergency physician, and trauma nurse coordinator/program manager may be from out-of-state. Neither North Carolina Committee on Trauma nor North Carolina College of Emergency Physician membership is required of the surgeon or emergency physician, respectively, if from out-of-state. The date, time, and all proposed site team members of the site visit team must be submitted to the OEMS for review at least 45 days prior to the site visit. The OEMS shall approve the site visit schedule if the schedule does not conflict with the ability of attendance by required OEMS staff. The OEMS shall approve the proposed site team members if the OEMS determines there is no conflict of interest, such as previous employment, by any site team member associated with the site visit.
- (7) All state Trauma Center criteria must be met as defined in Rules .0901, .0902, and .0903 of this Section, for renewal of state designation. An ACS' verification is not required for state designation. An ACS' verification does not ensure a state designation.
- (8) ACS reviewers shall complete the state designation preliminary reporting form immediately prior to the post conference meeting. This document and the ACS final written report and supporting documentation described in Subparagraph (c)(4) of this Rule shall be used to generate a staff summary of findings report following the post conference meeting for presentation to the NC EMS Advisory Council for redesignation.
- (9) The final written report issued by the ACS' verification review committee, the accompanying medical record reviews (from which all identifiers may be removed), and cover letter must be forwarded to OEMS within 10 working days of its receipt by the Trauma Center seeking renewal.
- (10) The OEMS shall present its summary of findings report to the State Emergency Medical Services Advisory Council at its next regularly scheduled meeting. The State EMS Advisory Council shall recommend to the Chief of the OEMS that the request for Trauma Center renewal be approved; approved with a contingency(ies) due to a deficiency(ies) requiring a focused review; approved with a contingency(ies) not due to a deficiency(ies); or denied.
- (11) The OEMS shall notify the hospital in writing of the State Emergency Medical Services Advisory Council's and OEMS' final recommendation within 30 days of the Advisory Council meeting.
- (12) Hospitals with contingencies, as the result of a deficiency(ies), as determined by OEMS, have up to 10 working days prior to the State EMS Advisory Council meeting to provide documentation to demonstrate compliance. If the hospital has a deficiency that cannot be corrected in this time period prior to the State EMS Advisory Council meeting, the hospital, instead of a four-year renewal, may undergo a focused review (to be conducted by the OEMS) whereby the Trauma Center is given 12 months by the OEMS to demonstrate compliance. Satisfaction of contingency(ies) may require an additional site visit. The hospital shall retain its Trauma Center designation during the focused review period. If compliance is demonstrated within the prescribed time period, the hospital shall be granted its designation for the four-year period from the previous designation's expiration date. If compliance is not demonstrated within the time period, as specified by OEMS, the Trauma Center designation shall not be renewed. To become redesignated, the hospital shall submit a new RFP and follow the initial applicant process outlined in Rule .0904 of this Section.
- (d) If a Trauma Center currently using the ACS' verification process chooses not to renew using this process, it must notify the OEMS at least six months prior to the end of its state trauma center designation period of its intention to exercise the option in Subparagraph (a)(1) of this Rule.

*History Note: Authority G.S. 131E-162; 143-509(3);
Temporary Adoption Eff. January 1, 2002;
Eff. April 1, 2003;
Amended Eff. April 1, 2009; January 1, 2009; January 1, 2004.*

TITLE 12 – DEPARTMENT OF JUSTICE

**12 NCAC 09A .0107 RULE-MAKING AND
ADMINISTRATIVE HEARING PROCEDURES**

(a) In addition to the procedures set out in G.S. 150B-20, Petitions for Rule-Making shall be submitted to the Commission and shall contain:

- (1) petitioner's name, address and telephone number;
- (2) a draft of the proposed rule or rule change;
- (3) the reason for its proposal;
- (4) the effect of the proposal on existing rules or decisions;
- (5) data supporting the proposal;
- (6) practices likely to be affected by the proposal; and
- (7) a list or description of persons likely to be affected by the proposed rule.

(b) Administrative hearings in contested cases conducted by the Commission or an Administrative Law Judge (as authorized in G.S. 150B-40) shall be governed by:

- (1) procedures set out in Article 3A of G.S. 150B;
- (2) insofar as relevant, the Rules of Civil Procedure as contained in G.S. 1A-1;
- (3) insofar as relevant, the General Rules of Practice for the Superior and District Courts as authorized by G.S. 7A-34 and found in the Rules Volume of the North Carolina General Statutes.

(c) The rules establishing procedures for contested cases adopted by the Office of Administrative Hearings as contained in Title 26, Chapter 3 of the North Carolina Administrative Code are hereby incorporated by reference for contested cases for which this agency has authority to adopt rules under G.S. 150B-38(h). All such incorporations by reference shall automatically include any later amendments and editions of the incorporated material as provided by G.S. 150B-21.6.

(d) If the case is conducted under G.S. 150B-40(b), the presiding officer shall have the powers and duties given to the Chief Administrative Law Judge or the presiding Administrative Law Judge in Title 26, Chapter 3 of the North Carolina Administrative Code.

(e) Pursuant to G.S. 17C-11(b), an applicant for certification or a certified officer shall have 30 days from the date of receipt of a notice of proposed action by the Commission to request a contested case hearing.

History Note: Authority G.S. 17C-6; 150B-20; 150B-21.6; 150B-38(h); 150B-40; Eff. January 1, 1981; Amended Eff. April 1, 2009; November 1, 1993; July 1, 1988; April 1, 1984.

**12 NCAC 09A .0204 SUSPENSION: REVOCATION:
OR DENIAL OF CERTIFICATION**

(a) The Commission shall revoke the certification of a criminal justice officer when the Commission finds that the officer has committed or been convicted of:

- (1) a felony offense; or

(2) a criminal offense for which the authorized punishment included imprisonment for more than two years.

(b) The Commission may suspend, revoke, or deny the certification of a criminal justice officer when the Commission finds that the applicant for certification or the certified officer:

- (1) has not enrolled in and satisfactorily completed the required basic training course in its entirety within prescribed time periods relevant or applicable to a specified position or job title;
- (2) fails to meet or maintain one or more of the minimum employment standards required by 12 NCAC 09B .0100 for the category of the officer's certification or fails to meet or maintain one or more of the minimum training standards required by 12 NCAC 09B .0200 or 12 NCAC 09B .0400 for the category of the officer's certification;
- (3) has committed or been convicted of:
 - (A) a criminal offense or unlawful act defined in 12 NCAC 09A .0103 as a Class B misdemeanor; or
 - (B) four or more criminal offenses or unlawful acts defined in 12 NCAC 09A .0103 as a Class A misdemeanor, each of which occurred after the date of initial certification;
- (4) has been discharged by a criminal justice agency for commission or conviction of:
 - (A) a motor vehicle offense requiring the revocation of the officer's driver's license; or
 - (B) any other offense involving moral turpitude;
- (5) has been discharged by a criminal justice agency because the officer lacks the mental or physical capabilities to properly fulfill the responsibilities of a criminal justice officer;
- (6) has knowingly made a material misrepresentation of any information required for certification or accreditation;
- (7) has knowingly and willfully, by any means of false pretense, deception, defraudation, misrepresentation or cheating whatsoever, obtained or attempted to obtain credit, training or certification from the Commission;
- (8) has knowingly and willfully, by any means of false pretense, deception, defraudation, misrepresentation or cheating whatsoever, aided another person in obtaining or attempting to obtain credit, training or certification from the Commission;
- (9) has failed to make either of the notifications as required by 12 NCAC 09B .0101(8);
- (10) has been removed from office by decree of the Superior Court in accord with the provisions of G.S. 128-16 or has been removed from

- office by sentence of the court in accord with the provisions of G.S. 14-230;
- (11) fails to satisfactorily complete the minimum in-service training requirements as prescribed in 12 NCAC 09E;
 - (12) has refused to submit to an applicant or lateral transferee drug screen as required by the rules in this Chapter, or has refused to submit to an in-service drug screen pursuant to the guidelines set forth in the Drug Screening Implementation Guide as required by the agency through which the officer is certified;
 - (13) has produced a positive result on a drug screen reported to the Commission as specified in 12 NCAC 09C .0310, where the positive result cannot be explained to the Commission's satisfaction;
 - (14) has been denied certification or had certification suspended or revoked by the North Carolina Sheriffs' Education and Training Standards Commission, the North Carolina Criminal Justice Education and Training Standards Commission; the North Carolina Company/Campus Police Program; or a similar North Carolina, out of state or federal approving, certifying or licensing agency;
 - (15) has performed activities or duties for which certification by the Commission is required without having first obtained the appropriate certification; or
 - (16) has been convicted of any offense proscribed by 18 USC 922(g)(8) that would prohibit possession of a firearm or ammunition.

(c) Following suspension, revocation, or denial of the person's certification, the person may not remain employed or appointed as a criminal justice officer and the person may not exercise any authority of a criminal justice officer during a period for which the person's certification is suspended, revoked, or denied.

History Note: Authority G.S. 17C-6; 17C-10;
Eff. January 1, 1981;

Amended Eff. April 1, 2009; February 1, 2006; August 1, 2001;
August 1, 1995; November 1, 1993; March 1, 1992; July 1, 1990.

12 NCAC 09B .0111 MINIMUM STANDARDS FOR LAW ENFORCEMENT OFFICERS

In addition to the requirements for criminal justice officers contained in Rule .0101 of this Section, every law enforcement officer employed by an agency in North Carolina shall:

- (1) not have committed or been convicted of:
 - (a) a felony;
 - (b) a crime for which the punishment could have been imprisonment for more than two years;
 - (c) a crime or unlawful act defined as a "Class B misdemeanor" within the

- (d) five year period prior to the date of application for employment;
- (d) four or more crimes or unlawful acts defined as "Class B misdemeanors" regardless of the date of conviction;
- (e) four or more crimes or unlawful acts defined as "Class A misdemeanors" except the applicant may be employed if the last conviction occurred more than two years prior to the date of application for employment; or
- (f) an offense that, proscribed by 18 USC 922(g)(8), would prohibit the possession of a firearm or ammunition;
- (2) be a high school graduate or have passed the General Educational Development Test indicating high school equivalency; and
- (3) satisfactorily complete the employing agency's in-service firearms training program as prescribed in 12 NCAC 09E .0105 and .0106. Such firearms training compliance must have occurred prior to submission of the application for appointment to the Commission and must be completed using the agency-approved service handgun(s) and any other weapon(s) that the applicant has been issued or authorized to use by the agency.

Note: Although not presently required, the Commission recommends that, on the date of employment or within 24 months thereafter, every candidate for employment as a law enforcement officer have completed no less than six semester units or nine quarter units of educational credit at an institution recognized by the United States Department of Education and the Council for Higher Education Accreditation.

History Note: Authority G.S. 17C-6; 17C-10;
Eff. January 1, 1981;
Amended Eff. April 1, 2009; August 1, 1998; December 1, 1987;
October 1, 1985; January 1, 1985; January 1, 1983.

12 NCAC 09B .0202 RESPONSIBILITIES OF THE SCHOOL DIRECTOR

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

- (1) Formalize and schedule the course curriculum in accordance with the curriculum standards established in this Subchapter;
- (2) Select and schedule instructors who are certified by the Commission;
- (3) Provide each instructor with a current Commission course outline and all necessary additional information concerning the instructor's duties and responsibilities;
- (4) Notify each instructor that they must comply with the Basic Law Enforcement Course Management Guide and provide them access

to the most current version of the Course Management Guide;

- (5) Review each instructor's lesson plans and other instructional materials for conformance to Commission standards and to minimize repetition and duplication of subject matter;
- (6) Arrange for the timely availability of appropriate audiovisual aids and materials, publications, facilities, and equipment for training in all topic areas;
- (7) Develop, adopt, reproduce, and distribute any supplemental rules, regulations, and requirements determined by the school to be necessary or appropriate for:
 - (A) effective course delivery;
 - (B) establishing responsibilities and obligations of agencies or departments employing or sponsoring course trainees; and
 - (C) regulating trainee participation and demeanor and ensuring trainee attendance and maintaining performance records;
- (8) If appropriate, recommend housing and dining facilities for trainees;
- (9) Administer the course delivery in accordance with Commission procedures and standards, give consideration to advisory guidelines issued by the Commission, and ensure that the training offered is safe and effective;
- (10) Maintain direct supervision, direction, and control over the performance of all persons to whom any portion of the planning, development, presentation, or administration of a course has been delegated; and
- (11) Report the completion of each presentation of a Commission-certified criminal justice training course to the Commission.

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

- (1) Deliver training in accordance with the most current version of the Basic Law Enforcement Training Course Management Guide as published by the North Carolina Justice Academy;
- (2) Schedule course presentation to include 12 hours of instruction each week during consecutive calendar weeks except that there may be as many as three one-week breaks until course requirements are completed;
- (3) Schedule only those instructors certified by the Commission to teach those high liability areas as specified in 12 NCAC 09B .0304(a) as either the lead instructor or in any other capacity;
- (4) With the exception of the First Responder, Physical Fitness, Electrical and Hazardous

Materials, and topical areas as outlined in 12 NCAC 09B .0304(a) of this Subchapter, schedule one specialized certified instructor certified by the Commission for each six trainees while actively engaged in a practical performance exercise;

- (5) Schedule one specialized certified instructor certified by the Commission for each eight trainees while actively engaged in a practical performance exercise in the topical area "Subject Control Arrest Techniques;"
- (6) Not schedule any single individual to instruct more than 35 percent of the total hours of the curriculum during any one delivery of the Basic Law Enforcement Training Course presentation;
- (7) Not less than 15 days before commencing delivery of the Basic Law Enforcement Training Course, submit to the Commission a Pre-Delivery Report of Training Course Presentation as set out in 12 NCAC 09C .0211 along with the following attachments:
 - (A) a course schedule showing arrangement of topical presentations and proposed instructional assignments; and
 - (B) a copy of any rules, regulations, and requirements for the school. A copy of such rules shall also be given to each trainee and to the executive officer of each trainee's employing or sponsoring agency or department at the time the trainee enrolls in the course;
- (8) Monitor, or designate an instructor certified by the Commission to monitor, the presentations of all instructors once during each three year certification period in each topic taught by the instructor and prepare written evaluations on their performance and suitability for subsequent instructional assignments. The observations shall be of sufficient duration to ensure the instructor is using the Instructional System Design model, and that the delivery is objective based, documented by and consistent with a Commission-approved lesson plan. For each topic area, the School Director's evaluation shall be based upon the course delivery observations, the instructor's use of the approved lesson plan, and the results of the student evaluation of the instructor. For probationary instructors, these evaluations shall be prepared on Commission forms and forwarded to the Commission. Based on this evaluation, the School Director shall recommend approval or denial of requests for General Instructor Certification. For all other instructors, these evaluations shall be prepared on Commission forms in accordance with

Commission standards as set out in this Chapter. These evaluations shall be kept on file by the school for a period of three years and shall be made available for inspection by a representative of the Commission upon request. In the event the evaluation of an instructor indicates that his or her performance was less than acceptable, the School Director shall forward a copy of the evaluation to the Commission. Any designated instructor certified by the Commission who is evaluating the instructional presentation of another instructor shall hold certification in the same instructional topic area as that for which the instructor is being evaluated;

- (9) Administer or designate a staff person to administer appropriate tests as determined necessary at various intervals during course delivery:

- (A) to determine and record the level of trainee comprehension and retention of instructional subject- matter;
- (B) to provide a basis for a final determination or recommendation regarding the minimum degree of knowledge and skill of each trainee to function as an inexperienced law enforcement officer; and
- (C) to determine subject or topic areas of deficiency for the application of 12 NCAC 09B .0405(a)(3);

- (10) During a delivery of Basic Law Enforcement Training, make available to the Commission four hours of scheduled class time and classroom facilities for the administration of a written examination to those trainees who have satisfactorily completed all course work; and

- (11) Not more than 10 days after receiving from the Commission's representative the Report of Examination Scores, submit to the Commission a Post-Delivery Report of Training Course Presentation (Form F-10B) which shall include:

- (A) a "Student Course Completion" form for each individual enrolled on the day of orientation; and
- (B) a "Certification and Test Score Release" form.

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

- (1) Schedule course presentation to include 40 hours of instruction each week during consecutive calendar weeks until course requirements are completed;
- (2) Schedule at least one evaluator for each six trainees, as follows:

- (A) no evaluator shall be assigned more than six trainees during a course delivery;
- (B) each evaluator, as well as the instructors, must have successfully completed a Commission-certified instructor training course or an equivalent instructor training course utilizing the Instructional Systems Design model, an international model with applications in education, military training, and private enterprise; and
- (C) each instructor and evaluator must document successful participation in a program presented by the Justice Academy for purposes of familiarization and supplementation relevant to delivery of the instructor training course and trainee evaluation;

- (3) Not less than 30 days before commencing delivery of the course, submit to the Commission a Pre-Delivery Report of Training Course Presentation [Form F-10A(ITC)] with the following attachments:

- (A) a course schedule showing arrangement of topical presentations and proposed instructional assignments;
- (B) the names and social security numbers of all instructors and evaluators; and
- (C) a copy of any rules, regulations, and requirements for the school; and

- (4) Not more than 10 days after course completion submit to the Commission a Post-Delivery Report [Form F-10B(ITC)] containing the following:

- (A) class enrollment roster;
- (B) a course schedule with designation of instructors and evaluators utilized in delivery;
- (C) scores recorded for each trainee on both the 80 minute skill presentation and the final written examination; and
- (D) designation of trainees who successfully completed the course in its entirety and whom the School Director finds to be competent to instruct.

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

- (1) select and schedule radar, time-distance, or lidar speed measurement instrument instructors who are certified by the

Commission as instructors for the specific speed measurement instruments in which the trainees are to receive instruction;

- (A) provide to the instructor the Commission form(s) for motor-skill examination on each trainee;
 - (B) require the instructor to complete the motor-skill examination form on each trainee indicating the level of proficiency obtained on each specific instrument; and
 - (C) require each instructor to sign each individual form and submit the original to the School Director;
- (2) not less than 30 days before the scheduled starting date submit to the Director of the Standards Division a Request for Training Course Presentation, and which shall contain a period of course delivery including the proposed starting date, course location and the number of trainees to be trained on each type of approved speed measurement instrument. The Director of the Standards Division shall review the request and notify the School Director of the accepted delivery period unless a conflict exists with previously scheduled programs;
- (3) during the delivery of the training course, make available to the Commission two hours of scheduled class time and classroom facilities for the administration of a written examination to the trainee; and
- (4) upon completing delivery of the Commission-certified course, and not more than 10 days after receiving from the Commission's representative the Report of Examination Scores, the School Director shall notify the Commission regarding the progress and achievements of each trainee by submitting a Post-Delivery Report of Training Course Presentation. This report shall include the original motor-skill examination form(s) completed and signed by the certified instructor responsible for administering the motor-skill examination to the respective trainee.

motor-skills and abilities by virtue of special training and demonstrated experience in one or more of the following topical areas:

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

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

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

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

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

- (1) The first option is:
 - (A) hold CPR instructor certification through an organization whose curriculum meets the national standard;
 - (B) hold, or have held, basic Emergency Medical Technician certification;
 - (C) have successfully completed the Department of Transportation's 40 hour EMT Instructor Course or equivalent within the last three years or hold a North Carolina teaching certificate; and
 - (D) obtain the recommendation of a Commission-certified school director or in-service training coordinator.
- (2) The second option is:
 - (A) hold General Instructor Certification, either probationary status or full general instructor status, as specified in Rule .0303 of this Section;
 - (B) hold CPR instructor certification through an organization whose

*History Note: Authority G.S. 17C-6;
 Eff. January 1, 1981;
 Amended Eff. November 1, 1981;
 Readopted w/change Eff. July 1, 1982;
 Amended Eff. April 1, 2009; November 1, 2007; January 1, 2006; May 1, 2004; August 1, 2000; January 1, 1996; November 1, 1993; December 1, 1987; January 1, 1985.*

12 NCAC 09B .0304 SPECIALIZED INSTRUCTOR CERTIFICATION

(a) The Commission may issue a Specialized Instructor Certification to an applicant who has developed specific

- curriculum meets the national standard;
- (C) hold, or have held, basic EMT certification; and
- (D) obtain the recommendation of a Commission-certified school director or in-service training coordinator.
- (e) To qualify for Specialized Instructor Certification in the Firearms topical area, an applicant must meet the following requirements:
- (1) hold General Instructor Certification, either probationary status or full general instructor status, as specified in Rule .0303 of this Section;
 - (2) successfully complete the pertinent Commission-approved specialized instructor training course; and
 - (3) obtain the recommendation of a Commission-certified school director or in-service training coordinator.
- (f) To qualify for Specialized Instructor Certification in the Law Enforcement Driver Training topical area, an applicant must meet the following requirements:
- (1) hold General Instructor Certification, either probationary status or full general instructor status, as specified in Rule .0303 of this Section;
 - (2) successfully complete the pertinent Commission-approved specialized instructor training course; and
 - (3) obtain the recommendation of a Commission-certified school director or in-service training coordinator.
- (g) To qualify for Specialized Instructor Certification in the Physical Fitness topical area, an applicant shall become certified through one of the following two methods:
- (1) The first method is:
 - (A) hold General Instructor Certification, either probationary status or full general instructor status, as specified in Rule .0303 of this Section;
 - (B) successfully complete the pertinent Commission-approved specialized instructor training course; and
 - (C) obtain the recommendation of a Commission-certified School Director.
 - (2) The second method is:
 - (A) successfully complete the pertinent Commission-approved specialized instructor training course;
 - (B) obtain the recommendation of a Commission-certified School director or in-service training coordinator; and
 - (C) meet one of the following qualifications:
 - (i) hold a valid North Carolina Teacher's Certificate and hold a minimum of a baccalaureate degree in physical education and be presently teaching in physical education topics; or
 - (ii) be presently instructing physical education topics in a community college, college or university and hold a minimum of a baccalaureate degree in physical education.
- (h) To qualify for Specialized Instructor Certification in the Department of Juvenile Justice and Delinquency Prevention Restraint, Control and Defense Techniques topical area, an applicant must meet the following requirements:
- (1) hold General Instructor Certification, either probationary status or full general instructor status, as specified in Rule .0303 of this Section;
 - (2) successfully complete the pertinent Commission-approved specialized instructor training course; and
 - (3) obtain the recommendation of a Commission-certified school director.
- (i) To qualify for Specialized Instructor Certification in the Department of Juvenile Justice and Delinquency Prevention Medical Emergencies topical area, an applicant must meet the following requirements:
- (1) have successfully completed a Commission-certified basic instructor training course or an equivalent instructor training course utilizing the Instructional Systems Design model, an international model with applications in education, military training, and private enterprise, within the 12 month period preceding application;
 - (2) hold instructor certification in CPR and First Aid by fulfillment of the American Red Cross Instructor requirements; and
 - (3) obtain the recommendation of a Commission-certified school director.
- (j) To qualify for Specialized Instructor Certification in the Explosive and Hazardous Materials Emergencies topical area, an applicant must satisfy one of the following two options:
- (1) The first option is:
 - (A) hold instructor certification as a First Responder Awareness Level Hazardous Materials instructor;
 - (B) have successfully completed the Fire Service Instructor Methodology Course or the equivalent utilizing the Instructional Systems Design model, an international model with applications in education, military training, and private enterprise; and
 - (C) obtain the recommendation of a Commission-certified school director or in-service training coordinator.
 - (2) The second option is:

- (A) hold General Instructor Certification, either probationary status or full general instructor status, as specified in 12 NCAC 09B .0303 of this Section;
- (B) have successfully completed the Awareness/Operations Level Hazardous Materials Course developed by the North Carolina Department of Insurance, Office of the State Fire Marshal; and
- (C) obtain the recommendation of a Commission-certified school director or in-service training coordinator.

History Note: Authority G.S. 17C-6; Eff. January 1, 1981; Amended Eff. August 1, 2000; July 1, 1991; March 1, 1990; July 1, 1989; December 1, 1987; Temporary Amendment Eff. January 1, 2001; Amended Eff. April 1, 2009; August 1, 2006; January 1, 2006; December 1, 2004; August 1, 2002.

12 NCAC 09B .0502 TERMS AND CONDITIONS OF SCHOOL DIRECTOR CERTIFICATION

- (a) The term of certification as a school director is two years from the date the Commission issues the certification, unless earlier terminated by action of the Commission. Upon application the certification may subsequently be renewed by the Commission for two-year periods. The application for renewal shall contain documentation meeting the requirements of Rule .0501(b)(2) and (3) of this Section.
- (b) To retain certification as a school director, the school director shall:
 - (1) Attend an annual school directors conference conducted by commission staff;
 - (2) Maintain and comply with the current version of the "Basic Law Enforcement Training Course Management Guide";
 - (3) Maintain and ensure compliance with the current version of the "Basic Law Enforcement Training Instructor Notebook" assigned to each certified school; and
 - (4) Perform the duties and responsibilities of a school director as specifically required in Rule .0202 of this Subchapter.

History Note: Authority G.S. 17C-6; Eff. January 1, 1985; Amended Eff. April 1, 2009.

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

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

- (1) Firearms Training and Qualification (4);
- (2) Legal Update (4);

- (3) Career Survival: Training and Standards Issues (2);
- (4) Juvenile Minority Sensitivity Training: Juvenile Law – In the Real World (2);
- (5) Domestic Violence (2);
- (6) Drug Diversion for Patrol Officers (2); and
- (7) Department Topics of Choice (8).

History Note: Authority G.S. 17C-6; 17C-10; Eff. July 1, 1989; Amended Eff. January 1, 2005; Temporary Amendment Eff. January 1, 2005; Amended Eff. April 1, 2009; April 1, 2008; February 1, 2007; January 1, 2006.

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

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

- (1) Firearms:
 - (a) Use of Force: review the authority to use deadly force [G.S. 15A-401(d)(2)] including the relevant case law and materials;
 - (b) Safety:
 - (i) range rules and regulations;
 - (ii) handling of a firearm; and
 - (iii) malfunctions;
 - (c) Review of Basic Marksmanship Fundamentals:
 - (i) grip, stance, breath control and trigger squeeze;
 - (ii) sight and alignment/sight picture; and
 - (iii) nomenclature; and
 - (d) The "Specialized Firearms Instructor Training Manual" as published by the North Carolina Justice Academy shall be applied as a guide for conducting the annual in-service firearms training program. Copies of this publication may be inspected at the office of the agency:

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

- (2) Legal Update (4);
- (3) Career Survival: Training and Standards Issues (2);
- (4) Juvenile Minority Sensitivity Training: Juvenile Law – In the Real World (2);
- (5) Domestic Violence (2);
- (6) Drug Diversion for Patrol Officers (2); and
- (7) Department Topics of Choice (8).

The In-Service Lesson Plans as published by the North Carolina Justice Academy shall be applied as a

minimum curriculum for conducting the annual in-service training program. Copies of this publication may be inspected at the office of the agency:

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

Raleigh, North Carolina 27602

and may be obtained at cost from the Academy at the following address:

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

*History Note: Authority G.S. 17C-6; 17C-10;
Eff. July 1, 1989;
Amended Eff. January 1, 2005; November 1, 1998;
Temporary Amendment Eff. January 1, 2005;
Amended Eff. April 1, 2009; April 1, 2008; February 1, 2007;
January 1, 2006.*

12 NCAC 09G .0102 DEFINITIONS

The following definitions apply throughout this Subchapter only:

- (1) "Commission of an offense" means a finding by the North Carolina Criminal Justice Education and Training Standards Commission or an administrative body that a person performed the acts necessary to satisfy the elements of a specified offense.
- (2) "Convicted" or "Conviction" means and includes, for purposes of this Subchapter, the entry of:
 - (a) a plea of guilty;
 - (b) a verdict or finding of guilt by a jury, judge, magistrate, or other duly constituted, established adjudicating body, tribunal, or official, either civilian or military; or
 - (c) a plea of no contest, nolo contendere, or the equivalent.
- (3) "Correctional Officer" means an employee of the North Carolina Department of Correction, Division of Prisons, responsible for the custody of inmates or offenders.
- (4) "Corrections Officer" means any or all of the three classes of officers employed by the North Carolina Department of Correction: correctional officer; probation/parole officer; and probation/parole officer-intermediate.
- (5) "Criminal Justice System" means the whole of the State and local criminal justice agencies including the North Carolina Department of Correction.
- (6) "Director" means the Director of the Criminal Justice Standards Division of the North Carolina Department of Justice.
- (7) "Educational Points" means points earned toward the State Correction Officers'

Professional Certificate Program for studies satisfactorily completed for semester hour or quarter hour credit at a regionally accredited institution of higher education. Each semester hour of college credit equals one educational point and each quarter hour of college credit equals two-thirds of an educational point.

(8) "High School" means graduation from a high school that meets the compulsory attendance requirements in the jurisdiction in which the school is located.

(9) "Misdemeanor" for corrections officers means those criminal offenses not classified under the laws, statutes, or ordinances as felonies. Misdemeanor offenses for corrections officers are classified by the Commission as follows:

- (a) 14-2.5 Punishment for attempt (offenses that are Class A-1 misdemeanor)
- (b) 14-27.7 Intercourse and sexual offenses with certain victims (If defendant is school personnel other than a teacher, school administrator, student teacher or coach)
- (c) 14-32.1(f) Assault on handicapped persons
- (d) 14-32.2(b)(4) Patient abuse and neglect, punishments
- (e) 14-32.3 Exploitation by caretaker of disabled/elder adult in domestic setting; resulting in loss of less than one thousand dollars (\$1000) (August 1, 2001-December 1, 2005. Repealed December 1, 2005)
- (f) 14-33(b)(9) Assault, battery against sports official
- (g) 14-33(c) Assault, battery with circumstances
- (h) 14-34 Assault by pointing a gun
- (i) 14-34.6(a) Assault on Emergency Personnel
- (j) 14-54 Breaking or Entering into buildings generally (14-54(b))
- (k) 14-72 Larceny of property; receiving stolen goods etc.; not more than one thousand dollars (\$1000.00) (14-72(a))
- (l) 14-72.1 Concealment of merchandise (14-72.1(e); 3rd or subsequent offense)
- (m) 14-76 Larceny, mutilation, or destruction of public records/papers
- (n) CH 14 Art. 19A False/fraudulent use of credit device (14-113.6)
- (o) CH 14 Art. 19B Financial transaction card crime (14-113.17(a))

(p)	14-114(a)	Fraudulent disposal of personal property on which there is a security interest	(pp)	14-269.4	Weapons on state property and in courthouses
(q)	14-118	Blackmailing	(qq)	14-269.6	Possession and sale of spring-loaded projectile knives prohibited (14-269.6(b))
(r)	14-118.2	Obtaining academic credit by fraudulent means (14-118.2(b))	(rr)	14-277	Impersonation of a law-enforcement or other public officer verbally, by displaying a badge or insignia, or by operating a red light (14-277 (d1) and (e))
(s)	14-122.1	Falsifying documents issued by a school (14-122.1(c))	(ss)	14-277.2(a)	Weapons at parades, etc., prohibited
(t)	14-127	Willful and wanton injury to real property	(tt)	14-277.3	Stalking (14-277.3(b))
(u)	14-160	Willful and wanton injury to personal property greater than two hundred dollars (\$200.00) (14-160(b))	(uu)	14-288.2(b)	Riot
(v)	14-190.5	Preparation of obscene photographs	(vv)	14-288.2(d)	Inciting to riot
(w)	14-190.9	Indecent Exposure	(ww)	14-288.6(a)	Looting; trespassing during emergency
(x)	14-190.14	Displaying material harmful to minors (14-190.14(b))	(xx)	14-288.7(c)	Transporting weapon or substance during emergency
(y)	14-190.15	Disseminating harmful material to minors (14-190.15(d))	(yy)	14-288.9(c)	Assault on emergency personnel; punishments
(z)	14-202.2	Indecent liberties between children	(zz)	14-315(a)	Selling or giving weapons to minors
(aa)	14-202.4	Taking indecent liberties with a student	(aaa)	14-315.1	Storage of firearms to protect minors
(bb)	14-204	Prostitution (14-207;14-208)	(bbb)	14-316.1	Contributing to delinquency
(cc)	14-223	Resisting officers	(ccc)	14-318.2	Child abuse
(dd)	14-225	False, etc., reports to law enforcement agencies or officers	(ddd)	14-360	Cruelty to animals
(ee)	14-230	Willfully failing to discharge duties	(eee)	14-361	Instigating or promoting cruelty to animals
(ff)	14-231	Failing to make reports and discharge other duties	(fff)	14-401.14	Ethnic intimidation; teaching any technique to be used for (14-401.14(a) and (b))
(gg)	14-232	Swearing falsely to official records	(ggg)	14-454(a) or (b)	Accessing computers
(hh)	14-239	Allowing prisoners to escape punishment	(hhh)	14-458	Computer trespass (Damage less than two thousand five hundred dollars (\$2500.00))
(ii)	14-255	Escape of working prisoners from custody	(iii)	15A-266.11	Unauthorized use of DNA databank; willful disclosure (15A-266.11(a) and (b))
(jj)	14-256	Prison breach and escape	(jjj)	15A-287	Interception and disclosure of wire etc. communications
(kk)	14-258.1(b)	Furnishing certain contraband to inmates	(kkk)	15B-7(b)	Filing false or fraudulent application for compensation award
(ll)	14-259	Harboring or aiding certain persons	(lll)	18B-902(c)	False statements in application for ABC permit (18B-102(b))
(mm)	CH 14 Art. 34	Persuading inmates to escape; harboring fugitives (14-268)	(mmm)	20-37.8(a) & (c)	Fraudulent use of a fictitious name for a special identification card
(nn)	14-269.2	Weapons on campus or other educational property (14-269.2(d), (e) and (f))	(nnn)	20-102.1	False report of theft or conversion of a motor vehicle
(oo)	14-269.3(a)	Weapons where alcoholic beverages are sold and consumed	(ooo)	20-111(5)	Fictitious name or address in application for registration

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| <p>(ppp) 20-130.1 Use of red or blue lights on vehicles prohibited (20-130.1(e))</p> <p>(qqq) 20-137.2 Operation of vehicles resembling law-enforcement vehicles (20-137.2(b))</p> <p>(rrr) 20-138.1 Driving while impaired (punishment level 1 (20-179(g)) or 2 (20-179(h))</p> <p>(sss) 20-138.2I Impaired driving in commercial vehicle (20-138.2(e))</p> <p>(ttt) 20-141.5(a) Speeding to elude arrest</p> <p>(uuu) 20-166(b) Duty to stop in event of accident or collision</p> <p>(vvv) 20-166(c) Duty to stop in event of accident or collision</p> <p>(www) 20-166(c1) Duty to stop in event of accident or collision</p> <p>(xxx) 50B-4.1 Knowingly violating valid protective order</p> <p>(yyy) 58-33-105 False statement in applications for insurance</p> <p>(zzz) 58-81-5 Careless or negligent setting of fires</p> <p>(aaaa) 62A-12 Misuse of 911 system</p> <p>(bbbb) 90-95(d)(2) Possession of schedule II, III, IV</p> <p>(cccc) 90-95(d)(3) Possession of Schedule V</p> <p>(dddd) 90-95(d)(4) Possession of Schedule VI (when punishable as Class 1 misdemeanor)</p> <p>(eeee) 90-95(e)(4) Conviction of 2 or more violations of Art. 5</p> <p>(ffff) 90-95(e)(7) Conviction of 2 or more violations of Art. 5</p> <p>(gggg) 90-113.22 Possession of drug paraphernalia (90-113.22(b))</p> <p>(hhhh) 90-113.23 Manufacture or delivery of drug paraphernalia (90-113.23(c))</p> <p>(iiii) 97-88.2(a) Misrepresentation to get worker's compensation payment</p> <p>(jjjj) 108A-39(a) Fraudulent misrepresentation of public assistance</p> <p>(kkkk) 108A-53 Fraudulent misrepresentation of foster care and adoption assistance payments</p> <p>(llll) 108A-64(a) Medical assistance recipient fraud; less than four hundred dollars (\$400.00) (108-64(c)(2))</p> <p>(mmmm) 108A-80 Recipient check register/list of all recipients of AFDC and state-county special assistance (108A-80(b))</p> | <p>(nnnn) 108A-80 Recipient check register/ list of all recipients of AFDC and state-county special assistance; political mailing list (108A-80(c))</p> <p>(oooo) 113-290.1(a)(2) Criminally negligent hunting; no bodily disfigurement</p> <p>(pppp) 113-290.1(a)(3) Criminally negligent hunting; bodily disfigurement</p> <p>(qqqq) 113-290.1(a)(4) Criminally negligent hunting; death results</p> <p>(rrrr) 113-290.1(d) Criminally negligent hunting; person convicted/suspended license</p> <p>(ssss) 143-58.1(a) Use of public purchase or contract for private benefit (143-58.1(c))</p> <p>(tttt) 148-45(d) Aiding escape or attempted escape from prison</p> <p>(uuuu) 162-55 Injury to prisoner by jailer</p> <p>(vvvv) Common-Law misdemeanors:</p> <ul style="list-style-type: none"> (i) Going Armed to the Terror of the People (ii) Common-Law Mayhem (iii) False Imprisonment (iv) Common-Law Robbery (v) Common-Law Forgery (vi) Common-Law Uttering of Forged paper (vii) Forcible Trespass (viii) Unlawful Assembly <p>(www) Common-Law Obstruction of Justice</p> <p>(www) Those offenses occurring in other jurisdictions which are comparable to the offenses specifically listed in (a) through (vvvv) of this Rule.</p> <p>(xxxx) Any offense proscribed by 18 USC 922(g)(8) [Lautenberg Amendment] that would prohibit possessing a firearm or ammunition.</p> <p>(10) "Pilot Courses" means those courses approved by the Education and Training Committee, consistent with 12 NCAC 09G .0404, which are utilized to develop new training course curricula.</p> <p>(11) "Probation/Parole Officer" means an employee of the North Carolina Department of Correction, Division of Community Corrections, whose duties include supervising, evaluating, or otherwise instructing offenders placed on probation, parole, post release supervision, or assigned to any other community-based program operated by the Division of Community Corrections.</p> <p>(12) "Probation/Parole Officer-Intermediate" means an employee of the North Carolina Department</p> |
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of Correction, Division of Community Corrections, other than a regular probation/parole officer who is trained in corrections techniques, and is an authorized representative of the courts of North Carolina and the Department of Correction, Division of Community Corrections, whose duties include supervising, investigating, reporting, and surveillance of serious offenders in an intensive probation, parole, or post release supervision program operated by the Division of Community Corrections.

- (13) "Qualified Assistant" means an additional staff person designated as such by the School Director to assist in the administration of a course when a certified institution or agency assigns additional responsibilities to the certified School Director during the planning, development, and implementation of a certified course.
- (14) "School" means an institution, college, university, academy, or agency which offers penal or corrections training for correctional officers, probation/parole officers, or probation/parole officers-intermediate. "School" includes the corrections training course curricula, instructors, and facilities.
- (15) "School Director" means the person designated by the Secretary of the North Carolina Department of Correction to administer the "School."
- (16) "Standards Division" means the Criminal Justice Standards Division of the North Carolina Department of Justice.
- (17) "State Corrections Training Points" means points earned toward the State Corrections Officers' Professional Certificate Program by successful completion of Commission-approved corrections training courses. 20 classroom hours of Commission-approved corrections training equals one State Corrections training point.

History Note: Authority G.S. 17C-2; 17C-6; 17C-10; 153A-217;
Temporary Adoption Eff. January 1, 2001;
Eff. August 1, 2002;
Amended Eff. April 1, 2009; August 1, 2004.

12 NCAC 09G .0205 PHYSICAL AND MENTAL STANDARDS

(a) Every person employed as a correctional officer, probation/parole officer, or probation/parole officer-intermediate by the North Carolina Department of Correction shall have been examined and certified within one year prior to employment with the North Carolina Department of Correction by a licensed physician, physician's assistant, or nurse practitioner to meet the physical requirements to fulfill properly the officer's particular responsibilities as stated in the essential job functions.

(b) Every person employed as a correctional officer, probation/parole officer, or probation/parole officer-intermediate by the North Carolina Department of Correction shall have been administered within one year prior to employment with the North Carolina Department of Correction a psychological screening examination by a clinical psychologist or psychiatrist licensed to practice in North Carolina to determine the officer's mental and emotional suitability to fulfill properly the officer's particular responsibilities as stated in the essential job functions.

History Note: Authority G.S. 17C-6; 17C-10;
Temporary Adoption Eff. January 1, 2001;
Eff. August 1, 2002;
Amended Eff. April 1, 2009; August 1, 2004.

12 NCAC 09G .0206 MORAL CHARACTER

Every person employed as a correctional officer, probation/parole officer, or probation/parole officer-intermediate by the North Carolina Department of Correction shall demonstrate good moral character as evidenced by, but not limited to:

- (1) not having been convicted of a misdemeanor as defined in 12 NCAC 09G .0102(9) for three years or the completion of any corrections supervision imposed by the courts whichever is later;
- (2) not having been convicted of an offense that, under 18 USC 922(g)(8), would prohibit the possession of a firearm or ammunition;
- (3) having submitted to and produced a negative result on a drug test within 60 days of employment or any in-service drug screening required by the Department of Correction which meets the certification standards of the Department of Health and Human Services for Federal Workplace Drug Testing Programs, copies of which may be obtained from National Institute on Drug Abuse, 5600 Fisher Lane, Rockville, Maryland 20857 at no cost, to detect the illegal use of at least cannabis, cocaine, phencyclidine (PCP), opiates and amphetamines or their metabolites;
- (4) submitting to a background investigation consisting of:
 - (a) verification of age;
 - (b) verification of education; and
 - (c) criminal history check of local, state, and national files; and
- (5) being truthful in providing all required information as prescribed by the application process.

History Note: Authority G.S. 17C-6; 17C-10;
Temporary Adoption Eff. January 1, 2001;
Eff. August 1, 2002;
Amended Eff. April 1, 2009; August 1, 2004.

**12 NCAC 09G .0504 SUSPENSION: REVOCATION:
OR DENIAL OF CERTIFICATION**

(a) The Commission shall revoke the certification of a correctional officer, probation/parole officer, or probation/parole officer-intermediate when the Commission finds that the officer has committed or been convicted of a felony offense.

(b) The Commission may, based on the evidence for each case, suspend, revoke, or deny the certification of a corrections officer when the Commission finds that the applicant for certification or the certified officer:

- (1) has not enrolled in and satisfactorily completed the required basic training course in its entirety within prescribed time periods relevant or applicable to a specified position or job title;
- (2) fails to meet or maintain one or more of the employment standards required by 12 NCAC 09G .0200 for the category of the officer's certification or fails to meet or maintain one or more of the training standards required by 12 NCAC 09G .0400 for the category of the officer's certification;
- (3) has committed or been convicted of a misdemeanor as defined in 12 NCAC 09G .0102 after certification;
- (4) has been discharged by the North Carolina Department of Correction for:
 - (A) commission or conviction of a motor vehicle offense requiring the revocation of the officer's drivers license; or
 - (B) commission or conviction of any other offense involving moral turpitude;
- (5) has been discharged by the North Carolina Department of Correction because the officer lacks the mental or physical capabilities to fulfill the responsibilities of a corrections officer;
- (6) has knowingly made a material misrepresentation of any information required for certification or accreditation;
- (7) has knowingly and willfully, by any means of false pretense, deception, fraud, misrepresentation or cheating whatsoever, obtained or attempted to obtain credit, training or certification from the Commission;
- (8) has knowingly and willfully, by any means of false pretense, deception, fraud, misrepresentation or cheating whatsoever, aided another person in obtaining or attempting to obtain credit, training, or certification from the Commission;
- (9) has failed to notify the Standards Division of all criminal charges or convictions as required by 12 NCAC 09G .0302;
- (10) has been removed from office by decree of the Superior Court in accord with the provisions of G.S. 128-16 or has been removed from

office by sentence of the court in accord with the provisions of G.S. 14-230;

- (11) has refused to submit to an applicant drug screen as required by 12 NCAC 09G .0206; or has refused to submit to an in-service drug screen pursuant to the guidelines set forth in the Drug Screening Implementation Guide as required by the Department of Correction;
- (12) has produced a positive result on a drug screen reported to the Commission as specified in 12 NCAC 09G .0206(3), where the positive result cannot be explained to the Commission's satisfaction; or
- (13) has been denied certification or had such certification suspended or revoked by a previous action of the North Carolina Criminal Justice Education and Training Standards Commission, the North Carolina Company/Campus Police Program, the North Carolina Sheriffs' Education and Training Standards Commission, or a similar North Carolina, out of state or federal approving, certifying or licensing agency whose function is the same or similar to the aforementioned agencies if such certification was denied, suspended or revoked based on grounds that would constitute a violation of Subchapter 09G.

(c) Following suspension, revocation, or denial of the person's certification, the person shall not remain employed or appointed as a corrections officer and the person shall not exercise any authority of a corrections officer during a period for which the person's certification is suspended, revoked, or denied.

*History Note: Authority G.S. 17C-6; 17C-10;
Temporary Adoption Eff. January 1, 2001;
Eff. August 1, 2002;
Amended Eff. April 1, 2009; December 1, 2004; August 1, 2004.*

12 NCAC 09H .0101 PURPOSE

The Commission hereby establishes rules to allow for the firearms qualification certification of qualified retired law enforcement officers, as defined in G.S. 14-415.10, who are authorized by federal law, Section 926C of Title 18 of the United States Code, to lawfully carry handguns concealed. The rules in this Section establish the method by which a qualified retired officer shall be tested to determine whether the officer meets the standards established by the State for training and qualification for active law enforcement officers to carry a firearm of the same type as the concealed firearm. The rules in this Section do not apply to qualified retired law enforcement officers who complete the required training and firearms qualification with the agency from which they retired.

*History Note: Authority G.S. 17C-6; 14-415.10; 14-415.25;
14-415.26;
Eff. April 1, 2009.*

12 NCAC 09H .0103 INSTRUCTORS

(a) Only instructors who hold Specialized Instructor Certification in Firearms issued by the Criminal Justice Education and Training Standards Commission as outlined in Rules 09B .0302 and 09B .0304 may conduct the firearms qualification training as specified in Rule 09H .0102.

(b) Each instructor specified in Paragraph (a) of this Rule shall record and retain the firearms qualification scores for each qualified retired law enforcement officer trained by the instructor for a period of five years. These scores shall be transmitted to the Criminal Justice Standards Division unless requested but must be available for inspection by Criminal Justice Standards Division representatives at reasonable times. If the instructor is conducting training on behalf of a North Carolina, governmental law enforcement agency, the North Carolina Justice Academy, or a North Carolina Community College, the institution shall maintain the records in lieu of the instructor in order to comply with this Rule.

(c) Upon successful qualification, the instructor shall sign and date the Retired Law Enforcement Officers Firearms Qualification Certification Application Form (F-9R) attesting to the successful qualification.

*History Note: Authority G.S. 17C-6; 14-415.10; 14-415.25; 14-415.26;
Eff. April 1, 2009.*

12 NCAC 09H .0104 SANCTIONS

(a) The Commission shall deny or revoke the applicant for firearms qualification certification or the qualified retired law enforcement officer's firearms qualification certification when the Commission finds the applicant or retired officer has willfully and intentionally falsified any application or documentation required for qualification certification. Any applicant or qualified retired law enforcement officer denied or revoked may request an administrative hearing with the Commission subsequent to the summary denial or revocation in accordance with G.S. Chapter 150B, Article 3A.

(b) The Commission may deny or suspend the applicant or retired law enforcement officer's firearms qualification certification when the Commission finds the applicant or retired officer:

- (1) has failed to successfully complete the required training or qualification specified in Rule 09H .0102; or
- (2) is ineligible to receive and possess firearms under federal or state law.

(c) Before taking action, the Standards Division shall investigate the alleged violation of Paragraph (b) of this Rule and present a report of its findings to the Probable Cause Committee of the Commission.

(d) The Probable Cause Committee may:

- (1) direct the Standards Division to conduct a further investigation of the alleged violation;
- (2) direct the Standards Division to conduct an administrative hearing in the matter, pursuant to 12 NCAC 09A .0107 and 26 NCAC 03; or

- (3) determine the appropriate sanctions against the violator pursuant to Paragraphs (f) and (g) of this Rule.

(e) Denials or revocations in accordance with Paragraph (a) of this Rule are permanent. The retired officer is ineligible to ever receive firearms qualification certification from the Commission.

(f) Denials or suspensions in accordance with Paragraph (b) of this Rule are:

- (1) until the applicant or retired officer has successfully completed the required training or qualification specified in Rule 09H .0102; or
- (2) until the applicant or retired officer is eligible to receive or possess firearms under federal or state law.

(g) Any applicant or qualified retired law enforcement officer who receives firearms qualification certification under the rules in this Section who becomes ineligible under any of the standards enumerated in this Rule shall notify the Criminal Justice Standards Division of such disqualification within 10 calendar days of the occurrence of the event.

*History Note: Authority G.S. 17C-6; 14-415.10; 14-415.25; 14-415.26;
Eff. April 1, 2009.*

12 NCAC 09H .0105 FILING AND FEES

Each applicant for firearms qualification certification under the Qualified Retired Law Enforcement Officers Firearms Qualification Certification Program shall submit the following to the Commission:

- (1) An original Commission-approved application form containing the applicant's notarized signature which attests that the applicant meets the definition of qualified retired law enforcement officer set forth in G.S. 14-415.10 and is eligible to receive or possess firearms under federal and state law. The application form must also include the signature of a Commission certified Specialized Firearms Instructor attesting that the applicant has met the training and qualification standards as specified in Rule 09H .0102 and lists the handguns with which the qualified retired officer qualified;
- (2) A copy of the qualified retired officer's photographic identification indicating retirement status issued by the law enforcement agency from which the applicant retired; and
- (3) A fee of fifty dollars (\$50.00) for the initial one-year qualification and a fee of twenty-five dollars (\$25.00) for the annual renewal thereafter. Applications and fees shall be submitted to:

Criminal Justice Standards Division
North Carolina Department of Justice
Post Office Drawer 149
Raleigh, NC 27602.

All fees shall be paid by certified check or money order made payable to the North Carolina Department of Justice.

History Note: Authority G.S. 17C-6; 14-415.10; 14-415.25; 14-415.26;
Eff. April 1, 2009.

TITLE 13 – DEPARTMENT OF LABOR

13 NCAC 07F .0901 SCOPE

(a) This Section applies to power-operated equipment used in construction that can hoist, lower and horizontally move a suspended load. Such equipment includes: articulating cranes (such as knuckle-boom cranes); crawler cranes; floating cranes; cranes on barges; locomotive cranes; mobile cranes (such as wheel-mounted, rough-terrain, all-terrain, commercial truck-mounted, and boom truck cranes); multi-purpose machines when configured to hoist and lower (by means of a winch or hook) and horizontally move a suspended load; industrial cranes (such as carry-deck cranes); dedicated pile drivers; service/mechanic trucks with a hoisting device; a crane on a monorail; tower cranes (such as fixed jib ("hammerhead boom"), luffing boom and self-erecting); pedestal cranes; portal cranes; overhead and gantry cranes; straddle cranes; side-boom tractors; derricks; and variations of such equipment. However, items listed in Paragraph (c) of this Rule are excluded from the scope of this Section.

(b) Attachments. This Section applies to equipment included in Paragraph (a) of this Rule when used with attachments. Such attachments, whether crane-attached or suspended include: hooks, magnets, grapples, clamshell buckets, orange peel buckets, concrete buckets, drag lines, personnel platforms, augers or drills and pile driving equipment.

(c) Exclusions. This Section does not cover:

- (1) Machinery included in Paragraph (a) of this Rule while it has been converted or adapted for a non-hoisting/lifting use. Such conversions/adaptations include power shovels, excavators and concrete pumps.
- (2) Power shovels, excavators, wheel loaders, backhoes, loader backhoes, track loaders. This machinery is also excluded when used with chains, slings or other rigging to lift suspended loads.
- (3) Automotive wreckers and tow trucks when used to clear wrecks and haul vehicles.
- (4) Service trucks with mobile lifting devices designed specifically for use in the power line and electric service industries, such as digger derricks (radial boom derricks), when used in these industries for augering holes to set power and utility poles, or handling associated materials to be installed or removed from utility poles.

- (5) Machinery originally designed as vehicle-mounted aerial devices (for lifting personnel) and self-propelled elevating work platforms.
- (6) Telescopic/hydraulic gantry systems.
- (7) Stacker cranes.
- (8) Powered industrial trucks (forklifts).
- (9) Mechanic's truck with a hoisting device when used in activities related to equipment maintenance and repair.
- (10) Machinery that hoists by using a come-a-long or chainfall.
- (11) Dedicated drilling rigs.
- (12) Gin poles used for the erection of communication towers.
- (13) Tree trimming and tree removal work.
- (14) Anchor handling with a vessel or barge using an affixed A-frame.
- (15) Roustabouts.

(d) All Rules of this Section apply to the equipment covered by this Section unless specified otherwise.

(e) The duties of controlling entities under this Section include the duties specified in 13 NCAC 07F .0912(a)(3), 13 NCAC 07F .0912(a)(5) and 13 NCAC 07F .0916(n)(2).

(f) Where provisions of this Section direct an operator, crewmember, or other employee to take certain actions, the employer shall establish, effectively communicate to the relevant persons, and enforce work rules, to ensure compliance with such provisions.

History Note: Authority G.S. 95-131;
Eff. Pending Legislative Review.

13 NCAC 07F .0902 INCORPORATION BY REFERENCE

(a) The provisions of Title 29, Part 1926, Subpart N of the Code of Federal Regulations promulgated as of November 15, 2007, and exclusive of subsequent amendments, are incorporated by reference except as follows:

- (1) 29 CFR 1926.550, "Cranes and Derricks," is not incorporated;
- (2) 29 CFR 1926.552, "Material hoists, personnel hoists, and elevators," is incorporated to the extent that it addresses elevators;
- (3) 29 CFR 1926.553, "Base-mounted drum hoists," is not incorporated; and
- (4) 29 CFR 1926.554, "Overhead hoists," is not incorporated.

(b) The following standards are incorporated by reference and do not include subsequent amendments and editions of the standards. The rules of this Chapter shall control when any conflict between these Rules and the following standards exists.

- (1) The American Society of Mechanical Engineers (hereinafter referenced as ANSI/ASME, ANSI or ASME) standards referenced below. Copies of the following applicable ASME Codes are available for inspection at the North Carolina Department of Labor or may be obtained from the American Society of Mechanical Engineers, via U.S.

Mail at 22 Law Drive, Box 2300, Fairfield, New Jersey 07007-2300, via telephone at (800) 843-2763, or via the internet at www.asme.org. The costs are as follows:

- (A) ANSI/ASME B30.14 (2004) – Side Boom Tractors – (\$45.00);
 - (B) ANSI/ASME B30.2 (2005) – Overhead and Gantry Cranes – (\$58.00);
 - (C) ANSI/ASME B30.3 (2004) – Construction Tower Cranes – (\$50.00);
 - (D) ANSI/ASME B30.5 (2004) – Safety Standards for Cableways, Cranes, Derricks, Hoists, Hooks, Jacks and Slings – (\$80.00); and
 - (E) ANSI/ASME B30.7 (2006) – Base-Mounted Drum Hoists – (\$50.00).
- (2) The American Welding Society (hereinafter referenced as ANSI/AWS or AWS). Copies of the following applicable AWS Codes are available for inspection at the North Carolina Department of Labor or may be obtained from the American Welding Society, via U.S. Mail at 2671 W. 81st Street, Hialeah, Florida 33016, via telephone at (305) 826-6193, or via the internet at www.awspubs.com. The costs are as follows:
- (A) ANSI/AWS D1.1 (2006) – Structural Welding Code Steel – (\$392.00); and
 - (B) ANSI/AWS D14.3 (2005) – Specification for Welding, Earthmoving, Construction, and Agricultural Equipment – (\$88.00).
- (3) The European Committee for Standardization (hereinafter referenced as CEN). A copy of CEN EN 13000 (2004) – Cranes – Mobile Cranes are available for inspection at the North Carolina Department of Labor or may be obtained from The British Standards Institution, 389 Chiswick High Road, London, W4 4AL, United Kingdom, via telephone at +44(0)20 8996 9001, or via the internet at www.bsigroup.com. The cost is one hundred and eighty dollars (\$180.00).
- (4) The Engineering Society for Advancing Mobility Land Sea Air and Space (hereinafter referred to as SAE). Copies of the following applicable codes are available for inspection at the North Carolina Department of Labor or may be obtained from SAE International via U.S. Mail at 400 Commonwealth Drive, Warrendale, Pennsylvania, 15096-0001, via telephone at (724) 776-4970, or via the internet at www.sae.org. The costs are as follows:
- (A) SAE J1063 – Cantilevered Boom Crane Structures – Method of Test (1993) – (\$61.00);

- (B) SAE J185 – Access Systems For Off-Road Machines (2003) – (\$61.00); and
- (C) SAE J987 – Lattice Boom Cranes – Method of Test (2003) – (\$61.00).

- (5) The Power Crane Shovel Association Standard (PCSA) No. 2. A copy of the applicable standard is available for inspection at the North Carolina Department of Labor or may be obtained from The Association of Equipment Manufacturers via U.S. Mail at 6737 W. Washington Street, Suite 2400, Milwaukee, WI 53214-5647, via telephone at (414) 272-0943, or via the internet at www.shop.aem.org. The cost is three dollars (\$3.00).
- (6) The German Institute for Standardization (DIN). A copy of the applicable standard is available for inspection at the North Carolina Department of Labor or may be obtained from DIN Deutsches Institut für Normung e. V., Burggrafenstraße 6, 10787 Berlin, Germany, via telephone at +49 30 2601-0, or via the internet at www.din.de. The cost is EUR 152,50.

History Note: Authority G.S. 95-131; Eff. July 1, 2009.

13 NCAC 07F .0906 MAINTENANCE AND REPAIR EMPLOYEE QUALIFICATION

(a) Maintenance, inspection and repair personnel may operate the equipment only where the following requirements are met:

- (1) The operation is limited to those functions necessary to perform maintenance, inspect or verify the performance of the equipment.
- (2) The personnel either:
 - (A) Operate the equipment under the direct supervision of an operator who meets the requirements of 13 NCAC 07F .0904 (Operator Qualification and Certification), or
 - (B) Are familiar with the operation, safe limitations, characteristics and hazards associated with the type of equipment.

(b) Maintenance and repair personnel shall meet the definition of a qualified person with respect to the equipment and maintenance/repair tasks performed.

History Note: Authority G.S. 95-131; Eff. July 1, 2009.

13 NCAC 07F .0907 TRAINING

(a) The employer shall provide training as follows:

- (1) Overhead power lines. Employees specified in 13 NCAC 07F .0913(b)(7) shall be trained in accordance with the requirements of that rule.

- (2) Signal persons. Employees who will be assigned to work as signal persons shall be trained in accordance with the requirements of 13 NCAC 07F .0905(c).
- (3) Operators.
 - (A) Operators shall be trained in accordance with the requirements of 13 NCAC 07F .0904(i). Retraining shall be provided if necessary for re-qualification or re-certification or if the operator does not pass a qualification or certification test.
 - (B) Operators shall be trained in the following practices:
 - (i) On friction equipment, whenever moving a boom off a support, the operator shall first raise the boom a short distance (sufficient to take the load of the boom) to determine if the boom hoist brake needs to be adjusted. On other types of equipment, the same practice is applicable, except that typically there is no means of adjusting the brake; if the brake does not hold, a repair is necessary.
 - (ii) Where available, the manufacturer's emergency procedures for halting unintended equipment movement.
- (4) Competent persons and qualified persons. Competent persons and qualified persons shall be trained regarding the requirements of this Section applicable to their respective roles.
- (5) Crush/pinch points. Employees who work with the equipment shall be instructed to keep clear of holes, and crush/pinch points and the hazards addressed in 13 NCAC 07F .0916(n) (work area control).
- (6) Tag-out. Operators and other employees authorized to start/energize equipment or operate equipment controls (such as maintenance and repair employees), shall be trained in the tag-out procedures in 13 NCAC 07F .0916(g).
- (7) Training administration.
 - (A) The employer shall ensure that employees required to be trained under this Section are evaluated to confirm that they understand the information provided in the training.
 - (B) Refresher training in relevant topics shall be provided when, based on the conduct of the employee or an evaluation of the employee's knowledge, there is an indication that retraining is necessary.
- (b) Training records.
 - (1) The employer shall certify that each employee has been trained by preparing a certification record which includes:
 - (A) The identity of the person trained;
 - (B) The signature of the employer or the qualified person who conducted the training; and
 - (C) The date that training was completed.
 - (2) The most current certification record shall be kept available for review by the Deputy Commissioner of Labor for Occupational Safety and Health or his designee, upon request.
 - (3) An employer may accept training records or certificates for previous training if the employer verifies that all training and knowledge is current and applicable to the new employee's job duties.

History Note: Authority G.S. 95-131; Eff. July 1, 2009.

13 NCAC 07F .0908 FALL PROTECTION

- (a) Application.
 - (1) Paragraphs (b), (c)(2), (d) and (e) of this Rule apply to all equipment covered by this Section except tower cranes.
 - (2) Paragraphs (c)(1), (f) and (h) of this Rule apply to all equipment covered by this Section.
 - (3) Paragraph (g) of this Rule applies only to tower cranes.
- (b) Boom walkways.
 - (1) Equipment manufactured more than one year after the effective date of this Rule with lattice booms shall be equipped with walkways on the boom(s) if the vertical profile of the boom (from cord centerline to cord centerline) is six or more feet.
 - (2) Boom walkway criteria.
 - (A) The walkways shall be at least 12 inches wide.
 - (B) Guardrails, railings and other permanent fall protection attachments along walkways are:
 - (i) Not required.
 - (ii) Prohibited on booms supported by pendant ropes or bars if the guardrails/railings/attachments could be snagged by the ropes or bars.
 - (iii) Prohibited if of the removable type (designed to be installed and removed each time the boom is assembled/disassembled).

- (iv) Where not prohibited, guardrails or railings may be of any height up to, but not more than, 45 inches.
- (c) Steps, handholds, grabrails, guardrails and railings.
 - (1) The employer shall maintain originally-equipped steps, handholds, ladders and guardrails/railings/grabrails in good condition.
 - (2) Equipment manufactured more than one year after the effective date of this rule shall be equipped so as to provide safe access and egress between the ground and the operator work station(s), including the forward and rear positions, by the provision of devices such as steps, handholds, ladders, and guardrails/railings/grabrails. These shall meet the following criteria:
 - (A) Steps, ladders and guardrails/railings/grabrails shall meet the requirements of SAE J185-2003, except where infeasible.
 - (B) Walking/stepping surfaces, except for crawler treads, shall have slip-resistant features/properties (such as diamond plate metal, strategically placed grip tape, expanded metal, or slip-resistant paint).
- (d) For non-assembly/disassembly work, the employer shall provide and ensure the use of fall protection equipment for employees who are on a walking/working surface with an unprotected side or edge more than six feet above a lower level as follows:
 - (1) When moving point-to-point:
 - (A) On non-lattice booms (whether horizontal or not horizontal).
 - (B) On lattice booms that are not horizontal.
 - (2) While at a work station on any part of the equipment (including the boom, of any type), except when the employee is at or near draw-works (when the equipment is running), in the cab, or on the deck.
- (e) For assembly/disassembly work, the employer shall provide and ensure the use of fall protection equipment for employees who are on a walking/working surface with an unprotected side or edge more than 15 feet above a lower level, except when the employee is at or near draw-works (when the equipment is running), in the cab, or on the deck.
- (f) Anchorage criteria.
 - (1) Anchorages for fall arrest and positioning device systems.
 - (A) Personal fall arrest systems and positioning systems shall be anchored to any apparently substantial part of the equipment unless a competent person, from a visual inspection, without an engineering analysis, would conclude that the applicable criteria in 29 CFR 1926.502 would not be met.
 - (B) Attachable anchor devices (portable anchor devices that are attached to the equipment) shall meet the applicable anchorage criteria in 29 CFR 1926.502.
 - (2) Anchorages for restraint systems. Restraint systems shall be anchored to any part of the equipment that is capable of withstanding twice the maximum load that an employee may impose on it during reasonably anticipated conditions of use.
- (g) Tower cranes.
 - (1) For non-erecting/dismantling work, the employer shall provide and ensure the use of fall protection equipment for employees who are on a walking/working surface with an unprotected side or edge more than six feet above a lower level, except when the employee is at or near draw-works (when the equipment is running), in a cab, or on the deck.
 - (2) For erecting/dismantling work, the employer shall provide and ensure the use of fall protection equipment for employees who are on a walking/working surface with an unprotected side or edge more than 15 feet above a lower level.
- (h) Anchoring to the load line. A fall arrest system may be anchored to the crane/derrick's hook (or other part of the load line) where the following requirements are met:
 - (1) A qualified person has determined that the set-up and rated capacity of the crane/derrick (including the hook, load line and rigging) meets or exceeds the requirements in 29 CFR 1926.502(d)(15).
 - (2) The equipment operator is at the work site and informed that the equipment is being used for this purpose.

*History Note: Authority G.S. 95-131;
Eff. July 1, 2009.*

13 NCAC 07F .0909 DESIGN, CONSTRUCTION AND TESTING

The following requirements apply to equipment that has a manufacturer-rated hoisting/lifting capacity of more than 2,000 pounds:

- (1) Equipment manufactured prior to the effective date of this Rule shall meet the applicable requirements for design, construction, and testing as prescribed in ANSI B30.5-1968, Safety Code for Crawler, Locomotive, and Truck Cranes, Power Crane Shovel Association (PCSA) Standard No. 2," the requirements in Item (2) of this Rule, or the applicable German Institute For Standardization (DIN) standards that were in effect at the time of manufacture.

- (2) Mobile (including crawler and truck) and locomotive cranes manufactured on or after the effective date of this Rule shall meet the following portions of ANSI/ASME B30.5-2004, Safety Code for Mobile and Locomotive Cranes, as applicable:
 - (a) In section 5-1.1.1 ("Load Ratings – Where Stability Governs Lifting Performance"), Paragraphs (a) through (d) (including Subparagraphs).
 - (b) In section 5-1.1.2 ("Load Ratings – Where Structural Competence Governs Lifting Performance"), Paragraph (b).
 - (c) Section 5-1.2 ("Stability (Backward and Forward)").
 - (d) In section 5-1.3.1 ("Boom Hoist Mechanism"), Paragraphs (a), (b)(1), and (b)(2), except that when using rotation resistant rope, Section 1414 (c)(4)(ii)(A) applies.
 - (e) In section 5-1.3.2 ("Load Hoist Mechanism"), Paragraphs (a)(2) through (a)(4) (including Subparagraphs), (b) (including Subparagraphs), (c) (first sentence only) and (d).
 - (f) Section 5-1.3.3 ("Telescoping Boom").
 - (g) Section 5-1.4 ("Swing Mechanism").
 - (h) In section 5-1.5 ("Crane Travel"), all provisions except 5-1.5.3 (d).
 - (i) In section 5-1.6 ("Controls"), all provisions except 5-1.6.1 (c).
 - (j) Section 5-1.7.4 ("Sheaves").
 - (k) Section 5-1.7.5 ("Sheave sizes").
 - (l) In section 5-1.9.1 ("Booms"), Paragraph (f).
 - (m) Section 5-1.9.3 ("Outriggers").
 - (n) Section 5-1.9.4 ("Locomotive Crane Equipment").
 - (o) Section 5-1.9.7 ("Clutch and Brake Protection").
 - (p) In section 5-1.9.11 (Miscellaneous Equipment"), Paragraphs (a), (c), (e), and (f).
- (3) Prototype testing: mobile (including crawler and truck) and locomotive cranes manufactured on or after the effective date of this Rule shall meet the prototype testing requirements in Test Option A or Test Option B.
 Note: Prototype testing of crawler, locomotive and truck cranes manufactured prior to the effective date of the Section must conform to Item (1) of this Rule.
 - (a) Test Option A.
 - (i) The following applies to equipment with the cantilevered booms (such as hydraulic boom cranes): All the tests listed in SAE J1063-1993, Table 1, shall be performed to load all critical structural elements to their respective limits. All the strength margins listed in SAE J1063-1993, Table 2, shall be met.
 - (ii) The following applies to equipment with pendant supported lattice booms: All the tests listed in SAE J987-2003, Table 1, shall be performed to load all critical structural elements to their respective limits. All the strength margins listed in SAE J987-2003, Table 2, shall be met.
 - (b) Test Option B. The testing and verification requirements of CEN's EN 13000 (2004) shall be met. In applying the CEN standard, the following additional requirements shall be met:
 - (i) The following applies to equipment with cantilevered booms (such as hydraulic boom cranes): The analysis methodology (computer modeling) shall demonstrate that all load cases listed in the SAE J1063-1993 meet the strength margins listed in SAE J1063-1993, Table 2.
 - (ii) The following applies to equipment with pendant supported lattice booms: The analysis methodology (computer modeling) shall demonstrate that all load cases listed in SAE J987-2003 meet the strength margins listed in SAE J987-2003, Table 2.
 - (iii) Analysis Verification: The physical testing requirements under SAE J1063-1993 and SAE J987-2003 shall be met unless the reliability of the analysis methodology (computer modeling) has been demonstrated by a documented history of

- certification through strain gauge measuring or strain gauge measuring in combination with other physical testing.
- (4) All equipment covered by this Section shall meet the following requirements:
- (a) Rated Capacity and Related Information: The information available in the cab (see 13 NCAC 07F .0916(c)) regarding "rated capacity" and related information shall include the following information:
 - (i) A complete range of the manufacturer's equipment rated capacities, as follows:
 - (A) At all manufacturer's approved operating radii, boom angles, work areas, boom lengths, and configurations, jib lengths and angles (or offset).
 - (B) Alternate ratings for use and nonuse of option equipment which affects rated capacities, such as outriggers and extra counterweights.
 - (ii) A work area chart for which capacities are listed in the load chart. (Note: an example of this type of chart is in ANSI/ASME B 30.5-2004, Section 5-1.1.3, Figure 11).
 - (iii) The work area figure and load chart shall indicate the areas where no load is to be handled.
 - (iv) Manufacturer-recommended reeving for the hoist lines shall be shown.
 - (v) Manufacturer-recommended parts of hoist reeving, size, and type of wire rope for various equipment loads.
 - (vi) Manufacturer-recommended boom hoist reeving diagram, where applicable; size, type, and length of rope wire.
 - (vii) Tire pressure (where applicable).
 - (vii) Caution or warnings relative to limitations on equipment and operating procedures, including an indication of the least stable direction.
 - (ix) Position of the gantry and requirements for intermediate boom suspension (where applicable).
 - (x) Instructions for the boom erection and conditions under which the boom, or boom and jib combinations, may be raised or lowered.
 - (xi) Whether the hoist holding mechanism is automatically or manually controlled, whether free fall is available, or any combination of these.
 - (xii) The maximum telescopic travel length of each boom telescopic section.
 - (xiii) Whether sections are telescoped manually or with power.
 - (xiv) The sequence and procedure for extending and retracting the telescopic boom section.
 - (xv) Maximum loads permitted during the boom extending operation, and any limiting conditions or cautions.
 - (xvi) Hydraulic relief valve settings specified by the manufacturer.
- (b) Load Hooks (including latched and unlatched types), ball assemblies and load blocks shall be of sufficient weight to overhaul the line from the highest hook position for boom or boom and jib lengths and the number of parts of the line in use.
- (c) Hook and ball assemblies and load blocks shall be marked with their rated capacity and weight.
- (d) Latching Hooks:
- (i) Hooks shall be equipped with latches, except where the requirements of the Sub-Item (4)(d)(ii) of this Rule are met.
 - (ii) Hooks without latches, or with latches removed or disabled, shall not be used unless:
 - (A) A qualified person has determined that it is safer to hoist

- and place the load without latches (or with the latches removed/tied-back);
 - (B) Routes for the loads are pre-planned to ensure that no employee is required to work in the fall zone except for employees necessary for the hooking or unhooking of the load; and
 - (C) The latch shall close the throat opening and be designed to retain slings or other lifting devices/accessories in the hook when the rigging apparatus is slack.
- (e) Posted Warnings. Posted Warnings required by this Section as well as those originally supplied with the equipment by the manufacturer shall be maintained in legible condition.
- (f) An accessible fire extinguisher shall be on the equipment.
- (g) Cabs. Equipment with cabs shall meet the following requirements:
 - (i) Cabs shall be designed with a form of adjustable ventilation and method for clearing the windshield for maintaining visibility and air circulation. Examples of means for adjustable ventilation include air conditioner or window that can be opened (for ventilation and air circulation); examples of means for maintaining visibility include heater (for preventing windshield icing), defroster, fan, windshield wiper.
 - (ii) Cab doors (swinging, sliding) shall be designed to prevent inadvertent opening or closing while traveling or operating the machine. Swinging doors adjacent to the operator shall open outward. Sliding operator doors shall open rearward.
- (iii) Windows.
 - (A) The cab shall have windows in front and on both sides of the operator. Forward vertical visibility shall be sufficient to give the operator a view of the boom point at all times.
 - (B) Windows may have sections designed to be opened or readily removed. Windows with sections designed to be opened shall be designed so that they can be secured to prevent inadvertent closure.
 - (C) Windows shall be of safety glass or material with similar optical and safety properties that introduce no visible distortion or otherwise obscure visibility that interferes with the safe operation of the equipment.
- (iv) A clear passageway shall be provided from the operator's station to an exit door on the operator's side.
- (v) Areas of the cab roof that serve as a workstation for rigging, maintenance or other equipment-related tasks shall be capable of supporting 250 pounds without permanent distortion.
- (h) Belts, gears, shafts, pulleys, sprockets, spindles, drums, fly wheels, chains, and other parts or components that reciprocate, rotate or otherwise move shall be guarded where contact by employees (except for maintenance and repair employees) is possible in the performance of normal duties.
- (i) All exhaust pipes, turbochargers, and charge air coolers shall be insulated

- or guarded where contact by employees (except for maintenance and repair employees) is possible in the performance of normal duties.
- (j) Hydraulic and pneumatic lines shall be protected from damage to the extent feasible.
- (k) The equipment shall be designed so that exhaust fumes are not discharged in the cab and are discharged in a direction away from the operator.
- (l) Friction mechanisms. Where friction mechanisms (such as brakes and clutches) are used to control the boom hoist or load line hoist, they shall be:
 - (i) Of a size and thermal capacity sufficient to control loads with the minimum recommended reeving.
 - (ii) Adjustable to permit compensation for lining wear to maintain proper operation.
- (m) Hydraulic load hoists. Hydraulic drums shall have an integrally mounted holding device or internal static brake to prevent load hoist movement in the event of hydraulic failure.
- (5) The employer's obligations under Items (1) through (3) and Sub-Items (4)(g) through (4)(m) of this Rule are met where the equipment has not changed (except in accordance with 13 NCAC 07F .0911) and it can refer to documentation from the manufacturer showing that the equipment has been designed, constructed and tested in accordance with those Items.

*History Note: Authority G.S. 95-131;
Eff. July 1, 2009.*

**13 NCAC 07F .0910 EQUIPMENT WITH A RATED
HOISTING/LIFTING CAPACITY OF 2,000 POUNDS OR
LESS**

For equipment with a maximum manufacturer-rated hoisting/lifting capacity of 2,000 pounds or less:

- (1) The following Rules of this Section apply: .0901 (Scope); .0903 (Definitions); .0908 (Fall Protection); .0911 (Equipment Modifications); .0912(a) (Ground conditions); .0913 (Power line safety); .0914 (Wire rope); .0916(e) (Authority to Stop Operation); .0916(v) (Free fall/Controlled Load Lowering); .0916(cc) (Multiple Crane Lifts); .0919 (Signals); .0921 (Tower Cranes); .0922 (Derricks); .0923 (Floating Cranes & Land Cranes on Barges); .0924 (Overhead and Gantry Cranes).
- (2) Assembly/disassembly.

- (a) 13 NCAC 07F .0912(b), concerning the selection of manufacturer or employer procedures during assembly/disassembly, applies.
- (b) Components and Configuration.
 - (i) The selection of components and configuration of the equipment that affect the capacity or safe operation of the equipment shall be in accordance with:
 - (A) Manufacturer instructions, recommendations, limitations, and specifications. Where these are unavailable, a qualified engineer familiar with the type of equipment involved shall approve, in writing, the selection and configuration of components; or
 - (B) Modifications that meet the requirements of 13 NCAC 07F .0911 (Equipment Modifications).
 - (ii) Post assembly inspection. Upon completion of assembly, the equipment shall be inspected to ensure compliance with Sub-Item (2)(b)(i) of this Rule (see 13 NCAC 07F .0915(c) for post-assembly inspection requirements).
- (c) Manufacturer prohibitions. The employer shall comply with applicable manufacturer prohibitions.
- (3) Operation-Procedures
 - (a) The employer shall comply with all manufacturer procedures applicable to the operational functions of the equipment, including its use with attachments.
 - (b) Unavailable operation procedures.
 - (i) Where the manufacturer procedures are unavailable, the employer shall develop and ensure compliance with all procedures necessary for the safe operation of the equipment and attachments.

- (ii) Procedures for the operational controls shall be developed by a qualified person.
- (iii) Procedures related to the capacity of the equipment shall be developed and signed by a qualified engineer familiar with the equipment.
- (c) Accessibility.
 - (i) The load chart shall be available to the operator at the control station.
 - (ii) Procedures applicable to the operation of the equipment, recommended operating speeds, special hazard warnings, instructions and operators manual, shall be readily available for use by the operator.
 - (iii) Where rated capacities are available at the control station only in electronic form: in the event of a failure which makes the load capacities inaccessible, the operator shall immediately cease operations or follow safe shut-down procedures until the rated capacities (in electronic or other form) are available.
- (4) Safety devices and operational aids.
 - (a) Originally-equipped safety devices and operational aids shall be maintained in accordance with manufacturer procedures.
 - (b) Anti-two blocking. Equipment covered by this Section manufactured more than one year after the effective date of this Rule shall have either an anti-two block device that meets the requirements of 13 NCAC 07F .0917(d)(3), or shall be designed so that, in the event of a two-block situation, no damage will occur and there will be no load failure (such as where the power unit will stall in the event of a two-block).
- (5) Operator qualifications. The employer shall ensure that, prior to operating the equipment, the operator is trained on the safe operation of the type of equipment the operator will be using.
- (6) Signal person qualifications. The employer shall ensure that signal persons are trained in the proper use of signals applicable to the use of the equipment.
- (7) Keeping clear of the load. 13 NCAC 07F .0916(t) applies, except for Part (t)(3)(C) (qualified rigger).
- (8) Inspections. The equipment shall be inspected in accordance with manufacturer procedures.
- (9) Hoisting personnel. Hoisting personnel using equipment covered by this Section is prohibited.
- (10) Design. The equipment shall be designed by a qualified engineer.

*History Note: Authority G.S. 95-131;
Eff. July 1, 2009.*

13 NCAC 07F .0911 EQUIPMENT MODIFICATIONS

(a) Modifications or additions which affect the capacity or safe operation of the equipment are prohibited except where the requirements of Subparagraphs (a)(1), (a)(2), or (a)(3) of this Rule are met.

- (1) Manufacturer review and approval.
 - (A) The manufacturer approves the modifications/additions in writing.
 - (B) The load charts, procedures, instruction manuals and instruction plates/tags/decals are modified as necessary to accord with the modification/addition.
 - (C) The original safety factor of the equipment is not reduced.
- (2) Manufacturer refusal to review request. The manufacturer is provided a description of the proposed modification/addition, is asked to approve the modification/addition, but it declines to review the technical merits of the proposal or fails, within 30 days, to acknowledge the request or initiate the review, and all of the following are met:
 - (A) A qualified engineer who is a qualified person with respect to the equipment involved:
 - (i) Approves the modification/addition and specifies the equipment configurations to which that approval applies, and
 - (ii) Modifies load charts, procedures, instruction manuals and instruction plates/tags/decals as necessary to accord with the modification/addition.
 - (B) The original safety factor of the equipment is not reduced.
- (3) Unavailable manufacturer. The manufacturer is unavailable and the requirements of Parts (a)(2)(A) and (a)(2)(B) of this Rule are met.

(b) Modifications or additions which affect the capacity or safe operation of the equipment are prohibited where the manufacturer, after a review of the technical safety merits of the proposed modification/addition, rejects the proposal and explains the reasons for the rejection in a written response. If the manufacturer rejects the proposal but does not explain the reasons for the rejection in writing, the employer may treat this as a manufacturer refusal to review the request under Subparagraph (a)(2) of this Rule.

(c) The provisions in Paragraphs (a) and (b) of this Rule do not apply to modifications made or approved by the U.S. military.

*History Note: Authority G.S. 95-131;
Eff. July 1, 2009.*

**13 NCAC 07F .0912 ASSEMBLY AND
DISASSEMBLY OF EQUIPMENT**

(a) Ground Conditions.

- (1) As used in this Rule, the following definitions apply:
 - (A) "Ground Conditions" means the ability of the ground to support the equipment (including slope, compaction and firmness).
 - (B) "Supporting Materials" means blocking, mats, cribbing, marsh buggies (in marshes/wetlands), or similar supporting materials or devices.
- (2) The equipment shall not be assembled or used unless ground conditions are firm, drained (except for marshes/wetlands), and graded to a sufficient extent so that, in conjunction (if necessary) with the use of supporting materials, the equipment manufacturer's specifications for adequate support and degree of level of the equipment are met.
- (3) The controlling entity shall:
 - (A) Ensure that the ground preparations necessary to meet the requirements in Subparagraph (a)(2) of this Rule are provided.
 - (B) Inform the user of the equipment and the operator of the location of hazards beneath the equipment to set-up area (such as voids, tanks, utilities) that are identified in documents (such as site drawings, as-built drawings, and soil analyses) if they are available to the controlling entity.
- (4) If there is no controlling entity for the project, the requirements in Part (a)(3)(A) of this Rule shall be met by the employer that has authority at the site to make or arrange for ground preparations needed to meet Subparagraph (a)(2) of this Rule.
- (5) If the A/D supervisor or the operator determines that ground conditions do not meet the requirements in Subparagraph (a)(2) of this

Rule, that person's employer shall have a discussion with the controlling entity regarding the ground preparations that are needed so that, with the use of suitable supporting materials/devices (if necessary), the requirements in Subparagraph (a)(2) of this Rule can be met.

(b) When assembling and disassembling equipment (or attachments), the employer shall comply with either:

- (1) Manufacturer procedures applicable to assembly and disassembly; or
- (2) Employer procedures for assembly and disassembly.

(A) When using employer procedures instead of manufacturer procedures for assembling or disassembling, the employer shall ensure that the procedures are designed to:

- (i) Prevent unintended dangerous movement, and to prevent collapse, of all parts of the equipment.
- (ii) Provide support and stability of all parts of the equipment during the assembly/disassembly process.
- (iii) Position employees involved in the assembly/disassembly operation so that their exposure to unintended movement or collapse of part or all of the equipment is minimized.

(B) Qualified person. Employer procedures shall be developed by a qualified person.

(c) Supervision – Competent-Qualified Person.

- (1) Assembly/disassembly shall be supervised by a person who meets the criteria for both a competent person and a qualified person, or by a competent person who is assisted by one or more qualified persons ("A/D supervisor").
- (2) Where the assembly/disassembly is being performed by only one person, that person shall meet the criteria for both a competent person and a qualified person. For purposes of this Section, that person is considered the A/D supervisor.

(d) Knowledge or Procedures. The A/D supervisor shall understand the applicable assembly/disassembly procedures.

(e) Review of Procedures. The A/D supervisor shall review the applicable assembly/disassembly procedures immediately prior to the commencement of assembly/disassembly unless the A/D supervisor has applied them to the same type and configuration of equipment (including accessories, if any) so that they are already known and understood.

(f) Crew Instructions.

- (1) Before commencing assembly/disassembly operations, the A/D supervisor shall determine that the crew members understand the following:
 - (A) Their tasks;
 - (B) The hazards associated with their tasks; and
 - (C) The hazardous positions/locations that they need to avoid.
 - (2) During assembly/disassembly operations, before a crew member takes on a different task, or when adding new personnel during the operations, the requirements in Parts (f)(1)(A) through (f)(1)(C) of this Rule shall be met with respect to the crew member's understanding regarding that task.
- (g) Protecting Assembly/Disassembly Crew Members Out of Operator View.
- (1) Before a crew member goes to a location that is out of view of the operator and is either in, on or under the equipment, or near the equipment (or load) where the crew member could be injured by movement of the equipment (or load), the crew member shall inform the operator that he or she is going to that location.
 - (2) Where the operator knows that a crew member went to a location covered by Subparagraph (g)(1) of this Rule, the operator shall not move any part of the equipment (or load) until the operator:
 - (A) Gives a warning that is understood by the crew member as a signal that the equipment (or load) is about to be moved and allows time for the crew member to get to a safe position; or
 - (B) Is informed in accordance with a pre-arranged system of communication that the crew member is in a safe position.
- (h) Working Under the Boom, Jib or Other Components.
- (1) When pins (or similar devices) are being removed, employees shall not be under the boom, jib or other components, except where the requirements of Subparagraph (h)(2) of this Rule are met.
 - (2) Exception. Where the employer demonstrates that site constraints require one or more employees to be under the boom, jib or other components when pins (or similar devices) are being removed, the A/D supervisor shall implement procedures that minimize the risk of unintended dangerous movement and minimize the duration and extent of exposure under the boom.
- (i) Capacity Limits. During all phases of assembly/disassembly, rated capacity limits for loads imposed on the equipment, equipment components (including rigging), lifting lugs and equipment accessories shall not be exceeded for the equipment being assembled/disassembled.
- (j) Addressing Specific Hazards. The A/D supervisor supervising the assembly/disassembly operation shall address the hazards associated with the operation with methods to protect the employees from them, as follows:
- (1) Site and Ground Bearing Conditions. Site and ground bearing conditions shall be adequate for safe assembly/disassembly operations and to support the equipment during assembly/disassembly (see Paragraph (a) of this Rule for ground condition requirements).
 - (2) Blocking Material. The size, amount, condition and method of stacking blocking shall be sufficient to sustain the loads and maintain stability.
 - (3) Proper Location of Blocking. When used to support lattice booms or components, blocking shall be appropriately placed to:
 - (A) Protect the structural integrity of the equipment; and
 - (B) Prevent dangerous movement and collapse.
 - (4) Verifying Assist Crane Loads. When using an assist crane, the loads that will be imposed on the assist crane at each phase of assembly/disassembly shall be verified in accordance with 13 NCAC 07F .0916(m)(3) (Rated Capacity) before assembly/disassembly begins in order to prevent exceeding rated capacity limits for the assist crane.
 - (5) Boom and Jib Pick Points. The point(s) of attachment of rigging to a boom (or boom sections or jib or jib sections) shall be suitable for preventing structural damage and facilitating safe handling of these components.
 - (6) Center of Gravity.
 - (A) The center of gravity of the load shall be identified if that is necessary for the method of use for maintaining stability.
 - (B) Where there is insufficient information to accurately identify the center of gravity, measures designed to prevent unintended dangerous movement resulting from an inaccurate identification of the center of gravity shall be used.
 - (7) Stability Upon Pin Removal. The boom sections, boom suspension systems (such as gantry A-frames and jib struts) or components shall be rigged or supported to maintain stability upon the removal of the pins.
 - (8) Snagging. Suspension ropes and pendants shall not be allowed to catch on the boom or jib connection pins or cotter pins (including keepers and locking pins).
 - (9) Struck by Counterweights. The potential for unexpected movement from inadequately

supported counterweights and from hoisting counterweights shall be considered.

- (10) **Boom Hoist Brake Failure.** Where reliance is placed on the boom hoist brake to prevent boom movement during assembly/disassembly, the brake shall be tested to determine if it is sufficient to prevent boom movement. If it is not sufficient, a boom hoist pawl, other locking device/back-up braking device, or another method of preventing dangerous movement of the boom (such as blocking or using an assist crane) from a boom hoist brake failure shall be used.
- (11) **Loss of Backward Stability.** Backward stability shall be considered before swinging the upperworks, travel, and when attaching or removing equipment components.
- (12) **Wind Speed and Weather.** Wind speed and weather shall be considered so that the safe assembly/disassembly of the equipment is not compromised.

(k) **Cantilevered Boom Sections.** Manufacturer limitations on the maximum amount of boom supported only by cantilevering shall not be exceeded. Where these are unavailable, a qualified engineer familiar with the type of equipment involved shall determine this limitation in writing, which shall not be exceeded.

(l) **Weight of Components.** The weight of the components shall be readily available.

(m) **Components and Configuration.**

- (1) The selection of components and configuration of the equipment that affect the capacity or safe operation of the equipment shall be in accordance with:
 - (A) Manufacturer instructions, limitation, and specifications. Where these are unavailable, a qualified engineer familiar with the type of equipment involved shall approve, in writing, the selection and configuration of components; or
 - (B) Modifications that meet the requirements of 13 NCAC 07F .0911 (Equipment Modifications).
- (2) **Post-Assembly Inspection.** Upon completion of assembly, the equipment shall be inspected to ensure compliance with Subparagraph (m)(1) of this Rule (see section 13 NCAC 07F .0915(c) for post-assembly inspection requirements).

(n) **Manufacturer Prohibitions.** The employer shall comply with applicable manufacturer prohibitions.

(o) **Shipping Pins.** Reusable shipping pins, straps, links, and similar equipment shall be removed and stowed in accordance with manufacturer instructions. Once they are removed, they must either be stowed or otherwise stored during pile driving operations.

(p) **Pile Driving.** Equipment used for pile driving shall not have a jib attached during pile driving operations.

(q) **Outriggers.** When the load to be handled and the operation radius require the use of outriggers, or at any time when outriggers are used, the following requirements shall be met:

- (1) The outriggers shall be either fully extended or, if manufacturer procedures permit, deployed as specified in the load chart.
- (2) The outriggers shall be set to remove the equipment weight from the wheels, except for locomotive cranes (see Subparagraph (q)(6) of this Rule for use of outriggers on locomotive cranes).
- (3) When outrigger floats are used, they shall be attached to the outriggers.
- (4) Each outrigger shall be visible to the operator or to a signal person during extension and setting.
- (5) **Outrigger blocking shall:**
 - (A) Meet the requirements in Subparagraphs (j)(2) and (j)(3) of this Rule.
 - (B) Be placed only under the outrigger float/pad of the outrigger jack or, where the outrigger is designed without a jack, under the outer bearing surface of the extended outrigger beam.
- (6) For locomotive cranes, when using outriggers to handle loads, the manufacturer's procedures shall be followed. When lifting loads without using outriggers, the manufacturer's procedures shall be met regarding truck wedges or screws.

(r) **Dismantling** (including dismantling for changing the length of booms and jibs).

- (1) None of the pins in the pendants shall be removed (partly or completely) when the pendants are in tension.
- (2) None of the pins (top and bottom) on boom sections located between the pendant attachment points and the crane/derrick body shall be removed (partly or completely) when the pendants are in tension.
- (3) None of the pins (top and bottom) on boom sections located between the uppermost boom section and the crane/derrick body shall be removed (partly or completely) when the boom is being supported by the uppermost boom section resting on the ground (or other support).
- (4) None of the top pins on boom sections located on the cantilevered portion of the boom being removed (the portion being removed ahead of the pendant attachment points) shall be removed (partly or completely) until the cantilevered section to be removed is fully supported.

*History Note: Authority G.S. 95-131;
Eff. July 1, 2009.*

13 NCAC 07F .0913 POWER LINE SAFETY

(a) Assembly and Disassembly of Equipment.

- (1) Before assembling or disassembling equipment, the employer shall determine if any part of the equipment, load line or load (including rigging and lifting accessories) could get, in the direction or area of assembly, closer than 20 feet of a power line that is up to 350 kV or closer than 50 feet of a power line that exceeds 350 kV during the assembly/disassembly process. If so, the employer shall meet the requirements in Option (1), Option (2), or Option (3), as follows:

- (A) Option (1) – Deenergize and ground. Confirm from the utility owner/operator that the power line has been deenergized and visibly grounded at the worksite.
- (B) Option (2) – Clearance. Ensure that no part of the equipment, load line or load (including rigging and lifting accessories), gets closer than 20 feet of a power line that is up to 350 kV or closer than 50 feet of a power line that exceeds 350 kV by implementing the measures specified in Subparagraph (a)(2) of this Rule.
- (C) Option (3) – Table A clearance.
 - (i) Determine the line's voltage and the minimum approach distance permitted under Table A of this Rule.
 - (ii) Determine if any part of the equipment, load line or load (including rigging and lifting accessories), could get closer than the minimum approach distance of the power line permitted under Table A of this Rule. If so, then the employer shall follow the requirements in Subparagraph (a)(2) of this Rule to ensure that no part of the equipment, load line, or load (including rigging and lifting accessories), gets closer to the line than the minimum approach distance.

- (2) Preventing encroachment/electrocution. Where encroachment precautions are required under Option (2), or Option (3), the following requirements shall be met:

- (A) The employer shall conduct a planning meeting with the A/D supervisor, operator, assembly/disassembly crew and the other workers who will be in the

assembly/disassembly area to review the location of the power line(s) and the steps that will be implemented to prevent encroachment/electrocution.

- (B) If tag lines are used, they shall be non-conductive.

- (C) At least one of the following additional measures shall be in place:

- (i) The employer shall use a dedicated spotter who is in continuous contact with the equipment operator. The dedicated spotter shall:

- (I) Be equipped with a visual aid to assist in identifying the minimum clearance distance. Examples of a visual aid include a visible line painted on the ground; a visible line of stanchions; a set of visible line-of-sight landmarks (such as a fence post behind the dedicated spotter and a building corner ahead of the dedicated spotter.)

- (II) Be positioned to effectively gauge the clearance distance.

- (III) Where necessary, use equipment that enables the dedicated spotter to communicate directly with the operator, in accordance with 13 NCAC 07F .0919(m) (radio, telephone, or other electronic transmission of signals).

- (IV) Give timely information to the operator so that the required clearance distance can be maintained.

- (ii) A proximity alarm set to give the operator sufficient warning to prevent encroachment.

- (iii) A device that automatically warns the operator when to stop movement, such as a range control warning device. Such a device shall be set to give the operator sufficient warning to prevent encroachment.
 - (iv) A device that automatically limits range of movement, set to prevent encroachment.
 - (v) An elevated warning line, barricade, or line of signs, in view of the operator, equipped with flags or similar high-visibility markings.
- (3) Assembly/disassembly below power lines prohibited. No part of a crane/derrick, load line or load (including rigging and lifting accessories), whether partially or fully assembled, is allowed below a power line unless the employer has confirmed that the utility owner/operator has deenergized and (at the worksite) visibly grounded the power line.
- (4) Assembly/disassembly inside Table A clearance prohibited. No part of a crane/derrick, load line or load (including rigging and lifting accessories), whether partially or fully assembled, is allowed closer than the minimum approach distance under Table A of a power line unless the employer has confirmed that the utility owner/operator has deenergized and (at the worksite) visibly grounded the power line.
- (5) Voltage information. Where Option (3) is used, the utility owner/operator of power lines shall provide the requested voltage information within two working days of the employer's request.
- (6) Power lines presumed energized. The employer shall assume that all power lines are energized unless the utility owner/operator confirms that the power line has been and continues to be deenergized and visibly grounded at the worksite.
- (7) Posting of electrocution warnings. There shall be at least one electrocution hazard warning conspicuously posted in the cab so that it is in view of the operator and (except for overhead gantry and tower cranes) at least two on the outside of the equipment.
- (b) Operation of Equipment.
 - (1) Hazard assessments and precautions inside the work zone. Before beginning equipment operations, the employer shall:
 - (A) Identify the work zone.
 - (i) Define a work zone by demarcating boundaries (such as with flags, or a device such as a range limit device or range control warning device) and prohibit the operator from operating the equipment past those boundaries, or
 - (ii) Define the work zone as the area 360 degrees around the equipment, up to the equipment's maximum working radius.
 - (B) Determine if any part of the equipment, load line or load (including rigging and lifting accessories), if operated up to the equipment's maximum working radius in the work zone, could get closer than 20 feet of a power line that is up to 350 kV or closer than 50 feet of a power line that exceeds 350 kV. If so, the employer shall meet the requirements in Option (1), Option (2), or Option (3) as follows:
 - (i) Option (1) – Deenergize and ground. Confirm from the utility owner/operator that the power line has been deenergized and visibly grounded at the worksite.
 - (ii) Option (2) – Clearance. Ensure that no part of the equipment, load line or load (including rigging and lifting accessories), gets closer than 20 feet of a power line that is up to 350 kV or closer than 50 feet of a power line that exceeds 350 kV by implementing the measures specified in Subparagraph (b)(2) of this Rule.
 - (iii) Option (3) – Table A clearance.
 - (I) Determine the line's voltage and the minimum approach distance permitted under Table A of this Rule.
 - (II) Determine if any part of the equipment, load line or load (including rigging and lifting accessories), while operating up to the equipment's

- maximum working radius in the work zone, could get closer than the minimum approach distance of the power line permitted under Table A of this Rule. If so, then the employer shall follow the requirements in Subparagraph (b)(2) of this Rule to ensure that no part of the equipment, load line, or load (including rigging and lifting accessories), gets closer to the line than the minimum approach distance.
- (2) Preventing encroachment/electrocution. Where encroachment precautions are required under Option (2), or Option (3), the following requirements shall be met:
- (A) The employer shall conduct a planning meeting with the operator and the other workers who will be in the area of the equipment or load to review the location of the power line(s), and the steps that will be implemented to prevent encroachment/electrocution.
 - (B) If tag lines are used, they shall be non-conductive.
 - (C) The employer shall erect and maintain an elevated warning line, barricade, or line of signs, in view of the operator, equipped with flags or similar high-visibility markings, at 20 feet from a power line that is up to 350 kV or 50 feet from a power line that exceeds 350 kV (if using Option (2)) or at the minimum approach distance under Table A of this Rule (if using Option (3)).
 - (D) The employer shall implement at least one of the following measures:
 - (i) A proximity alarm set to give the operator sufficient warning to prevent encroachment.
 - (ii) A dedicated spotter who is in continuous contact with the operator. Where this measure is selected, the dedicated spotter shall:
 - (I) Be equipped with a visual aid to assist in identifying the minimum clearance distance. Examples of a visual aid include a visible line painted on the ground; a visible line of stanchions; a set of visible line-of-sight landmarks (such as a fence post behind the dedicated spotter and a building corner ahead of the dedicated spotter).
 - (II) Be positioned to effectively gauge the clearance distance.
 - (III) Where necessary, use equipment that enables the dedicated spotter to communicate directly with the operator.
 - (IV) Give timely information to the operator so that the required clearance distance can be maintained.
- (iii) A device that automatically warns the operator when to stop movement, such as a range control warning device. Such a device shall be set to give the operator sufficient warning to prevent encroachment.
 - (iv) A device that automatically limits range of movement, set to prevent encroachment.
 - (v) An insulating link/device installed at a point between the end of the load line (or below) and the load.
- (E) The requirements of Part (b)(2)(D) of this Rule do not apply to work covered by 29 CFR 1926, Subpart V.
- (3) Voltage information. Where Option (3) is used, the employer shall not proceed with work until the voltage information requested

- from the operators of power lines has been received.
- (4) Operations below power lines.
- (A) No part of the equipment, load line or load (including rigging and lifting accessories) is allowed below a power line unless the employer has confirmed that the utility owner/operator has deenergized and (at the worksite) visibly grounded the power line, except where one of the exceptions in Part (b)(4)(B) of this Rule apply.
- (B) Exceptions. Part (b)(4)(A) of this Rule is inapplicable where the employer demonstrates that one of the following applies:
- (i) The work is covered by 29 CFR 1926, Subpart V.
- (ii) For equipment with non-extensible booms: The uppermost part of the equipment, with the boom at true vertical, would be more than 20 feet below the plane of a power line that is up to 350 kV, 50 feet below the plane of a power line that exceeds 350 kV or more than the Table A minimum clearance distance below the plane of the power line.
- (iii) For equipment with articulating or extensible booms: The uppermost part of the equipment, with the boom in the fully extended position, at true vertical, would be more than 20 feet below the plane of a power line that is up to 350 kV, 50 feet below the plane of a power line that exceeds 350 kV or more than the Table A minimum clearance distance below the plane of the power line.
- (iv) The employer demonstrates that compliance with Part (b)(4)(A) of this Rule is infeasible and meets the requirements of Paragraph (c) of this Rule.
- (5) Power lines presumed energized. The employer shall assume that all power lines are energized unless the utility owner/operator confirms that the power line has been and continues to be deenergized and visibly grounded at the worksite.
- (6) When working near transmitter/communication towers where the equipment is close enough for an electrical charge to be induced in the equipment or materials being handled, the transmitter shall be deenergized or the following precautions shall be taken when necessary to dissipate induced voltages:
- (A) The equipment shall be provided with an electrical ground.
- (B) Non-conductive rigging or an insulating link/device shall be used.
- (7) Training.
- (A) Operators and crew assigned to work with the equipment shall be trained on the following:
- (i) The procedures to be followed in the event of electrical contact with a power line. Such training shall include:
- (I) Information regarding the danger of electrocution from the operator simultaneously touching the equipment and the ground.
- (II) The importance to the operator's safety of remaining inside the cab except where there is an imminent danger of fire, explosion, or other emergency that necessitates leaving the cab.
- (III) The safest means of evacuating from equipment that may be energized.
- (IV) The danger of the potentially energized zone around the equipment.
- (V) The need for crew in the area to avoid approaching or touching the equipment.
- (VI) Safe clearance distance from power lines.
- (ii) Power lines are presumed to be energized unless the

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| | in identifying the minimum clearance distance. Examples of a visual aid include a visible line painted on the ground; a visible line of stanchions; a set of visible line-of-sight landmarks (such as a fence post behind the dedicated spotter and a building corner ahead of the dedicated spotter). | | only when working inside the 29 CFR 1926.950 Table V-1 clearance distances. |
| (II) | Be positioned to effectively gauge the clearance distance. | (v) | Non-conductive rigging if the rigging may be within the Table A distance during the operation. |
| (III) | Where necessary, use equipment that enables the dedicated spotter to communicate directly with the operator. | (vi) | If the equipment is equipped with a device that automatically limits range of movement, it shall be used and set to prevent any part of the equipment, load line or load (including rigging and lifting accessories) from breaching the minimum approach distance established under Part (c)(1)(C) of this Rule. |
| (IV) | Give timely information to the operator so that the required clearance distance can be maintained. | (vii) | If a tag line is used, it shall be of the non-conductive type. |
| (iii) | An elevated warning line, or barricade (not attached to the crane), in view of the operator (either directly or through video equipment), equipped with flags or similar high-visibility markings, to prevent electrical contact. However, this provision does not apply to work covered by 29 CFR 1926, Subpart V. | (viii) | Barricades forming a perimeter at least 10 feet away from the equipment to prevent personnel not authorized by the employer from entering the work area. In areas where obstacles prevent the barricade from being at least 10 feet away, the barricade shall be as far from the equipment as feasible. |
| (iv) | Insulating link/device. | (ix) | Workers other than the operator shall be prohibited from touching the load line above the insulating link/device and crane. |
| (I) | An insulating link/device installed at a point between the end of the load line (or below) and the load. | (x) | Only personnel essential to the operation shall be permitted to be in the area of the crane and load. |
| (II) | For work covered by 29 CFR 1926, Subpart V, the requirement in Subsubpart (c)(1)(D)(iv)(I) of this Rule applies | (xi) | The equipment shall be grounded. |
| | | (xii) | Insulating line hose or cover-up shall be installed by the utility owner/operator except where such devices are unavailable for the line voltages involved. |
| | | (E) | The procedures developed to comply with Part (c)(1)(D) of this Rule are documented and immediately available on-site. |
| | | (F) | The employer ensures that the equipment user, the operator and the other workers who will be in the area |

of the equipment or load meet with the utility owner/operator to review the procedures that will be implemented to prevent breaching the minimum approach distance established in Part (c)(1)(C) of this Rule and prevent electrocution.

- (G) The procedures developed to comply with Part (c)(1)(D) of this Rule are implemented.
- (H) All employers of employees involved in the work shall identify one person who will direct the implementation of the procedures. The person identified in accordance with this paragraph shall direct the implementation of the procedures and shall have the authority to stop work at any time to ensure safety.
- (I) If a problem occurs implementing the procedures being used to comply with Part (c)(1)(D) of this Rule, or indicating that those procedures are inadequate to prevent electrocution, the employer shall safely stop operations and either develop new procedures to comply with Part (c)(1)(D) of this Rule or have the utility owner/operator deenergize and visibly ground or relocate the power line before resuming work.
- (J) Devices originally designed by the manufacturer for use as a safety device (see 13 NCAC 07F .0918), operational aid, or a means to prevent power line contact or electrocution, when used to comply with this Section, shall meet the manufacturer's procedures for use and conditions of use.

(d) Equipment While Traveling.

- (1) This Paragraph establishes procedures and criteria that must be met for equipment traveling under a power line on the construction site with no load.

(2) The employer shall ensure that:

- (A) The boom/mast and boom/mast support system are lowered sufficiently to meet the requirements of this Paragraph.
- (B) The clearances specified in Table B of this Rule are maintained.
- (C) The effects of speed and terrain on equipment movement (including movement of the boom/mast) are considered so that those effects do not cause the minimum clearance distances specified in Table B of this Rule to be breached
- (D) Dedicated spotter. If any part of the equipment while traveling will get closer than 20 feet of the power line, the employer shall ensure that a dedicated spotter who is in continuous contact with the operator is used. The dedicated spotter shall:
 - (i) Be positioned to effectively gauge the clearance distance.
 - (ii) Where necessary, use equipment that enables the dedicated spotter to communicate directly with the operator.
 - (iii) Give timely information to the operator so that the required clearance distance can be maintained.
- (E) Additional precautions for traveling in poor visibility. When traveling at night, or in conditions of poor visibility, in addition to the measures specified in Parts (d)(2)(A) through (d)(2)(D) of this Rule, the employer shall ensure that:
 - (i) The power lines are illuminated or another means of identifying the location of the lines shall be used.
 - (ii) A safe path of travel is identified and used.

Table A – Minimum Clearance Distances Voltage (nominal, kV, alternating current)	Minimum clearance distance (feet)
Up to 50	10
Over 50 to 200	15
Over 200 to 350	20
Over 350 to 500	25
Over 500 to 750	35
Over 750 to 1,000	45
Over 1,000	(as established by a qualified engineer or by the owner or operator of the power line who is a qualified person with respect to electrical

	power transmission and distribution)
Note: The value that follows "to" is up to and includes the value. For example, over 50 to 200 means up to and including 200 kV.	

Table B – Minimum Clearance Distances While Traveling
With No Load and Boom/Mast Lowered

Voltage (nominal, kV, alternating current)	While Traveling Minimum Clearance Distance (feet)
Up to 0.75	4 (while traveling/boom lowered)
Over .75 to 50	6 (while traveling/boom lowered)
Over 50 to 345	10 (while traveling/boom lowered)
Over 345 to 750	16 (while traveling/boom lowered)
Over 750 to 1,000	20 (while traveling/boom lowered)
Over 1,000	(as established by the power line owner/operator or qualified engineer who is a qualified person with respect to electrical power transmission and distribution.

*History Note: Authority G.S. 95-131;
Eff. July 1, 2009.*

13 NCAC 07F .0914 WIRE ROPE

(a) Selection and Installation Criteria.

- (1) Selection of replacement wire rope shall be in accordance with the requirements of this Rule and the recommendations of the wire rope manufacturer, the equipment manufacturer, or a qualified person.
- (2) Boom hoist reeving.
 - (A) Fiber core ropes shall not be used for boom hoist reeving, except for derricks.
 - (B) Rotation resistant ropes shall be used for boom hoist reeving only where the requirements of Subparagraph (a)(3) of this Rule are met.
- (3) Rotation resistant ropes.
 - (A) Definitions.
 - (i) Type I rotation resistant wire rope ("Type I"). Type I rotation resistant rope is stranded rope constructed to have little or no tendency to rotate or, if guided, transmits little or no torque. It has at least 15 outer strands and comprises an assembly of at least three layers of strands laid helically over a center in two operations. The direction of lay of the outer strands is opposite to that of the underlying layer.
 - (ii) Type II rotation resistant wire rope ("Type II"). Type II rotation resistant rope is stranded rope constructed to

have resistance to rotation. It has at least 10 outer strands and comprises an assembly of two or more layers of strands laid helically over a center in two or three operations. The direction of lay of the outer strands is opposite to that of the underlying layer.

- (iii) Type III rotation resistant wire rope ("Type III"). Type III rotation resistant rope is stranded rope constructed to have limited resistance to rotation. It has no more than nine outer strands, and comprises an assembly of two layers of strands laid helically over a center in two operations. The direction of lay of the outer strands is opposite to that of the underlying layer.

(B) Requirements.

- (i) Types II and III with an operation design factor of less than five shall not be used for duty cycle or repetitive lifts.
- (ii) Rotation resistant ropes (including Types I, II and III) shall have an operating design factor of no less than three point five.
- (iii) Type I shall have an operating design factor of no

- less than five, except where the wire rope manufacturer and the equipment manufacturer approves the design factor, in writing.
- (iv) Types II and III shall have an operating design factor of no less than five, except where the requirements of Subparagraph (a)(3)(C) of this Rule are met.
- (C) When Types II and III with an operation design factor of less than five are used (for non-duty cycle, non-repetitive lifts), the following requirements shall be met for each lifting operation:
- (i) A qualified person shall inspect the rope in accordance with Subparagraph (b)(1) of this Rule. The rope shall be used only if the qualified person determines that there are no deficiencies constituting a hazard. In making this determination, more than one broken wire in any one rope lay shall be considered a hazard.
- (ii) Operations shall be conducted in such a manner and at such speeds as to minimize dynamic effects.
- (iii) Each lift made under these provisions shall be recorded in the monthly and annual inspection documents. Such prior uses shall be considered by the qualified person in determining whether to use the rope again.
- (D) Additional requirements for rotation resistant ropes for boom hoist reeving.
- (i) Rotation resistant ropes shall not be used for boom hoist reeving, except where the requirements of Subpart (a)(3)(D)(ii) of this Rule are met.
- (ii) Rotation resistant ropes may be used as boom hoist reeving when load hoists are used as boom hoists for attachments such as luffing attachments or boom and mast attachment systems.
- Under these conditions, the following requirements shall be met:
- (I) The drum shall provide a first layer rope pitch diameter of not less than 18 times the nominal diameter of the rope used.
- (II) The requirements in 13 NCAC 07F .0916(v)(1) (irrespective of the date of manufacture of the equipment), and 13 NCAC 07F .0916(v)(2).
- (III) The requirements of ANSI/ASME B30.5-2004, Section 5-1.3.2(a), (a)(2) through (a)(4), (b) through (d), except that the minimum pitch diameter for sheaves used in multiple rope reeving is 18 times the nominal diameter of the rope used instead of the value of 16 specified in Section 5-1.3.2(d).
- (IV) All sheaves used in the boom hoist reeving system shall have a rope pitch diameter of not less than 18 times the nominal diameter of the rope used.
- (V) The operating design factor for the boom hoist reeving system shall be not less than five.
- (VI) The operating design factor for these ropes shall be the total minimum breaking force of all parts of rope in the system divided by the load imposed on the rope system

- when supporting the static weights of the structure and the load within the equipment's rated capacity.
 - (VII) When provided, a power-controlled lowering system shall be capable of handling rated capacities and speeds as specified by the manufacturer.
 - (4) Wire rope clips used in conjunction with wedge sockets shall be attached to the unloaded dead end of the rope only, except that the use of devices specifically designed for dead-ending rope in a wedge socket is permitted.
 - (5) Socketing shall be done in the manner specified by the manufacturer of the wire rope or fitting.
 - (6) Prior to cutting a wire rope, seizings shall be placed on each side of the point to be cut. The length and number of seizings shall be in accordance with the wire rope manufacturer's instructions.
- (b) Inspection of Wire Ropes.
 - (1) Shift inspection.
 - (A) A competent person shall complete a visual inspection prior to commencement of crane operations during each shift. The inspection shall consist of observation of wire ropes (running and standing) that are reasonably likely to be in use during the shift for apparent deficiencies, including those listed in Part (b)(1)(B) of this Rule. Untwisting (opening) of wire rope or booming down is not required as part of this inspection.
 - (B) Apparent deficiencies.
 - (i) Category I. Apparent deficiencies in this category include the following:
 - (I) Distortion of the wire rope structure such as kinking, crushing, unstranding, birdcaging, signs of core failure or steel core protrusion between the outer strands.
 - (II) Corrosion.
 - (ii) Category II. Apparent deficiencies in this category are:
 - (I) Visibly broken wires in running wire ropes: six randomly distributed broken wires in one rope lay or three broken wires in one strand in one rope lay, where a rope lay is the length along the rope in which one strand makes a complete revolution around the rope;
 - (II) Visibly broken wires in rotation resistant ropes: two randomly distributed broken wires in six rope diameters or four randomly distributed broken wires in 30 rope diameters;
 - (III) Visibly broken wires in pendants or standing wire ropes: more than two broken wires in one rope lay located in rope beyond end connections or more than one broken wire in a rope lay located at an end connection; and
 - (IV) A diameter reduction of more than five percent from nominal diameter.
- (III) Electric arc (from a source other than power lines) or heat damage.
 - (IV) Improperly applied end connections.
 - (V) Corroded, cracked, bent, or worn end connections (such as from severe service).

- (iii) Category III. Apparent deficiencies in this category include the following:
 - (I) In rotation resistant wire rope, core protrusion or other distortion indicating core failure.
 - (II) Electrical contact with a power line.
 - (III) A broken strand.
- (C) Critical Review Items. The competent person shall ensure that the following items are reviewed:
 - (i) Rotation resistant wire rope in use.
 - (ii) Wire rope being used for boom hoists and luffing hoists, particularly at reverse bends.
 - (iii) Wire rope at flange points, crossover points and repetitive pickup points on drums.
 - (iv) Wire rope adjacent to end connections.
 - (v) Wire rope at and on equalizer sheaves.
- (D) Removal from service.
 - (i) If a deficiency in Category I is identified, an immediate determination shall be made by the competent person as to whether the deficiency constitutes a safety hazard. If the deficiency is determined to constitute a safety hazard, operations involving use of the wire rope in question shall be prohibited until:
 - (I) The wire rope is replaced, or
 - (II) If the deficiency (other than power line contact) is localized, the problem is corrected by severing the wire rope in two; the undamaged portion may continue to be used. Joining lengths of wire rope by splicing is prohibited. Repair of wire rope that contacted an energized power line is also prohibited.
 - (ii) If a deficiency in Category II is identified, the employer shall comply with Option A or Option B, as follows:
 - (I) Option A. Consider the deficiency to constitute a safety hazard where it meets the wire rope manufacturer's established criterion for removal from service or meets a different criterion that the wire rope manufacturer has approved in writing for that specific wire rope. If the deficiency is considered a safety hazard, operations involving use of the wire rope in question shall be prohibited until the wire rope is replaced, or the damage is removed in accordance with all of the requirements and restrictions in Subsubpart (b)(1)(D)(i)(II) of this Rule.
 - (II) Option B. Institute the alternative measures specified in Subpart (b)(1)(D)(iii) of this Rule.
 - (iii) Alternative measures for a Category II deficiency. The wire rope may continue to be used if the employer ensures that the following measures are implemented:
 - (I) A qualified person assesses the deficiency in light of the load and other conditions of use and determines it is safe to continue

- to use the wire rope as long as the conditions established under this paragraph are met.
- (II) A qualified person establishes the parameters for the use of the equipment with the deficiency, including a reduced maximum rated capacity.
- (III) A qualified person establishes a specific number of broken wires, broken strands, or diameter reduction that, when reached, will require the equipment to be taken out of service until the wire rope is replaced or the damage is removed in accordance with all of the requirements and restrictions in Subsubpart (b)(1)(D)(i)(II) of this Rule.
- (IV) A qualified person sets a time limit, not to exceed 30 days from the date the deficiency is first identified, by which the wire rope shall be replaced, or the damage removed in accordance with all of the requirements and restrictions in Subsubpart (b)(1)(D)(i)(II) of this Rule.
- (V) The workers who will conduct the shift inspections are informed of this deficiency and the measures taken under this Paragraph.
- (VI) The qualified person's findings and procedures in Subsubparts (b)(1)(D)(iii)(I) through (b)(1)(D)(iii)(IV) of this Rule are documented. The document shall contain the date, the name of the qualified person and the findings required by this Rule.
- (iv) If a deficiency in Category III is identified, operations involving use of the wire rope in question shall be prohibited until:
 - (I) The wire rope is replaced, or
 - (II) If the deficiency (other than power line contact) is localized, the problem is corrected by severing the wire rope in two; the undamaged portion may continue to be used. Joining lengths of wire rope by splicing is prohibited. Repair of wire rope that contacted an energized power line is also prohibited.
- (v) Where a wire rope is required to be removed from service under this Section, either the equipment (as a whole) or the hoist with that wire rope shall be tagged-out, in accordance with 13 NCAC 07F .0916(g)(1), until the wire rope is repaired or replaced.
- (2) Monthly inspection.
 - (A) Each month an inspection shall be conducted in accordance with Subparagraph (b)(1) of this Rule (shift inspection).
 - (B) Wire ropes on equipment shall not be used until an inspection under this

- paragraph demonstrates that no corrective action under Part (b)(1)(D) of this Rule is required.
- (C) The inspection shall be documented according to 13 NCAC 07F .0915(e)(3) (monthly inspection documentation).
- (3) Annual/comprehensive.
- (A) At least every 12 months, wire ropes in use on equipment shall be inspected by a qualified person in accordance with Subparagraph (b)(1) of this Rule (shift inspection).
- (B) In addition, at least every 12 months, the wire ropes in use on equipment shall be inspected by a qualified person, as follows:
- (i) The inspection shall be for deficiencies of the types listed in Part (b)(1)(B) of this Rule.
- (ii) The inspection shall be complete and thorough, covering the surface of the entire length of the wire ropes, with attention given to:
- (I) Critical review items listed in Part (b)(1)(C) of this Rule.
- (II) Those sections that are normally hidden during shift and monthly inspections.
- (III) Wire rope in contact with saddles, equalizer sheaves or other sheaves where rope travel is limited.
- (IV) Wire rope subject to reverse bends.
- (V) Wire rope passing over sheaves.
- (VI) Wire rope at or near terminal ends.
- (iii) Exception: In the event an inspection under Part (b)(3)(B) of this Rule is not feasible due to existing set-up and configuration of the equipment (such as where an assist crane is needed) or due to site conditions (such as a dense urban setting), such inspections shall be conducted as soon as it becomes feasible, but no longer than an additional six months for running ropes and, for standing ropes, at the time of disassembly.
- (C) If a deficiency is identified, an immediate determination shall be made by the qualified person as to whether the deficiency constitutes a safety hazard.
- (i) If the deficiency is determined to constitute a safety hazard, operations involving the use of the wire rope in question shall be prohibited until:
- (I) The wire rope is replaced, or
- (II) If the deficiency is localized, the problem is corrected by severing the wire rope in two; the undamaged portion may continue to be used. Joining lengths of wire rope by splicing is prohibited.
- (ii) If the qualified person determines that, though not presently a safety hazard, the deficiency needs to be monitored, the employer shall ensure that the deficiency is checked in the monthly inspections.
- (D) The inspection shall be documented according to 13 NCAC 07F .0915(f)(7) (annual/comprehensive inspection documentation).
- (4) Rope lubricants that are of the type that hinder inspection shall not be used.

*History Note: Authority G.S. 95-131;
Eff. July 1, 2009.*

13 NCAC 07F .0915 INSPECTIONS

(a) Modified equipment.

- (1) Equipment that has had modifications or additions which affect the safe operation of the equipment (such as modifications or additions involving a safety device or operator aid, critical part of a control system, power plant, braking system, load-sustaining structural components, load hook, or in-use operating mechanism) or capacity shall be inspected by a qualified person after such

modifications/additions have been completed, prior to initial use. The inspection shall meet the following requirements:

- (A) The inspection shall ensure that the modifications or additions have been done in accordance with the approval obtained pursuant to 13 NCAC 07F .0911 (Equipment Modifications).
 - (B) The inspection shall include functional testing.
- (2) Equipment shall not be used until an inspection under this Paragraph demonstrates that the requirements of Part (a)(1)(A) of this Rule have been met.

(b) Repaired/adjusted equipment.

- (1) Equipment that has had a repair or adjustment that relates to safe operation (such as a repair or adjustment to a safety device or operator aid, or to a critical part of a control system, power plant, braking system, load-sustaining structural components, load hook, or in-use operating mechanism), shall be inspected by a qualified person after such a repair or adjustment has been completed, prior to initial use. The inspection shall meet the following requirements:
 - (A) The qualified person shall determine if the repair/adjustment meets manufacturer equipment criteria (where applicable and available).
 - (B) Where manufacturer equipment criteria are unavailable or inapplicable, the qualified person shall:
 - (i) Determine if a qualified engineer is needed to develop criteria for the repair/adjustment. If a qualified engineer is not needed, the employer shall ensure that the criteria are developed by the qualified person. If a qualified engineer is needed, the employer shall ensure that they are developed by a qualified engineer.
 - (ii) Determine if the repair/adjustment meets the criteria developed in accordance with Subpart (b)(1)(B)(i) of this Rule.
 - (iii) The inspection shall include functional testing
 - (iv) Equipment shall not be used until an inspection under this Paragraph demonstrates that the repair/adjustment meets the requirements of Part

(b)(1)(A) of this Rule (or, where applicable, Part (b)(1)(B) of this Rule).

(c) Post-assembly.

- (1) Upon completion of assembly, the equipment shall be inspected by a qualified person to ensure that it is configured in accordance with manufacturer equipment criteria.
- (2) Where manufacturer equipment criteria are unavailable, a qualified person shall:
 - (A) Determine if a qualified engineer familiar with the type of equipment involved is needed to develop criteria for the equipment configuration. If a qualified engineer is not needed, the employer shall ensure that the criteria are developed by the qualified person. If a qualified engineer is needed, the employer shall ensure that they are developed by a qualified engineer.
 - (B) Determine if the equipment meets the criteria developed in accordance with Part (c)(2)(A) of this Rule.
- (3) Equipment shall not be used until an inspection under this paragraph demonstrates that the equipment is configured in accordance with the applicable criteria.

(d) Each shift.

- (1) A competent person shall complete a visual inspection prior to commencement of crane operations during each shift. The inspection shall consist of observation for apparent deficiencies. Disassembly is not required as part of this inspection unless the results of the visual inspection or trial operation indicate that further investigation necessitating disassembly is needed. Determinations made in conducting the inspection shall be reassessed in light of observations made during operation. The inspection shall include the following:
 - (A) Control mechanisms for maladjustments interfering with proper operation.
 - (B) Control and drive mechanisms for apparent wear of components and contamination by lubricants, water or other foreign matter.
 - (C) Air, hydraulic, and other pressurized lines for deterioration or leakage, particularly those which flex in normal operation.
 - (D) Hydraulic system for proper fluid level.
 - (E) Hooks and latches for deformation, cracks, wear, or damage such as from chemicals or heat.
 - (F) Wire rope reeving for compliance with the manufacturer's specifications.

- (G) Wire rope, in accordance with 13 NCAC 07F .0914(b)(1).
 - (H) Electrical apparatus for malfunctioning, signs of apparent deterioration, dirt or moisture accumulation.
 - (I) Tires (when in use) for proper inflation and condition.
 - (J) Ground conditions around the equipment for proper support, including ground settling under and around outriggers and supporting foundations, ground water accumulation, or similar conditions.
 - (K) The equipment for level position, both shift and after each move and setup.
 - (L) Operator cab windows for cracks, breaks, or other deficiencies that would hamper the operator's view.
 - (M) Rails, rail stops, rail clamps and supporting surfaces when the equipment has rail traveling.
 - (N) Safety devices and operational aids for proper operation.
- (2) If any deficiency in Parts (d)(1)(A) through (d)(1)(N) of the Rule (or in additional inspection items required to be checked for specific types of equipment in accordance with other Rules of this Section) is identified, an immediate determination shall be made by the competent person as to whether the deficiency constitutes a safety hazard. If the deficiency is determined to constitute a safety hazard, the equipment shall be removed from service until it has been corrected.
- (3) If any deficiency in Part (d)(1)(N) of this Rule (safety devices/operational aids) is identified, the action specified in 13 NCAC 07F .0917 and .0918 shall be taken prior to using the equipment.
- (e) Monthly.
- (1) Each month the equipment is in service it shall be inspected in accordance with Paragraph (d) of this Rule (each shift).
 - (2) Equipment shall not be used until an inspection under this paragraph demonstrates that no corrective action under Subparagraphs (d)(2) and (d)(3) of this Rule is required.
 - (3) Documentation.
 - (A) The following information shall be documented by the employer that conducts the inspection:
 - (i) The items checked and the results of the inspection.
 - (ii) The name and signature of the person who conducted the inspection and the date.
- (B) This document shall be retained for a minimum of three months.
- (f) Annual/comprehensive.
- (1) At least every 12 months the equipment shall be inspected by a qualified person in accordance with Paragraph (d) of this Rule (each shift), except that the corrective action set forth in this paragraph shall apply.
 - (2) In addition, at least every 12 months, the equipment shall be inspected by a qualified person for the following:
 - (A) Equipment structure (including the boom and, if equipped, the jib):
 - (i) Structural members: deformed, cracked, or corroded.
 - (ii) Bolts, rivets and other fasteners: loose, failed or corroded.
 - (iii) Welds for cracks.
 - (B) Sheaves and drums for cracks, damage, or wear.
 - (C) Parts such as pins, bearings, shafts, gears, rollers and locking devices for distortion, cracks or wear.
 - (D) Brake and clutch system parts, linings, pawls and ratchets for wear.
 - (E) Safety devices and operational aids for proper operation.
 - (F) Gasoline, diesel, electric, or other power plants for safety-related problems (such as leaking exhaust and emergency shut-down feature), condition and proper operation.
 - (G) Chains and chain drive sprockets for wear of sprockets and chain stretch.
 - (H) Travel steering, brakes, and locking devices, for proper operation.
 - (I) Tires for damage or wear.
 - (J) Hydraulic, pneumatic and other pressurized hoses, fittings and tubing, as follows:
 - (i) Flexible hose or its junction with the fittings for indications of leaks.
 - (ii) Threaded or clamped joints for leaks.
 - (iii) Outer covering of the hose for blistering, abnormal deformation or other signs of failure.
 - (iv) Outer surface of a hose, rigid tube, or fitting for indications of abrasion or scrubbing.
 - (K) Hydraulic and pneumatic pumps and motors, as follows:
 - (i) Performance indicators: noise or vibration, low

- operating speed, abrasion or scrubbing.
 - (ii) Loose bolts or fasteners.
 - (iii) Shaft seals and joints between pump sections for leaks.
 - (L) Hydraulic and pneumatic valves, as follows:
 - (i) Spools: sticking, improper return to neutral, and leaks.
 - (ii) Leaks.
 - (iii) Valve housing cracks.
 - (iv) Relief valves: failure to reach correct pressure (if there is a manufacturer procedure for checking pressure, it shall be followed).
 - (M) Hydraulic and pneumatic cylinders, as follows:
 - (i) Drifting caused by fluid leaking across the piston.
 - (ii) Rod seals and welded joints for leaks.
 - (iii) Cylinder rods for scores, nicks, or dents.
 - (iv) Case (barrel) for dents.
 - (v) Rod eyes and connecting joints: loose or deformed.
 - (N) Outrigger pads/floats and slider pads for wear or cracks.
 - (O) Slider pads for wear or cracks.
 - (P) Electrical components and wiring for cracked or split insulation and loose or corroded terminations.
 - (Q) Warning labels and decals originally supplied with the equipment by the manufacturer or otherwise required under this Section: missing or unreadable.
 - (R) Originally equipped operator seat: missing.
 - (S) Operator seat: unusable.
 - (T) Originally equipped steps, ladders, handrails, guards: missing.
 - (U) Steps, ladders, handrails, guards: in unusable/unsafe condition.
- (3) This inspection shall include functional testing to determine that the equipment as configured in the inspection is functioning properly.
 - (4) If any deficiency is identified, an immediate determination shall be made by the qualified person as to whether the deficiency constitutes a safety hazard or, though not yet a safety hazard, needs to be monitored in the monthly inspections.
 - (5) If the qualified person determines that a deficiency is a safety hazard, the equipment shall be removed from service until it has been corrected.
 - (6) If the qualified person determines that, though not presently a safety hazard, the deficiency needs to be monitored, the employer shall ensure that the deficiency is checked in the monthly inspections.
 - (7) Documentation of annual/comprehensive inspection. The following information shall be documented and maintained by the employer that conducts the inspection:
 - (A) The items checked and the results of the inspection.
 - (B) The name and signature of the person who conducted the inspection and the date.
 - (C) This document shall be retained for a minimum of 12 months.
 - (g) Severe Service. Where the severity of use/conditions is such that there is a reasonable probability of damage or wear (such as loading that may have exceeded rated capacity, shock loading that may have exceeded rated capacity, prolonged exposure to a corrosive atmosphere), the employer shall stop using the equipment and a qualified person shall:
 - (1) Inspect the equipment for structural damage.
 - (2) In light of the use/conditions, determine whether any items/conditions listed in Paragraph (f) of this Rule need to be inspected; if so, the qualified person shall inspect those items/conditions.
 - (3) If a deficiency is found, the employer shall follow the requirements in Subparagraphs (f)(4) through (f)(6) of this Rule.
 - (h) Equipment not in regular use. Equipment that has been idle for three months or more shall be inspected by a qualified person in accordance with the requirements of Paragraph (e) of this Rule (Monthly) before initial use.
 - (i) Any part of a manufacturer's procedures regarding inspections that relate to safe operation (such as to a safety device or operator aid, critical part of a control system, power plant, braking system, load-sustaining structural components, load hook, or in-use operating mechanism) that is more comprehensive or has a more frequent schedule than the requirements of this Rule shall be followed. Additional documentation requirements by the manufacturer are not required.
- History Note: Authority G.S. 95-131; Eff. July 1, 2009.*
- 13 NCAC 07F .0917 OPERATIONAL AIDS**
- (a) The devices listed in this Rule ("listed operational aids") are required on all equipment covered by this Section, unless otherwise specified.
 - (b) Operations shall not begin unless the listed operational aids are in proper working order, except where the employer meets the specified temporary alternative measures. More protective alternative measures specified by the crane/derrick manufacturer, if any, shall be followed.

(c) If a listed operational aid stops working properly during operations, the operator shall safely stop operations until the temporary alternative measures are implemented or the device is again working properly. If a replacement part is no longer available, the use of a substitute device that performs the same type of function is permitted and is not considered a modification under 13 NCAC 07F .0911.

(d) Category I operational aids and alternative measures. Operational aids listed in this Paragraph that are not working properly shall be repaired no later than seven days after the deficiency occurs. Exception: If the employer certifies that it has ordered the necessary parts within seven days of the occurrence of the deficiency, the repair shall be completed within seven days of receipt of the parts.

(1) Boom hoist limiting device.

(A) For equipment manufactured after December 16, 1969, a boom hoist limiting device is required. Temporary alternative measures (use at least one):

- (i) Use a boom angle indicator.
- (ii) Mark the boom hoist cable (so that it can easily be seen by the operator) at a point that will give the operator sufficient time to stop the hoist to keep the boom within the minimum allowable radius. In addition, install mirrors or remote video cameras and displays if necessary for the operator to see the mark.
- (iii) Mark the boom hoist cable (so that it can easily be seen by a spotter) at a point that will give the spotter sufficient time to signal the operator and have the operator stop the hoist to keep the boom within the minimum allowable radius.

(B) If the equipment was manufactured on or before December 16, 1969, and was not originally equipped with a boom hoist limiting device, at least one of the measures in Subparts (d)(1)(A)(i) through (d)(1)(A)(iii) of this Rule shall be used, on a permanent basis.

(2) Luffing jib limiting device. Equipment with a luffing jib shall have a luffing jib limiting device. Temporary alternative measures are the same as in Part (d)(1)(A) of this Rule, except to limit the movement of the luffing jib.

(3) Anti two-blocking device.

(A) Telescopic boom cranes manufactured after February 28, 1992, shall be equipped with a device

which automatically prevents damage from contact between the load block, overhaul bail, or similar component, and the boom tip (or upper block or similar component). The device(s) shall prevent such damage at all points where two-blocking could occur. Temporary alternative measures: Mark the cable (so that it can easily be seen by the operator) at a point that will give the operator sufficient time to stop the hoist to prevent two-blocking, and use a spotter when extending the boom.

(B) Lattice boom cranes.

(i) Lattice boom cranes manufactured after February 28, 1992, shall be equipped with a device that either automatically prevents damage and load failure from contact between the load block, overhaul ball, or similar component, and the boom tip (or fixed upper block or similar component), or warns the operator in time for the operator to prevent two-blocking. The device(s) shall prevent such damage/failure or provide warning for all points where two-blocking could occur.

(ii) Lattice boom cranes, and derricks, manufactured more than one year after the effective date of this Rule shall be equipped with a device which automatically prevents damage and load failure from contact between the load block, overhaul ball, or similar component, and the boom tip (or fixed upper block or similar component). The device(s) shall prevent such damage/failure at all points where two-blocking could occur.

(iii) Exception. The requirements in Subparts (d)(3)(B)(i) and (d)(3)(B)(ii) of this Rule do not apply to such lattice boom equipment when used for dragline, clamshell (grapple), magnet, drop ball, container handling, concrete bucket, marine operations that do

not involve hoisting personnel, and pile driving work.

- (iv) Temporary alternative measures. Mark the cable (so that it can easily be seen by the operator) at a point that will give the operator sufficient time to stop the hoist to prevent two-blocking, or use a spotter.

(e) Category II operational aids and alternative measures. Operation aids listed in this paragraph that are not working properly shall be repaired no later than 30 days after the deficiency occurs. Exception: If the employer certifies that it has ordered the necessary parts within seven days of the occurrence of the deficiency, and the part is not received in time to complete the repair in 30 days, the repair shall be completed within seven days of receipt of the parts.

- (1) Boom angle or radius indicator. The equipment shall have a boom angle or radius indicator readable from the operator's station. Temporary alternative measures: Radii or boom angle shall be determined by measuring the radii or boom angle with a measuring device.
- (2) Jib angle indicator if the equipment has a luffing jib. Temporary alternative measures: Radii or jib angle shall be determined by ascertaining the main boom angle and then measuring the radii or jib angle with a measuring device.
- (3) Boom length indicator if the equipment has a telescopic boom, except where the rated capacity is independent of the boom length. Temporary alternative measures: One of the following methods shall be used:
 - (A) Mark the boom with measured marks to calculate boom length; or
 - (B) Calculate boom length from boom angle and radius measurements; or
 - (C) Measure the boom with a measuring device.
- (4) Load weighing and similar devices. Equipment (other than derricks) manufactured after March 29, 2003 with a rated capacity over 6,000 pounds shall have at least one of the following: load weighing device, load moment (or rated capacity) indicator, or load moment (or rated capacity) limiter. Temporary alternative measures: The weight of the load shall be determined from a reliable source (such as the load's manufacturer), by a reliable calculation method (such as calculating a steel beam from measured dimensions and a known per foot weight), or by other equally reliable means. This information shall be provided to the operator prior to the lift.

- (5) The following devices are required on equipment manufactured more than one year after the effective date of this Rule:

- (A) Outrigger position (horizontal beam extension) sensor/monitor if the equipment has outriggers. Temporary alternative measures: the operator shall verify that the position of the outriggers is correct (in accordance with manufacturer procedures) before beginning operations requiring outrigger deployment.
- (B) Hoist drum rotation indicator if the drum is not visible from the operator's station. Temporary alternative measures. Mark the drum. In addition, install mirrors or remote video cameras and displays if necessary for the operator to see the mark.

History Note: Authority G.S. 95-131; Eff. July 1, 2009.

13 NCAC 07F .0918 SAFETY DEVICES

(a) Safety Devices. The following safety devices are required on all equipment covered by this Section, unless otherwise specified:

- (1) Crane level indicator.
 - (A) The equipment shall have a crane level indicator that is either built into the equipment or is available on the equipment.
 - (B) If a built-in crane level indicator is not working properly, the indicator shall be tagged-out or removed.
 - (C) This Subparagraph does not apply to portal cranes, derricks, floating cranes/derricks and land cranes/derricks on barges, pontoons, vessels or other means of flotation.
- (2) Boom stops, except for derricks and hydraulic booms.
- (3) Jib stops (if a jib is attached), except for derricks.
- (4) Equipment with foot pedal brakes shall have locks, except for portal cranes and floating cranes.
- (5) Hydraulic outrigger jacks shall have an integral holding device/check valve.
- (6) Equipment on rails shall have rail clamps and rail stops, except for portal cranes.

(b) Proper operation required. Operations shall not begin unless the devices listed in this section are in proper working order. If a device stops working properly during operations, the operator shall safely stop operations. Operations shall not resume until the device is again working properly. Alternative measures are not permitted to be used.

*History Note: Authority G.S. 95-131;
Eff. July 1, 2009.*

13 NCAC 07F .0922 DERRICKS

(a) This Rule contains supplemental requirements for derricks, whether temporary or permanently mounted; all rules of this Section apply to derricks unless specified otherwise. A derrick is powered equipment consisting of a mast or equivalent member that is held at or near the end by guys or braces, with or without a boom, and its hoisting mechanism. The mast/equivalent member or the load is moved by the hoisting mechanism (typically base-mounted) and operating ropes. Derricks include A-frame, basket, breast, Chicago boom, gin pole (except gin poles used for erection of communication towers), guy, shearleg, stiffleg, and variations of such equipment.

(b) Operation – procedures.

- (1) The following paragraphs of 13 NCAC 07F .0916 (Operation of Equipment) apply: Paragraphs (a), (b), (d), (f) through (m), (o) through (s), (u), (w) through (bb).
- (2) Load chart contents. Load charts shall contain the following information:
 - (A) Rated capacity at corresponding ranges of boom angle or operating radii.
 - (B) Specific lengths of components to which the rated capacities apply.
 - (C) Required parts for hoist reeving.
 - (D) Size and construction of rope shall be included on the load chart or in the operating manual.
- (3) Load chart location.
 - (A) Permanent installations. For permanently installed derricks with fixed lengths of boom, guy, and mast, a load chart shall be posted where it is visible to personnel responsible for the operation of the equipment.
 - (B) Non-permanent installations. For derricks that are not permanently installed, the load chart shall be readily available at the job site to personnel responsible for the operation of the equipment.

(c) Construction.

- (1) General requirements.
 - (A) Derricks shall be constructed to meet all stresses imposed on members and components when installed and operated in accordance with the manufacturer's/builder's procedures and within its rated capacity.
 - (B) Welding of load sustaining members shall conform to recommended practices in ANSI/AWS D14.3 – 2005 or D1.1 – 2006.
- (2) Guy derricks.
 - (A) The minimum number of guys shall be six, with equal spacing, except

where a qualified person or derrick manufacturer approves variations from these requirements and revises the rated capacity to compensate for such variations.

- (B) Guy derricks shall not be used unless the employer has the following guy information:
 - (i) The number of guys.
 - (ii) The spacing around the mast.
 - (iii) The size, grade, and construction of rope to be used for each guy.
- (C) For guy derricks manufactured after December 18, 1970, in addition to the information required in Subparagraph (c)(2) of this Rule, the employer shall have the following guy information:
 - (i) The amount of initial sag or tension.
 - (ii) The amount of tension in guy line rope at anchor.
- (D) The mast base shall permit the mast to rotate freely with allowance for slight tilting of the mast caused by guy slack.
- (E) The mast cap shall:
 - (i) Permit the mast to rotate freely.
 - (ii) Withstand tilting and cramping caused by the guy loads.
 - (iii) Be secured to the mast to prevent disengagement during erection.
 - (iv) Be provided with means for attaching guy ropes.
- (3) Stiffleg derricks.
 - (A) The mast shall be supported in the vertical position by at least two stifflegs; one end of each shall be connected to the top of the mast and the other end securely anchored.
 - (B) The stifflegs shall be capable of withstanding the loads imposed at any point of operation within the load chart range.
 - (C) The mast base shall:
 - (i) Permit the mast to rotate freely (when necessary).
 - (ii) Permit deflection of the mast without binding.
 - (D) The mast shall be prevented from lifting out of its socket when the mast is in tension.
 - (E) The stiffleg connecting member at the top of the mast shall:

- (i) Permit the mast to rotate freely (when necessary).
 - (ii) Withstand the loads imposed by the action of the stifflegs.
 - (iii) Be secured so as to oppose separating forces.
- (4) Gin pole derricks.
 - (A) Guy lines shall be sized and spaced so as to make the gin pole stable in both boomed and vertical positions. Exception: Where the size or spacing of guy lines do not result in the gin pole being stable in both boomed and vertical positions, the employer shall ensure that the derrick is not used in an unstable position.
 - (B) The base of the gin pole shall permit movement of the pole (when necessary).
 - (C) The gin pole shall be anchored at the base against horizontal forces (when such forces are present).
- (5) Chicago boom derricks. The fittings for stepping the boom and for attaching the topping lift shall be arranged to:
 - (A) Permit the derrick to swing at all permitted operating radii and mounting heights between fittings.
 - (B) Accommodate attachment to the upright member of the host structure.
 - (C) Withstand the forces applied when configured and operated in accordance with the manufacturer's/builder's procedures and within its rated capacity.
 - (D) Prevent the boom or topping lift from lifting out under tensile forces.
- (d) Anchoring and guying.
 - (1) Load anchoring data developed by the manufacturer or a qualified person shall be used.
 - (2) Guy derricks.
 - (A) The mast base shall be anchored.
 - (B) The guys shall be secured to the ground or other firm anchorage.
 - (C) The anchorage and guying shall be designed to withstand maximum horizontal and vertical forces encountered when operating within rated capacity with the particular guy slope and spacing specified for the application.
 - (3) Stiffleg derricks.
 - (A) The mast base and stifflegs shall be anchored.
 - (B) The mast base and stifflegs shall be designed to withstand maximum horizontal and vertical forces encountered when operating within
- rated capacity with the particular stiffleg spacing and slope specified for the application.
- (e) Swingers and hoists.
 - (1) The boom, swinger mechanisms and hoists shall be suitable for the derrick work intended and shall be anchored to prevent displacement from the imposed loads.
 - (2) Base-mounted drum hoists.
 - (A) Base mounted drum hoists shall meet the requirements in the following sections of ANSI/ASME B30.7 – 2006.
 - (i) Section 7-1.1 (Load ratings and markings).
 - (ii) Sections 7-1.2 (Construction), except: 7-1.2.13 (Operator's cab); 7-1.2.15 (Fire extinguishers).
 - (iii) Section 7-1.3 (Installation).
 - (iv) Applicable terms in Section 7-0.2 (Definitions).
 - (B) Load tests for new hoists. The employer shall ensure that new hoists are load tested to a minimum of 100 percent of rated capacity, but not more than 125 percent of rated capacity, unless otherwise recommended by the manufacturer. This requirement is met where the manufacturer has conducted this testing.
 - (C) Repaired or modified hoists. Hoists that have had repairs, modifications or additions affecting their capacity or safe operation shall be evaluated by a qualified person to determine if a load test is necessary. If it is, load testing shall be conducted in accordance with Parts (e)(2)(B) and (e)(2)(D) of this Rule.
 - (D) Load test procedure. Load tests required by Parts (e)(2)(B) or (e)(2)(C) of this Rule shall be conducted as follows:
 - (i) The test load shall be hoisted a vertical distance to ensure that the load is supported by the hoist and held by the hoist brake(s).
 - (ii) The test load shall be lowered, stopped and held with the brake(s).
 - (iii) The hoist shall not be used unless a competent person determines that the test has been passed.
- (f) Operational aids.

- (1) 13 NCAC 07F .0917 (Operational aids) applies, except for 13 NCAC 07F .0917(d)(1) (Boom hoist limiting device), 13 NCAC 07F .0917(e)(1) (Boom angle or radius indicator) and 13 NCAC 07F .0917(e)(4) (Load weighing and similar devices).
 - (2) Boom angle aid. The employer shall ensure that either:
 - (A) The boom hoist cable is marked with caution and stop marks. The stop marks shall correspond to maximum and minimum allowable boom angles. The caution and stop marks shall be in view of the operator, or a spotter who is in direct communication with the operator; or
 - (B) An electronic or other device that signals the operator in time to prevent the boom from moving past its maximum and minimum angles, or automatically prevents such movement, is used.
 - (3) Load weight/capacity devices. Derricks manufactured more than one year after the effective date of this Rule with a maximum rated capacity over 6,000 pounds shall have at least one of the following: load weighing device, load moment indicator, rated capacity indicator, or rated capacity limiter. Temporary alternative measures: The weight of the load shall be determined from a reliable source (such as the load's manufacturer), by a reliable calculation method (such as calculating a steel beam from measured dimensions and a known per foot weight), or by other equally reliable means. This information shall be provided to the operator prior to the lift.
- (g) Post-assembly approval and testing – new or reinstalled derricks.
- (1) Anchorages.
 - (A) Anchorages, including the structure to which the derrick is attached (if applicable), shall be approved by a qualified person.
 - (B) If using a rock or hairpin anchorage, the qualified person shall determine if testing of the anchorage is needed. If so, it shall be tested accordingly.
 - (2) Functional test. Prior to initial use, new or reinstalled derricks shall be tested by a competent person with no hook load to verify proper operation. This test shall include:
 - (A) Lifting and lowering the hook(s) through the full range of hook travel.
 - (B) Raising and lowering the boom through the full range of boom travel.
 - (C) Swinging in each direction through the full range of swing.
 - (D) Actuating the anti two-block and boom hoist limit devices (if provided).
 - (E) Actuating locking, limiting and indicating devices (if provided).
 - (3) Load test. Prior to initial use, new or reinstalled derricks shall be load tested by a competent person. The test load shall meet the following requirements:
 - (A) Test loads shall be at least 100 percent and no more than 110 percent of the rated capacity, unless otherwise recommended by the manufacturer or qualified person, but in no event shall the test load be less than the maximum anticipated load.
 - (B) The test shall consist of:
 - (i) Hoisting the test load a few inches and holding to verify that the load is supported by the derrick and held by the hoist brake(s).
 - (ii) Swinging the derrick, if applicable, the full range of its swing, at the maximum allowable working radius for the test load.
 - (iii) Booming the derrick up and down within the allowable working radius for the test load.
 - (iv) Lowering, stopping and holding the load with the brake(s).
 - (C) The derrick shall not be used unless the competent person determines that the test has been passed.
 - (4) Documentation. Tests conducted under this Paragraph shall be documented. The document shall contain the date, test results and the name of the tester. The document shall be retained until the derrick is re-tested or dismantled, whichever occurs first.
- (h) Load testing repaired or modified derricks. Derricks that have had repairs, modifications or additions affecting the derrick's capacity or safe operation shall be evaluated by a qualified person to determine if a load test is necessary. If it is, load testing shall be conducted and documented in accordance with Paragraph (g) of this Rule.
- (i) Power failure procedures. If power fails during operations, the derrick operator shall safely stop operations. This shall include:
 - (1) Setting all brakes or locking devices.
 - (2) Moving all clutch and other power controls to the off position.
 - (j) Use of winch heads.
 - (1) Ropes shall not be handled on a winch head without the knowledge of the operator.

- (2) While a winch head is being used, the operator shall be within reach of the power unit control lever.
- (k) Securing the boom.
 - (1) When the boom is being held in a fixed position, dogs, pawls, or other positive holding mechanisms on the boom hoist shall be engaged.
 - (2) When taken out of service for 30 days or more, the boom shall be secured by one of the following methods:
 - (A) Laid down.
 - (B) Secured to a stationary member, as nearly under the head as possible, by attachment of a sling to the load block.
 - (C) For guy derricks, lifted to a vertical position and secured to the mast.
 - (D) For stiffleg derricks, secured against the stiffleg.
- (l) The process of jumping the derrick shall be supervised by the A/D supervisor.
- (m) Derrick operations shall be conducted by and supervised by a competent person.
- (n) Inspections. In addition to the requirements in 13 NCAC 07F .0915, the following additional items shall be included in the inspections:
 - (1) Daily: Guys for proper tension.
 - (2) Annual.
 - (A) Gudgeon pin for cracks, wear, and distortion.
 - (B) Foundation supports for continued ability to sustain the imposed loads.
- (o) 13 NCAC 07F .0904 (Operator qualification and certification) does not apply.

History Note: Authority G.S. 95-131; Eff. July 1, 2009.

13 NCAC 07F .0923 FLOATING CRANES/DERRICKS AND LAND CRANES/DERRICKS ON BARGES

- (a) This Rule contains supplemental requirements for floating cranes/derricks and land cranes/derricks on barges, pontoons, vessels or other means of flotation (vessel/flotation device); all Rules of this Section apply to floating cranes/derricks and land cranes/derricks on barges, pontoons, vessels or other means of flotation, unless specified otherwise. The requirements of this Rule do not apply when using jacked barges when the jacks are deployed to the river/lake/sea bed and the barge is fully supported by the jacks.
- (b) General requirements. The requirements in Paragraphs (c) through (j) of this Rule apply to both floating cranes/derricks and land cranes/derricks on barges, pontoons, vessels or other means of flotation.
- (c) Work area control.
 - (1) The requirements of 13 NCAC 07F .0916(n) (Work area control) apply, except for Subparagraph (n)(1)(B)(ii).

- (2) The employer shall either:
 - (A) Erect and maintain control lines, warning lines, railings or similar barriers to mark the boundaries of the hazard areas, or
 - (B) The hazard areas shall be marked by a combination of warning signs (such as "Danger – Swing/Crush Zone") and high visibility markings on the equipment that identify the hazard areas. In addition, the employer shall train the employees to understand what these markings signify.
- (d) Keeping clear of the load. 13 NCAC 07F .0916(t) does not apply.
- (e) Additional Safety devices. In addition to the safety devices listed in 13 NCAC 07F .0918, the following safety devices are required:
 - (1) Barge, pontoon, vessel or other means of flotation and trim device. This shall be located in the cab or, where there is no cab, at the operator's station.
 - (2) Horn.
 - (3) Positive equipment house lock.
 - (4) Wind speed and direction indicator. A competent person shall determine if wind is a factor that needs to be considered; if it needs to be considered, a wind speed and direction indicator shall be used.
- (f) Operational aids. The operational aids listed in 13 NCAC 07F .0917 apply, except as follows:
 - (1) An anti two-block device is required only when hoisting personnel or hoisting over an occupied coffer dam or shaft.
 - (2) 13 NCAC 07F .0917(e)(4) (load weighing and similar devices) does not apply to dragline, clamshell (grapple), magnet, drop ball, container handling, concrete bucket, and pile driving work.
- (g) Accessibility of procedures applicable to equipment operation. If the crane/derrick has a cab, the requirements of 13 NCAC 07F .0916(c) apply. If the crane/derrick does not have a cab:
 - (1) Rated capacities (load charts) shall be posted at the operator's station. If the operator's station is moveable (such as with pendant-controlled equipment), the load charts shall be posted on the equipment.
 - (2) Procedures applicable to the operation of the equipment (other than load charts), recommended operating speeds, special hazard warning, instructions and operators manual, shall be readily available on board.
- (h) Inspections. In addition to meeting the requirements of 13 NCAC 07F .0915 for inspecting the crane/derrick, the employer shall ensure that the barge, pontoons, vessel or other means of flotation used to support a floating crane/derrick or land crane/derrick is inspected as follows:

- (1) Shift. The means used to secure/attach the equipment to the vessel/flotation device shall be inspected for proper condition, including wear, corrosion, loose or missing fasteners, defective welds, and (where applicable) insufficient tension.
- (2) Monthly. The vessel/flotation device used shall be inspected for the following:
 - (A) The means used to secure/attach the equipment to the vessel/flotation device shall be inspected for proper condition, including wear, corrosion and (where applicable) insufficient tension.
 - (B) Taking on water.
 - (C) Deckload for proper securing.
 - (D) Chain lockers, storage, fuel compartments and battening of hatches for serviceability as a water-tight appliance.
 - (E) Firefighting and lifesaving equipment in place and functional.
- (3) The shift and monthly inspections shall be conducted by a competent person. If any deficiency is identified, an immediate determination shall be made by a qualified person as to whether the deficiency constitutes a hazard. If the deficiency is determined to constitute a hazard, the vessel/flotation device shall be removed from service until it has been corrected.
- (4) Annual: external vessel/flotation device inspection.
 - (A) The external portion of the barge, pontoons, vessel or other means of flotation used shall be inspected annually by a qualified person who has expertise with respect to vessels/flotation devices. The inspection shall include the following items:
 - (i) The items identified in Subparagraphs (h)(1) (Shift) and (h)(2) (Monthly) of this Rule.
 - (ii) Cleats, bitts, chocks, fenders, capstans, ladders, and stanchions, for corrosion, wear, deterioration, and deformation.
 - (iii) External evidence of leaks and structural damage.
 - (iv) Four-corner draft readings.
 - (v) Firefighting equipment for serviceability.
 - (B) Rescue skiffs, lifelines, work vests, life preservers and ring buoys shall be inspected for proper condition.
- (C) If any deficiency is identified, an immediate determination shall be made by the qualified person as to whether the deficiency constitutes a hazard or, though not yet a hazard, needs to be monitored in the monthly inspections. If the deficiency is determined to constitute a hazard, the vessel/flotation device shall be removed from service until it has been corrected.
- (D) If the qualified person determines that, though not presently a hazard, the deficiency needs to be monitored, the employer shall ensure that the deficiency is checked in the monthly inspections.
- (5) Quadrennial: internal vessel/flotation device inspection.
 - (A) The internal portion of the barge, pontoons, vessel or other means of flotation used shall be surveyed once every four years by a marine engineer, marine architect, licensed surveyor, or other qualified person who has expertise with respect to vessels/flotation devices.
 - (B) If any deficiency is identified, an immediate determination shall be made by the surveyor as to whether the deficiency constitutes a hazard or, though not yet a hazard, needs to be monitored in the monthly or annual inspections, as appropriate.
 - (C) If the deficiency is determined to constitute a hazard, the vessel/flotation device shall be removed from service until it has been corrected.
 - (D) If the surveyor determines that, though not presently a hazard, the deficiency needs to be monitored, the employer shall ensure that the deficiency is checked in the monthly or annual inspections, as appropriate.
- (6) Documentation. The monthly and annual inspections required in Subparagraphs (h)(2) and (h)(4) of this Rule shall be documented in accordance with 13 NCAC 07F .0915(e)(3) and (f)(7), respectively. The quadrennial inspection required in Subparagraph (h)(5) of this Rule shall be documented in accordance with 13 NCAC 07F .0915(f)(7), except that the documentation for that inspection shall be retained for a minimum of four years.
 - (i) Working with a diver. The following additional requirements apply when working with a diver in the water:
 - (1) If a crane/derrick is used to get a diver into and out of the water, it shall not be used for any

other purpose until the diver is back on board. When used for more than one diver, it shall not be used for any other purpose until all divers are back on board.

- (2) The operator shall remain at the controls of the crane/derrick at all times.
- (3) In addition to the requirements of 13 NCAC 07F .0919 (Signals), either:
 - (A) A clear line of sight shall be maintained between the operator and tender, or
 - (B) The signals between the operator and tender shall be transmitted electronically.
- (4) The means used to secure the crane/derrick to the vessel/flotation device (see Subparagraph (l)(5) of this Rule) shall not allow any amount of shifting in any direction.

(j) The employer shall ensure that the manufacturer's specifications and limitations with respect to environmental, operational and in-transit loads for the barge, pontoons, vessel or other means of flotation are not exceeded or violated.

(k) Floating cranes/derricks. For equipment designed by the manufacturer (or employer) for marine use by permanent attachment to barges, pontoons, vessels or other means of flotation:

- (1) Load charts.
 - (A) The manufacturer load charts applicable to operations on water shall not be exceeded. When using these charts, the employer shall comply with all parameters and limitations (such as dynamic/environmental parameters) applicable to the use of the charts.
 - (B) The load charts shall take into consideration a minimum wind speed of 40 miles per hour.
- (2) The requirements for maximum allowable list and maximum allowable trim as specified in Table M1 shall be met.

TABLE M1		
Equipment designed for marine use by permanent attachment(other than derricks)		
Rated Capacity	Maximum Allowable List	Maximum Allowable Trim
25 tons or less	5 degrees	5 degrees
Over 25 tons	7 degrees	7 degrees
Derricks designed for marine use by permanent attachment:		
Any rated capacity	10 degrees	10 degrees

- (3) The equipment shall be stable under the conditions specified in Tables M2 and M3.

TABLE M2		
Operated at	Wind Speed	Minimum freeboard

Rated Capacity	60 mph	2 ft
Rated capacity plus 25%	60 mph	1 ft
High boom, no load	60 mph	2 ft

TABLE M3	
For backward stability of the boom:	
Operated at:	Wind speed
High boom, no load, full back list (least stable condition)	90mph

- (4) If the equipment is employer-made, it shall not be used unless the employer has documents demonstrating that the load charts and applicable parameters for use meet the requirements of Subparagraphs (k)(1) through (k)(3) of this Rule. Such documents shall be signed by a qualified engineer who is a qualified person with respect to the design of this type of equipment (including the means of flotation).

- (5) The barge, pontoons, vessel or other means of flotation used shall:

- (A) Be structurally sufficient to withstand the static and dynamic loads of the crane/derrick when operating at the crane/derrick's maximum rated capacity with all anticipated deck loads and ballasted compartments.
- (B) Have a subdivided hull with one or more longitudinal watertight bulkheads for reducing the free surface effect.
- (C) Have access to void compartments to allow for inspection and pumping.

- (l) Land cranes/derricks. For land cranes/derricks used on barges, pontoons, vessels or other means of flotation:

- (1) The rated capacity of the equipment (load charts) applicable for use on land shall be reduced to:
 - (A) Account for increased loading from list, trim, wave action, and wind.
 - (B) Be applicable to a specified location(s) on the specific barge, pontoons, vessel or other means of flotation that will be used, under the expected environmental conditions.
 - (C) Ensure that the conditions required in Subparagraphs (l)(3) and (l)(4) of this Rule are met.
- (2) The rated capacity modification required in Subparagraph (l)(1) of this Rule shall be done by the equipment manufacturer, or a qualified person who has expertise with respect to both land crane/derrick capacity and the stability of vessels/flotation devices.
- (3) List and trim.
 - (A) The maximum allowable list and the maximum allowable trim for the

- barge/pontoons/vessel/other means of flotation shall not exceed the amount necessary to ensure that the conditions of Subparagraph (1)(4) of this Rule are met. In addition, the maximum allowable list and the maximum allowable trim shall not exceed the least of the following: five degrees, the amount specified by the crane/derrick manufacturer, or where an amount is not so specified, the amount specified by the qualified person.
- (4) The following conditions shall be met:
- (A) All deck surfaces of the barge, pontoons, vessel or other means of flotation used shall be above water.
- (B) The entire bottom area of the barge, pontoons, vessel or other means of flotation used shall be submerged.
- (5) Physical attachment, corraling, rails system and centerline cable system. The employer shall meet the requirements in Option (1), Option (2), Option (3), or Option (4). Whichever option is used, the requirements of Part (1)(5)(E) of this Rule shall also be met.
- (A) Option (1) – Physical attachment. The crane/derrick shall be physically attached to the barge, pontoons, vessel or other means of flotation. Methods of physical attachment include crossed-cable systems attached to the crane/derrick and vessel/flotation device (this type of system allows the crane/derrick to lift up slightly from the surface of the vessel/flotation device), bolting or welding the crane/derrick to the vessel/flotation device, strapping the crane/derrick to the vessel/means of flotation with chains, or other methods of physical attachment.
- (B) Option (2) – Corraling. The crane/derrick shall be prevented from shifting by installing barricade restraints (a corraling system). Corraling systems shall not allow any amount of shifting in any direction by the equipment.
- (C) Option (3) – Rails. The crane/derrick shall be prevented from shifting by being mounted on a rail system. Rail clamps and rail stops are required unless the system is designed to prevent movement during operation by other means.
- (D) Option (4) – Centerline cable system. The crane/derrick shall be prevented from shifting by being mounted to a wire rope system. The wire rope system shall meet the following requirements:
- (i) The wire rope and attachments shall be of sufficient size/strength to support the side load of crane/derrick.
- (ii) The wire rope shall be physically attached to the vessel/flotation device.
- (iii) The wire rope shall be attached to the crane/derrick by appropriate attachment methods (such as shackles or sheaves) on the undercarriage which will allow the crew to secure the crane/derrick from movement during operation and to move the crane/derrick longitudinally along the vessel/flotation device for repositioning.
- (iv) Means shall be installed to prevent the crane/derrick from passing the forward or aft end of the wire rope attachments.
- The crane/derrick shall be secured from movement during operation.
- (E) The systems/means used to comply with Option (1), Option (2), Option (3), or Option (4) shall be designed by a marine engineer, qualified engineer familiar with floating crane/derrick design, or qualified person familiar with floating crane/derrick design.
- (F) Exception. For mobile auxiliary cranes used on the deck of a floating crane/derrick, the requirement to use Option (1), Option (2), Option (3), or Option (4) does not apply where the employer demonstrates implementation of a plan and procedures that meet the following requirements:
- (i) A marine engineer or qualified engineer familiar with floating crane/derrick design develops and signs a written plan for the use of the mobile auxiliary crane.
- (ii) The plan is designed so that the applicable requirements of this Rule will be met despite the position, travel, operation, and lack of

- physical attachment (or corraling, use of rails or cable system) of the mobile auxiliary crane.
 - (iii) The plan specifies the areas of the deck where the mobile auxiliary crane is permitted to be positioned, travel, and operate and the parameters/limitations of such movements and operation.
 - (iv) The deck is marked to identify the permitted areas for positioning, travel, and operation.
 - (v) The plan specifies the dynamic/environmental conditions that shall be present for use of the plan.
 - (vi) If the dynamic/environmental conditions in Subpart (I)(5)(F)(v) of this Rule are exceeded, the mobile auxiliary crane is physically attached or corralled in accordance with Option (1), Option (2) or Option (4).
- (6) The barge, pontoons, vessel or other means of flotation used shall:
 - (A) Be structurally sufficient to withstand the static and dynamic loads of the crane/derrick when operating at the crane/derrick's maximum rated capacity with all anticipated deck loads and ballasted compartments.
 - (B) Have a subdivided hull with one or more longitudinal watertight bulkheads for reducing the free surface effect.
 - (C) Have access to void compartments to allow for inspection and pumping.
- (2) The requirements of 29 CFR 1910.179, except for 1910.179(b)(1), apply to the equipment identified in Subparagraph (a)(1) of this Rule.
 - (b) Overhead and gantry cranes that are not permanently installed in a facility.
 - (1) This Paragraph applies to the following equipment when used in construction and not permanently installed in a facility: overhead and gantry cranes, overhead/bridge cranes, semigantry, cantilever gantry, wall cranes, storage bridge cranes, launching gantry cranes, and similar equipment, irrespective of whether it travels on tracks, wheels, or other means.
 - (2) The following requirements apply to equipment identified in Subparagraph (b)(1) of this Rule:
 - (A) The following Rules in this Section: 13 NCAC 07F .0901 through .0915; .0916, except Subparagraphs (v)(1) through (v)(3); .0919; .0920; .0923; and .0925.
 - (B) The following portions of 29 CFR 1910.179:
 - (i) Paragraphs (b)(5), (6), (7); (e)(1), (3), (5), (6); (f)(1), (4); (g); (h)(1), (3); (k); and (n).
 - (ii) The definitions in 29 CFR 1910.179(a), except for "hoist" and "load." For those words, the definitions in 13 NCAC 07F .0903 apply.
 - (iii) 1910.179(b)(2) applies only to equipment identified in Subparagraph (b)(1) of this Rule manufactured before September 19, 2001.
 - (C) For equipment manufactured on or after September 19, 2001, the following sections of ANSI/ASME B.30.2-2005 apply: 2-1.3.1; 2-1.3.2; 2-1.4.1; 2-1.6; 2-1.7.2; 2-1.8.2; 2-1.9.1; 2-1.9.2; 2-1.11; 2-1.12.2; 2-1.13.7; 2-1.14.2; 2-1.14.3; 2-1.14.5; 2-1.15; 2-2.2.2; 2-3.2.1.1. In addition, 2-3.5 applies, except in 2-3.5.1(b), "29 CFR 1910.147 is substituted for ANSI Z244.1".

History Note: Authority G.S. 95-131; Eff. July 1, 2009.

13 NCAC 07F .0924 OVERHEAD & GANTRY CRANES

- (a) Permanently installed overhead and gantry cranes.
 - (1) This Paragraph applies to the following equipment when used in construction and permanently installed in a facility: overhead and gantry cranes, including semigantry, cantilever gantry, wall cranes, storage bridge cranes, and others having the same fundamental characteristics.

History Note: Authority G.S. 95-131; Eff. July 1, 2009.

13 NCAC 07F .0925 DEDICATED PILE DRIVERS

- (a) The provisions of this Section apply to dedicated pile drivers, except as specified in this Rule.
- (b) 13 NCAC 07F .0917(d)(3) (anti two-block device) does not apply.

(c) 13 NCAC 07F .0917(e)(4) (Load weight/capacity devices) applies only to dedicated pile drivers manufactured more than one year after the effective date of this Rule.

(d) In 13 NCAC 07F .0909 (Design, construction and testing), only Paragraphs (d) and (e) apply to dedicated pile drivers.

(e) 13 NCAC 07F .0904 (Operator qualification and certification) applies, except that the qualification or certification shall be for operation of either dedicated pile drivers or equipment that is the most similar to dedicated pile drivers.

*History Note: Authority G.S. 95-131;
Eff. July 1, 2009.*

13 NCAC 07F .0926 SIDEBOOM CRANES

(a) The provisions of this Section apply, except 13 NCAC 07F .0912(a) (Ground Conditions), .0918 (Safety Devices), .0917 (Operational Aids), and .0904 (Operator Qualification and Certification).

(b) 13 NCAC 07F .0916(v) (Free Fall and Controlled Load Lowering) applies, except Subpart (v)(1)(B)(i). Sideboom cranes in which the boom is designed to free fall (live boom) are permitted only if manufactured prior to the effective date of this Rule.

(c) Sideboom cranes mounted on wheel or crawler tractors shall meet the following requirements of ANSI/ASME B30.14-2004 (Side Boom Tractors):

- (1) Section 14-1.1 ("Load Ratings").
- (2) Section 14.1.3 ("Side Boom Tractor Travel").
- (3) Section 14.1.5 ("Ropes and Reeving Accessories").
- (4) Section 14-1.7.1 ("Booms").
- (5) Section 14-1.7.2 ("General Requirements – Exhaust Gases").
- (6) Section 14-1.7.3 ("General Requirements – Stabilizers (Wheel-Type Side Boom Tractors)").
- (7) Section 14-1.7.4 ("General Requirements – Welded Construction").
- (8) Section 14-1.7.6 ("General Requirements – Clutch and Brake Protection").
- (9) Section 14.2.2.2 ("Testing – Rated Load Test"), except that it applies only to equipment that has been modified or repaired.
- (10) In section 14.3.1.2 ("Operator Qualifications"). Paragraph (a), except the phrase "When required by law."
- (11) In section 14.3.1.3 ("Operating Practices"), Paragraphs (e), (f)(1) through (4), (6), (7); (h), and (i).
- (12) In section 14-3.2.3 ("Moving the Load"), Paragraphs (j), (l), and (m).

*History Note: Authority G.S. 95-131;
Eff. July 1, 2009.*

13 NCAC 07F .0927 OPERATOR CERTIFICATION – WRITTEN EXAMINATION – TECHNICAL KNOWLEDGE CRITERIA

When developing criteria for a written examination to test an individual's technical knowledge of the operation of cranes

pursuant to 13 NCAC 07F .0904(i), the following topics shall be considered:

- (1) General technical information.
 - (a) The functions and limitations of the crane and attachments.
 - (b) Wire rope:
 - (i) Background information necessary to understand the inspection and removal from service criteria in 13 NCAC 07F .0913 and .0914.
 - (ii) Capacity and when multi-part rope is needed.
 - (iii) Relationship between line pull and safe working load.
 - (iv) How to determine the manufacturer's recommended rope for the crane.
 - (c) Rigging devices and their use, such as:
 - (i) Slings.
 - (ii) Spreaders.
 - (iii) Lifting beams.
 - (iv) Wire rope fittings, such as clips, shackles and wedge sockets.
 - (v) Saddles (softeners).
 - (vi) Clamps (beams).
 - (d) The technical limitations of protective measures against electrical hazards:
 - (i) Grounding.
 - (ii) Proximity warning devices.
 - (iii) Insulated links.
 - (iv) Boom cages.
 - (v) Proximity to electric power lines, radii, and microwave structures.
 - (e) The effects of load share and load transfer in multi-crane lifts.
 - (f) Basic crane terms.
 - (g) The basics of machine power flow systems.
 - (i) Mechanical.
 - (ii) Electrical.
 - (iii) Pneumatic.
 - (iv) Hydraulic.
 - (v) Combination.
 - (h) The significance of the instruments and gauge readings.
 - (i) The effects of thermal expansion and contraction in hydraulic cylinders.
 - (j) Background information necessary to understand the requirements of pre-operation and inspection.
 - (k) How to use the safety devices and operational aids required under 13 NCAC 07F .0915 and .0916.

- (l) The difference between duty-cycle and lifting operations.
- (m) How to calculate net capacity for every possible configuration of the equipment using the manufacturer's load chart.
- (n) How to use manufacturer-approved attachments and their effect on the equipment.
- (o) How to obtain dimensions, weight, and center of gravity of the load.
- (p) The effects of dynamic loading from:
 - (i) Wind.
 - (ii) Stopping and starting.
 - (iii) Impact loading.
 - (iv) Moving with the load.
- (q) The effect of side loading.
- (r) The principles of backward stability.
- (2) Site information.
 - (a) How to identify the suitability of the supporting ground/surface to support the expected loads of the operation. Elements include:
 - (i) Weakness below the surface (such as voids, tanks, loose fill).
 - (ii) Weaknesses on the surface (such as retaining walls, slopes, excavations, depressions).
 - (b) Proper use of mats, blocking/cribbing and outriggers or crawlers.
 - (c) Identification of site hazards such as power lines, piping, and traffic.
 - (d) How to review operation plans with supervisors and other workers (such as the signal person), including how to determine working height, boom length, load radius, and travel clearance.
 - (e) How to determine if there is adequate room for extension of crawlers or outriggers/stabilizers and counterweights.
- (3) Operations.
 - (a) How to pick, carry, swing and place the load smoothly and safely on rubber tires and on outriggers/stabilizers or crawlers (where applicable).
 - (b) How to communicate at the site with supervisors, the crew and the signal person.
 - (c) Proper procedures and methods of reeving wire ropes and methods of reeving multiple-part lines and selecting the proper load block or ball.
 - (d) How to react to changes in conditions that affect the safe operation of the equipment.
 - (e) How to shut down and secure the equipment properly when leaving it unattended.
 - (f) Know how to apply the manufacturer's specifications for operating in various weather conditions, and understand how environmental conditions affect the safe operation of the equipment.
 - (g) How to properly level the equipment.
 - (h) How to verify the weight of the load and rigging prior to initiating the lift.
 - (i) How to determine where the load is to be picked up and placed and how to verify the radii.
 - (j) Know basic rigging procedures.
 - (k) How to carry out the shift inspection required in this Section.
 - (l) Know that the following operations require specific procedures and skill levels:
 - (i) Multi-crane lifts.
 - (ii) Hoisting personnel.
 - (iii) Clamshell/dragline operations.
 - (iv) Pile driving and extracting.
 - (v) Concrete operations, including poured-in-place and tilt-up.
 - (vi) Demolition operations.
 - (vii) Operations on water.
 - (viii) Magnet Operations
 - (ix) Multi-drum operations.
 - (m) Know the proper procedures for operating safely under the following conditions:
 - (i) Traveling with suspended loads.
 - (ii) Approaching a two-block condition.
 - (iii) Operating near power lines.
 - (iv) Hoisting personnel.
 - (v) Using other than full outrigger/crawler extensions.
 - (vi) Lifting loads from beneath the surface of the water.
 - (vii) Using various approved counterweight configurations.
 - (viii) Handling loads out of the operator's vision ("operating in the blind").
 - (ix) Using electronic communication systems for signal communication.

- (n) Know the proper procedures for load control and the use of hand-held tag lines.
- (o) Know the emergency response procedure for:
 - (i) Fires.
 - (ii) Power line contact.
 - (iii) Loss of stability.
 - (iv) Control malfunction.
 - (v) Two-blocking.
 - (vi) Overload.
 - (vii) Carrier or travel malfunction.
- (p) Know how to properly use outriggers in accordance with manufacturer specifications.
- (4) Use of load charts.
 - (a) Know the terminology necessary to use load charts.
 - (b) Know how to ensure that load chart is the appropriate chart for the equipment in its particular configuration and application.
 - (c) Know how to use load charts. This includes knowing:
 - (i) The operational limitations of load charts and footnotes.
 - (ii) How to relate the chart to the configuration of the crane, crawlers, or outriggers extended or retracted, jib erected or offset, and various counterweight configurations.
 - (iii) The difference between structural capacity and capacity limited by stability.
 - (iv) What is included in capacity ratings.
 - (v) The range diagram and its relationship to the load chart.
 - (vi) The work area chart and its relationship to the load chart.
 - (vii) Where to find and how to use the "parts-of-line" information.
 - (d) Know how to use the load chart together with the load indicators and/or load moment devices.

*History Note: Authority G.S. 95-131;
Eff. July 1, 2009.*

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

15A NCAC 10F .0201 SAFETY EQUIPMENT

(a) Federal Regulations Adopted. As its regulations governing required equipment of vessels as defined in G.S. 75A-2(5), pursuant to G.S. 75A-6, the Wildlife Resources Commission adopts the following federal regulations, to be applicable to vessels operated on all waters of this state as defined by G.S. 75A-2(6): Code of Federal Regulations, Title 46, Part 25, and Title 33, Part 175, as supplemented by the Federal Register. To the extent that the vessel equipment requirements of G.S. 75A-6 conflict with these federal regulations, they are hereby modified to conform to the federal regulations as authorized by G.S. 75A-6(m) and 113-307.

Without limitation to the adoption of the Federal regulations named herein, the rules set forth in subsections (b) through (g) shall apply to vessels operating in State waters.

(b) Personal Flotation Devices (hereinafter referred to as PFDs) are required as follows except as provided in Subparagraph (6) of this Paragraph:

- (1) No person may operate a vessel unless at least one PFD of the following types is on board and readily accessible for each person:
 - (A) Type I PFD;
 - (B) Type II PFD; or
 - (C) Type III PFD.
- (2) No person may operate a vessel 16 feet or more in length unless one type IV PFD is on board and immediately available for use, in addition to the total number of PFDs required in Subparagraph (1) of this Paragraph.
- (3) No person may operate a vessel while such vessel is underway with any child under 13 years old aboard unless each such child is:
 - (A) wearing an appropriate PFD approved by the Coast Guard; or
 - (B) below decks; or
 - (C) in an enclosed cabin.

This Subparagraph does not apply to a vessel that is registered as a commercial vessel.

- (4) A Type V PFD may be carried in lieu of any PFD required under Subparagraph (1) of this Paragraph provided:
 - (A) the approval label for the Type V PFD indicates that the device is approved for the activity for which the vessel is used; or
 - (B) the Type V PFD is used in accordance with the requirements on the approval label and with the requirements in its owners manual.
- (5) No person may operate a vessel unless each required PFD is:
 - (A) in serviceable condition;
 - (B) of appropriate size and fit for the intended wearer;
 - (C) USCG approved; and
 - (D) legibly marked with its approval number, as specified in CFR Title 46 Part 25 and CFR Title 33 Part 175.
- (6) Exemptions:

- (A) Canoes and kayaks 16 feet in length and over are exempted from the requirements for carriage of the additional Type IV PFD as specified in Subparagraph (b)(2) of this Rule.
- (B) Sailboards, racing shells, rowing sculls, racing canoes and racing kayaks are exempted from the requirements for carriage of any type PFD required under this Paragraph.

(c) Fire Extinguishers are required as follows:

- (1) All motorboats shall carry at least the minimum number of USCG approved hand portable fire extinguishers specified in this Rule if any one of the following conditions exist:
 - (A) Closed compartments under thwarts and seats wherein portable fuel tanks may be stored;
 - (B) double bottoms not sealed to the hull or which are not completely filled with flotation material;
 - (C) closed living spaces;
 - (D) closed stowage compartments in which combustible or flammable materials are stowed;
 - (E) permanently installed fuel tanks; or
 - (F) motorboats of Class 2 or longer;
- (2) Motorboats of Class A and 1 (less than 26 feet): One Type B-I
- (3) Motorboats of Class 2; Two Type B-I extinguishers
- (4) Motorboats of Class 3; Three Type B-I extinguishers
- (5) One Type B-II hand held fire extinguisher may be substituted for two B-I hand portable fire extinguishers. A fixed fire extinguishing system installed in the engine compartment is equal to one Type B-I hand portable fire extinguisher.

Exemption to fire extinguisher requirements: Open Vessels. Vessels less than 26 feet in length, propelled by outboard motors and not carrying passengers for hire, need not carry such portable fire extinguishers if the construction of such motorboats will not permit the entrapment of explosive or flammable gases or vapors.

(d) Every engine installed in a vessel using gasoline as fuel must be equipped with an acceptable means of backfire flame control, except outboard motors. An acceptable means of backfire flame control meets the requirements of CFR Title 46 Part 25 and CFR Title 33 Part 175.

(e) Every vessel, except those open vessels defined in Paragraph (c) of this Rule, using as fuel any liquid of a volatile nature, shall be provided with such means of properly and efficiently ventilating the bilges of the engine and fuel tank compartments so as to remove any explosive or flammable gases. Proper and efficient ventilation meets the requirements of CFR Title 46 Part 25 and CFR Title 33 Part 175.

(f) Sound Devices

- (1) Vessels of less than 12 meters (39.4 feet) in length shall be equipped with some means of making an efficient sound signal.
- (2) Vessels greater than 12 meters (39.4 feet) in length shall be provided with a whistle and a bell which complies with 33 USC 2033.

(g) Lights. The lights prescribed by these Rules shall be exhibited from sunset to sunrise, and in restricted visibility. During such times no other lights shall be exhibited, except such lights as cannot be mistaken for the lights specified in these Rules or do not impair their visibility or distinctive character, or interfere with keeping a proper lookout. They may be exhibited in all other circumstances when deemed necessary:

- (1) Vessels greater than 12 meters (39.4 feet) but less than 20 meters (65.6 feet) in length shall exhibit:
 - (A) A masthead light forward visible for three miles;
 - (B) Sidelights, green to starboard and red to port visible for two miles; and
 - (C) A stern light visible for two miles;
- (2) Vessels less than 12 meters (39.4 feet) in length shall exhibit:
 - (A) An all-round white light visible for two miles; and
 - (B) Sidelights, green to starboard and red to port visible for 1 mile;
- (3) Sailing vessels underway that are seven meters (23 feet) in length or greater shall exhibit:
 - (A) A stern light visible for two miles; and
 - (B) Sidelights, green to starboard and red to port visible for two miles;
- (4) In a sailing vessel less than 20 meters in length the lights prescribed in Subparagraph (3) of this Paragraph may be combined in one lantern carried at or near the top of the mast where it can be best seen;
- (5) A sailing vessel of less than seven meters (23 feet) in length shall, if practicable, exhibit the lights prescribed in Subparagraph (3) or (4) of this Paragraph; if not the vessel shall have ready at hand an electric torch or lighted lantern showing a white light which shall be exhibited in sufficient time to prevent a collision;
- (6) A vessel under oars may exhibit the lights prescribed in this Rule for sailing vessels, but if not, shall have ready at hand an electric torch or lighted lantern showing a white light which shall be exhibited in sufficient time to prevent a collision; and
- (7) Vessels of 10 Horsepower or Less. On waters of this State not subject to the jurisdiction of the United States, vessels propelled by machinery of 10 horsepower or less, in lieu of the foregoing requirements, may carry from one-half hour after sunset to one-half hour before sunrise a white light in the stern or have

on board a hand flashlight in good working condition which shall be ready at hand and shall be temporarily displayed in sufficient time to prevent collision. On waters of this State that are subject to the jurisdiction of the United States, this exception, though permissible under state law, is not sanctioned by any federal law or regulation.

History Note: Authority G.S. 75A-3; 75A-6; 113-307; Eff. February 1, 1976; Amended Eff. April 1, 2009; March 1, 2008; April 1, 1999; August 1, 1988; May 1, 1976.

15A NCAC 10F .0305 BRUNSWICK COUNTY

(a) Regulated Areas. This Rule applies to the waters and portions of waters described as follows:

- (1) Lockwoods Folly River. An area on that portion of the Lockwood Folly River beginning 1500 feet north of the boat ramp at the end of State Road 1123 and extending downstream to a point 800 feet south of said boat ramp and the portion of Mill Creek beginning at its intersection with the Lockwood Folly River and extending upstream for 100 feet.
- (2) Calabash River. An area located on the Calabash River beginning 100 feet west of the Billy Cox Landing and extending 100 feet east of Captain Harry's Landing.
- (3) State Port Authority Small Boat Harbor. Beginning at the Intracoastal Waterway on the easterly side of the North Carolina State Port Authority Small Boat Harbor; thence runs along and with the easterly boundary of the said boat harbor basin and along the northerly boundary and westerly boundary thereof to a point at the intersection of the westerly boundary of said boat harbor with the highwater mark of the Intracoastal Waterway; runs thence in an easterly direction with the highwater mark of the Intracoastal Waterway to the place and point of beginning, and being the entire small boat harbor in Southport.
- (4) Shallotte River. The portion of the Shallotte River beginning at its intersection with the Intracoastal Waterway and extending from the northern boundary of the Intracoastal Waterway for a distance of 500 feet to the north, to be marked by appropriate markers.
- (5) Big Davis Creek. That part of Big Davis Creek within 100 yards of Sportsman Inn at Blue Water Point Marina near Long Beach.
- (6) Town of Ocean Isle Beach. Those waters in the canals, both natural and concrete, which are located on the south side of the Intracoastal Waterway in the Town of Ocean Isle Beach.

(7) Town Creek. The 200 yard portion of Town Creek lying in Town Creek Colony as delineated by no wake zone markers.

(8) Town of Oak Island. That part of Big Davis Canal within the Town of Oak Island starting with the entrance from the Intracoastal Waterway at the end of Yacht Drive SW upstream to the canal end at 40th Street, NE.

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

(c) Placement and Maintenance of Markers. Subject to the approval of the United States Coast Guard and the United States Army Corps of Engineers, the following agencies are designated suitable agencies for the placement and maintenance of markers implementing this Rule:

- (1) The Board of Aldermen of Varnamtown as to areas indicated in Paragraph (a), Subparagraph (1) of this Rule.
- (2) The Board of Commissioners of Brunswick County as to areas indicated in Paragraph (a), Subparagraphs (2)-(8) of this Rule.

History Note: Authority G.S. 75A-3; 75A-15; Eff. February 1, 1976; Amended Eff. April 1, 1997; July 1, 1994; July 1, 1993; January 1, 1989; January 1, 1987; Temporary Amendment Eff. March 1, 1998; Amended Eff. April 1, 2009; April 1, 1999.

15A NCAC 10F .0323 BURKE COUNTY

(a) Regulated Areas. This Rule applies only to the following waters or portions of waters in Burke County described as follows:

- (1) Lake Hickory;
- (2) Lake James, delineated by markers consistent with Paragraph (e) of this Rule, at the following locations:
 - (A) Holiday Shores Subdivision;
 - (B) Lake James Campground;
 - (C) Laurel Pointe Subdivision;
 - (D) Boyd Moore Cove;
 - (E) East Shores development;
 - (F) Eastern shore of Lake James at Mallard Cove;
 - (G) Highway 126 Bridge, area defined using the North American Datum of 1983 beginning 50 yards from the northeast side defined by a shore to shore line extending from state plane coordinates:

Northing	=	224985.481182,	Easting	=	348767.698377
			to Northing	=	224912.319514,
			Easting	=	348805.193732,

 encompassing all waters to a line 200 yards south of the bridge defined by a line extending shore to shore from state plane coordinates:

Northing	=
----------	---

224723.881492, Easting =
348679.284125 to Northing =
224835.222394, Easting =
348534.751513;

(H) Canal Bridge Boating Access Area:
within 50 yards of the Canal Bridge
Boating Access area dock.

(3) Lake Rhodhiss.

(b) Speed Limit. No person shall operate a vessel at greater than no-wake speed within 50 yards of any designated public boat launching ramp, bridge, marina, boat storage structure, boat service area, dock, or pier; or while on designated waters of the areas described in Paragraph (a) of this Rule.

(c) Speed Limit in Mooring Areas. No person shall operate a vessel at greater than no-wake speed while within a marked mooring area established with the approval of the Executive Director, or his representative, on the regulated areas described in Paragraph (a) of this Rule.

(d) Restricted Swimming Areas. No person operating or responsible for the operation of a vessel shall permit it to enter any marked public swimming area established with the approval of the Executive Director, or his representative, on the regulated areas described in Paragraph (a) of this Rule.

(e) Placement and Maintenance of Markers. The Board of Commissioners of Burke County is designated a suitable agency for placement and maintenance of the markers implementing this Rule, subject to the approval of the United States Coast Guard and the United States Army Corps of Engineers, if applicable. With regard to marking the regulated areas described in Paragraph (a) of this Rule, all of the supplementary standards listed in Rule .0301(g) of this Section shall apply.

History Note: Authority G.S. 75A-3; 75A-15; 102-1.1;
Eff. July 1, 1976;
Amended Eff. December 1, 1995; December 1, 1994; December 1, 1992; March 1, 1992;
Temporary Amendment Eff. April 1, 1999;
Amended Eff. July 1, 2000;
Temporary Amendment Eff. August 15, 2001;
Amended Eff. May 1, 2009; August 1, 2002.

15A NCAC 10F .0333 MECKLENBURG AND GASTON COUNTIES

(a) Regulated Areas. This Rule applies to the following waters of Lake Wylie in Mecklenburg and Gaston Counties:

- (1) McDowell Park – The waters of the coves adjoining McDowell Park and the Southwest Nature Preserve in Mecklenburg County, including the entrances to the coves on either side of Copperhead Island;
- (2) Gaston County Wildlife Club Cove – The waters of the cove at the Gaston County Wildlife Club on South Point Peninsula in Gaston County;
- (3) Buster Boyd Bridge- The areas 250 feet to the north and 150 feet to the south of the Buster Boyd Bridge;
- (4) Highway 27 Bridge – The area beginning 50 yards north of the NC 27 Bridge and extending

50 yards south of the southernmost of two railroad trestles immediately downstream from the NC 27 Bridge;

(5) Brown's Cove – The area beginning at the most narrow point of the entrance to Brown's Cove and extending 250 feet in both directions;

(6) Paradise Point Cove – The waters of the Paradise Point Cove between Paradise Circle and Lakeshore Drive as delineated by appropriate markers;

(7) Withers Cove - The area 50 feet on either side of Withers Bridge; and

(8) All other bridges – the areas that are within 50 feet of any bridge in North Carolina that crosses the waters of Lake Wylie that is not otherwise specifically mentioned in this Paragraph.

(b) Speed Limit Near Ramps. No person shall operate a vessel at greater than no-wake speed within 50 yards of any public boat-launching ramp, dock, pier, marina, boat storage structure or boat service area.

(c) Speed Limit Near All Other Bridges. No person shall operate a vessel at greater than no-wake speed within 50 feet of any bridge in North Carolina that crosses the waters of Lake Wylie that is not otherwise specifically mentioned in Paragraph (a) of this Rule.

(d) Speed Limit in Marked Swimming or Mooring Areas. No person shall operate a vessel at greater than no-wake speed within 50 yards of any marked mooring area or marked swimming area.

(e) Placement and Maintenance of Markers. The Lake Wylie Marine Commission is designated a suitable agency for placement and maintenance of markers implementing this Rule.

History Note: Authority G.S. 75A-3; 75A-15;
Eff. July 1, 1980;
Amended Eff. July 1, 1994; June 1, 1985; June 1, 1984; March 1, 1983;
Temporary Amendment Eff. January 1, 1998;
Amended Eff. July 1, 1998;
Temporary Amendment Eff. February 4, 2000;
Amended Eff. April 1, 2009; June 1, 2004; July 1, 2000.

15A NCAC 10F .0376 TOWN OF EMERALD ISLE

(a) Regulated Area. This Rule applies to waters within the territorial jurisdiction of the Town of Emerald Isle, as described in Paragraph (c) of this Rule.

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

(c) Affected Areas are:

- (1) the entire length of the Bogue Sound Drive Channel, which is .6 miles in length, located adjacent and roughly parallel to the shoreline in the vicinity of Kelly Lane and Bogue Sound Drive; and
- (2) the waters of the Coast Guard Channel at a point extending from the north entrance of the

channel behind 419 Channel Drive to the west entrance of the channel near 116 Bogue Court.

(d) Placement and Maintenance of Markers. The Town of Emerald Isle is designated a suitable agency for placement and maintenance of the markers or signs implementing this Rule.

History Note: Authority G.S. 71A-15; 72A-3;
Eff. September 1, 2008;
Amended Eff. April 1, 2009.

TITLE 18 – DEPARTMENT OF SECRETARY OF STATE

18 NCAC 06A .1103 ADMINISTRATION

History Note: Authority G.S. 78A-45(a);
Eff. April 1, 1981;
Amended Eff. January 1, 1984;
Repealed Eff. April 1, 2009.

18 NCAC 06B .0101 SCOPE

(a) The rules in this Chapter execute the authority granted to the Secretary of State pursuant to the following Chapters of the North Carolina General Statutes ("the Secretary's authority"):

- (1) Chapter 78A, the North Carolina Securities Act;
- (2) Chapter 78C, the North Carolina Investment Advisers Act, including the Uniform Athlete Agents Act;
- (3) Chapter 78D, the North Carolina Commodities Act; and
- (4) Article 4, Part 5, of Chapter 105, Tax Credits for Qualified Business Investments.

(b) The Secretary's authority under these statutes is administered under the supervision of the Deputy Securities Administrator through the Securities Division of the North Carolina Department of the Secretary of State.

History Note: Authority G.S. 78A-45(a); 78A-49(a); 78C-26(a); 78C-30(a); 78C-105; 78D-25; 78D-27; 105-163.013;
Eff. April 1, 2009.

18 NCAC 06B .0102 ADMINISTRATION

(a) "Administrator" as used in this Chapter means the Secretary of State.

(b) The Deputy Securities Administrator shall carry out the duties assigned by statute and rule to the Administrator in G.S. Chapters 78A, 78C, 78D, and Article 4, Part 5, of Chapter 105, Tax Credits for Qualified Business Investments.

(c) "Department" as used in this Chapter means the Department of the Secretary of State.

(d) "Division" as used in this Chapter means the Securities Division of the Department of the Secretary of State.

History Note: Authority G.S. 78A-45(a); 78A-49(a); 78C-26(a); 78C-30(a); 78C-105; 78D-25; 78D-27; 105-163.013;
Eff. April 1, 2009.

18 NCAC 06C .0101 LETTER OF INQUIRY

(a) The Division may issue a Letter of Inquiry to anyone engaging in activities which may subject them to the jurisdiction of the Administrator. The purpose of a Letter of Inquiry is to obtain information or documents necessary to the understanding of matters under investigation.

(b) Anyone who is subject to the jurisdiction of the Administrator and who receives a Letter of Inquiry shall respond to the Letter of Inquiry in writing with:

- (1) such information as is within his or her personal knowledge;
- (2) recorded information in any form, including business records, under the recipient's control; and
- (3) the identity of any other person whom the recipient believes has information relevant to the subject of a Letter of Inquiry who is subject to the jurisdiction of the Administrator.

History Note: Authority G.S. 78A-18; 78A-29; 78A-30; 78A-39; 78A-46; 78A-47; 78A-49; 78C-19; 78C-27; 78C-28; 78C-30; 78C-90; 78C-91; 78D-4; 78D-21; 78D-22; 78D-25; 78D-26; 78D-27; 78D-30; 105-163.013; 150B-38(h); 150B-40;
Eff. April 1, 2009.

18 NCAC 06C .0102 INVESTIGATIVE SUBPOENAS

(a) When the Administrator issues subpoenas for testimony, written statements or documents during the course of an investigation, the recipient of a subpoena may object to the subpoena. Objections to compliance with a subpoena, including but not limited to, claims of privilege, hardship, or inadequate time for compliance, shall be filed in writing with the Administrator. Objections shall be filed no later than the time for compliance set in the subpoena. Written objections to a subpoena shall state the legal and factual basis for the objections.

(b) The recipient of a subpoena who files written objections to the subpoena shall comply with any portions of the subpoena which are not expressly included in the written objections.

(c) Upon receipt of written objections to an investigative subpoena, the Division may attempt to reach a written settlement of the objections with the recipient.

(d) This Rule does not restrict, or constitute a pre-condition to, the Administrator's right to seek enforcement of an investigative subpoena in court.

History Note: Authority G.S. 78A-46; 78C-27; 78C-87; 78D-21; 78D-25; 78D-26; 78D-27; 105-163.013; 150B-38(h); 150B-40;
Eff. April 1, 2009.

18 NCAC 06C .0103 ADMINISTRATIVE HEARINGS

(a) The Division shall bring proceedings pursuant to the statutes and rules it enforces in the name of the Division against one or more respondents.

(b) The Division shall commence proceedings before the Administrator in which a sanction or payment, other than a civil monetary penalty or reimbursement of investigation costs is sought, as provided in Chapters 78A, 78C, 78D, Article 4, Part

5, of Chapter 105 and Article 3A, Chapter 150B, of the General Statutes and the rules in this Chapter.

(c) Commencement of a proceeding under Article 3 of Chapter 150B of the General Statutes for a civil monetary penalty or reimbursement of investigation costs does not preclude commencement of a proceeding against the same respondent under Article 3A of Chapter 150B of the General Statutes for other sanctions.

History Note: Authority G.S. 78A-47; 78C-28; 78C-90; 78C-91; 78D-21; 78D-22; 78D-27; 78D-31; 105-163.013; 150B-38(h); 150B-40; Eff. April 1, 2009.

18 NCAC 06C .0104 SETTLEMENT

(a) The Division may negotiate settlements with a respondent or counsel for a respondent.

(b) The Division may negotiate and submit settlements for approval prior to the issuance of a Notice of Hearing or an Administrative Petition. Settlements shall be presented to the Administrator as soon as practicable before a scheduled hearing date. The Division shall prepare the final written settlement proposal in all cases.

(c) The Administrator shall consider a final written settlement proposal only if the final written settlement proposal:

- (1) is signed by the respondent and counsel, if represented by counsel;
- (2) includes the respondent's waiver of all further procedural and substantive rights, including hearings, issuance of notice of hearing, service, judicial review and collateral attacks or other proceedings contesting the terms of the settlement;
- (3) contains the respondent's agreement that rejection of the final written settlement proposal shall not disqualify the Administrator from acting as the trier of fact or final agency decision maker; and
- (4) is within the authority of the Administrator.

(d) The Administrator may, with the written consent of respondent or counsel for respondent, consider a final written settlement proposal *ex parte*.

(e) Parties are not bound by matters contained in a settlement rejected by the Administrator.

(f) Rejection of a proposed settlement alone does not constitute grounds for continuance of a previously scheduled hearing but may be considered in deciding whether the hearing should be continued.

(g) A settlement approved by the Administrator is the Final Order as to any respondent who has signed the settlement. The Division shall serve the Final Order upon the respondents and their counsel.

History Note: Authority G.S. 78A-18; 78A-29; 78A-30; 78A-39; 78A-46; 78A-47; 78A-49; 78C-19; 78C-27; 78C-28; 78C-30; 78C-90; 78C-91; 78D-4; 78D-21; 78D-22; 78D-25; 78D-26; 78D-27; 78D-30; 105-163.013; 150B-38(h); 150B-40; Eff. April 1, 2009.

18 NCAC 06C .0105 ARTICLE 3A CONTESTED CASE PROCEDURES

(a) This Rule applies to proceedings under Article 3A of Chapter 150B of the General Statutes.

(b) The Administrator shall notify the respondents in a contested case proceeding under G.S. 150B, Article 3A, as to whether the hearing of the contested case will be:

- (1) referred to the Office of Administrative Hearings;
- (2) conducted by the Administrator; or
- (3) conducted by a hearing officer appointed by the Administrator.

(c) The Administrative Petition is a pleading submitted to the Administrator which:

- (1) is denominated as an Administrative Petition;
- (2) is captioned as a proceeding by the Division acting as petitioner brought under the authority of the Administrator against the person(s) named as respondents;
- (3) is signed by counsel for the Division;
- (4) sets forth the factual and legal basis for any request that the Administrator take action permitted by law or rule against any person subject to the jurisdiction of the Administrator; and,
- (5) is used in those proceedings in which the Administrator is not required first to issue a notice of hearing before taking an administrative action.

(d) Each named respondent shall be served with the Administrative Petition and a notice of rights and opportunity for a hearing. If the Administrator issues an Order in response to the Administrative Petition, the Order shall be served on each named respondent.

(e) The Division may commence a contested case by issuing a notice of hearing, a pleading filed with the Administrator, which:

- (1) is denominated as a notice of hearing;
- (2) is captioned as a proceeding by the Division acting as petitioner brought under the authority of the Administrator against the person(s) named as respondents;
- (3) is signed by counsel for the Division;
- (4) sets forth the factual and legal basis for any request that the Administrator take action permitted by law or rule against any person subject to the jurisdiction of the Administrator;
- (5) lists the sanctions that may be imposed as a result of the hearing; and
- (6) gives the day, date, time, and place of the hearing, as set by the Administrator.

(f) The Division shall serve the notice of hearing upon the person(s) named as respondents.

(g) When a respondent served with an Administrative Petition and notice of rights and opportunity for a hearing requests a hearing:

- (1) the Administrative Petition shall serve as the notice of hearing with respect to the factual and legal basis for the charges brought and sanctions sought against a respondent; and

- (2) the Administrator, a hearing officer appointed by the Administrator, or an administrative law judge when the case is assigned to the OAH, shall issue a separate order, notifying respondent of the date, time and place of the hearing.

(h) There are no specific forms required for answers, motions or other pleadings in contested cases before the Administrator. Respondents and their counsel may caption such documents in the style and manner shown on the notice of hearing in their case. All pleadings, other than oral motions during a hearing, shall:

- (1) be made on 8 ½ by 11 inch paper with legible writing or printing;
- (2) contain the caption or case number of the matter in which the pleading is made;
- (3) apprise the Administrator of the matters alleged or to which the pleading relates; and
- (4) if a motion, state the relief sought and the legal basis for the motion.

History Note: Authority G.S. 78A-46; 78A-47; 78C-27; 78C-28; 78C-90; 78C-91; 78D-22; 78D-25; 78D-26; 78D-27; 78D-30; 105-163.013; 150B-38(h); 150B-40; Eff. April 1, 2009.

18 NCAC 06C .0106 TEMPORARY ORDERS

(a) The Division may seek a temporary or summary order at any time as follows:

- (1) If the Division seeks a temporary or summary order prior to the issuance of a notice of hearing, the Division shall file an *ex parte* Administrative Petition supported as required by this Rule.
- (2) If the Division seeks a temporary or summary order during a contested case proceeding, it shall file and serve an appropriate pleading in that proceeding, supported as required by this Rule.

(b) When seeking a temporary or summary order, the Division shall support the request with evidence including at least one sworn affidavit or its equivalent to support the order.

(c) The Administrator (or an appointed hearing officer, or an assigned administrative law judge), upon findings and conclusions that the evidentiary showing by the Division supports the request, may issue a temporary cease and desist order or summary order suspending, denying, postponing or taking any other action as permitted by applicable law against any license, registration or exemption.

(d) Any temporary or summary order issued under this Rule shall:

- (1) be in writing and signed by the person who issues it;
- (2) make findings of fact supporting the factual basis for the temporary or summary action;
- (3) make conclusions of law supporting the temporary or summary action;
- (4) state the conduct prohibited or identify the registration, filing, license or other privilege

- (5) suspended, denied, revoked, postponed or against which other action has been taken; and be served upon the persons subject to the order together with any other documents that may be required by applicable statutes and rules.

(e) A temporary or summary order shall remain in effect until rescinded, modified or vacated by the Administrator, or until a final order is issued. Orders issued under this Rule are not final agency decisions. The Division's procedures for issuing final orders are found in 18 NCAC 06C .0108.

History Note: Authority G.S. 78A-46; 78C-27; 78C-87; 78D-22; 78D-25; 78D-26; 78D-27; 78D-30; 105-160.013; 150B-38(h); 150B-40; Eff. April 1, 2009.

18 NCAC 06C .0107 CONDUCT OF HEARING

(a) Scope. This Rule applies to all hearings under G.S. 150B, Article 3A, conducted by the Administrator or a hearing officer designated by the Administrator. Hearings referred to the Office of Administrative Hearings ("OAH") are governed by the rules adopted by OAH. This Rule also applies to all other hearings which the Administrator is required to conduct and which are not by law required to be heard by OAH.

(b) Discovery. All discovery shall be conducted pursuant to G.S. 150B-39.

(c) Continuances. A motion for the continuance of a scheduled hearing shall be:

- (1) made in writing;
- (2) filed with the Administrator at least 10 business days prior to the scheduled hearing; and
- (3) served upon the opposing party or counsel.

(d) Evidence. Evidence introduced at a hearing conducted under these rules shall conform to G.S. 150B-41. The Administrator or the hearing officer designated by the Administrator shall rule upon the objections of any party to the admission of evidence.

(e) Subpoenas.

- (1) If a party to a contested case seeks to have witnesses or documents subpoenaed to the hearing, the party or counsel shall submit a written request for the issuance of subpoenas to the Administrator or designated hearing officer in sufficient time in advance of the hearing for preparation and issuance of the subpoenas by the Administrator or designated hearing officer.
- (2) Service of a subpoena issued shall be the responsibility of the party requesting the subpoena. Service and return of service shall be made in the manner provided for in G.S. 1A-1, Rule 4.
- (3) The Administrator or designated hearing officer shall issue a subpoena that complies with G.S. 1A-1, Rule 45.
- (4) Any party or person served with a subpoena issued under this subsection who objects to the subpoena shall make and file the written

objection required by G.S. 1A-1, Rule 45, with the Administrator or hearing officer assigned to the case.

(f) The conduct of the hearing shall conform to G.S. 150B-40.

History Note: Authority G.S. 78A-18; 78A-29; 78A-30; 78A-39; 78A-46; 78A-47; 78A-49; 78C-19; 78C-27; 78C-28; 78C-30; 78C-90; 78C-91; 78D-4; 78D-21; 78D-22; 78D-25; 78D-26; 78D-27; 78D-30; 105-163.013; 150B-38; 150B-40; Eff. April 1, 2009.

18 NCAC 06C .0108 FINAL ORDER

(a) Proceedings based on temporary orders – when a final order may issue. The Administrator may issue a final order when no hearing has been requested by a respondent within 30 business days after receipt of a Temporary Order in any proceeding:

- (1) initiated by serving a respondent with a temporary or summary order; and
- (2) in which the statute under which the proceeding was commenced provides that the temporary or summary order shall become permanent if the respondent fails to request a hearing.

(b) Proceedings based on temporary orders – requirements for final order. The Administrator shall issue a final order making the temporary cease and desist or summary order permanent:

- (1) based solely upon the evidence in the record;
- (2) including findings that the proceeding:
 - (A) was commenced;
 - (B) an order was issued;
 - (C) all necessary pleadings and notices were served as required by law; and
 - (D) the respondent failed to request a hearing within the time prescribed by law, file a responsive pleading or make any other submission.

(c) Article 3A proceedings before the Administrator or a designated hearing officer. After a hearing by the Administrator or hearing officer designated by the Administrator, the decision of the Administrator or hearing officer shall be made in the form of a final order containing:

- (1) findings of fact;
- (2) conclusions of law; and
- (3) a decree as to the action of the agency in the matters addressed in the hearing.

(d) Article 3A proceedings referred to OAH. When a contested case hearing subject to G.S. 150B, Article 3A, has been referred to and heard by the Office of Administrative Hearings ("OAH"), and the proposed agency decision has been filed with the Administrator by the OAH:

- (1) the Division shall serve the proposed agency decision upon the respondent with a notice of rights provided by G.S. 150B-40(e) including notice of the day, time and place where the parties may appear and make oral argument concerning the proposed final agency decision;
- (2) written exceptions, proposed findings of fact and written arguments shall be filed with the Administrator and served upon any opposing

party or counsel at least 10 business days before the scheduled oral argument; and

- (3) after reviewing any written submissions and hearing the oral argument of the parties, the Administrator shall issue a final order containing findings of fact, conclusions of law, and a decree as to the agency action in the matters addressed in the hearing.

(e) Article 3 proceedings heard by OAH. When a contested case has been heard by OAH under G.S. 150B, Article 3, and the proposed final decision has been returned to the Administrator by OAH, the Administrator shall by letter notify any respondent or counsel for any respondent of the date, not less than 30 days from the date of the letter, by which written exceptions or written arguments regarding the proposed final decision must be submitted to the Administrator.

(f) Service. The Division shall serve the final order served upon the respondents or their counsel.

History Note: Authority G.S. 78A-18; 78A-29; 78A-30; 78A-39; 78A-46; 78A-47; 78A-49; 78C-19; 78C-27; 78C-28; 78C-30; 78C-90; 78C-91; 78D-4; 78D-21; 78D-22; 78D-25; 78D-26; 78D-27; 78D-30; 150B-38(h); 150B-40; Eff. April 1, 2009.

TITLE 19A – DEPARTMENT OF TRANSPORTATION

19A NCAC 02D .0601 PERMITS-AUTHORITY, APPLICATION AND ENFORCEMENT

(a) The State Highway Administrator or his designee shall issue oversize/overweight permits for qualifying vehicles. Irrespective of the route shown on the permit, a permitted vehicle shall travel an alternate route:

- (1) if directed by a law enforcement officer with jurisdiction;
- (2) if directed by an official traffic control device to follow a route to a weighing device;
- (3) if the specified route on the permit is detoured by an officially erected highway sign, traffic control devices, or law enforcement officer, the driver of the permitted vehicle shall contact the Central Permit Office or the issuing field office for house move permits as soon as reasonably possible for clearance of route or revision of the permit.

(b) Prior to application for an oversize/overweight permit, the vehicle/vehicle combination and the commodity in transport shall be reduced or loaded to the least practical dimensions and weight. Application for permits with the exception of house move permits shall be made to the Central Permit Office. Applications for permits shall be submitted in writing to the Central Permit Office for consideration of approval for moves exceeding:

- (1) a gross weight of 132,000 pounds with the fee specified in G.S. 20-119(b) at least ten working days prior to the anticipated date of movement; or

- (2) a width of 15' with documentation for variances at least ten working days prior to the anticipated date of movement with the exception of a mobile/modular unit with maximum measurements of 16' wide unit and a 3" gutter edge; a width of 16' 11" with the exception of house moves is required to be submitted with the fee specified in G.S. 20-119(b) with documentation for variances at least ten working days prior to the anticipated date of movement; or
- (3) a height of 14 feet at least two working days prior to the anticipated date of movement.
- (c) Upon completion of an engineering study for moves exceeding a gross weight of 132,000 pounds, a surety bond to cover potential damage to highways and bridge structures shall be required for overweight permits if the engineering study shows potential for damage to highways and bridge structures along the particular route of the requested permit.
- (d) The North Carolina licensed mobile/modular home retail dealer shall maintain records of all mobile/modular units moved by authority of an annual permit for a minimum of four years from the date of movement. The records shall be readily available for inspection and audit by officers of the Division of Motor Vehicles. Monthly reports shall be submitted by the dealer to the Central Permit Office on a form designed and furnished by the Department of Transportation. Failure to comply with any requirement may be grounds for denying, suspending, or revoking Manufacturer's License, Dealer's License, or both issued by the Division of Motor Vehicles as specified in Chapter 20 of the Motor Vehicle Law, Title 19A NCAC 03D .0219, or North Carolina Oversize/Overweight permit privileges.
- (e) Law enforcement officers may perform on-site inspections of mobile/modular homes ready for shipment at the point of manufacture or at the dealer lot for compliance with Chapter 20 of the General Statutes, dealer and manufacturer regulations, permit regulations, and policy. Notification of violations shall be submitted by enforcement personnel to the Central Permit Office.
- (f) The penalties provided in this Rule are in addition to the penalties provided for in Chapter 20 of the North Carolina General Statutes.
- (g) Permits may be declared void by the State Highway Administrator or his designee upon determination that such overdimension/overweight permit was being used in violation of the General Statutes of North Carolina, Permit Rules or restrictions stated on the permit.
- (h) Permits may also be denied, revoked or declared invalid as stated in Rule .0633 of this Section.

History Note: Authority G.S. 20-119; 136-18(5); Eff. July 1, 1978; Amended Eff. November 1, 1993; October 1, 1991; Temporary Amendment Eff. January 10, 2002; October 1, 2000; Amended Eff. April 1, 2009; August 1, 2002.

19A NCAC 02D .0607 PERMITS-WEIGHT, DIMENSIONS AND LIMITATIONS

(a) Vehicle/vehicle combinations with non-divisible overwidth loads are limited to a maximum width of 15 feet. After review of documentation of variances, the State Highway Administrator or his designee may authorize the issuance of a permit for movement of loads in excess of 15 feet wide in accordance with 19A NCAC 02D .0600 et seq. Exception: A mobile/modular unit with maximum measurements of 16' wide unit and a 3" gutter edge may be issued a permit. If blades of construction equipment or front end loader buckets cannot be angled to extend no more than 14' across the roadway, they shall be removed. A blade, bucket or other attachment that is an original part of the equipment as manufactured may be hauled with the equipment without being considered a divisible load except as provided in this Rule. A 14' wide mobile/modular home unit with a roof overhang not to exceed a total of 12" may be transported with a bay window, room extension, or porch providing the protrusion does not extend beyond the maximum 12" of roof overhang or the total width of overhang on the appropriate side of the home. An extender shall be placed on the front and rear of the mobile home with a length to extend horizontally equal to but not beyond the extreme outermost edge of the home's extension. The extenders shall have retro-reflective sheeting, a minimum of 4", which is required to be Type III high intensity (encapsulated lens) or Type IV high performance (prismatic) with alternating fluorescent yellow and black diagonal stripes sloping towards the outside of the home with a minimum area of 288 square inches. The bottom of the extenders shall be 6' to 8' above the road surface with a 5" amber flashing beacon mounted on the top of each extender. Authorization to move commodities wider than 15 feet in width may be denied if considered by the issuing agent to be unsafe to the traveling public or if the highway cannot accommodate the move due to width.

(b) A single trip permit shall not be issued vehicle specific to exceed a width in excess of 15 feet for all movements unless authorized by the State Highway Administrator or his designee after analysis of the proposed load and evaluation of the proposed route of travel. Exception: A mobile/modular unit with maximum measurements of 16' wide unit and a 3" gutter edge may be issued a permit. Permits for house moves may be issued as specified in G.S. 20-356 through G.S. 20-372.

(c) An annual oversize/overweight permit may be issued as follows:

- (1) for unlimited movement without an escort on all North Carolina highways, where permitted by the posted road and bridge limits, for vehicle/vehicle combinations transporting general non-divisible commodities which has a minimum extreme wheelbase of 51 feet and which does not exceed: width of 12 feet; height of 13 feet, 6 inches; length of 75 feet; gross weight of 90,000 pounds; and axle weights of 12,000 pounds steer axle, 25,000 pounds single axle, 50,000 pounds tandem axle, and 60,000 pounds for a three or more axle grouping.

- (2) for unlimited movement without the requirement of an escort on all North Carolina highways, where permitted by the posted road and bridge limits, for four or five axle self-propelled equipment or special mobile equipment capable of traveling at a highway speed of 45 miles per hour which has a minimum wheel base of 30 feet and which does not exceed: width of 10 feet; height of 13 feet, 6 inches; length of 45 feet with front and rear overhang not to exceed a total of 10 feet; gross weight of 90,000 pounds; axle weights of 20,000 pounds single axle; 50,000 pounds tandem axle; and 60,000 pounds for a three or more axle grouping.
- (3) for unlimited movement with the requirement of an escort vehicle on all North Carolina highways, where permitted by the posted bridge and load limits, for vehicles/vehicle combinations transporting farm equipment and which does not exceed: a width of 14 feet; a height of 13 feet 6 inches; and a weight as set forth in G.S. 20-118(b)(3).
- (4) for mobile/modular homes with a maximum height of 13' 6" being transported from the manufacturer to an authorized North Carolina mobile/modular home dealership are an exception and shall be permitted for a width not to exceed a 14' unit with an allowable roof overhang not to exceed a total of 12" or a 16' wide unit with a 3" gutter edge. These mobile/modular homes shall be authorized to travel on designated routes approved by the Department of Transportation considering construction work zones, highway lane widths, origin and destination or other factors to ensure safe movement.
- (5) to the North Carolina licensed mobile/modular home retail dealer and the transporter for delivery of mobile/modular homes not to exceed a maximum width of a 14' unit with a total roof overhang not to exceed 12" and a height of 13' 6". The annual permit shall be valid for delivery of mobile/modular homes within a maximum 25-mile radius of the dealer location. Confirmation of destination for delivery is to be carried in the permitted towing unit readily available for law enforcement inspection.

(d) The maximum weight permitted on a designated route is determined by the bridge capacity of bridges to be crossed during movement. The route traveled from a specific origin to a specific destination must be included within a single permitted route of travel. Moves exceeding weight limits for highways or bridge structures may be denied if considered by the issuing agent to be unsafe or if they may cause damage to such highway or structure. A surety bond may be required as determined by the issuing agent to cover the cost of potential damage to

pavement, bridges or other damages incurred during the permitted move.

(e) The standards for analysis, extreme wheelbase requirements, weight distribution and axle configuration requirements are based on a Department of Transportation engineering study with consideration of the infrastructure being crossed along the permitted route of travel. The maximum permissible weights are as follows:

- (1) The maximum single trip and annual permit weight allowed for a specific vehicle or vehicle combination not including off highway construction equipment without an engineering study is:

Steer Axle	12,000 lbs.
Single axle	25,000 lbs.
2 axle tandem	50,000 lbs.
3 or more axle group	60,000 lbs.

3 axle single vehicle may have a maximum gross weight up to 70,000 lbs. based on the engineering study.

4 axle single vehicle may have a maximum gross weight up to 90,000 lbs. based on the engineering study.

5 axle single vehicle may have a maximum gross weight up to 94,500 lbs. based on the engineering study.

5 axle vehicle combination may have a maximum gross weight up to 112,000 lbs. based on the engineering study.

6 axle single vehicle may have a maximum gross weight up to 108,000 lbs. based on the engineering study.

6 axle vehicle combination may have a maximum gross weight up to 120,000 lbs. based on the engineering study.

7 axle single vehicle may have a maximum gross weight up to 122,000 lbs. based on the engineering study.

7 axle vehicle combination may have a maximum gross weight up to 132,000 lbs. based on the engineering study.

7 or more axle vehicle combination with a gross weight exceeding 132,000 lbs. requires the engineering study.
- (2) The maximum permit weight allowed for self propelled off highway construction equipment with low pressure/flotation tires is:

Single axle	37,000 pounds
Tandem axle	50,000 pounds

2 axle single vehicle may have a maximum gross weight up to 70,000 lbs. based on the engineering study.

3 axle single vehicle may have a maximum gross weight up to 80,000 lbs. based on the engineering study.

4 axle single vehicle may have a maximum gross weight up to 90,000 lbs. based on the engineering study.

- (3) A vehicle combination consisting of a power unit and trailer hauling a sealed ship container may qualify for a specific route overweight permit not to exceed 94,500 lbs. provided the vehicle:
 - (A) Is going to or from a designated seaport (to include in state and out of state) and has been or shall be transported by marine shipment;
 - (B) Is licensed for the maximum allowable weight for a 51' extreme wheelbase measurement specified in G.S. 20-118;
 - (C) Does not exceed maximum dimensions of width, height and length specified in Chapter 20 of the Motor Vehicle Law;
 - (D) Is a vehicle combination with at least five axles;
 - (E) Has proper documentation (shippers bill of lading or trucking bill of lading) of sealed commodity being transported available for law enforcement officer inspection.
- (f) Overlength permits shall be limited as follows:
 - (1) Single trip permits are limited to 105 feet inclusive of the towing vehicle. Approval may be given by the Central Permit Office for permitted loads in excess of 105 feet after review of geographic route of travel, consideration of local construction projects and other dimensions of the load. Mobile/modular home units shall not exceed a length of 80 feet inclusive of a 4 foot trailer tongue. Total length inclusive of the towing vehicle is 105 feet.
 - (2) Annual (blanket) permits shall not be issued for lengths to exceed 75 feet. Mobile/modular home permits may be issued for a length not to exceed 105 feet.
 - (3) Front overhang may not exceed the length of 3' specified in Chapter 20 unless if transported otherwise would create a safety hazard. If the front overhang exceeds 3', an overlength permit may be issued.
- (g) An Overheight Permit Application for heights in excess of 14' must be submitted in writing to the Central Permit Office at least two working days prior to the anticipated date of movement. The issuance of the permit does not imply nor guarantee the clearance for the permitted load and all vertical clearances shall be checked by the permittee prior to movement underneath.
- (h) The move is to be made between sunrise and sunset Monday through Saturday with no move to be made on Sunday. Exception: A 16' wide mobile/modular home unit with a maximum three inch gutter edge is restricted to travel from 9:00 a.m. to 2:30 p.m. Monday through Saturday. A 16' wide unit is authorized to continue operation after 2:30 p.m., but not beyond sunset, when traveling on an approved route as determined by an engineering study and the unit is being exported out-of-state. Additional time restrictions may be set by the issuing office if it is in the best interest for safety or to expedite flow of traffic. No movement is permitted for a vehicle/vehicle combination after noon on the weekday preceding the six holidays of New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day and no movement is permitted until noon on the weekday following a holiday. If the observed holiday falls on the weekend, travel is restricted from 12:00 noon on the preceding Friday through 12:00 noon on the following Monday. Continuous travel (24 hr/7 day/365 days a year) is authorized for any vehicle/vehicle combination up to but not to exceed a permitted gross weight of 112,000 lbs. provided the permitted vehicle has no other over legal dimension of width, height or length included in the permitted move. Exception: self-propelled equipment may be authorized for continuous travel with overhang (front or rear or both) not to exceed a total of 10 feet provided overhang is marked with high intensity glass bead retro-reflective sheeting tape measuring 2" by 12" to be displayed on both sides and the end of the extension and on each side of the self-propelled vehicle 24" from the road surface at nearest feasible center point between the steer and drive axles. Any rear overhang must display a temporarily mounted brake light and a flashing amber light, 8" in diameter with a minimum candlepower of 800 watts. Permitted vehicles owned or leased by the same company or permitted vehicles originating at the same location shall travel at a distance of not less than two miles apart. Convoy travel is not authorized except as directed by authorized law enforcement escort.
 - (i) The speed of permitted moves shall be that which is reasonable and prudent for the load, considering weight and bulk, under conditions existing at the time; however, the maximum speed shall not exceed the posted speed limit. A towing unit and mobile/modular home combination shall not exceed a maximum speed of 60 miles per hour. The driver of the permitted vehicle shall avoid creating traffic congestion by periodically relinquishing the traffic way to allow the passage of following vehicles when a build up of traffic occurs.
 - (j) Additional safety measures are as follows:
 - (1) A yellow banner measuring a total length of 7' x 18" high bearing the legend "Oversize Load" in 10" black letters 1.5 inches wide brush stroke shall be displayed in one or two pieces totaling the required length on the front and rear bumpers of a permitted vehicle/vehicle combination with a width of 10' or greater. A towing unit mobile/modular home combination shall display banners of the size specified bearing the legend "Oversize ----ft. Load" identifying the nominal width of the unit in transport. Escort vehicles shall display banners as previously specified with the exception of length to extend the entire width of the bumpers;
 - (2) Red or orange flags measuring 18" square shall be displayed on all sides at the widest point of load for all loads in excess of 8' 6" wide but the flags shall be so mounted as to not increase the overall width of the load;

- (3) All permitted vehicles/vehicle combinations shall be equipped with tires of the size specified and the required number of axles equipped with operable brakes in good working condition as provided in North Carolina Statutes and Motor Carrier and Housing and Urban Development (HUD) regulations.
- (4) Rear view mirrors and other safety devices on towing units attached for movement of overwidth loads shall be removed or retracted to conform with legal width when unit is not towing/hauling such vehicle or load;
- (5) Flashing amber lights shall be used as determined by the issuing permit office.

(k) The object to be transported shall not be loaded or parked, day or night, on the highway right of way without specific permission from the office issuing the permit after confirmation of an emergency condition.

(l) No move shall be made when weather conditions render visibility less than 500 feet for a person or vehicle. Moves shall not be made when highway is covered with snow or ice or at any time travel conditions are considered unsafe by the Division of Highways, State Highway Patrol or other Law Enforcement Officers having jurisdiction. Movement of a mobile/modular unit exceeding a width of 10' shall be prohibited when wind velocities exceed 25 miles per hour in gusts.

(m) All obstructions, including traffic signals, signs and utility lines shall be removed immediately prior to and replaced immediately after the move at the expense of the mover, provided arrangements for and approval from the owner is obtained. In no event are trees, shrubs, or official signs to be cut, trimmed or removed without personal approval from the Division of Highways District Engineer having jurisdiction over the area involved. In determining whether to grant approval, the district engineer shall consider the species, age and appearance of the tree or shrub in question and its contribution to the aesthetics of the immediate area.

(n) The Department of Transportation may require escort vehicles to accompany oversize or overweight loads. The weight, width of load, width of pavement, height, length of combination, length of overhang, maximum speed of vehicle, geographical route of travel, weather conditions and restricted time of travel shall be considered to determine escort requirements.

History Note: Authority G.S. 20-119; 136-18(5); Board of Transportation Minutes for February 16, 1977 and November 10, 1978;

Eff. July 1, 1978;

Amended Eff. October 1, 1994; December 29, 1993; October 1, 1991; October 1, 1990;

Temporary Amendment Eff. January 10, 2002; December 31, 2000; October 1, 2000;

Amended Eff. April 1, 2009; August 1, 2002.

19A NCAC 02D .0633 DENIAL: REVOCATION: REFUSAL TO RENEW: APPEAL: INVALIDATION

(a) An oversize or overweight permit may be revoked and considered void by the State Highway Administrator or his designee upon inspection and written documentation that the permittee violated the terms and conditions of the permit, or state and local laws and ordinances regulating the operation of oversize and overweight vehicles. A permit may also be revoked or considered void if information on the permit application is misrepresented, if the permit is obtained fraudulently, if the permit is altered, or if the permit is used in an unauthorized manner. Permits may be revoked or considered void by the State Highway Administrator or his designee if the vehicle or vehicle combination is found by a law enforcement officer to be operating in violation of the authorized route of travel, time of movement, escort requirements, axle weights, number of axles, or any other special conditions of the permit that may damage North Carolina highway infrastructure or create unsafe travel conditions for the motoring public. A permit that is determined by the State Highway Administrator or his designee to be revoked or void must be surrendered without consideration for refund of fees to the law enforcement officer for delivery to the State Highway Administrator or his designee.

(b) No permit application shall be denied or renewal refused or an issued permit revoked or considered void until a verbal or written notice of the denial of permit request or revocation of the issued permit has been furnished to the permittee. The permittee may appeal in writing to the State Highway Administrator or his designee within 10 days of receipt of a verbal or written notice of such denial or revocation. The State Highway Administrator or his designee shall send a written notice by certified mail, return receipt requested, not less than 10 days prior to the date of the hearing. The State Highway Administrator or his designee shall provide a written decision to the permittee within 10 days from the date of the hearing.

(c) A permittee who has had their permit privileges suspended or revoked by the State Highway Administrator or his designee may, within 15 days following notification of the adverse action, make written appeal to the Secretary of Transportation for review of the suspension or revocation. The Secretary may affirm or set aside the suspension or revocation based on a review of the written appeal, the suspension or revocation decision, as well as any available documents, exhibits or other evidence bearing on the appeal. The individual appealing will be advised of the final disposition of the action within 21 days following receipt of the appeal.

(d) An oversize or overweight permit application may be denied for a period of up to six months upon written documentation that the applicant operated in violation of any of the rules contained in this Section, or any state and local law or any rule or ordinance regulating the operation of oversize or overweight vehicles. Repeated violations may result in a permanent denial of the right to use the N.C. State Highway System of roads for transportation of oversize or overweight loads or vehicles.

History Note: Authority G.S. 20-119; 20-360; 20-361; 20-367; 20-369; 20-371; 136-18(5); 143B-346; 143B-350(f); Eff. July 1, 1978;

Amended Eff. November 1, 1993; October 1, 1991; April 1, 1984; April 11, 1980;

Filed as a Temporary Rule Eff. October 1, 2000;

Amended Eff. April 1, 2009; August 1, 2002.

**19A NCAC 02D .0644 OVERSIZE-OVERWEIGHT
LOAD ESCORT VEHICLE OPERATOR
CERTIFICATION PROGRAM**

(a) The Secretary of Transportation or his designee shall administer an Oversize-Overweight Load Escort Vehicle Operator Certification Program as required by G.S. 20-119.

(b) The escort vehicle operator certification program shall include the following:

- (1) Instruction on safe and effective escort skills.
- (2) Examination that documents course comprehension.
- (3) Recognition of escort vehicle operator certification.
- (4) Recognition of escort vehicle operator certification from other states which have certification programs for operators with out-of-state driver's license.

(c) The department shall issue a certificate which provides recognition of satisfactory completion of the instruction.

- (1) The certificate shall be effective for four years from issue date.
- (2) The certificate shall be reissued upon satisfactory completion of a current certification examination administered by North Carolina Department of Transportation (NCDOT) training providers.

(d) Any operator authorized to escort a permitted oversize-overweight load in North Carolina shall make application to NCDOT and be qualified as follows:

- (1) An escort certified by another state's approved program;
- (2) A North Carolina law enforcement officer; or
- (3) A person who:
 - (A) Meets one of the following requirements:
 - (i) Is at least 21 years of age; or
 - (ii) Is at least 18 years of age with a Class A commercial driver's license;
 - (B) Possesses a valid driver's license without restrictions other than for use of corrective lens and has demonstrated evidence of operating a motor vehicle safely which includes not operating in a reckless manner or driving while impaired in the previous 12 months. The driving record shall be documented by a certified copy of Division of Motor Vehicles (DMV) Driver's Record accompanying the application;
 - (C) Possesses and provides with application documentation of completion of a defensive driving

course approved by the National Safety Council or an equivalent course; and

- (D) Has successfully completed the eight classroom-hours North Carolina Department of Transportation Oversize-Overweight Load Escort Vehicle Operator Certification Program offered by the North Carolina Community College System with a certification examination score of at least 75% correct and has received escort certification by the Department.

(e) Certification shall be revoked during its effective period for the following:

- (1) Failure to maintain a valid driver's license without restrictions other than for corrective lens; or
- (2) Failure to operate a motor vehicle safely. Conviction of operating in a reckless manner or driving while impaired shall constitute prima facie evidence of not operating a motor vehicle in a safe manner; or
- (3) Evidence of performing the duties of an escort driver in a manner with the potential to cause an accident, personal injury, or damage to property.

(f) If certification is revoked under this Section, subsequent certification as an Escort Vehicle Operator shall require reapplication, satisfaction of program prerequisites, and requalification through the certification program.

(g) An individual who has had his or her certificate revoked may, within 15 days following notification of the adverse action, make written appeal to the Secretary of Transportation for review of the revocation. The Secretary may affirm or set aside the revocation based on a review of the written appeal, the revocation decision, as well as any available documents, exhibits or other evidence bearing on the appeal. The individual appealing will be advised of the final disposition of the action within 21 days following receipt of the appeal.

(h) The Secretary of Transportation or his designee shall recognize certificates of other states whose programs meet the objectives of North Carolina's program for operators with out-of-state driver's license.

(i) Escort Vehicle Operator certification and a valid driver's license shall be available in the escort vehicle for inspection whenever the operator is performing the role of escort.

(j) Failure to conform to the escort requirements of this Rule shall result in penalties imposed in G.S. 20-119(d).

*History Note: Authority G.S. 20-119;
Temporary Adoption Eff. March 11, 2002;
Eff. April 1, 2003;
Amended Eff. April 1, 2009.*

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 32 – MEDICAL BOARD

21 NCAC 32K .0101 DEFINITIONS

The following definitions apply to this Subchapter:

- (1) "Board" or "NCMB" means the North Carolina Medical Board.
- (2) "Compliance Committee" means the committee which meets to coordinate with the NCMB in its oversight of licensees in the PHP. It includes members of the PHP Board of Directors, members of the NCMB, and a Physician Assistant who is on the PHP Board of Directors.
- (3) "Impairment" means the inability to practice medicine or perform acts, tasks and functions with skill and safety to patients by reasons of physical or mental illness or condition, including use of alcohol, drugs, chemicals or any other type of material.
- (4) "Licensee" means a person licensed by the NCMB.
- (5) "Medical Director" means the person employed by the Program to coordinate the activities of the Program.
- (6) "Participant" means a licensee of the NCMB who is permitted to participate and may receive services from PHP, and has executed a monitoring contract with PHP.
- (7) "Program" or "NCPHP" or "PHP" means the North Carolina Physicians Health Program established for promoting a coordinated and effective peer review process.

History Note: Authority G.S. 90-21.22;
Eff. August 1, 1988;
Amended Eff. April 1, 2009; May 1, 1989.

21 NCAC 32K .0102 AUTHORITY 21 NCAC 32K .0103 PEER REVIEW AGREEMENTS 21 NCAC 32K .0104 DUE PROCESS

History Note: Authority G.S. 90-21.22;
Eff. August 1, 1988;
Amended Eff. May 1, 1989;
Repealed Eff. April 1, 2009.

21 NCAC 32K .0201 RECEIPT AND USE OF INFORMATION OF POTENTIAL IMPAIRMENT

Information concerning potential impairments may be received by the Program through reports from any source. Upon receipt of information of a potential impairment, the Program shall conduct an assessment as soon as possible. This shall not create a physician-patient relationship. A physician assistant selected by the Medical Director shall be present during an assessment of

a physician assistant. The Program may conduct routine inquiries regarding potential impairments. Licensees with potential impairments may be required to submit to personal interviews before the Medical Director or a designee.

History Note: Authority G.S. 90-21.22;
Eff. August 1, 1988;
Amended Eff. April 1, 2009; May 1, 1989.

21 NCAC 32K .0202 ASSESSMENT AND REFERRAL
 When an initial assessment reveals that further assessment, treatment or monitoring is indicated, PHP shall advise the licensee and referral source of the findings and recommendations. The Program shall develop a treatment plan designed to ensure that the recipient is safe to practice.

History Note: Authority G.S. 90-21.22;
Eff. August 1, 1988;
Amended Eff. April 1, 2009; May 1, 1989.

21 NCAC 32K .0203 MONITORING TREATMENT SOURCES

The Program shall monitor the cost of treatment. Treatment sources receiving referrals from the Program also shall be monitored as to their ability to provide:

- (1) adequate medical and non-medical staffing;
- (2) appropriate treatment;
- (3) adequate facilities; and
- (4) appropriate post-treatment support.

History Note: Authority G.S. 90-21.22;
Eff. August 1, 1988;
Amended Eff. April 1, 2009.

21 NCAC 32K .0204 MONITORING REHABILITATION AND PERFORMANCE

(a) If a licensee is referred to the Program by the Board, and if the Program finds that treatment or monitoring are appropriate, the Program shall ask the licensee to sign a monitoring contract in order to become an active participant in the Program. If the licensee chooses not to sign a monitoring contract, the Program may refer the licensee to the Board for potential disciplinary action.

(b) If a licensee is self-referred to the Program, and if the Program finds that treatment or monitoring are appropriate, the Program shall ask the licensee to sign a monitoring contract in order to become a participant in the program.

(c) Participants shall be required to submit urine or other bodily specimens if requested by PHP.

(d) Participants may be required to submit to periodic personal interviews with the Medical Director or a designee.

(e) Treatment providers shall be required to submit reports regarding a licensee's rehabilitation and performance to the Program. Such reports shall be in accordance with state and federal laws. The Program shall maintain case records for each participant or licensee.

History Note: Authority G.S. 90-21.22;
Eff. August 1, 1988;

Amended Eff. April 1, 2009; May 1, 1989.

21 NCAC 32K .0205 MONITORING POST-TREATMENT SUPPORT

- (a) The Program may require post-treatment support. Post-treatment support may include family counseling, advocacy, after care support groups, self-help groups and other services and programs deemed appropriate to improve recoveries.
- (b) The Program shall monitor post-treatment support.

*History Note: Authority G.S. 90-21.22;
Eff. August 1, 1988;
Amended Eff. April 1, 2009; May 1, 1989.*

21 NCAC 32K .0206 REPORTS OF INDIVIDUAL CASES TO THE BOARD

Bimonthly, the Program shall submit a report to the Board on the status of all participants under monitoring contracts and all licensees being treated who have not signed monitoring contracts. The Program shall report immediately to the Board information about any licensee as required under G.S. 90-21.22(d).

*History Note: Authority G.S. 90-21.22;
Eff. August 1, 1988;
Amended Eff. April 1, 2009; May 1, 1989.*

21 NCAC 32K .0207 PERIODIC REPORTING OF STATISTICAL INFORMATION

Upon request by the Board, the Program shall provide statistical and demographic information concerning potential impairments, impairments, self-referrals, post-treatment support and other demographic and substantive information collected through Program operations.

*History Note: Authority G.S. 90-21.22;
Eff. August 1, 1988;
Amended Eff. April 1, 2009; May 1, 1989.*

- 21 NCAC 32Q .0101 DEFINITIONS**
- 21 NCAC 32Q .0102 AUTHORITY**
- 21 NCAC 32Q .0103 PEER REVIEW AGREEMENTS**
- 21 NCAC 32Q .0104 DUE PROCESS**

*History Note: Authority G.S. 90-21.22;
Eff. June 1, 1994;
Repealed Eff. April 1, 2009.*

21 NCAC 32Q .0201 RECEIPT AND USE OF INFORMATION OF SUSPECTED IMPAIRMENT

21 NCAC 32Q .0202 INTERVENTION AND REFERRAL

21 NCAC 32Q .0203 MONITORING TREATMENT

21 NCAC 32Q .0204 MONITORING REHABILITATION AND PERFORMANCE

21 NCAC 32Q .0205 MONITORING POST-TREATMENT SUPPORT

21 NCAC 32Q .0206 REPORTS OF INDIVIDUAL CASES TO THE BOARD

21 NCAC 32Q .0207 PERIODIC REPORTING OF STATISTICAL INFORMATION

*History Note: Authority G.S. 90-21.22;
Eff. June 1, 1994;
Repealed Eff. April 1, 2009.*

CHAPTER 36 – BOARD OF NURSING

21 NCAC 36 .0503 PREREQUISITES FOR INCORPORATION

The following requirements must be met in order to incorporate:

- (1) The incorporator, whether one or more, of a professional corporation shall be licensed to practice nursing in North Carolina as a registered nurse.
- (2) Before the filing of the articles of incorporation with the Secretary of State, the incorporators shall file, with the Board, the original articles of incorporation, plus a copy, together with a registration fee of fifty dollars (\$50.00).
- (3) The original articles of incorporation and the copy shall be accompanied by an application to the Board (Corp. Form 1) certified by all incorporators, setting forth the names, addresses, and certificate numbers of each shareholder of the corporation who will be practicing nursing for the corporation.
- (4) Included with the above shall be a statement that all such persons are licensed to practice nursing in North Carolina as registered nurses, and stating that the corporation will be conducted in compliance with the Professional Corporation Act and these Rules.
- (5) If the articles are changed in any manner before being filed with the Secretary of State, they shall be re-submitted to the Board and shall not be filed with the Secretary of State until approved by the Board.

*History Note: Authority G.S. 55B-4; 55B-10; 55B-12; 90-171.20(6);
Eff. March 1, 1991;
Amended Eff. April 1, 2009.*

TITLE 23 – DEPARTMENT OF COMMUNITY COLLEGES

23 NCAC 02D .0304 EXPENDITURES OF STATE FUNDS: ACCREDITATION EXPENSES & DUES

- (a) Accreditation expenses relative to Southern Association of Colleges and Schools may be paid from state funds within the institution's current allotment. These expenses shall be limited to payment of travel, subsistence, lodging, and honorarium

incurred by members of visiting committees, other bona fide representatives, and members of the staff of accrediting organizations. This Rule permits payment of only those expenses for which an institution is customarily invoiced by an accrediting organization following a visit.

(b) The institution may pay from state funds the required annual dues of the Southern Association of Colleges and Schools, and such institutional association membership dues as the board of trustees deems to benefit the institution. Regarding membership dues in the Southern Association, this Rule applies to annual dues of correspondents and candidates for membership, as well as accredited members.

(c) The institution may also pay from state funds the fees for accrediting individual programs offered by the institution in the following circumstances:

- (1) Where such an accreditation is an official prerequisite for graduates of such programs to be licensed, certified, or registered by legally designated professional or occupational boards or agencies that license, certify, or register in the State of North Carolina;
- (2) When the accrediting agency from which the accreditation is sought, is officially listed by the U.S. Department of Education or the Council on Higher Education Accreditation as a recognized accrediting agency or organization; or
- (3) When the accrediting agency is a member of the Association of Specialized and Professional Accreditors.

(d) Except as provided by this Rule, state funds may not be used to pay the accreditation costs of any other accrediting organizations or agencies.

History Note: Authority G.S. 115D-5; 115D-55; Eff. February 1, 1976; Amended Eff. April 1, 2009; August 1, 1983; August 17, 1981; September 30, 1977.

TITLE 25 – OFFICE OF STATE PERSONNEL

25 NCAC 01H .0632 APPLICANT INFORMATION AND APPLICATION

(a) Applicants applying for a state vacancy shall complete and submit a State Application Form (Form PD-107 or its equivalent) to the hiring authority. At the discretion of the agency, a resume may be accepted in lieu of an application in the initial stages of the screening process. Applicants selected for an interview shall complete and submit a State application (Form PD-107 or its equivalent) at the time of the interview.

(b) In completing an Application Form, persons subject to registration under the Military Selective Service Act (50 United States Code, Appx Section 453) shall certify compliance with such registration requirements to be eligible for State employment, as required by G.S. 143B-421.1. The knowing and willful failure of a subject person to certify compliance with this Act when submitting an application for consideration, or to

falsely certify compliance, may be grounds for dismissal from employment.

(c) Persons eligible for veteran's preference shall submit a DD Form 214, Certificate of Release or Discharge from Active Duty, with the application or resume. The agency shall verify eligibility for veterans' preference.

History Note: Authority G.S. 96-29; 126-4(4); 126-4(6); Eff. February 1, 2007; Amended Eff. April 1, 2009.

TITLE 26 – OFFICE OF ADMINISTRATIVE HEARINGS

26 NCAC 01 .0103 COST TO PUBLIC

(a) Copies of any public documents filed in the Office of Administrative Hearings are available at the "actual cost" as defined in G.S. 132-6.2(b) for making the copy and mailing cost if applicable. OAH shall provide its "actual cost" on the OAH website.

(b) Certified copies of any public document filed in the Office of Administrative Hearings are available at a cost of one dollar (\$1.00) per certification in addition to any other applicable cost for the public document. Electronic copy certification is not available.

(c) Transcripts are available of contested case hearings. Procedures for requesting and costs of transcripts are in 26 NCAC 03 .0123.

(d) Copies of recordings are available in the original recording format and media only.

(e) Video conferencing fees including cancellation fees shall be paid by the requesting party. The video conferencing fees are set at the rates established by the Office of Information Technology Services (ITS).

(f) North Carolina sales tax shall be added if applicable.

(g) There is no charge to the requesting party unless the total charge is equal to or exceeds three dollars (\$3.00).

History Note: Authority G.S. 132-6.2; 150B-19; 150B-21.25; 150B-37; Eff. August 1, 1986; Amended Eff. April 1, 1990; January 1, 1989; Recodified from 26 NCAC 1 .0001 Eff. January 1, 1991; Amended Eff. April 1, 2009; May 1, 2001; August 1, 2000; February 1, 1994; August 2, 1993.

26 NCAC 02C .0114 AGENCY FINAL COPY

(a) OAH shall send electronically a final draft of an adopted emergency, temporary or permanent rule to an agency's rule-making coordinator after the rule is filed with OAH.

(b) The agency shall notify OAH of any error made in the draft within five business days of the date OAH sent the draft.

(c) If OAH receives written notification from the agency of any error made by OAH within the five business days, OAH shall correct the error.

(d) If OAH receives written notification from the agency of any error in the content of the rule not made by OAH, OAH shall return the rule to the Commission.

History Note: Authority G.S. 150B-21.5; 150B-21.20;
Temporary Adoption Eff. July 1, 2003;
Eff. April 1, 2004;
Amended Eff. April 1, 2009.

26 NCAC 03 .0123 OFFICIAL RECORD

- (a) The official record of a contested case shall be available for public inspection upon request. An administrative law judge may, consistent with law, order part or all of an official record sealed.
- (b) The official record shall be prepared in accordance with G.S. 150B-37(a).
- (c) Contested case hearings shall be recorded either by a four-track recording system or a court reporter using stenomask or stenotype.
- (d) Transcript costs incurred shall be divided equally among the party(ies) requesting a transcript.
- (e) Any other costs incurred when using a court reporter shall be divided equally among the requesting party(ies).
- (f) A 24 hour cancellation notice is required in all cases. The party(ies) responsible for the cancellation are liable for any cancellation fees.
- (g) Transcripts of proceedings during which oral evidence is presented shall be made only upon request of a party. OAH

shall contract with an independent contractor to provide transcript services. Transcript requests must be made to the independent contractor. The name and phone number of the independent contractor may be obtained by calling the Office of Administrative Hearings. Transcript costs shall be provided to the requesting party by the independent contractor. An attorney requesting a transcript on behalf of a party shall be a guarantor of payment of the cost. The independent contractor may require an advance security deposit to cover the prospective cost.

(h) Copies of recordings are available upon written request at a cost set out in 26 NCAC 01 .0103.

(i) Copies of OAH Hearings recordings or non-OAH certified transcripts therefrom are not part of the official record.

Note: Rule 5.3(B) of the Rules of Professional Conduct permits an attorney to advance or guarantee expenses of litigation provided the client remains ultimately liable for such expenses.

History Note: Authority G.S. 150B-37;
Eff. August 1, 1986;
Amended Eff. August 1, 1998; April 1, 1990; February 1, 1989;
November 1, 1987;
September 1, 1986;
Recodified from Rule .0122 Eff. August 1, 2000;
Amended Eff. April 1, 2009.

This Section contains information for the meeting of the Rules Review Commission on Thursday, May 21, 2009 9:00 a.m. at 1711 New Hope Church Road, RRC Commission 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 919-431-3100. Anyone wishing to address the Commission should notify the RRC staff and the agency no later than 5:00 p.m. of the 2nd business day before the meeting. Please refer to RRC rules codified in 26 NCAC 05.

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
Clarence E. Horton, Jr.
Daniel F. McLawhorn
Curtis Venable

COMMISSION COUNSEL

Joe DeLuca (919)431-3081
Bobby Bryan (919)431-3079

RULES REVIEW COMMISSION MEETING DATES

May 21, 2009 June 18, 2009
July 16, 2009 August 20, 2009

AGENDA**RULES REVIEW COMMISSION****Thursday, May 21, 2009, 9:00 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. Department of Administration – 01 NCAC 44A .0202, .0204, .0301 (Bryan)
 - B. Commission for Mental Health – 10A NCAC 28F .0101 (Bryan)
 - C. Private Protective Services Board – 12 NCAC 07D .0402, .0501 (Bryan)
 - D. Criminal Justice Education and Training Standards Commission – 12 NCAC 09B .0301 (Bryan)
 - E. Environmental Management Commission – 15A NCAC 02D .1205, .1212 (DeLuca)
 - F. Wildlife Resources Commission – 15A NCAC 10B .0105 (DeLuca)
 - G. Wildlife Resources Commission – 15A NCAC 10C .0211, .0216 (DeLuca)
 - H. Wildlife Resources Commission – 15A NCAC 10H .0102 (DeLuca)
 - I. Licensing Board for General Contractors – 21 NCAC 12 .0202 (DeLuca)
 - J. Board of Cosmetic Art Examiners – 21 NCAC 14H .0105 (DeLuca)
 - K. Real Estate Commission – 21 NCAC 58C .0105, .0218, .0608 (Bryan)
 - L. Board of Community Colleges – 23 NCAC 02E .0101, .0401 (Bryan)
- IV. Review of Log of Permanent Rule filings for rules filed between March 23, 2009 and April 20, 2009 (attached)
- V. Review of Temporary Rules

VI. Commission Business

- Next meeting: June 18, 2009
-

**Commission Review
Log of Permanent Rule Filings
March 23, 2009 through April 20, 2009**

MENTAL HEALTH, COMMISSION FOR

The rules in Chapter 26 are from the Mental Health, Developmental Disabilities and Substance Abuse Services Commission.

The rules in Subchapter 26F concern controlled substances including schedules of controlled substances (.0100).

<u>Schedule II</u>	10A	NCAC	26F	.0103
Amend/*				
<u>Schedule III</u>	10A	NCAC	26F	.0104
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>Reporting Requirements for the Discharge of Firearms</u>	12	NCAC	07D	.0112
Amend/**				
<u>Fees for Licenses and Trainee Permits</u>	12	NCAC	07D	.0202
Amend/*				
<u>Training Requirements for Unarmed Security Guards</u>	12	NCAC	07D	.0707
Amend/*				
<u>Renewal of Armed Security Guard Firearm Registration Permit</u>	12	NCAC	07D	.0806
Amend/**				
<u>Training Requirements for Armed Security Guards</u>	12	NCAC	07D	.0807
Amend/*				
<u>Renewal of Firearms Trainer Certificate</u>	12	NCAC	07D	.0904
Amend/*				

DENTAL EXAMINERS, BOARD OF

The rules in Chapter 16 cover the licensing of dentists and dental hygienists.

The rules in Subchapter 16B concern licensure examination for dentists including examination required (.0100); qualifications (.0200); application (.0300); Board conducted examinations (.0400); licensure by credentials (.0500); limited volunteer dental license (.0600); instructor's license (.0700); and temporary volunteer dental license (.0800).

<u>Board Approved Examinations</u>	21	NCAC	16B	.0303
Amend/*				

The rules in Chapter 16 cover the licensing of dentists and dental hygienists. The rules in Subchapter 16C are dental hygienist licensure rules including general provision (.0100); qualifications (.0200); application and examination (.0300); and licensure by credentials (.0400).

<u>Board Approved Examinations</u>	21	NCAC	16C	.0303
Amend/*				

BUILDING CODE COUNCIL

<u>NC Building Code - Entrapment Avoidance</u> Amend/*	3109.5
<u>NC Fire/Building Code - Group A-2 Sprinklers</u> Amend/*	903.2.1.2
<u>NC Plumbing Code - Rain Water Recycling Systems</u> Amend/*	Appendix C-1
<u>NC Plumbing Code - Connections to the Sanitary Drainage S...</u> Amend/*	301.3
<u>NC Plumbing Code - Strainers</u> Amend/*	1105.1
<u>NC Residential Code - Entrapment Avoidance</u> Amend/*	AG106
<u>NC Residential Code - Sunroom Addition</u> Amend/*	R202
<u>NC Residential Code - Under Stair Protection</u> Amend/*	R311.2.2
<u>NC Residential Code - Special Stairways</u> Amend/*	R311.5.8
<u>NC Residential Code - Retaining Walls</u> Amend/*	R404.5
<u>NC Residential Code - Concrete and Masonry Foundation Dam...</u> Amend/*	R406.1
<u>NC Residential Code - Thermally Isolated Sunroom Addition...</u> Amend/*	N1102.2.10
<u>NC Residential Code - Thermally Isolated Sunroom Addition...</u> Amend/*	N1102.3.5

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) 431-3000. 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

Beecher R. Gray	Randall May
Selina Brooks	A. B. Elkins II
Melissa Owens Lassiter	Joe Webster
Don Overby	

<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>				
Partnership T/A C Js Lounge v. ABC Commission	07 ABC 0201	Overby	03/11/08	
Michael Daniel Clair v. T/A Par 3 Bistro v. ABC Commission	07 ABC 1289	Lassiter	10/07/08	
ABC Commission v. Rainbow Enterprises, Inc T/A Club N Motion	07 ABC 1532	Gray	06/20/08	23:05 NCR 489
Benita, Inc., T/A Pantana Bob's v. ABC Commission	07 ABC 1584	Overby	04/21/08	23:01 NCR 141
Original Grad, Inc/ T/A Graduate Food and Pub	07 ABC 1648	Joseph	02/25/08	
N.C. Alcoholic Beverage Control Commission v. Feest Inc. T/A Spankys Sports Bar and Grill	07 ABC 2135	Gray	09/12/08	
Don Mariachi Ventures, T/A EL Mariachi Gordo	07 ABC 2155	Webster	11/05/08	
N.C. Alcoholic Beverage Control Commission v. Jenny S. Chanthalacksa T/A JB Food Mart	08 ABC 0097	May	09/03/08	
N.C. Alcoholic Beverage Control Commission v. Jenny S. Chanthalacksa T/A JB Food Mart	08 ABC 0351	May	09/03/08	
AM Enterprises of Fayetteville, Inc., T/A Izzy's Sports Bar v. ABC Commission	08 ABC 0371	Lassiter	06/13/08	
Bhaves Corporation, T/A K&B Foomart v. ABC Commission	08 ABC 0508	Overby	05/19/08	
Downtown Event Center, Inc. T/A Downtown Event Center v. ABC Commission	08 ABC 0937	May	09/16/08	
<u>CRIME VICTIMS COMPENSATION</u>				
Patricia Ginyard v. Crime Victim Compensation Commission	06 CPS 1720	Gray	05/27/08	
Carrie R. McDougal v. Victims Compensation Services Division	07 CPS 1970	Elkins	05/23/08	
Hillary Holt v. Crime Victims Compensation Commission	07 CPS 2292	Brooks	09/18/08	
Taureka S Johnson v. NC Crime Victims Compensation Commission	08 CPS 0402	Morrison	08/08/08	
Rich's Towing and Service Inc. v. NC Department of Crime Control And Public Safety, Division of State Highway Patrol, Motor Carrier Enforcement Section	08 CPS 0698	May	08/13/08	
Steel Supply and Erection Co., Department of Crime Control and Public Safety, Division of State Highway Patrol and Department of Revenue	08 CPS 0777	Overby	05/29/08	
ATS Specialized, Inc, v. Dept. of Crime Control and Public Safety, Div. Of State Highway Patrol, Motor Carrier Enforcement Section	08 CPS 0864	May	09/11/08	
Willie Trucking, Inc d/b/a Allstate Transport Co v. Dept. of Crime Control & Public Safety, Division of State Highway Patrol, Motor Carrier Enforcement Section	08 CPS 0897	May	09/11/08	
Randy S. Griffin v. NC Crime Victims Compensation Commission	08 CPS 0995	May	09/11/08	
Kenneth Lee Moore v. Dept. of Crime Control and Public Safety	08 CPS 1093	Webster	10/27/08	
Interstate Crushing Inc. v. NC Dept. of Crime Control and Public Safety, Division of State Highway Patrol, Motor Carrier Enforcement Section	08 CPS 1086	Overby	09/29/08	

CONTESTED CASE DECISIONS

Sterett Equipment Company LLC v. N.C. Dept. of Crime Control And Public Safety, Division of State Highway Patrol, Motor Carrier Enforcement Section	08 CPS 1206	Overby	09/29/08
Bertrand E. Dupuis d/b/a New England Heavy Hauling v. N.C. Department of Crime Control and Public Safety, Division of State Highway Patrol, Motor Carrier Enforcement Section	08 CPS 1207	Overby	09/29/08
Bulldog Erectors, Inc v. N.C. Department of Crime Control and Public Safety, Division of State Highway Patrol, Motor Carrier Enforcement Section	08 CPS 1208	Overby	09/29/08
Continental Machinery Movers Inc. v. N.C. Department of Crime Control and Public Safety, Division of State Highway Patrol, Motor Carrier Enforcement Section	08 CPS 1209	Overby	09/29/08
Michael Alan Moore v. Crime Victims Compensation Commission	08 CPS 1478	Lassiter	09/08/08
TNT of York County, Inc., Tony McMillan v. State Highway Patrol Motor Carrier Enforcement	08 CPS 1508	Joseph	12/11/08
SOOF Trucking, Ray Charles Solomon v. Secretary of Crime Control And Public Safety	08 CPS 1526	Overby	09/09/08
Dickinson Hauling and Grading., Inc, Tony E. Dickinson, 3134016-9 v. Dept. of Crime Control and Public Safety, Division of State Highway Patrol	08 CPS 1800	Brooks	12/15/08
Dickinson Hauling and Grading., Inc, Tony E. Dickinson, 3134016-9 v. Dept. of Crime Control and Public Safety, Division of State Highway Patrol	08 CPS 1801	Brooks	12/15/08
Dickinson Hauling and Grading., Inc, Tony E. Dickinson, 3134016-9 v. Dept. of Crime Control and Public Safety, Division of State Highway Patrol	08 CPS 1802	Brooks	12/15/08
Kayonna Goodwin Pollard c/o Chad Lopez Pollard v. Crime Control & Victim Compensation Services	08 CPS 1850	Gray	10/24/08
John D. Lane v. Diversified Drilling Corp v. Office of Admin Svc, Sec. of Crime Control and Public Safety	08 CPS 2049	Joseph	11/06/08
Richard Pratt v. Dept. of Crime Control and Public Safety	08 CPS 2417	Lassiter	01/15/08
Robert D. Reinhold v. Dept. of Transportation, Division of Motor Vehicles	08 CPS 2501	Gray	12/10/08

A list of Child Support Decisions may be obtained by accessing the OAH Website: <http://www.ncoah.com/hearings/decisions/>

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Gloria McNair Jean's Jewels v. Div. of Child Development, DHHS	06 DHR 0633	Lassiter	07/11/08
Gloria McNair Jean's Jewels v. Div. of Child Development, DHHS	06 DHR 1350	Lassiter	07/11/08
Character Builders, Inc., Clavon Leonard v. DMA, Developmental Disabilities and Substance Abuse Services	07 DHR 0124	Elkins	08/07/08
Character Builders, Inc., Clavon Leonard v. DMA, Developmental Disabilities and Substance Abuse Services	07 DHR 0125	Elkins	08/07/08
Arthur Burch and Margaret and Burch v. Department of Health and Human Services	07 DHR 0242	Brooks	04/30/08
The "M" Company LLC, v. DHHS, DMA, Program Integrity	07 DHR 0429	Webster	05/29/08
Brenda F. Ervin v. DHHS, DFS, Health Care Personnel Registry	07 DHR 0493	Gray	12/08/08
Judy E. Pettus v. Office of Chief Medical Examiner, Thomas B. Clark, III, Md, Pathologist	07 DHR 0535	Webster	05/05/08
Clorie Bivens Owen on Behalf of Williams Baxter Bivens – Estate of Leroy A. Bivens v. DHHS	07 DHR 0701	Elkins	12/08/08
Alterra Clare Bridge of Asheville v. DHHS, DFS, Adult Care Licensure Section	07 DHR 0914	Gray	06/06/08
Shirley Brooks Dial v. Health Care Personnel Registry	07 DHR 0931	Webster	02/27/08
Midtown Food Mart #2, Kerab Giebrehiwot, Mehreteab Wooldeghebibel and Fesseha Zeru	07 DHR 1044	Webster	04/25/08
Midtown Food Mart III, Chenet Haileslassi and Fesseha Zeru v. DHHS	07 DHR 1045	Webster	04/28/08
Kelly Schofield MD, Clinical Director, Youth Quest, Inc. v. DHHS, DFS Mental Health Licensure and Certification	07 DHR 1064	Joseph	10/17/08
Carolyn E. Reed v. DHHS, Division of Social Services Program Integrity AFDC/Work First	07 DHR 1214	Webster	07/21/08
Mrs. Elizabeth Futrell v. Value Options	07 DHR 1331	Lassiter	06/09/08
Cornell Jones v. DHHS, Division of Health Services Regulation	07 DHR 1399	Joseph	04/22/08
Dianetta Foye v. Division of Child Development, DHHS, Services	07 DHR 1440	Joseph	05/07/08
Rufus Patrick Devers v. DHHS, Division of Health Service Regulation Health Care Personnel Registry	07 DHR 1442	Joseph	05/29/08
Ray Dukes, Bright Future Learning Center v. DHHS, Division of Public Health, Child and Adult Care Food Program	07 DHR 1473	Joseph	04/08/08
William Manning c/o Thyllis Smith, A Touch From the Heart Staff v. NC Department of Health and Human Services, Division of	07 DHR 1060	Webster	10/14/08

CONTESTED CASE DECISIONS

Medical Assistance				
Hospice of the Piedmont, Inc., v. DHHS, Division of Health Service Regulation, Licensure and Certification Section and DHHS, Division of Health Service Regulation, CON Section	07 DHR 1617	Elkins	05/21/08	
Janice Addison v. Value Options	07 DHR 1618	Webster	05/16/08	
Donna Hicks Crocker v. DHHS/DMA	07 DHR 1629	Joseph	08/01/08	
Rebecca Dehart v. DHHS, Division of Health Service Regulation Health Care Personnel Registry Section	07 DHR 1650	Elkins	05/21/08	
Ellen Brown v. DHHS, Division of Health Service Regulation, Health Care Personnel Registry Section	07 DHR 1651	Elkins	05/21/08	
Beth Suzanne Garson v. DHHS, Division of Social Services, Regulatory and Licensing Services	07 DHR 1718	Joseph	01/09/09	
Life Solutions of Lumberton, NC, LLC d/b/a Timberwood and Bridgecrest	07 DHR 1758	Joseph	12/04/08	
Life Solutions of Lumberton, NC, LLC d/b/a Timberwood and Bridgecrest	07 DHR 1759	Joseph	12/04/08	
Joann Lennon v. Value Options Medicaid	07 DHR 1770	Webster	05/16/08	
Angeline Currie v. DHHS	07 DHR 1986	Elkins	06/04/08	
Tameala Jones v. OAH	07 DHR 1993	Webster	05/16/08	
Dianetta Foye v. Division of Child Development, DHHS, Services	07 DHR 2020	Joseph	05/07/08	
Lashauna Reid v. CCMHC (PFCS-Service Provider)	07 DHR 2039	Elkins	08/05/08	
Presbyterian Diagnostic Center at Cabarrus LLC v. N.C. Department of Health and Human Services, Division of Health Service Regulation and Southern Piedmont Imaging, LLC	07 DHR 2043	Lassiter	08/18/08	23:16 NCR 1600
Southern Piedmont Imaging, LLC v. N.C. Department of Health and Human Services, Division of Health Service Regulation and Presbyterian Diagnostic Center at Cabarrus, LLC	07 DHR 2045	Lassiter	08/18/08	23:16 NCR 1600
Family & Youth Services, Inc. Angela Ford, President v. DHHS, Division of Medical Assistance Provider Services	07 DHR 2057	Webster	05/16/08	
Yolanda Jones v. DHHS, Adult Licensure Section	07 DHR 2081	Webster	05/16/08	
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Gary Carlton, Sr., v. DHHS	07 DHR 2099	Brooks	07/10/08	
Alexis Ford/Linda M McLaughlin v. DHHS	07 DHR 2111	Elkins	06/04/08	
Roger Houston v. DHHS, Div. of Health Service Regulation	07 DHR 2176	Gray	07/08/08	
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McLeod Addictive Disease Center, Inc v. Div. of Health Service Regulation	07 DHR 2202	Brooks	12/11/08	
Kevin McMillian/Linda M McLaughlin v. DHHS	07 DHR 2239	Elkins	06/04/08	
Maurisha Bethea/Linda McLaughlin v. DHHS	07 DHR 2240	Elkins	06/04/08	
Manu Gaur v. DHHS	07 DHR 2275	Lassiter	10/01/08	23:16 NCR 1654
Gladys Cherry v. NC Department of Health and Human Services	07 DHR 2288	Webster	10/10/08	
Double Oaks Nursery, Inc., and T. Timothy Turner as Board Chairman v. DHHS, Div. of Public Health, Child and Adult Care Food Program	07 DHR 2323	Joseph	01/08/09	
Anna Fields v. Value Options	07 DHR 2326	Joseph	06/02/08	
Larry Hopper v. DHHS	07 DHR 2356	May	06/20/08	
Shelby Davis v. DHHS	08 DHR 0014	Lassiter	05/09/08	
Hellon P. Johnson v. DHHS	08 DHR 0020	May	07/03/08	
Lenora King v. DHHS	08 DHR 0034	Joseph	05/01/08	
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Wilma Jackson v. Value Options	08 DHR 0082	Joseph	06/02/08	
Carmelita Wiggins v. Value Options	08 DHR 0198	Webster	05/16/08	
Blue Ridge Healthcare Surgery Center, Morganton LLC and Grace Hospital, Inc, v. DHHS, DHSR, CON Section v. Dr. Mushtaq Bukhari, Dr. Edwin Holler, Dr. Suneel Mohammed, Carolina Digestive Care, PLLC, and Gastroenterology Specialists	08 DHR 0204	Brooks	09/18/08	
Murphy's Outreach Community Developmental Services, Inc, d/b/a Outreach Home Health	08 DHR 0220	Joseph	07/22/08	
Lisa Helms v. DHHS	08 DHR 0255	Overby	06/17/08	
Pearlene Johnson Ivery v. DMA, Third Party Recovery (Medicaid)	08 DHR 0286	Brooks	07/07/08	
Darryl A. Edwards v. DHHS	08 DHR 0320	Gray	11/05/08	
Mamaue Aytech v. DHHS	08 DHR 0325	Elkins	05/23/08	
Brenda McGilvary v. DHHS, Division of Social Services	08 DHR 0384	Webster	08/05/08	
Fannie M. Wilson v. OAH	08 DHR 0393	Webster	06/17/08	
Angela D Seabrooks/The Jabez House LLC v. DHHS/Division of Mental Health, Developmental and Substance Abuse Services, The Guilford	08 DHR 0403	Joseph	06/09/08	
Angela D. Seabrooks/The Jabez House LLC v. NC Department of Health and Human Services, Division of Mental Health, Developmental Disabilities and Substance Abuse Services and The Guilford Center Center	08 DHR 0403	Joseph	09/03/08	
William McCray Pretty v. DHHS, Division of Facility Services	08 DHR 0411	Webster	06/12/08	
Focus Health Services, Inc. via Annette Johnson, Owner Operator v. North Carolina Department of Health and Human Services and	08 DHR 0442	Gray	06/12/08	

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Judith E. Torres v. DHHS, DHSR	08 DHR 0488	Morrison	10/07/08	
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Earline Ross (Quentin Galloway) v. DHHS (Medicaid)	08 DHR 0549	May	06/09/08	
Frances Milligan v. DHHS	08 DHR 0566	May	06/19/08	
Betty Williams v. DHHS	08 DHR 0570	Joseph	06/02/08	
Brandon McMahon v. DHHS	08 DHR 0572	Webster	11/14/08	
Susan Nelson v. Medicaid	08 DHR 0573	May	06/09/08	
Brent Morris Per Dedrea Moors (Mother) v. Priscilla Valet, DMA	08 DHR 0585	May	06/09/08	
Brenda M. Finney v. Medicaid	08 DHR 0586	Joseph	06/09/08	
Allred & Allred Day Care Center, Inc. v. N.C. Department of Health and Human Services, Division of Public Health, Child And Adult Care Food Program	08 DHR 0617	May	06/04/08	
Lakeva Robinson v. DMA/Value Options	08 DHR 0625	May	05/28/08	
Ronald Lee Young v. N.C. Department of Health and Human Services	08 DHR 0631	Joseph	07/21/08	
Steven Chestnut v. DHHS, Health Care Personnel Registry	08 DHR 0652	May	11/19/08	
Tina Miller v. OAH, DHHS	08 DHR 0661	Lassiter	06/10/08	
Doris Harris v. Division of Child Development	08 DHR 0710	May	07/02/08	
Michelle D. Mills v. DHHS, Division of Health Service Regulation	08 DHR 0712	Joseph	06/09/08	
Trena Ellis v. DHHS	08 DHR 0730	Lassiter	07/03/08	
Faith Davis v. Pride in North Carolina Value Options	08 DHR 0746	Overby	05/28/08	
Evonne Neal v. Medicaid	08 DHR 0748	May	06/20/08	
Maria Dejesus Ruiz La Vaca Ramona v. N.C. Department of Health and Human Services	08 DHR 0760	Overby	07/24/08	
Ray C. Price v. DHHS, Office of the Controller	08 DHR 0767	Brooks	07/07/08	
Miland Hanna, Lamia Hanna and Charlotte Fast Mart, v. DHHS Div. of Public Health	08 DHR 0778	Brooks	08/28/08	
Cheryl I Rice v. DHHS	08 DHR 0793	Overby	07/10/08	
Destiny A Taylor v. Division of Child Development	08 DHR 0794	Gray	07/21/08	
Shawanda Rayner v. Cherry Hospital	08 DHR 0797	Webster	10/10/08	
Mary Ada Mills, Mary M. Mills MSA FCH v. Adult Care Licensure	08 DHR 0808	May	08/26/08	
Total Renal Care of North Carolina, LLC d/b/a TRC-Lelan v. DHHS Div. of Health Service Center Regulation, CON Section and Bio-Medical Applications of NC, Inc. d/b/a Fresenius Medical Care Of Brunswick County	08 DHR 0818	Webster	12/23/08	23:16 NCR 1670
Lula Bowden v. OAH	08 DHR 0852	May	06/20/08	
Karen Denise McGinnis v. HHS, Div. of Health Service Regulation	08 DHR 0867	Brooks	01/12/09	
Donovan Harris v. Value Options	08 DHR 0894	May	06/19/08	
Gabrielle Lloyd v. DHHS, Division of Health Service Regulation	08 DHR 0905	May	09/22/08	
Janice Chavis v. DHHS	08 DHR 0923	Lassiter	05/19/08	
Frankie Nicole Carter v. DHHS, Division of Health Service Regulation	08 DHR 0929	Brooks	06/19/08	
Christine Maria Plyer v. Medicaid Reimbursement	08 DHR 0949	Mann	06/18/08	
Margaret Mubanga v. NC Department of Health and Human Services	08 DHR 0961	Gray	08/25/08	
Evangeline Ingram v. Value Options	08 DHR 0997	Gray	06/10/08	
Marcia Veronica Harris v. Department of Health and Human Services, Division of Health Service Regulation	08 DHR 0169	Lassiter	08/11/08	
Maureen Jordan parent of Destinne Jordan v. Value Options	08 DHR 1005	Gray	06/19/08	
Triangle Alternative Inc. Dorothy George v. Office of Administrative Hearings	08 DHR 1012	May	07/21/08	
Terrie P Hill dba Positive Care MHL 041-595 2203 Wanda Drive v. N.C. Department of Health and Human Services, Division of Health Service Regulation, Mental Health Licensure and Certification Section	08 DHR 1015	Lassiter	09/12/08	
Terrie P Hill dba Positive Care II MHL 041-633 3406 Fern Place v. NC Department of Health and Human Services, Division of Health Service Regulation, Mental Health Licensure and Certification Section	08 DHR 1016	Lassiter	09/12/08	
Terrie P Hill dba Positive Care II MHL 041-765 3406 Fern Place v. NC Department of Health and Human Services, Division of Health Service Regulation, Mental Health Licensure and Certification Section	08 DHR 1017	Lassiter	09/12/08	
Mario Jackson v. DHHS	08 DHR 1024	Overby	06/19/08	
Adam L Powell v. NC Department of Health and Human Services	08 DHR 1030	Lassiter	09/05/08	
Edwin F Clavijo, El Exito v. NC Department of Health and Human Services, Division of Public Health, Nutrition Services Branch	08 DHR 1034	Lassiter	09/15/08	
Linda F. Ellison v. NC Department of Health and Human Services and or EDS	08 DHR 1035	Joseph	07/09/08	
Doris Smith v. Health Care Personnel Registry	08 DHR 1238	Brooks	08/08/08	
Latrish T. Perry v. Department of Health and Human Services	08 DHR 1023	Webster	08/29/08	
Martha Washington Harper v. DSS	08 DHR 1041	Brooks	06/23/08	
Martha McDonald v. DHHS, Div. of Health Service Regulation, Health	08 DHR 1052	May	12/04/08	

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Mary K. Tulay v. DHHS	08 DHR 1055	Joseph	07/09/08
Gwendolyn F. Gulley v. NC Department of Health and Human Services, Division of Health Service Regulation, Adult Care Licensure Section	08 DHR 1062	Overby	09/09/08
Rhonda Jones v. Value Options	08 DHR 1064	Webster	07/18/08
One Love Developmental Services v. Division of Health Service Regulation, Department of Health and Human Services	08 DHR 1068	Lassiter	07/25/08
Jona Turner v. Office of Administrative Hearings	08 DHR 1092	Webster	07/18/08
Tonia Chatman Davis v. N.C. Department of Health and Human Services	08 DHR 1141	Lassiter	07/28/08
Lorena Ivy Gates v. DHHS, Division of Health Service Regulation, Health Care Personnel Registry	08 DHR 1160	Joseph	01/06/09
Mary M. Branch v. North Carolina Dept of Health and Human Services, Value Options	08 DHR 1174	Elkins	08/11/08
Haywood Miller, Bobby Jean Graves Miller v. DHHS, Mental Health Licensure Certification Section	08 DHR 1181	Overby	07/01/08
Donna Armstrong v. DHHS	08 DHR 1185	Brooks	12/02/08
Jan Williams v. Value Options, DHHS	08 DHR 1231	Overby	07/09/08
Heather Peete v. OAH	08 DHR 1281	Lassiter	07/02/08
Ann Moody v. DHHS	08 DHR 1299	Webster	07/18/08
Khahada Kirby v. Value Options	08 DHR 1310	Webster	07/18/08
Eastern Carolina Internal Medicine, P.A. v. DHHS, Division of Health Services, Division of Health Service Regulation, CON Section	08 DHR 1320	Webster	02/13/09
Amir Abusamak v. N.C. Department of Health and Human Services	08 DHR 1325	Gray	07/16/08
Big Z Supermarket, Abdul Hamdan v. Cory Menees, NC Dept. of Health and Human Services	08 DHR 1343	Overby	08/27/08
Alesia Alwahishi dba Brotherhood Market	08 DHR 1356	Gray	07/22/08
Nigel Brown v. Value Options	08 DHR 1358	Gray	08/29/08
Beverly Darlene Christian v. DHHS Hearing Office	08 DHR 1422	Elkins	11/24/08
Meres El Bey v. DHHS	08 DHR 1453	Joseph	11/06/08
Forever Young Group Care LLC T/A FY Inc v. DHHS, Div. of Health Service Regulation, Mental Health Licensure and Certification Section	08 DHR 1455	Lassiter	01/16/09
Supported Living Youth Service, Kirk Hillian v. Div. of Health Service Regulation	08 DHR 1456	Joseph	10/22/08
Michael Grondahl v. DHHS	08 DHR 1491	Gray	08/01/08
Tyechia Jones v. Value Options/DHHS	08 DHR 1492	Mann	09/18/08
Kelly A Schofield MD – Clinical Director Youth Quest Inc. v. N.C. Department of Health Service Regulation, Mental Health Licensure and Certification Section	08 DHR 1505	Lassiter	09/08/08
Holly Martin Ph.D, Div. of Medical Assistance of DHHS	08 DHR 1534	Webster	01/06/09
Edward Kenneth Smith v. NC Department of Health and Human Services, Division of Health Service Regulation	08 DHR 1537	Lassiter	09/16/08
Brian C. Hargrove v. DHHS	08 DHR 1556	Webster	01/07/09
Elsie Mae Joiner v. Health Care Registry DHHS	08 DHR 1560	Lassiter	09/11/08
Margaret Brack for Elgin Brack v. Value Options Emery Milliken DHHS	08 DHR 1576	Lassiter	08/27/08
Evans Momanyi Mose v. DHHS, Division of Health Service Regulation	08 DHR 1591	Webster	10/01/08
Draughton's Supermarket, Betty Draughton v. Cumberland County Health Dept. WIC Office	08 DHR 1592	Gray	08/25/08
Brittany Brown v. Value Options	08 DHR 1599	Webster	10/10/08
Evangeline Ingram v. Value Options	08 DHR 1618	Joseph	12/05/08
Tyvonnie Sheri Glenn v. Value Options	08 DHR 1628	May	09/19/08
Robert Anthony Glenn, Sr., v. EDS, SMA, DHHS, Medicaid	08 DHR 1630	Brooks	10/20/08
Thomas Woodberry v. DHHS	08 DHR 1634	Elkins	01/29/09
Levi Rutty/Linda McLaughlin v. DHHS	08 DHR 1651	Elkins	01/14/09
Longview Childrens Day School v. Div. of Child Development	08 DHR 1676	Webster	01/06/09
Judy Grissett v. OAH, DHHS	08 DHR 1678	Webster	11/19/08
Tyrese Rogers/Linda McLaughlin v. DHHS	08 DHR 1685	Elkins	01/14/09
Shavon Maynor/Linda McLaughlin v. DHHS	08 DHR 1688	Elkins	01/14/09
William Scott Davis, Jr v. DHHS, Child Protective Services	08 DHR 1691	Webster	12/15/08
Donna Locklear v. Value Options	08 DHR 1695	Webster	11/19/08
Amanda Hennes v. N.C. Department of Health and Human Services	08 DHR 1696	Gray	09/22/08
Alexis Faulk v. DMA/Value Options	08 DHR 1701	Elkins	11/14/08
Bobbie L Cribb v. Office of Administrative Hearings	08 DHR 1714	Gray	09/08/08
Irene McLendon/Mikala McLendon v. Value Options	08 DHR 1722	Webster	10/01/08
Keyanna Byrd v. DHHS	08 DHR 1751	Webster	10/01/08
Janelle Gatewood v. Value Options	08 DHR 1763	Webster	10/10/08
Mr. and Mrs. Gregory and Martha Glenn v. HHS	08 DHR 1787	Brooks	10/27/08
Pamela Lynn Downey v. DHHS, Div. of Medical Assistance	08 DHR 1793	Gray	01/26/09
Roxanne Houghton v. Value Options/DMA	08 DHR 1799	Elkins	10/14/08
Rainbow Academy, Dorothy Johnson v. Div. of Child Development DHHS	08 DHR 1838	Brooks	11/03/08

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Joshua Dmae Thompson (Consumer) Sebrene Yvett Thompson (Mother) v. Department of Mental Health	08 DHR 1844	Webster	10/01/08
Christie Moriea Turner v. CMC Carolines Medical Center Mental Health	08 DHR 1848	Gray	10/27/08
Sativa Shalunda Brown v. DHHS, Div. of Health Service Regulation	08 DHR 1869	Gray	12/31/08
JE Cameron DDS & Associates v. DHHS, DMA	08 DHR 1885	Gray	10/27/08
Wendy McMillian v. DHHS	08 DHR 1887	Elkins	11/05/08
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Keystone Charlotte, LLC d/b/a The Keys of Carolina (Administrative Penalty) v. DHHS, Div. of Health Service Regulation, Mental Health Licensure and Certification Section	08 DHR 1913 08 DHR 1914	Joseph Joseph	11/17/08 11/17/08
Karen D. Barwick DDS PA v. EDS/DHHS	08 DHR 1923	Joseph	10/27/08
Dorothy Graham v. DHHS, Div. of Public Health, Nutrition Services Branch, Child and Adult Care Food Program	08 DHR 1960	Gray	01/07/09
County of Guilford v. DHHS	08 DHR 1965	May	01/15/09
Dyquay Morris v. Value Options	08 DHR 1967	Mann	10/24/08
Chanda Stokely v. DHHS	08 DHR 2002	Brooks	12/09/08
Wanda Hager v. Value Options	08 DHR 2008	Joseph	10/27/08
Austin Cummings v. Value Options	08 DHR 2011	Joseph	01/08/09
Keith Floyd, Rosa Agemang v. DHHS, Div. of Health Service Regulation Mental Health Licensure and Certification Section, Merita Hall	08 DHR 2032	Brooks	11/06/08
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Carrie E. Crosson and Leroy J. Crosson v. Vance County Dept. of Social Services	08 DHR 2048	Joseph	10/28/08
Elizabeth Elaine Croker v. DHHS, Div. of Health Service Regulation	08 DHR 2050	Webster	12/23/09
Stephanie Craven v. Health Care Registry	08 DHR 2051	Joseph	11/25/08
Marsha Hester v. Health Care Personnel Registry	08 DHR 2056	Gray	02/11/09
Dejuan Martell Willis v. DHHS, Div. of Health Service Regulation	08 DHR 2074	Joseph	01/06/09
David Haqq v. DHHS	08 DHR 2076	Gray	11/07/08
Shane Howell v. Value Options	08 DHR 2077	Joseph	11/05/08
Towanna Yvette Patterson v. DHHS, Div. of Health Service Regulation	08 DHR 2104	Brooks	12/17/08
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Shirley Hawls v. DHHS	08 DHR 2225	Joseph	01/08/09
Bennett Short v. Medicaid	08 DHR 2226	Mann	12/18/08
ReNu Life Extended, Diane Harrison CEO, v. Div. of Health Service Regulation, Licensure Division, Barbara Ryan, Chief	08 DHR 2256	Gray	02/03/09
Naomi J. Silver v. DHHS	08 DHR 2257	Gray	01/22/09
Pearline H. White v. DHHS	08 DHR 2263	Mann	01/15/09
Cynthia McMillian v. Div. of Child Development	08 DHR 2273	Overby	01/23/09
Zarie D. Wooten v. DHHS, Division of Child Development	08 DHR 2294	May	02/13/09
David McBrayer v. Value Options	08 DHR 2303	Brooks	12/01/08
Diane Harrison, ReNu Life Extended, Inc., v. Adult Care Section, Div. of Health Service Regulation	08 DHR 2304	Gray	02/03/09
Family Network Services, Inc., Ron Blake, Altrice Gales	08 DHR 2311	Joseph	12/01/08
Laverne Jones, Jeffrey's Rest Home v. DHHS	08 DHR 2343	Webster	02/23/09
Sabrina Brower v. Value Options/DHHS	08 DHR 2373	Mann	01/13/09
Emmanuel House, Erthel J. Anderson v. DHHS, Div. of Medical Asst.	08 DHR 2382	Gray	12/10/08
William P. Miller, Chapter 11 Trustee for Debtor Faiger M. Blackwell (Dogwood Forest) v. DHHS, Div. of Health Service Regulation Adult Care Licensure Section	08 DHR 2388	Gray	11/06/08
Alexandria Adelaide, dba Pine Forrest Home v. DHHS, DFS – Adult Care Licensure Section	08 DHR 2408	Webster	12/11/08
Grace K. Thomas v. DHHS	08 DHR 2450	Gray	02/17/09
Donna C. Hilemon v. Dept. of Social Services, OAH Clerks – Kim Hausen	08 DHR 2456	Brooks	02/02/09
James Pardue President and CEO Ralph Scott Lifeservice, Inc v. DHHS	08 DHR 2567	Gray	12/11/08
Debora Bolton Stamatakis DDS PA, DR. Stamatakis & Nick Stamatakis v. DHHS, Emery Milliken	08 DHR 2580	Gray	02/23/09
Regina McCall QP, Turning Pointe Group Home Inc. v. OAH, Mental Health Licensure & Certification Section	08 DHR 2703	Overby	01/30/09
Victoria J. Deranamie v. DHHS, Div. of Health Service Regulation	08 DHR 3048	May	02/23/09
Ikkuoma A. Mbonu v. DHHS, Health Care Personnel Registry	09 DHR 0447	Lassiter	02/19/09
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Robert Allen Sartori v. DOC	08 DOC 2651	Gray	12/16/08
Robert Allen Sartori v. DOC	08 DOC 2977	Gray	01/14/09
<u>DEPARTMENT OF JUSTICE</u>			
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Dallas Ray Joyner v. Criminal Justice Education and Training Standards	07 DOJ 0719	Overby	04/15/08

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Sheldon Avery McCoy v. Criminal Justice Education and Training Standards Commission	07 DOJ 1162	Mann	04/07/08
David Steven Norris v. Private Protective Services Board	07 DOJ 1256	Elkins	04/16/08
Scott McLean Harrison v. North Carolina Criminal Justice Education And Training Standards Commission	07 DOJ 1330	Webster	06/24/08
Brian Campbell v. Department of Justice, Company Police Program	07 DOJ 1344	Webster	02/25/08
John Mark Goodin v. Alarm Systems Licensing Board	07 DOJ 1405	Lassiter	04/04/08
James Lee Rodenberg v. Depart. of Justice, Company Police Program	07 DOJ 1434	Webster	02/25/08
Michael L. Scriven v. Private Protective Services Board	07 DOJ 1483	Elkins	03/25/08
Lamuel Tommy Anderson v. North Carolina Department of Justice Campus Police Program	07 DOJ 1500	Joseph	06/03/08
Roger Wayne Mungo, Jr., Sheriffs' Education and Training Standards Commission	07 DOJ 1510	Overby	05/19/08
Steven L. Haire v. North Carolina Department of Justice, Campus Police Program	07 DOJ 1558	Joseph	05/22/08
Timothy Daniel McFalls v. N.C. Criminal Justice Education and Training Standards Commission	07 DOJ 1712	May	09/03/08
Iris Nina Bumpass v. Criminal Justice Education and Training Standards Commission	07 DOJ 2071	Webster	05/16/08
Michael Gerald Copeland v. Private Protective Services Board	07 DOJ 2286	Gray	07/17/08
Leigh Ann Branch v. N.C. Sheriffs' Education and Training Standards Commission	08 DOJ 0177	Gray	06/23/08
Jimmy Dean Poston v. N.C. Sheriffs' Education and Training Standards Commission	08 DOJ 0179	Webster	08/28/08
Katheryn Renee Johnson v. North Carolina Sheriffs' Education And Training Standards Commission	08 DOJ 0180	Brooks	06/18/08
Gerald Boyce Bond, Jr. v. N.C. Sheriffs' Education and Training Standards Commission	08 DOJ 0181	Gray	07/14/08
Lamar Krider v. N.C. Sheriffs' Education and Training Standards Commission	08 DOJ 0183	Gray	06/20/08
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Anthony Ray Haynie v. N.C. Sheriffs' Education and Training Standards Commission	08 DOJ 0207	Brooks	08/06/08
Joseph Shane Johnston v. N.C. Sheriffs' Education and Training Standards Commission	08 DOJ 0209	Lassiter	10/07/08
Patrick Edsel Cashwell v. Criminal Justice Education and Training Standards Commission	08 DOJ 0498	Webster	10/01/08
Anthony Ray Haynie v. N.C. Sheriffs' Education and Training Standards Commission	08 DOJ 0532	Brooks	08/06/08
Jonathan R. Elam v. Private Protective Services Board	08 DOJ 0568	Webster	05/08/08
Wilford Odell Hamlin v. Private Protective Services Board	08 DOJ 0713	Joseph	05/01/08
Stephen Joseph Ciliberti v. N.C. Private Protective Services Board	08 DOJ 0858	Gray	07/15/08
Lawrence William Sitgraves v. Sheriffs' Education and Training Standards Commission	08 DOJ 1036	May	09/16/08
Deborah Moore Anderson v. North Carolina Sheriffs' Education And Training Standards Commission	08 DOJ 1038	Brooks	05/28/08
Faneal Godbold v. Criminal Justice Education and Training Standards Commission	08 DOJ 1077	Gray	12/12/08
Dustin Elvin Campbell v. Criminal Justice Education and Training Standards Commission	08 DOJ 1078	Lassiter	07/14/08
Cynthia Kay Saintsing v. Criminal Justice Education and Training Standards Commission	08 DOJ 1079	Lassiter	07/14/08
Timothy C. Darrh v. DHHS/Value Options	07 DOJ 1239	Overby	07/07/08
David Alan Moore v. North Carolina Private Protective Services Board	08 DOJ 1264	Morrison	07/21/08
Gregory Alan Hooks v. NC Alarm Systems Licensing Board	08 DOJ 1265	Morrison	07/10/08
Kimberly Blue Cameron v. Sheriffs' Education and Training Standards Commission	08 DOJ 1269	Overby	10/13/08
Jesse Adam Salmon v. N.C. Sheriffs' Education and Training Standards Commission	08 DOJ 1270	Overby	09/15/08
Tina Ann Ward v. N.C. Sheriffs' Education and Training Standards Commission	08 DOJ 1273	Gray	08/29/08
P.J. Shelton v. NC Sheriffs' Education and Training Standards Commission	08 DOJ 1274	Brooks	10/10/08
Stephen Matthew Crotts v. Sheriffs' Education and Training Standards Commission	08 DOJ 1275	Brooks	10/27/08
Danny Dwight Jordan v. Private Protective Services Board	08 DOJ 1594	Overby	10/14/08
Reshella Moore v. Sheriffs' Education and Training Standards Comm.	08 DOJ 1846	Joseph	09/25/08
Jamaal Ahkiem Gittens v. Private Protective Services Board	08 DOJ 1867	May	10/08/08
Ryan Ginn v. Criminal Justice Education and Training Standards	08 DOJ 1927	Gray	11/12/08

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Matthew William MacDonald v. Criminal Justice Education and Training Standards Commission	08 DOJ 2033	Brooks	12/01/08
Ronald Lewis Leak v. Private Protective Services Board	08 DOJ 2080	Overby	10/14/08
Penny Thomas Schronce v. Sheriffs' Education and Training Standards Commission	08 DOJ 2109	Brooks	12/01/08
Dwight Wendell Parker v. Criminal Justice Education and Training Standards Commission	08 DOJ 2110	Gray	10/27/08
Aaron McDowell v. Company Police Program	08 DOJ 2176	Brooks	01/05/09
Richard Bryant Honeycutt v. Criminal Justice Education and Training Standards Commission	08 DOJ 2209	May	12/31/08
James Percy Stancil III v. Sheriffs' Education and Training Standards Commission	08 DOJ 2489	Joseph	12/31/08
David L. Walser v. Private Protective Services Board	08 DOJ 2561	Webster	01/06/09

DEPARTMENT OF LABOR

Sandra Leroux, Leroux Entertainment Corporation d/b/a Spectacular Events! V. DOL	08 DOL 0754	May	07/08/08
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Kevin Douglas v. Dept. of Justice Criminal Justice Standards, DMV License and Theft, Holly Springs Police Department	07 DOT 2221	Webster	05/12/08
Terry J. Kyte, Pres. Kyte Construction v. DMV	08 DOT 1517	Elkins	12/03/08
Benjamin Cartwright Simmons III, Citation #3131650-8 v. DMV	08 DOT 1774	Lassiter	11/03/08

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Robert A. Gabriel Sr. v. DST	05 DST 0586	Gray	12/31/08	23:16 NCR 1695
Trevor Allan Hampton v. N.C. State Retirement Systems	07 DST 1493	Overby	09/08/08	
Patricia V. Leonard v. State Treasurer/Retirement Systems Division	07 DST 1928	Lassiter	03/12/08	
William S. Greene v. DST, Retirement Systems Division	08 DST 0235	Gray	07/16/08	23:05 NCR 524
Jerry Alan Reese v. DST, State and Local Finance Division and the Local Government Commission	08 DST 0256	Morrison	07/25/08	
Charles C. Williams, Sr., v. Dept. of Treasurer	08 DST 0736	Elkins	10/27/08	

ETHICS COMMISSION

Earnest Waters v. State Ethics Commission	08 EBD 2375	Gray	02/13/09
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Stephen Miller Gibson v. DPI	07 EDC 0121	May	09/17/08
Bradford Dale Gulley v. Depart. of Education Attorney Generals Office	07 EDC 1486	Webster	05/16/08
Lucretia Burrus v. State Board of Education	07 EDC 2210	Webster	05/16/08
Gregory Bates v. DPI, Licensure Section	07 EDC 2238	Gray	04/30/08
Heather S. Brame v. State Board of Education	07 EDC 2287	Joseph	05/07/08
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Freedman Farms v. DENR, Div. of Water Quality	05 EHR 0905	Overby	10/23/08	
Anderson Sand & Grave; LLC, Gerald L. Anderson LLC, and Gerald Anderson	05 EHR 1787	Gray	10/29/08	23:16 NCR 1701
Henry S. Cowell, III and Carolyn Dressler v. DENR, Div. of Coastal Management	06 EHR 1185	Brooks	05/30/08	23:05 NCR 501
Robin R. Moore v. DENR, Division of Waste Management	06 EHR 1479	Lassiter	03/24/08	
Ray Sael v. DENR, Div. of Water Quality	06 EHR 1671	Gray	01/22/09	
Mr. Robert W. Elmore v. Division of Environmental Health, Onside Water Protection Section	06 EHR 2232	Webster	01/07/09	
Laurel Valley Watch and Clean Water for North Carolina, Inc., v. Div. of Water Quality, DENR and Scenic Wolf Development, LLC	06 EHR 2393	Gray	12/08/08	

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John B. Chastain, Jr., W.B. Chastain v. N.C. Department of Environment and Natural Resources	07 EHR 0722	Brooks	06/26/08
Terry Hill DAQ 2007-015 v. DENR, Division of Air Quality	07 EHR 0937	Morrison	04/08/08
Frank Home Construction, Inc. v. Division of Water Quality	07 EHR 1061	Webster	05/12/08
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Durham Land Associates LLC v. County of Durham, Engineering Department	07 EHR 1141	Overby	08/20/08
Dennis L. Jude v. NC Department of Environment and Natural Resources	07 HER 1238	Webster	08/20/08
Martha and Charles Morton v. N.C. Department of Environment And Natural Resources	07 EHR 1297	Overby	06/02/08
Kenneth & Mary Anne Sutton v. DENR, Division of Coastal Management	07 EHR 1316	Overby	05/09/08
William Lewell Huff v. N.C. Department of Environment and Natural Resources	07 EHR 1579	Overby	06/02/08
Stridemark, LLC v. North Carolina Department of Environment and Natural Resources, Division of Air Quality	07 EHR 1564	Webster	07/17/08
Gleason James v. Appalachian District Health Department	07 EHR 2073	Brooks	09/05/08
Senia I. Parker v. Environmental Management Commission	07 EHR 2082	Webster	10/24/08
Bateman Trucking, Inc., James K. Bateman v. Cherokee County Health Department, Environmental Health Division	07 EHR 2180	Brooks	01/15/09
Frank Myers Investments, LLC v. DENR	07 EHR 2377	May	05/28/08
W Russell Overman Martin County Water & Sewer District v. DENR Public Water Supply Section	08 EHR 0345	Gray	06/10/08
Christopher E. Taylor, Jane Taylor v. DENR, Land Quality Section	08 EHR 0512	Brooks	12/09/08
Ray Poole's Park, Jean Poole v. DENR, Public Water Supply Section	08 EHR 0563	Joseph	05/16/08
Allen Johnson v. DENR, Div. of Air Quality and Teresa Tart v. DENR Div. of Air Quality	08 EHR 0567	Webster	10/28/08
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Joe S. Edge Sr. v. N.C. Department of Environment and Natural Resources	08 HER 0757	Gray	09/17/08
Donald Lindsay v. Cherokee County Health Dept.	08 EHR 0764	Brooks	07/10/08
Joel M. Walker v. Division of Water Quality Well Contractors Certification Commission	08 EHR 0985	Joseph	06/11/08
George Bess, Sr., v. DENR, Div. of Air Quality	08 EHR 1000	Overby	10/28/08
Eddie Verdis Hood v. N.C. Department of Environment and Natural Resources	08 EHR 1073	Overby	07/30/08
John S. Stirewalt, Architect, Agent for B. Parker Overton, Landowner v. DENR, Div of Coastal Management	08 EHR 1090	Webster	11/24/08
Research Triangle Institute v. Division of Waste Management, Hazardous Waste Section, DENR	08 EHR 1100	Overby	07/11/08
Tracie Locklear, Ammie Brewer-James, Native Designs Hair & Tanning Salon v. DENR, Health Radiation Protection	08 EHR 1143	Gray	7/17/08
Donna C Garrett v. Cherokee County Health Dept., Environmental Health Division	08 EHR 1246	Brooks	09/09/08
Riegel Ridge Partners v. DENR , Div. of Waste Management	08 EHR 1414	Gray	12/17/08
Michael J. Campbell v. Rowan County Health Department	08 EHR 1572	Books	10/10/08
Roray Kent Mishak, Town of China Grove v. NCDENR, Public Water Supply Section	08 EHR 1573	Brooks	09/08/08
Bethel Jr. High School NC 144418, Heather Teague v. DENR Public Water Supply Section	08 EHR 1810	Brooks	10/10/08
The Village of Walnut Creek PWS ID#NC0496155 v. DENR Public Water Supply Section	08 EHR 1892	Gray	11/18/08
The Village of Walnut Creek PWS ID#NC0496155 v. DENR, Public Water Supply Section	08 EHR 1930	Gray	11/07/08
Tabernacle Week Day School Cynthia M. Doyle v. DENR, Public Water Supply Section	08 EHR 1984	Mann	10/20/08
Michael Chapman FV Productions v. Stanly County Environmental Health Dennis R. Joyner, Health Director Division of Environment Health Terry Pierce, Director	08 EHR 1986	Lassiter	11/03/08
Carl J. Peters and Color Works v. City of Raleigh	08 EHR 2005	Joseph	10/28/08
Michael J. Carnes v. DENR, Div. of Air Quality	08 EHR 2042	Brooks	01/06/09
Country Fun Land Inc., A North Carolina Corporation v. DENR, Div. of Water Quality	08 EHR 2470	Elkins	02/04/09
Pro Dev 8, LLC v. City of Raleigh, Stormwater Management Division	08 EHR 3308	Joseph	01/08/09
Gary Kelly v. Div. of Air Quality	09 EHR 0219	Gray	02/17/09

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Ronald Caleb White v. Employment Security Commission UI Division 08 ESC 2568 Joseph 12/12/08

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Sandra Vanderbeek v. Teachers' and State Employees' Comprehensive
Major Medical Plan 07 INS 1130 Overby 03/12/08

Benjamin Brodey, Inger Brodey, Clara Brodey 07 INS 1139 Elkins 10/24/08

Nettie C Minshew v. North Carolina State Health Plan 07 INS 1319 Gray 09/08/08

Albert N. Whiting, by his daughter, Brooke E. Whiting v. Teachers' and
State Employees' Comprehensive Major Medical Plan 07 INS 1431

Alesha D Carter v. State Health Plan 07 INS 1858 Lassiter 05/19/08

Maria Patricia Rivera v. Teachers' and State Employees' Comprehensive
Major Medical Plan 08 INS 0035 Joseph 09/16/08

Esther A. Scott v. State Health Plan 08 INS 0819 Gray 10/31/08

Judith Kay Klink v. State Health Plan Teachers' Comprehensive Health
Plan 08 INS 0846 Overby 10/20/08

Michelle Patton v. Blue Cross Blue Shield State Health Plan 08 INS 1039 Joseph 12/04/08

David Danmyer for Nancy Danmeyer v. Teachers' and State Employees'
Comprehensive Major Medical Plan 08 INS 1575 May 10/15/08

23:16 NCR 1711

MISCELLANEOUS

Kevin Edral Douglas v. Wake County District Attorney, DMV 07 MIS 1976 Webster 05/12/08

Jeannie L Day v. City of Asheville Control, Brenda Sears Officer
White 08 MIS 0895 Brooks 08/18/08

Promise Land Ministries Inc., Joel K. Wilson v. Mitchell
County Tax Assessor and Board of Equalization 08 MIS 1447 May 09/17/08

Catherine Seay v. Judge Debra Sasser, Wake County District Court
Civil Division 08 MIS 2295 Elkins 11/24/08

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Marsha A Early v. Durham County Department of Social Services 01 OSP 0279 Lassiter 04/02/08

Cheryl Best v. Columbus County Department of Social Services 06 OSP 2206 Lassiter 09/10/08

Scott Burgess v. N.C. Department of Crime Control and
Public Safety, N.C. Highway Patrol 07 OSP 0052 Gray 07/16/08

Ralph Mitchell Foard v. Highway Patrol 07 OSP 0135 Webster 11/06/08

Divina P. Shields v. North Carolina State University 07 OSP 0317 Lassiter 07/11/08

Milton R. Perry v. DOT 07 OSP 0362 Lassiter 12/16/08

Jacqueline B. Maynard v. UNC 07 OSP 0575 Webster 04/08/08

Warren R. Follum v. NCSU 07 OSP 0577 Webster 03/21/08

Sharon P. House v. UNC 07 OSP 0630 Webster 04/08/08

Marcus Guy v. A&T University 07 OSP 0760 Webster 09/16/08

Michael Phillips v. A&T State University 07 OSP 0833 Overby 11/12/08

Pam Moses v. Macon County Health Department 07 OSP 0945 Overby 06/30/08

Cassandra F. Barner v. Halifax County Department of Social Serv. 07 OSP 1186 Joseph 05/16/08

Michael Shelton Woody v. DENR, Division of Forest Resources 07 OSP 1255 Brooks 05/13/08

Kellee M. Buck v. Dare County Department of Social Services 07 OSP 1385 Overby 05/27/08

Dennis E. Hrynkow v. Dept. of Insurance 07 OSP 1400 Joseph 04/03/08

Stacey M. Gasque v. N.C. Department of Corrections 07 OSP 1479 Overby 06/09/08

Betty J. LaBombard v. Hoke County Department of Social Services 07 OSP 1860 Joseph 10/01/08

James Dobaly v. North Carolina Department of Health and Human
Services 07 OSP 1873 Lassiter 07/02/08

Adley K. Prager v. Dept. of Crime Control and Public Safety and
Butner Public Safety 07 OSP 2011 Webster 05/29/08

Charlene J. Shaw v. Peter Bucholz, Hoke Correctional Institution 07 OSP 2012 Joseph 04/07/08

Jacqueline Burkes v. DOC, Hoke 4320, Mr. Peter Bucholz 07 OSP 2047 Joseph 04/07/08

Charles Jones v. Bryan Beatty, Secretary of Crime Control & Public
Safety and The Dept. of Crime Control & Public Safety (NC
Highway Patrol) 07 OSP 2222 Morrison 06/05/08

Norman K. Goering v. Crime Control and Public Safety, Highway
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23:18 NCR 1920

23:05 NCR 528

23:01 NCR 147

23:05 NCR 547

Brenda S. Williamson v. DHHS 08 OSP 0058 Gray 10/15/08

Kimberly James v. UNC-Charlotte 08 OSP 0146 Webster 05/08/08

Nancy Hester v. Guilford County AOC Pretrial Services 08 OSP 0224 Overby 06/19/08

Elizabeth Frazier v. Western Carolina University 08 OSP 0246 Brooks 12/09/08

Ray Stanford Williams Jr. v. NC Department of Cultural Resources 08 OSP 0529 Morrison 08/19/08

Jacqueline Yvette Lowry v. Durham County, Department of Social
Services 08 OSP 0552 May 10/08/08

23:16 NCR 1722

Laura L. Holliman v. Caledonia Correctional Inst. 08 OSP 0591 Gray 07/08/08

Ashley K. Severson v. Greene County 08 OSP 0611 Joseph 07/29/08

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Richard Manson v. NC A&T State University	08 OSP 1561	Brooks	09/25/08	
Kenneth L. Cassidy v. DOT, DMV	08 OSP 1584	Morrison	10/31/08	23:18 NCR 1945
Richard T Ward v. NC DOT Ferry Division	08 OSP 1617	Lassiter	08/27/08	
Patrice A Bernard v. NC A&T	08 OSP 1724	Gray	09/18/08	
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Josephine Hood v. Dorothea Dix Hospital Food and Nutrition	08 OSP 2276	Webster	12/23/08	
Garland Morman v. Dorothea Dix Hospital Food and Nutrition	08 OSP 2277	Webster	01/06/09	
Jackie L. Eley v. DHHS, Hearing Office	08 OSP 2286	Gray	01/06/09	
Charles V. Nichols v. DOC	08 OSP 2314	Brooks	01/08/09	
James C. Bailey, Jr v. Cherry Hospital, DHHS	08 OSP 2432	Gray	01/16/09	
Tony Chambers v. Dept. of Juvenile Justice and Delinquency Prevention	08 OSP 2692	Brooks	01/05/09	
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<u>OFFICE OF SECRETARY OF STATE</u>				
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Hope Taylor (formerly Taylor-Guevara) v. North Carolina Department of The Secretary of State	07 SOS 2280	Joseph	05/21/08	
Lisa F. Jarvis v. SOS, Notary Division	08 SOS 0074	Webster	11/06/08	
Robert C Garrard Jr. v. NC Department of Secretary of State	08 SOS 0523	Brooks	09/12/08	
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<u>UNC HOSPITALS</u>				
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Charity Smith v. UNC Hospitals	08 UNC 0533	Gray	07/28/08	
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Bobby and Robin Wilson v. UNC Hospitals	08 UNC 0595	May	09/11/08	
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Rolie Adrienne Webb "Andi" v. UNC Hospitals	08 UNC 0881	Gray	06/11/08	
Marcus M. McCullers v. UNC Hospitals	08 UNC 0928	Gray	07/30/08	
Satarah K. Latiker v. UNC Hospitals	08 UNC 0952	May	08/21/08	
Mary C. Gessell v. UNC Hospitals	08 UNC 0981	Joseph	09/18/08	
Richard and Amy Whitt v. UNC Hospitals	08 UNC 1048	May	08/15/08	
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<u>WILDLIFE RESOURCES COMMISSION</u>				
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