

# ***NORTH CAROLINA REGISTER***

**VOLUME 24 • ISSUE 03 • Pages 71 - 148**

**August 03, 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.**

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Raleigh, North Carolina 27609  
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(919) 431-3104 FAX

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

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116 West Jones Street  
Raleigh, North Carolina 27603-8005  
(919) 807-4700  
(919) 733-0640 FAX

contact: Nathan Knuffman, Asst. Budget Officer      osbmruleanalysis@ncmail.net      (919)807-4728

### **Governor's Review**

Eddie Speas      edwin.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      karenc@ncleg.net  
Jeff Hudson, Staff Attorney      jeffreyh@ncleg.net

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

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

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

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

contact: 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 <sup>th</sup> 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
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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
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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.



EXECUTIVE ORDER NO. 16

**DESIGNATING THE OFFICE OF ECONOMIC RECOVERY AND INVESTMENT AS  
THE AUTHORIZED ENTITY UNDER THE AMERICAN RECOVERY AND  
REINVESTMENT ACT STRENGTHENING COMMUNITIES FUND**

**WHEREAS**, the U.S. Department of Health and Human Services, Administration for Children and Families, Office of Community Services, has solicited applications to award grants to State, local, and Tribal governments to build the capacity of government offices that provide outreach to faith-based and community-based organizations and to assist nonprofit organizations in addressing the broad economic recovery issues present in their communities, including helping low-income individuals secure and retain employment, earn higher wages, obtain better-quality jobs, and gain greater access to State and Federal benefits and tax credits; and

**WHEREAS**, the application for this grant program, entitled the American Recovery and Reinvestment Act Strengthening Communities Fund—State, Local and Tribal Government Capacity Building Program, requires the designation by Executive Order or other means of an Authorized Entity to apply for and administer the grant.

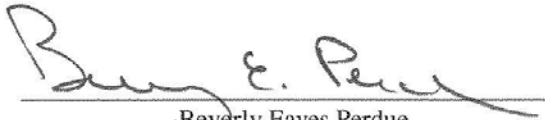
**NOW THEREFORE**, by the power vested in me as Governor by the Constitution and laws of the State of North Carolina, **IT IS ORDERED**:

The North Carolina Office of Economic Recovery and Investment is hereby designated on behalf of the State of North Carolina as the Authorized Entity to apply for and administer grants made available by the U.S. Department of Health and Human Services, Administration for Children and Families, Office of Community Services, under the American Recovery and Reinvestment Act Strengthening Communities Fund—State, Local and Tribal Government Capacity Building Program. The Office of Economic Recovery and Investment will have the full support of the Executive Branch and the authority to implement the activities of the grant.

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

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



  
Beverly Eaves Perdue  
Governor

ATTEST:

  
Elaine F. Marshall  
Secretary of State



EXECUTIVE ORDER NO. 17

NOTICE AND REPORTING OF ECONOMIC DEVELOPMENT  
CONSULTING RELATIONSHIPS

**WHEREAS**, governmental decisions relating to economic development projects should be made based on the best interests of the State and the affected communities involved; and

**WHEREAS**, in making decisions relating to economic development projects, public officials should avoid conflicts of interest and the appearance of conflicts of interest.

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

1. As a part of conducting due diligence on economic development projects, the Department of Commerce shall obtain from businesses seeking benefits under the State's economic development incentive programs identified in Section 10 of this Order the names and addresses of all consultants retained to advise and assist the business in securing those benefits. For each consultant, the Department of Commerce shall obtain the names and addresses of all employees and agents of the consultant working on the project.
2. Such information shall be collected as part of the application forms for the State's incentive programs and before the Department of Commerce begins consideration of any benefits for the project under the State's incentive programs.
3. For all currently active projects that are being considered for possible benefits under the State's incentive programs, the Department of Commerce shall obtain the information from businesses within 60 days of the date of this Order or prior to any approval or award of benefits for the project, whichever comes first.
4. The Department of Commerce shall submit the names of consultants on a project to the Governor, the Secretary of Commerce, and each member of the Economic Investment Committee for those projects that will come before the Governor, Secretary, or Committee for consideration. The Governor, the Secretary of Commerce, and each member of the Economic Investment Committee shall review the names submitted to determine if she or he has a financial, personal, or familial relationship with any consultant or with any individual or entity employed by or affiliated with that consultant.
5. The Governor, Secretary of Commerce, or any member of the Economic Investment Committee, in consultation with legal counsel employed by or assigned to her or his office, agency, or board, shall take appropriate steps, considering the nature of the project and the level of involvement of

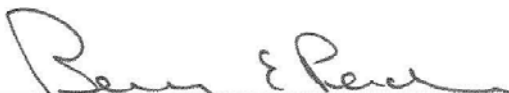
the consultant, to limit her or his involvement in the project to the extent necessary to protect the public interest when the impartiality of the Governor, Secretary of Commerce, or member might reasonably be questioned due to a financial, personal, or familial relationship with a consultant or that consultant's employees or agents. If the Governor, the Secretary of Commerce, or a member of the Economic Investment Committee is the only individual having legal authority to take action or make a decision regarding the business, such person shall follow the provisions of G.S. § 138A-38(a)(7) in taking any such action or making any such decision.

6. The Governor, Secretary of Commerce, or member of the Economic Investment Committee, or her or his legal counsel, may consult with the staff of the State Ethics Commission in making the determination in Section 5 of this Order.
7. The Governor's Ethics Officer or counsel to the Economic Investment Committee shall inform the Secretary of Commerce of any action taken pursuant to Section 5 of this Order. In cases where the Secretary of Commerce takes action pursuant to Section 5 of this Order, she or he shall inform the Governor's Ethics Officer.
8. Documents generated under this Order are considered public records subject to disclosure in accordance with the provisions of G.S. § 132-6(d).
9. For purposes of this Order, a "business" is defined as an entity or individual, other than a local government, that seeks benefits, through the Department of Commerce, under the State's economic development incentive programs identified in Section 10 of this Order.
10. The following programs are the "State's incentive programs" covered by the provisions of this Order: the Site Infrastructure Development Fund, pursuant to G.S. § 143B-437.02; the Job Maintenance and Capital Development Fund, pursuant to G.S. § 143B-437.012; the North Carolina Green Business Fund, pursuant to G.S. § 143B-437, Part 2B; the Job Development Investment Grant Program, pursuant to G.S. § 143B-437, Part 2G; the One North Carolina Fund, pursuant to G.S. § 143B-437, Part 2H; and the One North Carolina SBIR/STTR Incentive Program, pursuant to G.S. § 143B-437, Part 2I.

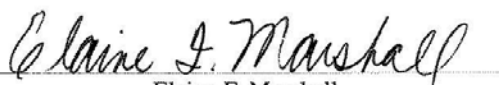
This Executive Order shall be effective immediately and remain in effect until rescinded.

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



  
Beverly Faves Perdue  
Governor

ATTEST:

  
Elaine F. Marshall  
Secretary of State





**EXECUTIVE ORDER NO. 18  
E-MAIL RETENTION AND ARCHIVING POLICY**

**WHEREAS**, the North Carolina Public Records Law declares that the public records and information compiled by the agencies of North Carolina government are the property of the people; and

**WHEREAS**, all e-mail messages sent and received in the transaction of state business are public records; and

**WHEREAS**, a transparent government and the citizens' right to access public records are of paramount importance; and

**WHEREAS**, Governor Easley issued Executive Order Number 150, entitled E-mail Retention and Archiving, on January 9, 2009; and

**WHEREAS**, I have reviewed Executive Order Number 150 and determined that some of the provisions in the aforementioned order should be clarified.

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

**RESCISSION**

1. Executive Order Number 150, dated January 9, 2009, is hereby rescinded.

**EMPLOYEE RESPONSIBILITIES**

2. Executive Branch employees shall treat all e-mail messages which they send or receive via state government e-mail accounts as public records and shall handle and maintain them in compliance with the Public Records Law and records retention schedules in the same manner as paper documents or other tangible records.

3. Employees have no expectation of privacy in their electronic correspondence, and all employees shall assume that information on the State's e-mail system is subject to public review and to review by state officials.
4. All outgoing e-mails sent from Executive Branch State e-mail accounts shall include language notifying the recipient(s) that the message is subject to the Public Records Law and may be disclosed to third parties.
5. Executive Branch employees shall not permanently delete any e-mail messages that they **send** for at least 24 hours, and shall not permanently delete any e-mail messages they **receive** for at least 24 hours except that they may immediately and permanently delete any e-mail messages they **receive** that are not clearly related to the transaction of State business, such as e-mails containing advertising materials or offensive materials. After 24 hours, Executive Branch employees shall retain or delete e-mails they have sent or received according to the retention schedules for their agency established by the Department of Cultural Resources.
6. Executive Branch employees who conduct State business via personal e-mail accounts shall ensure that all public records are retained in accordance with this Executive Order and are retained pursuant to the Public Records Law and applicable record retention schedules.
7. Executive Branch employees shall not use State e-mail accounts for political purposes, to conduct private commercial transactions or to engage in private business activities. Executive Branch employees may use State e-mail for limited family or personal communications so long as those communications do not interfere with their work.

#### **AGENCY RESPONSIBILITIES**

8. All Executive Branch agencies shall copy all e-mails sent and received by their employees on backup tapes at least once daily. The Office of Information Technology Services (ITS) will provide this backup service to all agencies for which it provides e-mail services. Each Executive Branch agency that does not use ITS e-mail services shall employ a back-up system that creates a back-up copy of the messages in all e-mail systems of the agency at least once daily. All backup tapes created after the issuance of Executive Order 150 and prior to the implementation of a single e-mail archive system will be maintained for 10 years. After implementation of an e-mail archive system, backup tapes will be maintained for such period as ITS may establish.
9. ITS will procure an e-mail archive system as soon as practicable and provide that system to all agencies for which it provides e-mail services. ITS will make this archive system available to other Executive Branch agencies as soon as practicable. E-mails shall be retained in this system for 10 years. ITS will consult with the North Carolina Department of Cultural Resources (DCR) to identify e-mails that should be preserved beyond 10 years.

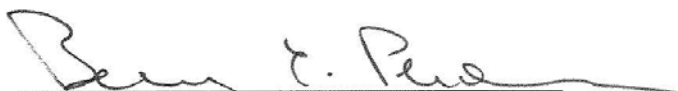
10. DCR shall provide Executive Branch employees with mandatory online training for managing e-mail as public records.
11. DCR shall conduct random audits of State agencies in the Executive Branch to ensure that employees are in compliance with the records retention and disposition schedules.
12. Executive Branch agencies not subject to this Order, the Legislative Branch and the Judicial Branch, are encouraged and invited to participate in this Executive Order.

**DURATION**

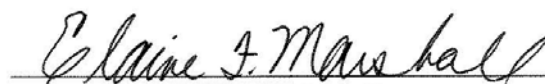
13. This Executive Order shall be effective immediately and shall remain in effect until rescinded.

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



  
Beverly Eaves Perdue  
Governor

**ATTEST:**

  
Elaine F. Marshall  
Secretary of State

**SUMMARY OF NOTICE OF  
INTENT TO REDEVELOP A BROWNFIELDS PROPERTY  
LI Building, L.L.C.**

Pursuant to N.C.G.S. § 130A-310.34, LI Building, 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 Haw River, Alamance County, North Carolina. The Property consists of approximately 54 acres and is located at 449 Trollingwood Road. It is bounded by vacant land to the north, wooded land to the south, Trollingwood Road and residential property to the east, and wooded land to the west. Environmental contamination exists on the Property in soil and groundwater. LI Building, L.L.C. has committed itself to make no use of the Property other than for industrial, sales/distribution and, with prior written DENR approval, other commercial uses. The Notice of Intent to Redevelop a Brownfields Property includes: (1) a proposed Brownfields

Agreement between DENR and LI Building, 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 Graham Public Library, 211 South Main Street, Graham, NC 27253 by contacting Becky Peterson at that address, at (336) 570-6730 or at [bpeterson@alamancelibraries.org](mailto:bpeterson@alamancelibraries.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](mailto: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 LI Building, LLC, as it plans, publishes this Summary in the North Carolina Register after it publishes the Summary in a newspaper of general circulation serving the area in which the Property is located, and if it effects publication of this Summary in the North Carolina Register on the date it expects to do so, the periods for submitting written requests for a public meeting regarding this project and for submitting written public comments will commence on August 4, 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

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, Energy Conservation, Fire and Residential 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:** *September 14, 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 October 2, 2009.*

**Statement of Subject Matter:**

**1. Request by Tom Hunter, Jr., to amend the 2009 NC Building Code and the 2009 NC Fire Code. The proposed amendment is as follows:**

**Amend the 2009 NC State Building Code as follows:**

**Section 202. Add the following definition:**

**Cooperative Innovative High School Program.** A program in excess of the required curriculum for high school students in attendance at a college, community college or university.

**Section 304.1. Add the following to the list of Group B occupancies:**

Education occupancies for high school students participating in Cooperative Innovative High School Programs taught at colleges, community colleges or universities.

**Section 305.1. Amend by adding the following underlined text:**

**305.1 Educational Group E.** Educational Group E occupancy includes, among others, the use of a building or structure, or a portion thereof, by six or more persons at any one time for educational purposes through the 12<sup>th</sup> grade. Religious educational rooms and religious auditoriums, which are accessory to places of religious worship in accordance with Section 508.3.1 and have occupant loads of less than 100, shall be classified as A-3 occupancies. Education occupancies for high school students participating in Cooperative Innovative High School Programs taught at colleges, community colleges or universities shall be classified as Group B occupancies.

**Amend the 2009 NC State Fire Code as follows:**

**Section 202. Add the following definition:**

**Cooperative Innovative High School Program.** A program in excess of the required curriculum for high school students in attendance at a college, community college or university.

**Add the following to the list of Business Group B occupancies:**

Education occupancies for high school students participating in Cooperative Innovative High School Programs taught at colleges, community colleges or universities.

**Amend Table 405.2 as follows:**

**TABLE 405.2**

**FIRE AND EVACUATION DRILL**

**FREQUENCY AND PARTICIPATION**

<b>GROUP OR OCCUPANCY</b>	<b>FREQUENCY</b>	<b>PARTICIPATION</b>
Group A	Quarterly	Employees
Group B <sup>c</sup>	Annually	Employees
Group B <sup>e</sup>	Quarterly	All occupants
Group E	Monthly <sup>a</sup>	All occupants
Group I	Quarterly on each shift	Employees <sup>b</sup>
Group R-1	Quarterly on each shift	Employees
Group R-2 <sup>d</sup>	Four annually	All occupants
Group R-4	Quarterly on each shift	Employees <sup>b</sup>
High-rise buildings	Annually	Employees

- a. The frequency shall be allowed to be modified in accordance with Section 408.3.2.
- b. Fire and evacuation drills in residential care assisted living facilities shall include complete evacuation of the premises in accordance with Section 408.10.5. Where occupants receive habilitation or rehabilitation training, fire prevention and fire safety practices shall be included as part of the training program.
- c. Group B buildings having an occupant load of 500 or more persons or more than 100 persons above or below the lowest level of exit discharge.
- d. Applicable to Group R-2 college and university buildings in accordance with Section 408.3.
- e. Cooperative Innovative High School Programs taught at colleges, community colleges or universities when required to have a fire alarm system in accordance with Section 907.2.2 or as required in accordance with Section 404.2.

**2. Request by John Hitch, AIA, to amend the 2009 NC Building Code. The proposed amendment is as follows:**

2007 ICC Supplement language:

**1007.3 Exit stairways.** In order to be considered part of an accessible means of egress, an exit stairway shall have a clear width of 48 inches (1219 mm) minimum between handrails and shall either incorporate an area of refuge within an enlarged floor-level landing or shall be accessed from either an area of refuge complying with Section 1007.6 or a horizontal exit.

**Exceptions:**

1. The area of refuge is not required at unenclosed interior exit stairways as permitted by Section 1020.1 in buildings or facilities that are equipped throughout with an automatic sprinkler system installed in accordance with Section 903.3.1.1 or 903.3.1.2.
2. The clear width of 48 inches (1219 mm) between handrails is not required at exit stairways in buildings or facilities equipped throughout with an automatic sprinkler system installed in accordance with Section 903.3.1.1 or 903.3.1.2.
3. Areas of refuge are not required at exit stairways in buildings or facilities equipped throughout by an automatic sprinkler system installed in accordance with Section 903.3.1.1 or 903.3.1.2.
4. The clear width of 48 inches (1219 mm) between handrails is not required for exit stairways accessed from a horizontal exit.
5. Areas of refuge are not required at exit stairways serving open parking garages.
6. Areas of refuge are not required for smoke protected seating areas complying with Section 1025.6.2.
7. The areas of refuge are not required in Group R-2 occupancies.

**3. Request by Lon McSwain, Mecklenberg County, to amend the 2009 NC Building Code. The proposed amendment is as follows:**

**ASCE/SEI 7/05** Minimum Design Loads for Buildings and Other Structures Including Supplement No. 1 and Supplement No. 2 and excluding Chapter 14 and Appendix 11A.

**4. Request by Alan Perdue, Building Code Council, to amend the 2009 NC Fire Code. The proposed amendment is as follows:**

**3308.11 Retail display and sale.** ~~Fireworks displayed for retail sale shall not be made readily accessible to the public allowed by NC General Statute 14-414 shall be permitted to be sold, used or possessed without a permit.~~ A minimum of one pressurized-water portable fire extinguisher complying with Section 906 shall be located not more than 15 feet (4572 mm) and not less than 10 feet (3048 mm) from the hazard. "No Smoking" signs complying with Section 310 shall be conspicuously posted in areas where fireworks are stored or displayed for retail sale. No sale of fireworks shall be made to persons less than 16 years of age (N.C.G.S. 14-410)

**5. Request by Al Bass, Building Code Council, to amend the 2009 NC Energy Conservation Code. The proposed amendment is as follows:**

**503.2.8 Piping insulation.** All piping serving as part of a heating or cooling system shall be thermally insulated in accordance with Table 503.2.8.

**Exceptions:**

(no change to exceptions 1 through 4)

5. Refrigerant piping installed within the thermal envelope of the building.

**6. Request by David Smith, Building Code Council, to amend the 2009 NC Residential Code. The proposed amendment is as follows:**

**Option #1 (sections will be renumbered):**

**R313.1.1 Carbon monoxide alarms.** In new construction, dwelling units within which fuel-fired appliances are installed or have attached garages shall be provided with an approved carbon monoxide alarm installed outside of each separate sleeping area in the immediate vicinity of the bedroom(s).

**R313.1.2 Where required-existing dwellings.** In existing dwellings within which fuel-fired appliances exist or have attached garages, where interior alterations, repairs, fuel-fired appliance replacements or additions work requiring a permit occurs, or where one or more sleeping rooms are added or created, carbon monoxide alarms shall be provided in accordance with Section 313.1.1.

**R313.1.3 Alarm requirements.** The required carbon monoxide alarms shall be clearly audible in all bedrooms over background noise levels with all intervening doors closed. Single station carbon monoxide alarms shall be listed as complying with UL 2034 and shall be installed in accordance with this code and the manufacturer's installation instructions.

**7. Request by David Smith, Building Code Council, to amend the 2009 NC Residential Code. The proposed amendment is as follows:**

**Option #2 (sections will be renumbered):**

**R313.1.1 Carbon monoxide alarms.** In new construction, dwelling units shall be provided with an approved carbon monoxide alarm installed outside of each separate sleeping area in the immediate vicinity of the bedroom(s).

**R313.1.2 Where required-existing dwellings.** In existing dwellings, where interior alterations, repairs, fuel-fired appliance replacements or additions work requiring a permit occurs, or where one or more sleeping rooms are added or created, carbon monoxide alarms shall be provided in accordance with Section 313.1.1.

**R313.1.3 Alarm requirements.** The required carbon monoxide alarms shall be clearly audible in all bedrooms over background noise levels with all intervening doors closed. Single station carbon monoxide alarms shall be listed as complying with UL 2034 and shall be installed in accordance with this code and the manufacturer's installation instructions.

**8. Request by David Smith, Building Code Council, to amend the 2009 NC Residential Code. The proposed amendment is as follows:**

**R313.2.1 Alterations, repairs and additions.** When alterations, repairs or additions requiring a building permit occur, or when one or more sleeping rooms are added or created in existing dwellings, the individual dwelling unit shall be equipped with smoke alarms located as required for new dwellings; the smoke alarms shall be interconnected and hard wired.

**Exceptions:**

1. Interconnection and hard-wiring of smoke alarms in existing areas shall not be required where the alterations or repairs do not result in the removal of interior wall or ceiling finishes exposing the structure, ~~unless there is an attic, crawl space or basement available which could provide access for hard wiring and interconnection without the removal of interior finishes.~~ Smoke alarm locations are required per Section R313.2, but may be battery powered and shall be designed to emit a recurring signal when batteries are low and need to be replaced.

2. (no change to exception 2)

**9. Request by David Smith, Building Code Council, to amend the 2009 NC Residential Code. The proposed amendment is as follows:**

**SECTION R614**

**SIDE HINGE AND GARAGE DOORS**

**R614.1 Side hinge and garage doors.** Exterior side hinge doors and garage doors shall have a structural design pressure rating as required by Table R301.2(4) or Section 4402. These doors are not required to be rated for water resistance nor air infiltration.

**R614.2 Door mounting.** Wall framing around exterior doors shall be adequate to hold the door in place. The door manufacturer's installation instructions shall specify the proper anchorage required to enable the door to resist the required design pressure.

**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 Commission for Public Health intends to adopt the rules cited as 10A NCAC 39C .0101-.0103.*

**Proposed Effective Date:** January 2, 2010

**Public Hearing:**

**Date:** September 17, 2009

**Time:** 2:00 p.m.

**Location:** Cardinal Room, 5605 Six Forks Road, Raleigh, NC 27609

**Reason for Proposed Action:** These rules are required to implement ratified House Bill 2, Prohibit Smoking in Certain Public Places, which was signed by the Governor on May 19, 2009. This bill is effective January 2, 2010. These rules need to be adopted at the October meeting of the Commission for Public Health and to become effective on January 2, 2010.

**Procedure by which a person can object to the agency on a proposed rule:** Objections may be submitted in writing to Chris G. Hoke, JD, the Rule-Making Coordinator, during the public comment period. Additionally, objections may be made verbally and/or in writing at the public hearing for these rules.

**Comments may be submitted to:** Chris G. Hoke, JD, 1931 Mail Service Center, Raleigh, NC 27699-1931; phone (919) 715-5006; email Chris.Hoke@ncmail.net

**Comment period ends:** October 2, 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 39 – ADULT HEALTH**

**SUBCHAPTER 39C – SMOKING PROHIBITED IN RESTAURANTS AND BARS**

**10A NCAC 39C .0101 GENERAL PROVISIONS**

- (a) The purpose of the rules in this Subchapter is to implement Part 1C of Article 23 of Chapter 130A of the General Statutes.
- (b) The definitions in G.S.130A-492 apply throughout this Subchapter. In addition, throughout this Subchapter, "Division" means North Carolina Department of Health and Human Services, Division of Public Health.

Authority G.S. 130A-497(f).

**10A NCAC 39C .0102 EXEMPTION OF CIGAR BARS**

- (a) Cigar bars shall file an affidavit with the Division within 30 days after the end of each quarter stating the establishment meets the statutory requirements set forth for cigar bars by G.S.130A-492 and G.S.130A-496. Affidavits shall be sent to the:

Chief, Regulatory and Legal Affairs  
N.C. Department of Health and Human Services  
Division of Public Health  
1931 Mail Service Center  
Raleigh, NC 27699-1931.

- (b) Affidavits submitted in 2010 and each year thereafter shall be post-marked:

- (1) By January 31st for the quarter ending December 31<sup>st</sup>.
- (2) By April 30<sup>th</sup> for the quarter ending March 31<sup>st</sup>.
- (3) By July 31<sup>st</sup> for the quarter ending June 30<sup>th</sup>.
- (4) By October 31<sup>st</sup> for the quarter ending September 30<sup>th</sup>.

- (c) Within 60 days after receiving the affidavit the Division shall provide written documentation to the cigar bar on its exemption status under G.S. 130A-496.

Authority G.S. 130A-497(f).

**10A NCAC 39C .0103 POSTING SIGNS**

The signs required to be posted in restaurants and bars by G.S. 130A-497 shall:



- (1) Be posted at each public entrance at a height and location easily seen.
- (2) Be at least 24 square inches in size (for example, 4 by 6 inches).
- (3) Be in legible font type.
- (4) Display:
  - (a) The Division's toll-free complaint line telephone number.
  - (b) "G.S.130A-497."
  - (c) "www.smokefree.nc.gov."

Authority G.S. 130A-497(f).

## TITLE 12 – DEPARTMENT OF JUSTICE

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Criminal Justice Education and Training Standards Commission intends to amend the rules cited as 12 NCAC 09B .0203, .0209, .0232-.0233; 09E .0102, .0105.*

**Proposed Effective Date:** December 1, 2009

**Public Hearing:**

**Date:** August 27, 2009

**Time:** 1:00 p.m.

**Location:** Dept. of Correction, Office of Staff Development and Training, 2211 Schieffelin Road, Apex, NC

**Reason for Proposed Action:**

**12 NCAC 09B .0203** - All applicants for BLET are currently required to take a reading comprehension test, with no specific score required. The amendment will require an applicant to score at or above the tenth grade reading level, or its equivalent, prior to admittance into BLET.

**12 NCAC 09A .0209** - The Civil Liabilities for Law Enforcement Trainers 2 hour block of instruction has been renamed as Instructor Liabilities and Responsibilities.

**12 NCAC 09B .0232** - The Importance of Being Physically Fit and Conducting Safe Warm-Up Exercises 12 hour block of instruction has been renamed as Combat Conditioning.

**12 NCAC 09B .0233** - Two changes to lesson plan as follows: Lesson Plan Review block of instruction changed from 8 hours to 4 hours. New 4 hour block of instruction titled Developing In-Service Wellness Programs and Validating Fitness Standards has been added.

**12 NCAC 09E .0102 and 09E .0105** - The Commission has changed the required topics for annual In-Service training for law enforcement officers. The following topics have been removed: Career Survival: Training and Standards Issues; Juvenile Minority Sensitivity Training: Juvenile Law in the Real World; Domestic Violence; and Drug Diversion for Patrol Officers. The following topics have been added: Career Survival: Positive Rules to be Successful; Juvenile Minority Sensitivity Training: Juvenile Law – In the Real World; Domestic Violence; and Drug Diversion for Patrol Officers.

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

**Comments may be submitted to:** *Teresa Marrella, Department of Justice, 114 West Edenton Street, Raleigh, NC 27602, phone (919)716-6470, fax (919)716-6752, email tmarrella@ncdoj.gov.*

**Comment period ends:** October 2, 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**
- ☐ **Local**
- ☐ **Substantive (≥\$3,000,000)**
- ☐ **None**

## CHAPTER 09 - CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS

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

#### SECTION .0200 – ENFORCEMENT OF RULES

#### 12 NCAC 09B .0203      ADMISSION OF TRAINEES

(a) The school director shall not admit any individual as a trainee in a presentation of the Basic Law Enforcement Training Course who is not a citizen of the United States.

(b) The school shall not admit any individual younger than 20 years of age as a trainee in any non-academic basic criminal justice training course. Individuals under 20 years of age may be granted authorization for early enrollment as trainees in a presentation of the Basic Law Enforcement Training Course with prior written approval from the Director of the Standards Division. The Director shall approve early enrollment as long as the individual turns 20 years of age prior to the date of the State Comprehensive Examination for the course.

(c) The school shall give priority admission in certified criminal justice training courses to individuals holding full-time employment with criminal justice agencies.

(d) The school shall not admit any individual as a trainee in a presentation of the "Criminal Justice Instructor Training Course" who does not meet the education and experience requirements for instructor certification under Rule .0302(1) of this Subchapter within 60 days of successful completion of the Instructor Training State Comprehensive Examination.

~~(e) The school shall administer the reading component of a standardized test which reports a grade level for each trainee participating in the Basic Law Enforcement Training Course. The specific type of test instrument shall be determined by the School Director and shall be administered no later than by the end of the first two weeks of a presentation of the Basic Law Enforcement Training Course.~~

(e) The school shall not admit an individual, including partial or limited enrollees, as a trainee in a presentation of the Basic Law Enforcement Training Course unless the individual has taken the reading component of a nationally standardized test within one year prior to admission to Basic Law Enforcement Training and has scored at or above the 10<sup>th</sup> grade level, or the equivalent.

(f) The school shall not admit any individual as a trainee in a presentation of the Basic Law Enforcement Training Course unless as a prerequisite the individual has provided to the School Director a medical examination report, properly completed by a physician licensed to practice medicine in North Carolina, a physician's assistant, or a nurse practitioner, to determine the individual's fitness to perform the essential job functions of a criminal justice officer. The Director of the Standards Division may grant an exception to this standard for a period of time not to exceed the commencement of the physical fitness topical area when failure to timely receive the medical examination report is not due to neglect on the part of the trainee.

(g) The school shall not admit any individual as a trainee in a presentation of the Basic Law Enforcement Training Course unless as a prerequisite the individual is a high school graduate or has passed the General Educational Development Test indicating high school equivalency. High school diplomas earned through correspondence enrollment are not recognized toward the educational requirements.

(h) The school shall not admit any individual trainee in a presentation of the Basic Law Enforcement Training Course unless as a prerequisite the individual has provided the certified School Director a certified criminal record check for local and state records for the time period since the trainee has become an adult and from all locations where the trainee has resided since becoming an adult. An Administrative Office of the Courts criminal record check or a comparable out-of-state criminal record check will satisfy this requirement.

(i) The school shall not admit any individual as a trainee in a presentation of the Basic Law Enforcement Training Course who has been convicted of the following:

- (1) a felony; or
- (2) a crime for which the punishment could have been imprisonment for more than two years; or
- (3) a crime or unlawful act defined as a "Class B Misdemeanor" within the five year period prior to the date of application for employment

unless the individual intends to seek certification through the North Carolina Sheriffs' Education and Training Standards Commission; or

(4) four or more crimes or unlawful acts as defined as "Class B Misdemeanors" regardless of the date of conviction; or

(5) four or more crimes or unlawful acts defined as "Class A Misdemeanors" except the trainee may be enrolled if the last conviction occurred more than two years prior to the date of enrollment; or

(6) a combination of four or more "Class A Misdemeanors" or "Class B Misdemeanors" regardless of the date of conviction unless the individual intends to seek certification through the North Carolina Criminal Justice Education and Training Standards Commission.

(j) Individuals charged with crimes as specified in Paragraph (i) of this Rule, and such offenses were dismissed or the person was found not guilty, may be admitted into the Basic Law Enforcement Training Course but completion of the Basic Law Enforcement Training Course will not ensure that certification as a law enforcement officer or justice officer through the North Carolina Criminal Justice Education and Training Standards Commission will be issued. Every individual who is admitted as a trainee in a presentation of the Basic Law Enforcement Training Course shall notify the School Director of all criminal offenses which the trainee is arrested for or charged with, pleads no contest to, pleads guilty to or is found guilty of, and notify the School Director of all Domestic Violence Orders (G.S. 50B) which are issued by a judicial official that provide an opportunity for both parties to be present. This shall include all criminal offenses except minor traffic offenses and shall specifically include any offense of Driving Under the Influence (DUI) or Driving While Impaired (DWI). A minor traffic offense is defined, for the purposes of this Paragraph, as an offense where the maximum punishment allowable by law is 60 days or less. Other offenses under G.S. 20 (Motor Vehicles) or other similar laws of other jurisdictions which shall be reported to the School Director expressly include G.S. 20-139 (persons under influence of drugs), G.S. 20-28 (driving while license permanently revoked or permanently suspended), G.S. 20-30(5) (fictitious name or address in application for license or learner's permit), G.S. 20-37.8 (fraudulent use of a fictitious name for a special identification card), G.S. 20-102.1 (false report of theft or conversion of a motor vehicle), G.S. 20-111(5) (fictitious name or address in application for registration), G.S. 20-130.1 (unlawful use of red or blue lights), G.S. 20-137.2 (operation of vehicles resembling law enforcement vehicles), G.S. 20-141.3 (unlawful racing on streets and highways), G.S. 20-141.5 (speeding to elude arrest), and G.S. 20-166 (duty to stop in event of accident). The notifications required under this Paragraph must be in writing, must specify the nature of the offense, the court in which the case was handled, the date of the arrest or criminal charge, the date of issuance of the Domestic Violence Order (G.S. 50B), the final disposition, and the date thereof. The notifications required under this Paragraph must be received by the School Director within 30 days of the date the case was

disposed of in court. The requirements of this Paragraph shall be applicable at all times during which the trainee is enrolled in a Basic Law Enforcement Training Course. The requirements of this Paragraph are in addition to the notifications required under 12 NCAC 10B .0301 and 12 NCAC 09B .0101(8).

*Authority G.S. 17C-6; 17C-10.*

**12 NCAC 09B .0209 CRIMINAL JUSTICE INSTRUCTOR TRAINING**

(a) The instructor training course required for general instructor certification shall consist of a minimum of 77 hours of instruction presented during a continuous period of not more than two weeks.

(b) Each instructor training course shall be designed to provide the trainee with the skills and knowledge to perform the function of a criminal justice instructor.

(c) Each instructor training course shall include the following identified topic areas and minimum instructional hours for each area:

- |      |   |          |
|------|---|----------|
| (1)  | Orientation/Self Assessment   | 3 Hours  |
| (2)  | Curriculum Development: ISD Model   | 3 Hours  |
| (3)  | <del>Civil Liability for Law Enforcement Trainers</del><br><u>Instructor Liabilities and Responsibilities</u> | 2 Hours  |
| (4)  | Interpersonal Communication in Instruction  | 4 Hours  |
| (5)  | Lesson Plan Preparation: Professional Resources   | 2 Hours  |
| (6)  | Lesson Plan Preparation: Format and Objectives  | 6 Hours  |
| (7)  | Teaching Adults   | 4 Hours  |
| (8)  | Principles of Instruction: Demonstration Methods and Practical Exercise                                       | 6 Hours  |
| (9)  | Methods and Strategies of Instruction   | 4 Hours  |
| (10) | The Evaluation Process  | 4 Hours  |
| (11) | Principles of Instruction: Audio-Visual Aids  | 6 Hours  |
| (12) | Student 10-Minute Talk and Video Critique   | 6 Hours  |
| (13) | Student Performance:  |          |
|      | First 30-Minute Presentation  | 6 Hours  |
|      | Second 30-Minute Presentation   | 6 Hours  |
|      | Final 80-Minute Presentation and Review   | 12 Hours |
| (14) | Examination and Course Closing  | 3 Hours  |

(d) The "Basic Instructor Training Manual" as published by the North Carolina Justice Academy shall be applied as the basic curriculum for delivery of basic instructor training courses. Copies of this publication may be inspected at the agency:

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

and may be purchased from the Academy at the following address:

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

*Authority G.S. 17C-6.*

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

(a) The instructor training course required for specialized subject control arrest techniques instructor certification shall consist of a minimum of 80 hours of instruction presented during a continuous period of not more than two weeks.

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

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

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

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

- |     |   |          |
|-----|---|----------|
| (1) | Orientation   | 1 Hour   |
| (2) | Skills Pre-Test   | 1 Hour   |
| (3) | Student Instructional Practicum   | 3 Hours  |
| (4) | Practical Skills Evaluation   | 3 Hours  |
| (5) | Response to Injury  | 4 Hours  |
| (6) | <del>Importance of Being Physically Fit and Conducting Safe Warm Up Exercises</del><br><u>Combat Conditioning</u> | 12 Hours |
| (7) | Safety Guidelines/Rules   | 2 Hours  |
| (8) | Practical Skills Enhancement  | 4 Hours  |
| (9) | Subject Control/Arrest Techniques Practical Skills and Instructional Methods                                      | 44 Hours |

- (10) Fundamentals of Professional Liability For Law Enforcement Trainers 4 Hours
- (11) State Comprehensive Examination/Course Closing 2 Hours
- TOTAL 80 Hours

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

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

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

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

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

*Authority G.S. 17C-6.*

## **12 NCAC 09B .0233 SPECIALIZED PHYSICAL FITNESS INSTRUCTOR TRAINING**

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

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

(c) Each applicant for specialized physical fitness training shall:

- (1) qualify through one of the following three options:
  - (A) have completed the criminal justice general instructor training course; or
  - (B) hold a current and valid North Carolina Teacher's Certificate and hold a minimum of a baccalaureate degree in physical education and be actively teaching in physical education topics; or
  - (C) be presently instructing physical education topics in a community college, college or university and hold a minimum of a baccalaureate degree in physical education; and
- (2) present a written endorsement by either
  - (A) a school director indicating the student will be utilized to instruct

physical fitness in Basic Law Enforcement Training Courses; or  
(B) a certified school director, or in-service training coordinator indicating the student will be utilized to instruct physical fitness for the "Law Enforcement Officers' In-Service Training Program"; and

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

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

- (1) Orientation 5 Hours
- (2) Lesson Plan Review 84 Hours
- (3) Physical Fitness Assessments, Exercise Programs and Instructional Methods 31 Hours
- (4) Injury Care and Prevention 4 Hours
- (5) Nutrition 6 Hours
- (6) Civil Liabilities for Trainers 2 Hours
- (7) CVD Risk Factors 2 Hours
- (8) Developing In-Service Wellness Programs and Validating Fitness Standards 4 Hours
- ~~(8)~~(9) State Examination 2 Hours
- TOTAL 60 Hours

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

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

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

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

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

*Authority G.S. 17C-6.*

## **SUBCHAPTER 09E - IN-SERVICE TRAINING PROGRAMS**

### **SECTION .0100 - LAW ENFORCEMENT OFFICER'S IN-SERVICE TRAINING PROGRAM**

**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);~~ Positive Ways to be Successful (4);
- (4) Juvenile Minority Sensitivity Training: ~~Juvenile Law — In the Real World (2);~~ Race Matters (2); and
- ~~(5) Domestic Violence (2);~~
- ~~(6) Drug Diversion for Patrol Officers (2);~~ and
- ~~(7)(5) Department Topics of Choice (8);~~ (10).

*Authority G.S. 17C-6; 17C-10.*

**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);~~ Positive Ways to be Successful (4);
- (4) Juvenile Minority Sensitivity Training: ~~Juvenile Law — In the Real World (2);~~ Race Matters (2); and
- ~~(5) Domestic Violence (2);~~

~~(6) Drug Diversion for Patrol Officers (2);~~ and  
~~(7)(5) Department Topics of Choice (8);~~ (10).  
 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

*Authority G.S. 17C-6; 17C-10.*

**TITLE 13 – DEPARTMENT OF LABOR**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. Department of Labor intends to adopt the rule cited as 13 NCAC 07F .0901.*

**Proposed Effective Date:** *December 1, 2009*

**Public Hearing:**

**Date:** *September 1, 2009*

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

**Location:** *4 West Edenton Street, Room 249, Raleigh, NC 27601*

**Reason for Proposed Action:** *Effective June 30, 2009, Session Law 2009-217 disapproved 13 NCAC 07F .0901 (Scope) as adopted by the Department of Labor on February 19, 2009 and approved by the Rules Review Commission on March 19, 2009. Pursuant to S.L. 2009-217, the Department of Labor adopted a temporary rule in accordance with the procedure set forth in Section 5 of S.L. 2009-217 that established the scope of application for the Department's rules governing the standards for cranes and derricks in a manner identical to the original rule, except that the temporary rule included an exclusion for 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). The proposed permanent rule is identical to the temporary rule which is effective October 1, 2009.*

**Procedure by which a person can object to the agency on a proposed rule:** *Objections to the proposed rules may be submitted, in writing, to Erin T. Gould, Assistant Rulemaking Coordinator, via United States mail at the following address: 1101 Mail Service Center, Raleigh, North Carolina 27699-1101; or via facsimile at (919) 733-4235. Objections may also*

*be submitted during the public hearings conducted on this rule, which is noticed above. Objections shall include the specific rule citation(s) for the objectionable rule(s), the nature of the objection(s), and the complete name(s) and contact information for the individual(s) submitting the objection. Objections must be received by 5:00 p.m. on October 2, 2009.*

**Comments may be submitted to:** Erin T. Gould, 1101 Mail Service Center, Raleigh, N.C. 27699-1101; phone (919) 737-7885; fax (919) 733-4235; email erin.gould@labor.nc.gov

**Comment period ends:** October 2, 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 07 – OFFICE OF OCCUPATIONAL SAFETY  
AND HEALTH**

**SUBCHAPTER 07F - STANDARDS**

**SECTION .0900 – CRANES AND DERRICKS  
STANDARDS**

**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).
- (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.

*Authority G.S. 95-131.*

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

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

## TITLE 13 – DEPARTMENT OF LABOR

**Rule-making Agency:** N.C. Department of Labor

**Rule Citation:** 13 NCAC 07F .0901

**Effective Date:** October 1, 2009

**Date Approved by the Codifier of Rules:** July 10, 2009

**Reason for Action:** Effective June 30, 2009, Session Law 2009-217 disapproved 13 NCAC 07F .0901 (Scope) as adopted by the Department of Labor on February 19, 2009 and approved by the Rules Review Commission on March 19, 2009. S.L. 2009-217 states that the Department of Labor shall immediately adopt a temporary rule in accordance with the procedure set forth in Section 5 of S.L. 2009-217 that established the scope of application for the Department's rules governing the standards for cranes and derricks in a manner identical to the original rule, except that the temporary rule shall include an exclusion for 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).

## CHAPTER 07 – OFFICE OF OCCUPATIONAL SAFETY AND HEALTH

### SUBCHAPTER 07F – STANDARDS

#### SECTION .0900 – CRANES AND DERRICKS STANDARDS

##### 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).
- (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;  
Temporary Adoption Eff. October 1, 2009.

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**APPROVED RULES**

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

*Rules approved by the Rules Review Commission at its meeting on June 18, 2009.*

**REGISTER CITATION TO THE  
NOTICE OF TEXT****PESTICIDE BOARD**

<u>Definitions</u>	02 NCAC 09L .2201*	22:17 NCR
<u>Pesticide Use Limitation Areas</u>	02 NCAC 09L .2202*	22:17 NCR
<u>Pesticides With Additional Use Limitations</u>	02 NCAC 09L .2203*	22:17 NCR

**MEDICAL CARE COMMISSION**

<u>Preservations of Medical Records</u>	10A NCAC 13B .3903*	23:09 NCR
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**HHS - MENTAL HEALTH, DIVISION OF**

<u>Scope</u>	10A NCAC 27A .0401	22:22 NCR
<u>Definitions</u>	10A NCAC 27A .0402*	22:22 NCR
<u>Monthly Payments and Monthly Reporting</u>	10A NCAC 27A .0403*	22:22 NCR
<u>Settlement of LME System Management Payments</u>	10A NCAC 27A .0404*	22:22 NCR

**PUBLIC HEALTH, COMMISSION FOR**

<u>Dietetics</u>	10A NCAC 43D .0101	23:18 NCR
<u>Dietitian</u>	10A NCAC 43D .0102	23:18 NCR
<u>Nutritionist</u>	10A NCAC 43D .0103	23:18 NCR
<u>The American Dietetic Association</u>	10A NCAC 43D .0104	23:18 NCR
<u>Home Economist</u>	10A NCAC 43D .0105	23:18 NCR
<u>Competent Dietary Professional</u>	10A NCAC 43D .0106	23:18 NCR
<u>WIC</u>	10A NCAC 43D .0107	23:18 NCR
<u>Description</u>	10A NCAC 43D .0201*	23:18 NCR
<u>Definitions</u>	10A NCAC 43D .0202*	23:18 NCR
<u>References</u>	10A NCAC 43D .0203*	23:18 NCR
<u>Contract with FNS</u>	10A NCAC 43D .0204*	23:18 NCR
<u>General Administration</u>	10A NCAC 43D .0206	23:18 NCR
<u>Criteria for Selection of Local Agencies</u>	10A NCAC 43D .0302*	23:18 NCR
<u>Continuation of Local Agencies</u>	10A NCAC 43D .0303*	23:18 NCR
<u>Termination of Local WIC Agencies</u>	10A NCAC 43D .0305*	23:18 NCR
<u>Eligibility</u>	10A NCAC 43D .0401	23:18 NCR
<u>Application</u>	10A NCAC 43D .0402	23:18 NCR
<u>Medical and Nutrition Assessment</u>	10A NCAC 43D .0403	23:18 NCR
<u>Nutritional Risk Certification Criteria</u>	10A NCAC 43D .0404	23:18 NCR
<u>Schedule of Certification</u>	10A NCAC 43D .0405	23:18 NCR
<u>Documentation of Certification</u>	10A NCAC 43D .0406	23:18 NCR
<u>Transfer of Certification</u>	10A NCAC 43D .0407	23:18 NCR
<u>Required Notification</u>	10A NCAC 43D .0409*	23:18 NCR



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**APPROVED RULES**

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<u>Participant Violations and Sanctions</u>	10A NCAC 43D .0410	23:18 NCR
<u>Dual Participation</u>	10A NCAC 43D .0411	23:18 NCR
<u>Supplemental Foods</u>	10A NCAC 43D .0501	23:18 NCR
<u>Quantity of Foods</u>	10A NCAC 43D .0502	23:18 NCR
<u>Education of Participants</u>	10A NCAC 43D .0601	23:18 NCR
<u>Documentation of Nutrition Education</u>	10A NCAC 43D .0602	23:18 NCR
<u>Continuing Education of Staff</u>	10A NCAC 43D .0603	23:18 NCR
<u>The Local Agency Nutrition Education Plan</u>	10A NCAC 43D .0604	23:18 NCR
<u>The North Carolina Automated WIC System</u>	10A NCAC 43D .0701	23:18 NCR
<u>Issuance of Food Instruments</u>	10A NCAC 43D .0702	23:18 NCR
<u>Use of Food Instruments</u>	10A NCAC 43D .0703	23:18 NCR
<u>Validity of Food Instruments and Cash-Value Vouchers</u>	10A NCAC 43D .0704	23:18 NCR
<u>Payment of WIC Food Instruments and Cash-Value Vouchers</u>	10A NCAC 43D .0705*	23:18 NCR
<u>Authorized WIC Vendors</u>	10A NCAC 43D .0706*	23:18 NCR
<u>Administration</u>	10A NCAC 43D .1001	23:18 NCR
<u>Public Health Dietitians</u>	10A NCAC 43D .1003	23:18 NCR
<u>Nutrition Program Consultants</u>	10A NCAC 43D .1004	23:18 NCR

**ENVIRONMENTAL MANAGEMENT COMMISSION**

<u>Outstanding Resource Waters</u>	15A NCAC 02B .0225	23:12 NCR
<u>Little Tennessee River Basin and Savannah River Drainage ...</u>	15A NCAC 02B .0303	23:12 NCR

**COASTAL RESOURCES COMMISSION**

<u>Specific Use Standards for Ocean Hazard Areas</u>	15A NCAC 07H .0308	23:12 NCR
<u>Purpose</u>	15A NCAC 07H .1101	23:14 NCR
<u>Approval Procedures</u>	15A NCAC 07H .1102	23:14 NCR
<u>Permit Fee</u>	15A NCAC 07H .1103	23:14 NCR
<u>General Conditions</u>	15A NCAC 07H .1104	23:14 NCR
<u>Specific Conditions</u>	15A NCAC 07H .1105*	23:14 NCR
<u>Purpose</u>	15A NCAC 07H .1201	23:14 NCR
<u>General Conditions</u>	15A NCAC 07H .1204*	23:14 NCR
<u>Specific Conditions</u>	15A NCAC 07H .1205*	23:14 NCR

**WILDLIFE RESOURCES COMMISSION**

<u>Burke County</u>	15A NCAC 10F .0323*	23:17 NCR
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**COSMETIC ART EXAMINERS, BOARD OF**

<u>Live Model/Mannequin Performance Requirements</u>	21 NCAC 14J .0207	23:12 NCR
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**PSYCHOLOGY BOARD**

<u>Licensed Psychologist</u>	21 NCAC 54 .1803*	23:15 NCR
<u>Activities</u>	21 NCAC 54 .2701*	23:15 NCR

**ENGINEERS AND SURVEYORS, BOARD OF EXAMINERS FOR**

<u>Records of Applications</u>	21 NCAC 56 .0402*	n/a G.S. 150B-21.5(a)(2)&(5)
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**APPROVED RULES**

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<u>Requirements for Licensing</u>	21	NCAC 56 .0601*	n/a G.S. 150B-21.5(a)(2)&(5)
<u>Standard Certification Requirements</u>	21	NCAC 56 .1103*	n/a G.S. 150B-21.5(a)(2)&(5)
<u>Improper Practice by a Licensee</u>	21	NCAC 56 .1301*	n/a G.S. 150B-21.5(a)(2)&(5)
<u>Classification/Land Information System/Geographic Informa...</u>	21	NCAC 56 .1608*	n/a G.S. 150B-21.5(a)(2)&(5)
<u>Dual Licensees</u>	21	NCAC 56 .1710*	n/a G.S. 150B-21.5(a)(2)&(5)
<u>Forms</u>	21	NCAC 56 .1711*	n/a G.S. 150B-21.5(a)(2)&(5)

**COMMUNITY COLLEGES, BOARD OF**

<u>Customized Training Program</u>	23	NCAC 02E .0401*	23:10 NCR
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These rules are subject to the next Legislative Session. (See G.S. 150B-21.3.)

**ENVIRONMENTAL MANAGEMENT COMMISSION**

<u>Applicability</u>	15A NCAC 02Q .0701*	23:07 NCR
<u>Exemptions</u>	15A NCAC 02Q .0702*	23:07 NCR
<u>Modifications</u>	15A NCAC 02Q .0706*	23:07 NCR
<u>Demonstrations</u>	15A NCAC 02Q .0709*	23:07 NCR

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

**02 NCAC 09L .2201 DEFINITIONS**

All specific words or terms used in this Section shall have the same definitions as shown in the North Carolina Pesticide Law of 1971, G.S. 143-460.

*History Note:* Authority G.S. 143-458; 143-466(a);  
Eff. July 1, 2009.

**02 NCAC 09L .2202 PESTICIDE USE LIMITATION AREAS**

The table in 02 NCAC 09L .2203 contains pesticide active ingredients that have specific limitations on pesticide use in order to protect the federally listed endangered species Carolina heelsplitter (*Lasmigona decorata*) in Union County, NC, in the vicinity of:

- (1) the main stem of Goose Creek from the NC Highway 218 bridge, downstream to its confluence with the Rocky River;
- (2) the main stem of Duck Creek, from the Mecklenburg/Union County line, downstream to its confluence with Goose Creek; and
- (3) the main stem of Waxhaw Creek, from NC Highway 200 bridge, downstream to the North Carolina/South Carolina State line.

*History Note:* Authority G.S. 143-458; 143-466(a);  
Eff. July 1, 2009.

**02 NCAC 09L .2203 PESTICIDES WITH ADDITIONAL USE LIMITATIONS**

Effective March 1, 2010, the application of any of the following pesticides in the vicinity of the areas identified in 02 NCAC 09L .2202 must not occur within the areas identified by the codes in the following table:

<b>Pesticide Active Ingredient</b>	<b>Code</b>
Azinphos-methyl	2x
Benomyl	1x
Captan	1x
Carbaryl	2x
Carbofuran	1x
Chlorpyrifos	3z
Diazinon	2x
Dicofol	2x
Dimethoate	2x
Endosulfan	2x
Esfenvalerate	1x
Ethion	2x
Ethoprop	1x
Fenamiphos	2x
Fonofos	2x
Malathion	2x
Methidathion	2x
Methomyl	1x
Mevinphos	2x
Naled	1x
Parathion (ethyl)	2x
Pendimethalin	2x
Permethrin	1x
Phorate	1x
Phosmet	1x

Phosphamidon	1x
Propiconazole	1x
Pyrethrins	2x
Terbufos	2x
Trichlorfon	2x

**Code/Limitations:**

- (1) 1x - Within the area described in 02 NCAC 09L .2202 and one-half mile up all streams that join the area, this pesticide shall not be applied within 20 yards from the edge of water for ground applications and within 100 yards for aerial applications;
- (2) 2x - Within the area described in 02 NCAC 09L .2202 and one-half mile up all streams that join the area, this pesticide shall not be applied within 40 yards from the edge of water for ground applications and within 200 yards for aerial applications;
- (3) 3z - Within the area described in 02 NCAC 09L .2202, this pesticide shall not be applied within 100 yards from the edge of water for ground applications and within one-fourth mile for aerial applications.

*History Note:* Authority G.S. 143-458; 143-466(a);  
Eff. July 1, 2009.

(f) Nothing in this Section shall be construed to prohibit the use of automation in the medical records service, provided that all of the provisions in this Rule are met and the information is readily available for use in patient care.

(g) Only personnel authorized by state laws and Health Insurance Portability and Accountability Act regulations shall have access to medical records. Where the written authorization of a patient is required for the release or disclosure of health information, the written authorization of the patient or authorized representative shall be maintained in the original record as authority for the release or disclosure.

(h) Medical records are the property of the hospital, and they shall not be removed from the facility jurisdiction except through a court order. Copies shall be made available for authorized purposes such as insurance claims and physician review.

*History Note:* Authority G.S. 90-21.20B; 131E-79; 131E-97;  
Eff. January 1, 1996;  
Amended Eff. July 1, 2009.

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**10A NCAC 27A .0401 SCOPE**

The purpose of this Section is to set forth procedures for the payment, reporting and settlement of Local Management Entities System Management (LME SM) funding provided by the Division of Mental Health, Developmental Disabilities and Substance Abuse Services to Local Management Entities.

*History Note:* Authority G.S. 122C-112.1(a)(12);  
Eff. July 1, 2009.

**10A NCAC 27A .0402 DEFINITIONS**

(a) "Systems Management Funding" when used in this Section means funding provided, pursuant to the LME SM Cost Model, to Local Management Entities (LMEs) to enable LMEs to carry out system management responsibilities set forth in G.S. 122C-115.4.

(b) "LME SM Cost Model" when used in this Section means the cost model produced under contract, with all subsequent adjustments, as a tool to predict the cost of LMEs performing system management responsibilities set forth in G.S. 122C-115.4.

(c) "State funding from state appropriations" when used in this Section means the amount of state appropriation required to fund the LME SM cost as projected via the LME SM Cost Model as determined for each LME.

*History Note:* Authority G.S. 122C-112.1(a)(12);  
Eff. July 1, 2009.

**10A NCAC 27A .0403 MONTHLY PAYMENTS AND MONTHLY REPORTING**

(a) Prior to the Division making any LME SM payments to an LME, the LME and Department shall sign a memorandum of agreement (MOA), as required in G.S. 122C-115.2(d), and the MOA shall be in place for the period of time for which an LME SM payment is to be made.

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

**10A NCAC 13B .3903 PRESERVATION OF MEDICAL RECORDS**

(a) The manager of medical records service shall maintain medical records, whether original, computer media, or microfilm, for a minimum of 11 years following the discharge of an adult patient.

(b) The manager of medical records shall maintain medical records of a patient who is a minor until the patient's 30th birthday.

(c) If a hospital discontinues operation, its management shall make known to the Division where its records are stored. Records shall be stored in a business offering retrieval services for at least 11 years after the closure date.

(d) The hospital shall give public notice prior to destruction of its records, to permit former patients or representatives of former patients to claim the record of the former patient. Public notice shall be in at least two forms: written notice to the former patient or their representative and display of an advertisement in a newspaper of general circulation in the area of the facility.

(e) The manager of medical records may authorize the microfilming of medical records. Microfilming may be done on or off the premises. If done off the premises, the facility shall provide for the confidentiality and safekeeping of the records. The original of microfilmed medical records shall not be destroyed until the medical records department has had an opportunity to review the processed film for content.

(b) Subject to Paragraphs (a), (c), (d), (e) and (f) of this Rule, the Division shall pay LMEs their LME SM funds in monthly installments based on their annual LME SM allocation from the Division.

(c) Subject to the availability of sufficient allotment approved by the Office of State Budget and Management, each LME SM monthly payment shall be made following receipt of a correctly submitted and signed "Monthly LME Report of Expenditures" to the Division for the month of expenditures being reported.

(d) The LME shall submit "Monthly LME Report of Expenditures" on a form issued jointly by the Division and DHHS Office of the Controller. The LME Monthly Expenditure Reporting Form and instructions can be accessed at no cost at <http://www.dhhs.state.nc.us/mhddsas>.

(e) The Division shall not participate in the portion of salary for personnel, other than Doctors of Medicine and Doctors of Osteopathic Medicine, in excess of the current Level I of the Executive Schedule as published by the United States Office of Personnel Management, and subsequent amendments, which can be obtained free of charge at <http://www.opm.gov/oca/>. In order for Doctors of Medicine and Doctors of Osteopathic Medicine to be exempt from this cap on funding participation, the individuals must be primarily performing duties which require the utilization of their medical training and licensure; otherwise, they are also subject to the limitation set forth in this Rule.

(f) The portion of a salary which exceeds the limitation set forth in Paragraph (e) of this Rule, and the related fringe benefits, are disallowable for reporting purposes on "Monthly LME Report of

Expenditures" and shall not be reported by the LME as an allowable cost.

*History Note: Authority G.S. 122C-112.1(a)(12); 122C-115.2;*

*Eff. July 1, 2009.*

**10A NCAC 27A .0404 SETTLEMENT OF LME SYSTEMS MANAGEMENT PAYMENTS**

(a) LME SM payments shall be settled annually for each LME individually taking into consideration actual LME SM expenditures, the earning of Medicaid administrative funds and the retention of up to the lesser of 15 percent of the full annual LME SM payment made to the LME by the Division or 15 percent of the actual allowable LME SM reported expenditures for fund balance. The settlement process set forth in this Rule is based on the Division having paid the LME the LME's full Division allocated LME SM funding prior to the time of settlement.

(b) The settlement process shall not result in any LME receiving:

- (1) LME SM payments greater than the amount of its total annual LME SM allocation from the Division; or
- (2) State funding from state appropriations in an amount greater than the amount projected in the cost model.

(c) To determine the settlement of LME SM payments for an LME, the Division shall utilize the following format:

Line 1: Lesser of Full Annual LME SM Payment Made to the LME by the Division or Actual Allowable LME SM Reported Expenditures. \$\_\_\_\_\_

Line 2: Actual Medicaid Earnings Based on Actual Allowable LME SM Expenditures Reported. If total LME SM expenditures exceeded the LME SM allocation, the amount of Medicaid earnings listed on Line 2 will be the prorated share of Medicaid earnings based on LME SM allocation compared to total LME SM expenditures. \$\_\_\_\_\_

Line 3: Difference of Line 1 Minus Line 2. \$\_\_\_\_\_

Line 4: State funding from state appropriations as defined in Rule .0402(c) of this Section. \$\_\_\_\_\_

Line 5: If Line 3 is equal to or greater than Line 4, settlement is finalized at this point and no refund is due to the Division by the LME. If Line 3 is less than Line 4, continue with settlement computations by entering the difference of Line 4 minus Line 3. \$\_\_\_\_\_

Line 6: Enter 15% of the amount from Line 1 above. \$\_\_\_\_\_

Line 7: If Line 5 is equal to or less than Line 6, settlement is finalized at this point and no refund is due to the Division by the LME. If Line 5 is greater than Line 6, continue with settlement computations by

entering the difference between Line 5 minus Line 6;  
this is the amount of refund owed by the LME to the  
Division.

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*History note:* Authority G.S. 122C-112.1(a)(12);  
Eff. July 1, 2009.

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**10A NCAC 43D .0101 DIETETICS**  
**10A NCAC 43D .0102 DIETITIAN**  
**10A NCAC 43D .0103 NUTRITIONIST**  
**10A NCAC 43D .0104 THE AMERICAN DIETETIC**  
**ASSOCIATION**  
**10A NCAC 43D .0105 HOME ECONOMIST**  
**10A NCAC 43D .0106 COMPETENT DIETARY**  
**PROFESSIONAL**  
**10A NCAC 43D .0107 WIC**

*History Note:* Authority G.S. 130A-361;  
Eff. February 1, 1976;  
Readopted Eff. December 5, 1977;  
Amended Eff. December 6, 1991; November 1, 1990;  
Repealed Eff. October 1, 2009.

**10A NCAC 43D .0201 DESCRIPTION**

The Nutrition Services Branch is responsible for the  
administration of the WIC Program in North Carolina.

*History Note:* Authority G.S. 130A-361; 7 C.F.R. 246;  
Eff. July 1, 1981;  
Amended Eff. October 1, 2009; December 6, 1991; November 1,  
1990.

**10A NCAC 43D .0202 DEFINITIONS**

For the purposes of this Subchapter, all definitions set forth in 7  
C.F.R. Part 246.2 are hereby incorporated by reference,  
including subsequent amendments and additions, with the  
following additions and modifications:

- (1) An "administrative appeal" is an appeal in  
accordance with Section .0800 of this  
Subchapter through which a local WIC  
agency, potential local WIC agency,  
authorized WIC vendor or potential authorized  
WIC vendor may appeal the adverse actions  
listed in 7 C.F.R. 246.18(a)(1)(i), (a)(1)(ii) and  
(a)(3)(i).
- (2) An "authorized store representative" includes  
an owner, manager, assistant manager, head  
cashier, or chief fiscal officer.
- (3) An "authorized WIC vendor" is a food retailer  
or free-standing pharmacy that has executed a  
currently effective North Carolina WIC  
Vendor Agreement.
- (4) A "chain store" is a store that is owned or  
operated by a corporation, partnership,  
cooperative association, or other business  
entity that has 20 or more stores owned or  
operated by the business entity.

- (5) A "fair hearing" is the informal dispute  
resolution process in Section .0900 of this  
Subchapter through which any individual may  
appeal a state or local agency action which  
results in a claim against the individual for  
repayment of the cash value of improperly  
issued benefits or results in the individual's  
denial of participation or disqualification from  
the WIC Program. This process must be  
completed prior to requesting a contested  
case hearing in accordance with G.S. 150B.
- (6) "FNS" means the Food and Nutrition Service  
of the U.S. Department of Agriculture.
- (7) "Free-standing pharmacy" means a pharmacy  
that does not operate within another retail  
store. Free-standing pharmacy includes free-  
standing pharmacies that are chain stores and  
free-standing pharmacies participating under a  
WIC corporate agreement.
- (8) The "local WIC agency" is the local agency  
which enters into an agreement with the  
Division of Public Health to operate the  
Special Supplemental Nutrition Program for  
Women, Infants and Children.
- (9) A "local WIC program plan" is a written  
compilation of information on the local WIC  
agency policies concerning program operation,  
including administration, nutrition education,  
personnel functions, costs and other  
information prepared by the local WIC agency  
and submitted to the Nutrition Services Branch  
in accordance with instructions issued by the  
Branch.
- (10) A "predominantly WIC vendor" is an 'above-  
50-percent vendor' as defined in 7 C.F.R.  
246.2.
- (11) "Redemption" is the process by which a  
vendor deposits a food instrument or cash-  
value voucher for payment and the state  
agency (or its financial agent) makes payment  
to the vendor for the food instrument or cash-  
value voucher.
- (12) "Shelf price" is the price a vendor charges a  
non-WIC customer for a WIC supplemental  
food.
- (13) The "state agency" is the Nutrition Services  
Branch, Women's and Children's Health  
Section, Division of Public Health,  
Department of Health and Human Services.

- (14) "Store" means the physical building located at a permanent and fixed site that operates as a food retailer or free-standing pharmacy.
- (15) "Supplemental food" or "WIC supplemental food" is a food which satisfies the requirements of 10A NCAC 43D .0501.
- (16) "Support costs" are clinic costs, administrative costs, and nutrition education costs.
- (17) "Transaction" is the process by which a WIC customer tenders a food instrument or a cash-value voucher to a vendor in exchange for authorized supplemental foods.
- (18) "Vendor applicant" is a store that is not yet authorized as a WIC vendor.
- (19) A "vendor overcharge" is intentionally or unintentionally charging more for supplemental food provided to a WIC customer than to a non-WIC customer or charging more than the current shelf price for supplemental food provided to a WIC customer.
- (20) A "WIC corporate agreement" is a single WIC Vendor Agreement with a corporate entity that has 20 or more stores authorized as WIC vendors under the Agreement.
- (21) "WIC customer" means a WIC participant, parent or caretaker of an infant or child participant, proxy or compliance investigator who tenders a food instrument or a cash-value voucher to a vendor in exchange for WIC supplemental food.
- (22) "WIC program" means the Special Supplemental Nutrition Program for Women, Infants, and Children authorized by 42 U.S.C. 1786 of the Child Nutrition Act of 1966 as amended.

A copy of 7 C.F.R. Part 246.1 through 246.28 is available for inspection at the Department of Health and Human Services, Division of Public Health, Women's and Children's Health Section, Nutrition Services Branch, 5601 Six Forks Road, Raleigh, North Carolina. Copies are available at no cost from the Supplemental Nutrition Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 540, Alexandria, Virginia 22302 by calling (703) 305-2730 or access <http://www.access.gpo.gov/nara/cfr/index.html>.

*History Note:* Authority G.S. 130A-361; 42 U.S.C. 1786; 7 C.F.R. 246;  
*Eff.* July 1, 1981;  
*Amended Eff.* December 6, 1991; November 1, 1990; July 1, 1989;  
*Temporary Amendment Eff.* May 17, 2000;  
*Amended Eff.* April 1, 2001;  
*Temporary Amendment Eff.* July 1, 2002;  
*Amended Eff.* August 1, 2004;  
*Temporary Amendment Eff.* July 1, 2006;  
*Amended Eff.* October 1, 2009; April 1, 2007.

#### **10A NCAC 43D .0203 REFERENCES**

(a) The state agency shall administer the WIC program in accordance with:

- (1) 42 U.S.C. 1786; and
- (2) 7 C.F.R. 246.1 through 246.28, United States Department of Agriculture, Food and Nutrition Service, Special Supplemental Nutrition Program for Women, Infants and Children.

(b) The documents listed in Paragraph (a) of this Rule are available for inspection at the state agency during regular business hours.

*History Note:* Authority G.S. 130A-361;  
*Eff.* July 1, 1981;  
*Amended Eff.* October 1, 2009; April 1, 1984; April 1, 1982.

#### **10A NCAC 43D .0204 CONTRACT WITH FNS**

(a) The Division of Public Health shall maintain the Federal-State Special Supplemental Nutrition Program Agreement with the United States Department of Agriculture, Food and Nutrition Service.

(b) The state agency shall prepare, submit to FNS, and maintain the North Carolina State WIC Program Plan of Operations to fulfill the requirements of 7 C.F.R. 246.4. This plan is available for inspection at the state agency during business hours.

*History Note:* Authority G.S. 130A-361;  
*Eff.* July 1, 1981;  
*Amended Eff.* October 1, 2009.

#### **10A NCAC 43D .0206 GENERAL ADMINISTRATION**

*History Note:* Authority G.S. 130A-361;  
*Eff.* July 1, 1981;  
*Amended Eff.* November 1, 1990;  
*Repealed Eff.* October 1, 2009.

#### **10A NCAC 43D .0302 CRITERIA FOR SELECTION OF LOCAL AGENCIES**

(a) The state agency shall only accept applications from local agencies as defined in 7 C.F.R. 246.2.

(b) The application must be to provide WIC program benefits to an area or population not receiving program benefits from a local WIC agency.

(c) WIC program funds must be available to serve the area or population described in the application.

(d) The State Agency shall consider the local agency priority system and Affirmative Action Plan described in 7 C.F.R. 246.5 in making the decision to fund or not to fund an application.

*History Note:* Authority G.S. 130A-361;  
*Eff.* July 1, 1981;  
*Amended Eff.* October 1, 2009.

#### **10A NCAC 43D.0303 CONTINUATION OF LOCAL WIC AGENCIES**

(a) All grants to local WIC agencies shall be issued annually through an agreement unless the agreement has been terminated as specified in Rule .0305 of this Section.

(b) All local WIC agencies are eligible to obtain a grant for the next fiscal year provided that:

- (1) WIC program funds are available to serve the area or population;
- (2) The agency continues to operate as a local WIC agency; and
- (3) The agency signs and submits the grant agreement and budget required by the state agency.

*History Note:* Authority G.S. 130A-361;  
*Eff. July 1, 1981;*  
*Amended Eff. October 1, 2009; September 1, 1991.*

**10A NCAC 43D .0305 TERMINATION OF LOCAL WIC AGENCIES**

- (a) The authority to operate a local WIC program may be terminated for noncompliance.
- (b) If FNS terminates or suspends the North Carolina WIC program, the state agency shall in turn, terminate or suspend its agreements with local WIC agencies.
- (c) Termination of a local agency is subject to the appeal provisions of 7 C.F.R. 246.18(a)(3) and Section .0800 of this Subchapter.

*History Note:* Authority G.S. 130A-361;  
*Eff. July 1, 1981;*  
*Amended Eff. October 1, 2009; September 1, 1991.*

**10A NCAC 43D .0401 ELIGIBILITY**  
**10A NCAC 43D .0402 APPLICATION**  
**10A NCAC 43D .0403 MEDICAL AND NUTRITION ASSESSMENT**  
**10A NCAC 43D .0404 NUTRITIONAL RISK CERTIFICATION CRITERIA**  
**10A NCAC 43D .0405 SCHEDULE OF CERTIFICATION**  
**10A NCAC 43D .0406 DOCUMENTATION OF CERTIFICATION**  
**10A NCAC 43D .0407 TRANSFER OF CERTIFICATION**

*History Note:* Authority G.S. 130A-361; 7 C.F.R. 246; 143B-10;  
*Eff. July 1, 1981;*  
*Amended Eff. October 1, 1993; September 1, 1991; December 6, 1991; November 1, 1990; October 1, 1990; July 1, 1989;*  
*Repealed Eff. October 1, 2009.*

**10A NCAC 43D .0409 REQUIRED NOTIFICATIONS**

*History Note:* Authority G.S. 130A-361;  
*Eff. July 1, 1981;*  
*Amended Eff. September 1, 1991; July 1, 1989;*  
*Repealed Eff. October 1, 2009.*

**10A NCAC 43D .0410 PARTICIPANT VIOLATIONS AND SANCTIONS**

(a) The State agency shall assess a claim for the full value of Program benefits that have been obtained or disposed of improperly as the result of a participant violation. "Participant violation" means those violations listed in 7 C.F.R. 246.2 which are incorporated by reference in Rule .0202 of this Subchapter. A claim shall not be paid by offsetting the claim against future Program benefits.

(b) The following participant violations committed by a participant, parent or caretaker of an infant or child participant, or proxy shall result in a one-year disqualification of the participant from the WIC Program, except as provided in Paragraphs (c) and (d) of this Rule:

- (1) Exchanging food instruments, cash-value vouchers or supplemental food for cash;
- (2) Exchanging food instruments, cash-value vouchers or supplemental food for alcohol, alcoholic beverages, tobacco products, firearms, ammunition, explosives, or controlled substances as defined in 21 U.S.C. 802;
- (3) A claim for dual participation resulting from intentional misrepresentation;
- (4) Intentionally making false or misleading statements or intentionally misrepresenting, concealing, or withholding facts to obtain Program benefits;
- (5) Any participant violation for which a claim of one hundred dollars (\$100.00) or more is assessed;
- (6) A second or subsequent claim assessed for any participant violation, regardless of the dollar amount. The second or subsequent claim does not have to be for the same participant violation as the initial claim to result in a one-year disqualification; and
- (7) Physical harm to clinic or vendor staff.

(c) The one-year disqualification referenced in Paragraph (b) of this Rule shall not be imposed against the participant if a claim is assessed and full payment is made or a repayment schedule is agreed upon within 30 days of receipt of a written demand for repayment of the claim for the improperly obtained or disposed of Program benefits.

(d) The one-year disqualification referenced in Paragraph (b) of this Rule shall not be imposed against the participant if the participant is an infant, child, or under age 18 and the state or local agency approves the designation of a proxy for the participant. Designation of a proxy shall be approved if the proxy:

- (1) is at least 18 years of age;
- (2) presents proof of identification in the form of a government-issued photo identification card, work or school identification card, health benefits or social services program card, social security card, birth certificate, or a pay stub or utility bill no more than 60 days old;

- (3) has written authorization from the participant or the parent or caretaker of an infant or child participant;
- (4) will not be serving as proxy for more than two families at the same time; and
- (5) will be the person who transacts the food instruments.

(e) Except as provided in Subparagraphs (b)(5) and (b)(6) of this Rule, the following participant violations committed by a participant, parent or caretaker of an infant or child participant, or proxy shall result in a written warning for the first violation and the assessment of a claim for the full amount of any improperly obtained or disposed of Program benefits:

- (1) Exchanging food instruments, cash-value vouchers or supplemental food for credit;
- (2) Exchanging food instruments, cash-value vouchers or supplemental food for non-food items, other than alcohol, alcoholic beverages, tobacco products, firearms, ammunition, explosives, or controlled substances as defined in 21 U.S.C. 802; and
- (3) Exchanging food instruments, cash-value vouchers or supplemental food for unauthorized food items, including supplemental foods in excess of those listed on the participant's food instrument.

For the violations listed in this Paragraph, failure to pay a claim in full or agree to a repayment schedule within 30 days of receipt of a written demand for repayment of a claim, shall result in a 90-day disqualification of the participant, unless the participant is an infant, child, or under age 18 and the state or local agency approves the designation of a proxy for the participant in accordance with Paragraph (d) of this Rule.

(f) The occurrence of a second or subsequent participant violation listed in Paragraph (e) of this Rule shall result in a one-year disqualification of the participant and the assessment of a claim for the full amount of any improperly obtained or disposed of Program benefits. The second or subsequent violation does not have to be the same as the initial violation to result in a one-year disqualification. The one-year disqualification shall not be imposed against the participant if full payment is made or a repayment schedule is agreed upon within 30 days of receipt of a written demand for repayment of a claim. Additionally, the one-year disqualification shall not be imposed against the participant if the participant is an infant, child, or under age 18 and the state or local agency approves the designation of a proxy for the participant in accordance with Paragraph (d) of this Rule.

(g) Threatening physical harm to or verbal abuse of clinic or vendor staff by a participant, parent or caretaker of an infant or child participant, or proxy shall result in a written warning for the first occurrence of this violation. A second occurrence within a 12-month period shall result in a 90-day disqualification of the participant, unless the participant is an infant, child, or under age 18 and the state or local agency approves the designation of a proxy for the participant in accordance with Paragraph (d) of this Rule.

(h) For any disqualification imposed under this Rule, a participant may reapply for Program participation if during the period of the disqualification full payment is made or a

repayment schedule is agreed upon, or in the case of a participant who is an infant, child, or under age 18, the state or local agency approves the designation of a proxy in accordance with Paragraph (d) of this Rule.

(i) The participant has a right to a fair hearing in accordance with Section .0900 of this Subchapter for sanctions imposed under this Rule.

*History Note:* Authority G.S. 130A-361; 7 C.F.R. 246; 42 U.S.C. 1786;

*Eff. July 1, 1983;*

*Amended Eff. November 1, 1990;*

*Temporary Amendment Eff. July 1, 2002;*

*Amended Eff. October 1, 2009; August 1, 2004.*

#### **10A NCAC 43D .0411 DUAL PARTICIPATION**

(a) A WIC participant shall not participate simultaneously in one or more than one WIC clinic, or participate in the WIC Program and the Commodity Supplemental Food Program ("CSFP") during the same period of time. For purposes of this Rule, participate means certification as a WIC participant for the receipt of WIC food instruments or cash-value vouchers or certification as a CSFP participant for the receipt of CSFP food.

(b) The state agency shall immediately terminate the participation in one of the clinics or Programs, or the simultaneous participation in a single clinic, in accordance with 7 C.F.R. 246.7 (l) when a participant is found to be in violation of Paragraph (a) of this Rule.

(c) In the case of dual participation resulting from intentional misrepresentation, the participant, parent or caretaker of an infant or child participant, or proxy shall repay Program benefits improperly issued as a result of the dual participation, and the participant shall be disqualified from participation in both Programs or clinic(s) in accordance with 7 C.F.R. 246.7 (l) and Paragraph (b) of Rule .0410 of this Section. For purposes of this Paragraph, receiving WIC food instruments or cash-value vouchers under two or more participant identities in a single WIC clinic during the same issuance period and transacting one or more of the food instruments or cash-value vouchers received under two or more of the identities constitutes dual participation based on intentional misrepresentation. Receiving WIC food instruments or cash-value vouchers from more than one WIC clinic during the same issuance period and transacting one or more of the food instruments or cash-value vouchers received from two or more of the clinics constitutes dual participation based on intentional misrepresentation. Additionally, receiving WIC food instruments or cash-value vouchers and CSFP food during the same time period and transacting one or more of the WIC food instruments or cash-value vouchers constitutes dual participation based on intentional misrepresentation.

*History Note:* Authority G.S. 130A-361; 7 C.F.R. 246; 42 U.S.C. 1786;

*Temporary Adoption Eff. July 1, 2002;*

*Eff. July 1, 2004;*

*Amended Eff. October 1, 2009.*



**10A NCAC 43D .0501 SUPPLEMENTAL FOODS**

(a) The foods which may be provided to WIC program participants are specified in 7 C.F.R. 246.10, which is incorporated by reference including any subsequent amendments and editions. This material is available for inspection at the Department of Health and Human Services, Division of Public Health, 5601 Six Forks Road, Raleigh, North Carolina 27609 and may be obtained from Nutrition Services at no cost.

(b) The following exclusions from the food package have been adopted by the North Carolina WIC program and approved by the United States Department of Agriculture, Food and Nutrition Service:

- (1) shredded, diced, grated and organic cheese;
- (2) eggs other than white, fresh, grade A large;
- (3) mackerel and sardines;
- (4) organic foods other than fruits and vegetables obtained with cash-value vouchers;
- (5) goat milk; and
- (6) dried fruits and vegetables.

(c) The state agency may exclude foods other than those described in Paragraph (b) of this Rule if it determines such foods to be inappropriate for provision as supplemental foods through the WIC program as a result of their cost, nutritional composition, packaging, statewide availability, participant acceptance, or promotion in a manner which is contrary to the purpose of the program as contained in 7 C.F.R. 246.1.

*History Note:* Authority G.S. 130A-361; 7 C.F.R. 246; 42 U.S.C. 1786;

*Eff.* July 1, 1981;

*Amended Eff.* October 1, 1993; October 1, 1990; July 1, 1989; October 1, 1988;

*Temporary Amendment Eff.* July 1, 2002;

*Amended Eff.* October 1, 2009; August 1, 2004.

**10A NCAC 43D .0502 QUANTITY OF FOODS**

The amount of supplemental foods provided shall not exceed the maximum quantities specified in 7 C.F.R. 246.10, which is incorporated by reference with all subsequent amendments and editions.

*History Note:* Authority G.S. 130A-361;

*Eff.* July 1, 1981;

*Amended Eff.* October 1, 2009; July 1, 1989; July 1, 1982.

**10A NCAC 43D .0601 EDUCATION OF PARTICIPANTS**

**10A NCAC 43D .0602 DOCUMENTATION OF NUTRITION EDUCATION**

**10A NCAC 43D .0603 CONTINUING EDUCATION OF STAFF**

**10A NCAC 43D .0604 THE LOCAL AGENCY NUTRITION EDUCATION PLAN**

*History Note:* Authority G.S. 130A-361;

*Eff.* July 1, 1981;

*Amended Eff.* December 6, 1991; November 1, 1990;

*Repealed Eff.* October 1, 2009.

**10A NCAC 43D .0701 THE NORTH CAROLINA AUTOMATED WIC SYSTEM**

The WIC program shall provide supplemental foods through a uniform retail distribution system in accordance with 7 C.F.R. 246.12. An automated data processing system shall be utilized to promote the provision of and accounting for food instruments and cash-value vouchers issued to participants.

*History Note:* Authority G.S. 130A-361; 42 U.S.C. 1786; 7 C.F.R. 246;

*Eff.* July 1, 1981;

*Amended Eff.* October 1, 2009; April 1, 2001.

**10A NCAC 43D .0702 ISSUANCE OF FOOD INSTRUMENTS AND CASH-VALUE VOUCHERS**

(a) Local WIC agencies shall issue WIC program food instruments and cash-value vouchers to program participants in a manner which ensures that participants can receive the appropriate supplemental foods that have been prescribed for them.

(b) Local WIC agencies shall issue food instruments and cash-value vouchers in a manner which prevents theft and shall retain documentation of the disposition of the food instruments and cash-value vouchers. The documentation of issuance shall include the dated signature of the authorized individual receiving the food instruments or cash-value vouchers unless the food instruments or cash-value vouchers are mailed.

(c) Participants shall be given appointments to receive food instruments or cash-value vouchers in a manner which promotes coordination with WIC program certification, nutrition education, other health services and the services being received by other family members.

(d) Food instruments and cash-value vouchers shall be issued only to the participant, the participant's parent, the participant's caretaker, a proxy, or a compliance investigator.

*History Note:* Authority G.S. 130A-361; 7 C.F.R. 246; 42 U.S.C. 1786;

*Eff.* July 1, 1981;

*Amended Eff.* April 1, 2001;

*Temporary Amendment Eff.* July 1, 2002;

*Amended Eff.* October 1, 2009; August 1, 2004.

**10A NCAC 43D .0703 USE OF FOOD INSTRUMENTS AND CASH-VALUE VOUCHERS**

(a) Participants may transact food instruments and cash-value vouchers on any day on or between the "date of issue" and "participant must use by" dates printed on the food instrument or cash-value voucher. The "participant must use by" date shall be 30 days from the "date of issue."

(b) North Carolina WIC program food instruments and cash-value vouchers shall be transacted only at authorized WIC vendors in accordance with the terms of the signed WIC Vendor Agreement and WIC Program rules, regulations, and statutes. Vendors are responsible for food instruments and cash-value vouchers not properly transacted. Neither an agency of the United States government, the State of North Carolina, the local WIC agency nor a past or present WIC participant, parent or

caretaker of an infant or child participant, or proxy is under any obligation to pay for food instruments or cash-value vouchers accepted by a store that was not an authorized WIC vendor on the date of transaction of the food instrument or cash-value voucher.

(c) North Carolina WIC food instruments and cash-value vouchers shall be deposited at the vendor's bank. These food instruments and cash-value vouchers shall not be assigned, transferred, sold or otherwise negotiated.

*History Note: Authority G.S. 130A-361; 7 C.F.R. 246; 42 U.S.C. 1786; Eff. July 1, 1981; Amended Eff. April 1, 2001; November 1, 1990; July 1, 1989; Temporary Amendment Eff. July 1, 2002; Amended Eff. October 1, 2009; August 1, 2004.*

**10A NCAC 43D .0704 VALIDITY OF WIC FOOD INSTRUMENTS AND CASH-VALUE VOUCHERS**

(a) North Carolina WIC food instruments and cash-value vouchers shall not be valid if:

- (1) the instrument or voucher has not been legibly imprinted with an authorized WIC vendor stamp;
- (2) the instrument or voucher has been counterfeited or the signature forged;
- (3) the instrument or voucher has been mutilated, defaced or otherwise tampered with or altered;
- (4) the instrument or voucher is not deposited in the vendor's bank within 60 days of the "date of issue" assigned to the instrument or voucher;
- (5) the "pay exactly" amount (i.e. purchase price) is not recorded on the food instrument or voucher;
- (6) the signature is missing;
- (7) the "date transacted" entered on the instrument or voucher is not on or between the "date of issue" and "participant must use by" dates assigned to the instrument or voucher;
- (8) the instrument or voucher is not completed in indelible ink. Invalid food instruments and cash-value vouchers shall be stamped with the reason for invalidity and returned to the vendor without payment.

(b) A vendor may attempt to justify or correct an invalid food instrument or cash-value voucher and shall receive payment if:

- (1) for a food instrument or cash-value voucher invalid under Subparagraph (a)(1) of this Rule, the vendor legibly imprints the authorized WIC vendor stamp on the food instrument or cash-value voucher and redeposits it within 95 days from the "date of issue" on the food instrument or cash-value voucher;
- (2) for a food instrument or cash-value voucher invalid under Subparagraphs (a)(2) or (a)(3) of this Rule, the vendor can demonstrate the food instrument or cash-value voucher was invalid due solely to the actions of a third party other

than the vendor's owners, officers, managers, agents, or employees and the "pay exactly" amount is legible or can be verified by the vendor with a receipt.

- (3) for a food instrument or cash-value voucher invalid under Subparagraph (a)(3) of this Rule, the food instrument or cash-value voucher was unintentionally mutilated or defaced by the vendor's owners, officers, managers, agents, or employees and the "pay exactly" amount is legible or can be verified by the vendor with a receipt.
- (4) for a food instrument or cash-value voucher invalid under Subparagraph (a)(3) of this Rule, the "pay exactly" amount has been altered and the vendor provides a receipt that confirms the altered amount is the correct "pay exactly" amount;
- (5) for a food instrument or cash-value voucher invalid under Subparagraph (a)(4) of this Rule, the state WIC office gives approval to the local WIC agency to replace. The state WIC office shall give approval to the local WIC agency to replace unless:
  - (A) the total value of food instruments and cash-value vouchers submitted at one time to the local WIC agency exceeds five hundred dollars (\$500.00);
  - (B) the vendor has submitted food instruments or cash-value vouchers for replacement to the local agency on two separate occasions within the preceding 12 months; or
  - (C) the date the vendor submits the food instrument or cash-value voucher to the local WIC agency for replacement is more than six months past the "date of issue" on the food instrument or cash-value voucher.

*History Note: Authority G.S. 130A-361; 7 C.F.R. 246; 42 U.S.C. 1786; Eff. July 1, 1981; Amended Eff. July 1, 1989; July 1, 1985; Temporary Amendment Eff. May 17, 2000; Amended Eff. April 1, 2001; Temporary Amendment Eff. July 1, 2002; Amended Eff. October 1, 2009; August 1, 2004.*

**10A NCAC 43D .0705 PAYMENT OF WIC FOOD INSTRUMENTS AND CASH-VALUE VOUCHERS**

The State of North Carolina shall:

- (1) accept North Carolina WIC food instruments and cash-value vouchers through the Federal Reserve and commercial banking systems;
- (2) ensure that WIC food instruments and cash-value vouchers are valid in accordance with Rule .0704 of this Subchapter;

- (3) provide payment for all valid WIC food instruments and cash-value vouchers. To the extent that sufficient funds are available in the WIC disbursing account, payment shall be provided according to established Department of Health and Human Services procedures for payment of WIC food instruments and cash-value vouchers.
- (4) ensure that every invalid WIC food instrument or cash-value voucher is stamped to indicate the reason for invalidity;
- (5) ensure that invalid WIC food instruments and cash-value vouchers are returned to the banks from which they were received, according to established banking procedures.

*History Note: Authority G.S. 130A-361; 42 U.S.C. 1786; 7 C.F.R. 246; Eff. July 1, 1981; Amended Eff. October 1, 2009; April 1, 2001.*

**10A NCAC 43D .0706 AUTHORIZED WIC VENDORS**

(a) Vendor applicants and authorized vendors shall be placed into peer groups as follows:

- (1) When annual WIC supplemental food sales are not yet available, vendor applicants and authorized vendors, excluding chain stores, stores under a WIC corporate agreement, military commissaries, predominantly WIC vendors, and free-standing pharmacies, shall be placed into peer groups based on the number of cash registers in the store until six months of WIC supplemental food sales become available. The following are the peer groups based on the number of cash registers in the store:
  - Peer Group I - - zero to two cash registers;
  - Peer Group II - - three to five cash registers; and
  - Peer Group III - - six or more cash registers.

WIC sales figures of new vendors shall be reviewed six months from authorization. A vendor whose first six months of WIC sales exceed twenty five thousand dollars (\$25,000) shall be placed in a peer group in accordance with the dollar thresholds of Subparagraph (a)(2) of this Rule.
- (2) Authorized vendors for which annual WIC supplemental food sales is available, excluding chain stores, stores under a WIC corporate agreement, military commissaries, predominantly WIC vendors, and free-standing pharmacies, shall be placed into peer groups as follows, except as provided in Subparagraph (a)(8) of this Rule.
  - Peer Group I - - two thousand dollars (\$2,000) to twenty five thousand

dollars (\$25,000) annually in WIC supplemental food sales at the store;  
 Peer Group II - - greater than twenty five thousand dollars (\$25,000) but not exceeding seventy five thousand dollars (\$75,000) annually in WIC supplemental food sales at the store;  
 Peer Group III - - greater than seventy five thousand dollars (\$75,000) but not exceeding three hundred thousand dollars (\$300,000) annually in WIC supplemental food sales at the store; and  
 Peer Group IV - - greater than three hundred thousand dollars (\$300,000) annually in WIC supplemental food sales at the store;

- (3) Chain stores, stores under a WIC corporate agreement (20 or more authorized vendors under one agreement), military commissaries, predominantly WIC vendors, and free-standing pharmacies, including free-standing pharmacy chain stores and free-standing pharmacies participating under a WIC corporate agreement, shall be placed into peer groups as follows:

Peer Group IV - - chain stores, stores under a WIC corporate agreement (20 or more authorized vendors under one agreement), military commissaries, and predominantly WIC vendors; and  
 Peer Group V - - free-standing pharmacies, including free-standing pharmacy chain stores and free-standing pharmacies participating under a WIC corporate agreement;

- (4) Annual WIC supplemental food sales is the dollar amount in sales of WIC supplemental foods at the store within a 12-month period.
- (5) In determining a vendor's peer group designation based on annual WIC supplemental food sales under Subparagraph (a)(2) of this Rule, the state agency shall look at the most recent 12-month period of sales data.
- (6) All stores held under common ownership shall be placed in the highest peer group among those commonly held. Common ownership is ownership of 30 percent or more in each of the stores commonly held.
- (7) The state agency may reassess an authorized vendor's peer group designation at any time during the vendor's agreement period and place the vendor in a different peer group if upon reassessment the state agency determines that the vendor is no longer in the appropriate peer group.
- (8) A vendor applicant previously authorized in a peer group under Subparagraph (a)(2) of this

Rule that is being reauthorized following the nonrenewal or termination of its Agreement or disqualification or withdrawal from the WIC Program shall be placed into the same peer group the vendor applicant was previously in under Subparagraph (a)(2) of this Rule, provided that no more than one year has passed since the nonrenewal, termination, disqualification or withdrawal. If more than one year has passed, the vendor applicant shall be placed into a peer group in accordance with Subparagraph (a)(1) of this Rule.

(b) To become authorized as a WIC vendor, a vendor applicant shall comply with the following vendor selection criteria:

- (1) A vendor applicant shall accurately complete a WIC Vendor Application, a WIC Price List, and a WIC Vendor Agreement. A vendor applicant shall submit its current highest shelf price for each WIC supplemental food listed on the WIC Price List.
- (2) A vendor applicant, at the time of application and throughout the term of authorization, shall submit all completed forms to the local WIC program, except that a corporate entity operating under a WIC corporate agreement shall submit one completed WIC corporate agreement and the WIC Price Lists to the state agency and a separate WIC Vendor Application for each store to the local WIC agency. A corporate entity operating under a WIC corporate agreement may submit a single WIC Price List for those stores that have the same prices for WIC supplemental foods in each store, rather than submitting a separate WIC Price List for each store.
- (3) A vendor applicant shall agree to purchase all infant formula, exempt infant formula, and WIC-eligible medical food directly from:
  - (A) Infant formula manufacturers registered with the U.S. Food and Drug Administration;
  - (B) Food and drug wholesalers registered with the North Carolina Secretary of State and inspected or licensed by the North Carolina Department of Agriculture and Consumer Services;
  - (C) Retail food stores that purchase directly from suppliers described in Part (b)(3)(A) or Part (b)(3)(B) of this Rule; or
  - (D) A supplier on another state's list of approved infant formula suppliers as verified by that state's agency.

Authorized vendors shall agree to make available to the state or local WIC agency, upon request, invoices or receipts documenting purchases of all infant formula, exempt infant formula, and WIC-eligible medical foods. Acceptable receipts include company

letterhead or name of wholesaler or manufacturer with date(s) of purchase and itemization of purchases reflecting infant formula, exempt infant formula, and WIC-eligible medical food purchases.

(4) A vendor applicant's current highest shelf price for each WIC supplemental food listed on the WIC Price List must not exceed the maximum price set by the state agency for each supplemental food within that vendor applicant's peer group, except as provided in Part (b)(4)(B) of this Rule. The maximum price for each supplemental food shall be established as follows:

- (A) The most recent WIC Price Lists submitted by authorized vendors within the same peer group shall be used to determine the maximum price for each supplemental food. The WIC Price Lists of predominantly WIC vendors shall be excluded from the maximum price determination. The maximum price shall be the 97th percentile of the current highest shelf prices for each supplemental food within a vendor peer group. The state agency shall reassess the maximum price set for each supplemental food at least four times a year. For two of its price assessments, the state agency shall use the WIC Price Lists which must be submitted by all vendors by April 1 and October 1 each year in accordance with Subparagraph (c)(31) of this Rule. The other two price assessments shall be based on WIC Price Lists requested from a sample of vendors within each peer group in January and July of each year. The sample of vendors shall exclude predominantly WIC vendors.
- (B) If any of the vendor applicant's price(s) on its WIC Price List exceed the maximum price(s) set by the state agency for that applicant's peer group, the applicant shall be notified in writing. Within 30 days of the date of the written notice, the vendor applicant may resubmit price(s) that it will charge the state WIC Program for those foods that exceeded the maximum price(s). If none of the vendor applicant's resubmitted prices exceed the maximum prices set by the state agency, the vendor applicant shall be deemed to have met the requirements of Subparagraph (b)(4) of this Rule. If any of the vendor applicant's resubmitted prices still

exceed the maximum prices set by the state agency, or the vendor applicant does not resubmit prices within 30 days of the date of written notice, the application shall be denied in writing. The vendor applicant must wait 90 days from the date of receipt of the written denial to reapply for authorization.

- (5) A vendor applicant shall pass a monitoring review by the local WIC program to determine whether the store has minimum inventory of supplemental foods as specified in Subparagraph (c)(24) of this Rule. A vendor applicant that fails this review shall be allowed a second opportunity for an unannounced monitoring review within 14 days. If the applicant fails both reviews, the applicant shall wait 90 days from the date of the second monitoring review before submitting a new application.
- (6) A vendor applicant shall attend, or cause a manager or other authorized store representative to attend, WIC Vendor Training provided by the local WIC Program prior to authorization and ensure that the applicant's employees receive instruction in WIC program procedures and requirements.
- (7) An applicant shall mark the current shelf prices of all WIC supplemental foods on the foods or have the prices posted on the shelf or display case at all times.
- (8) The store shall be located at a permanent and fixed location within the State of North Carolina. The store shall be located at the address indicated on the WIC vendor application and shall be the site at which WIC supplemental foods are selected by the WIC customer.
- (9) The store shall be open throughout the year for business with the public at least six days a week for at least 40 hours per week between 8:00 a.m. and 11:00 p.m.
- (10) The store shall not use the acronym "WIC" or the WIC logo, including close facsimiles, in total or in part, in the official name in which the business is registered or in the name under which it does business.
- (11) A vendor applicant shall not submit false, erroneous, or misleading information in an application to become an authorized WIC vendor or in subsequent documents submitted to the state or local WIC agency.
- (12) The owner(s), officer(s) or manager(s) of a vendor applicant shall not be employed, or have a spouse, child, or parent who is employed by the state WIC program or the local WIC program serving the county in which the vendor applicant conducts business.

A vendor applicant shall not have an employee who handles, transacts, deposits, or stores WIC food instruments or cash-value vouchers who is employed, or has a spouse, child, or parent who is employed by the state WIC program or the local WIC program serving the county in which the vendor applicant conducts business.

- (13) WIC vendor authorization shall be denied if in the last six years any of the vendor applicant's current owners, officers, or managers have been convicted of or had a civil judgment entered against them for any activity indicating a lack of business integrity, including fraud, antitrust violations, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, and obstruction of justice. For purposes of this Subparagraph, "convicted" or "conviction" means and includes a plea of guilty, 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 a plea of no contest, nolo contendere, or the equivalent. Entry of a prayer for judgment continued following a conviction as defined in this Rule is the same as a conviction for purposes of this Subparagraph.
- (14) A vendor applicant shall not be authorized if it is currently disqualified from the Special Nutrition Assistance Program ("SNAP") or it has been assessed a SNAP civil money penalty for hardship and the disqualification period that otherwise would have been imposed has not expired.
- (15) A vendor applicant, excluding chain stores and stores under a WIC corporate agreement that have a separate manager on site for each store, shall not have an owner who holds a financial interest in any of the following:
  - (A) a SNAP vendor which is disqualified from participation in the SNAP or has been assessed a civil money penalty for hardship in lieu of disqualification and the time period during which the disqualification would have run, had a penalty not been paid, is continuing; or
  - (B) another WIC vendor which is disqualified from participation in the WIC Program or which has been assessed an administrative penalty pursuant to G.S. 130A-22(c1), Paragraph (k), or Paragraph (l) of this Rule as the result of violation of Paragraphs (g), (h)(1)(A), (h)(1)(B), (h)(1)(C), (h)(1)(D) or (h)(2)(D) of

this Rule, and if assessed a penalty, the time during which the disqualification would have run, had a penalty not been assessed, is continuing.

The requirements of this Subparagraph shall not be met by the transfer or conveyance of financial interest during the period of disqualification. Additionally, the requirements of this Subparagraph shall not be met even if such transfer or conveyance of financial interest in a SNAP vendor under Part (b)(15)(A) of this Subparagraph prematurely ends the disqualification period applicable to that SNAP vendor. The requirements of this Subparagraph shall apply until the time the SNAP vendor disqualification otherwise would have expired.

- (16) A vendor applicant, excluding free-standing pharmacies, must have SNAP authorization for the store as a prerequisite for WIC vendor authorization and must provide its SNAP authorization number to the state agency.
- (17) A vendor applicant shall not become authorized as a WIC vendor if the store has been disqualified from participation in the WIC Program and the disqualification period has not expired.

(c) By signing the WIC Vendor Agreement, the vendor agrees to:

- (1) Process WIC program food instruments and cash-value vouchers in accordance with the terms of the Vendor Agreement and state and federal WIC program rules, regulations and applicable law;
- (2) Accept WIC program food instruments and cash-value vouchers in exchange for WIC supplemental foods. Supplemental foods are those foods which satisfy the requirements of 10A NCAC 43D .0501;
- (3) Provide only the authorized supplemental foods listed on the food instrument, or authorized fruits and vegetables with a cash-value voucher, accurately determine the charges to the WIC program, and complete the "Pay Exactly" box on the food instrument or cash-value voucher prior to obtaining the signature of the WIC customer. The WIC customer is not required to get all of the supplemental foods listed on the food instrument or the full dollar value of the cash-value voucher. However, a WIC customer may obtain more fruits and vegetables than the full dollar value of a cash-value voucher if the WIC customer pays the difference;
- (4) Enter in the "Pay Exactly" box on the food instrument or cash-value voucher only the total amount of the current shelf prices, or less than the current shelf prices, for the supplemental

food actually provided and shall not charge or collect sales taxes for the supplemental food provided;

- (5) Charge no more for supplemental food provided to a WIC customer than to a non-WIC customer or no more than the current shelf price, whichever is less;
- (6) Accept payment from the state WIC Program only up to the maximum price set by the state agency for each food instrument within that vendor's peer group. The maximum price for each food instrument shall be based on the maximum prices set by the state agency for each supplemental food, as described in Part (b)(4)(A) of this Rule, listed on the food instrument. A food instrument deposited by a vendor for payment which exceeds the maximum price shall be paid at the maximum price set by the state agency for that food instrument. Payment to predominantly WIC vendors for a food instrument shall not exceed the statewide average for that food instrument. This average excludes data from predominantly WIC vendors;
- (7) Accept payment from the state WIC Program only up to the full dollar value of the cash-value voucher;
- (8) Not charge the state WIC Program more than the maximum price set by the state agency under Part (b)(4)(A) of this Rule for each supplemental food within the vendor's peer group;
- (9) For non-contract brand milk-based and soy-based infant formulas, excluding exempt infant formulas, accept payment from the state WIC Program only up to the maximum price established for contract brand infant formulas under Part (b)(4)(A) of this Rule for the vendor's peer group;
- (10) For free-standing pharmacies, provide only exempt infant formula and WIC-eligible medical foods;
- (11) Excluding free-standing pharmacies, redeem at least two thousand dollars (\$2,000) annually in WIC supplemental food sales. Failure to redeem at least two thousand dollars (\$2,000) annually in WIC supplemental food sales shall result in termination of the WIC Vendor Agreement. The store must wait 180 days to reapply for authorization;
- (12) Accept WIC program food instruments and cash-value vouchers only on or between the "Date of Issue" and the "Participant Must Use By" dates;
- (13) Prior to obtaining the signature, enter in the "Date Transacted" box the month, day and year the WIC food instrument or cash-value voucher is exchanged for supplemental food;

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|---|--|
| <p>(14) Ensure that the food instrument or cash-value voucher is signed in the presence of the cashier;</p> <p>(15) Refuse to transact any food instrument or cash-value voucher that has been altered;</p> <p>(16) Not transact food instruments or cash-value vouchers in whole or in part for cash, credit, unauthorized foods, or non-food items;</p> <p>(17) Not provide refunds or permit exchanges for authorized supplemental foods obtained with food instruments or cash-value vouchers, except for exchanges of an identical authorized supplemental food when the original authorized supplemental food is defective, spoiled, or has exceeded its "sell by," "best if used by," or other date limiting the sale or use of the food. An identical authorized supplemental food means the exact brand, type and size as the original authorized supplemental food obtained and returned by the WIC customer;</p> <p>(18) Imprint the authorized WIC vendor stamp in the "Pay the Authorized WIC Vendor Stamped Here" box on the face of the food instrument or cash-value voucher to enable the vendor number to be read during the Program editing process;</p> <p>(19) Imprint the vendor's bank deposit stamp or the vendor's name, address and bank account number in the "Authorized WIC Vendor Stamp" box in the endorsement;</p> <p>(20) Deposit WIC program food instruments and cash-value vouchers in the vendor's bank. All</p> | <p>North Carolina WIC program food instruments and cash-value vouchers must be deposited in the vendor's bank within 60 days of the "Date of Issue" on the food instrument or cash-value voucher;</p> <p>(21) Ensure that the authorized WIC vendor stamp is used only for the purpose and in the manner authorized by the Agreement and be responsible for the unauthorized use of the authorized WIC vendor stamp;</p> <p>(22) Maintain storage of the authorized WIC vendor stamp so only the staff designated by the vendor owner or manager have access to the stamp and report loss of this stamp within two business days to the local agency;</p> <p>(23) Notify the local WIC agency of misuse (attempted or actual) of WIC program food instruments or cash-value vouchers;</p> <p>(24) Maintain a minimum inventory of supplemental foods in the store for purchase. Supplemental foods that are outside of the manufacturer's expiration date do not count towards meeting the minimum inventory requirement. The following items and sizes constitute the minimum inventory of supplemental foods for vendors in Peer Groups I through III of Subparagraph (a)(1) of this Rule, vendors in Peer Groups I through IV of Subparagraph (a)(2) of this Rule and vendors in Peer Group IV of Subparagraph (a)(3) of this Rule:</p> |
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Food Item	Type of Inventory	Quantities Required
Milk	Whole fluid: gallon	2 gallons
	-and-	
	Skim/lowfat fluid: gallon	4 gallons
Cheese	1 pound package	2 pounds
Cereals	2 types: whole grain	
	(minimum package size 12 ounce)	6 packages
Eggs	Grade A,	2 dozen
	large, white: one dozen	
	size carton	
Juices	Single strength:	
	48 ounce container	4 containers
	64 ounce container	4 containers
Dried Peas and Beans	one pound package	2 packages
Peanut Butter	16 to 18 ounce container	2 containers
Infant Cereal	8 ounce box	6 boxes
Infant Formula	milk-based concentrate;	34 cans
	13 ounce	
	-and-	
	soy-based concentrate;	17 cans
	13 ounce	
	-and-	
	milk-based powder;	10 cans
	12.9 to 14.3 ounce	

- |            |                                  |        |
|------------|----------------------------------|--------|
|            | -and-                            |        |
|            | soy-based powder;                | 5 cans |
|            | 12.9 to 14.3 ounce               |        |
|            | Brands must be the               |        |
|            | primary contract infant formulas |        |
| Fruits     | 14 to 16 ounce can: 2 varieties  | 6 cans |
| Vegetables | 14 to 16 ounce can: 2 varieties  | 6 cans |
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- All vendors in Peer Groups I through III of Subparagraph (a)(1) of this Rule, Peer Groups I through IV of Subparagraph (a)(2) of this Rule and Peer Groups IV and V of Subparagraph (a)(3) of this Rule shall supply milk, soy-based or lactose-free infant formula in 32 ounce ready-to-feed or lactose-free powder within 48 hours of request by the state or local WIC agency;

(25) Ensure that all supplemental foods in the store for purchase are within the manufacturer's expiration date;

(26) Permit the purchase of supplemental food without requiring other purchases;

(27) Attend, or cause a manager or other authorized store representative to attend, annual vendor training upon notification by the local agency;

(28) Inform and train vendor's cashiers and other staff on WIC Program requirements;

(29) Be accountable for the actions of its owners, officers, managers, agents, and employees who commit vendor violations;

(30) Allow monitoring and inspection of the store premises and procedures to ensure compliance with the agreement and state and federal WIC Program rules, regulations and statutes. This includes allowing access to all WIC food instruments and cash-value vouchers at the store, vendor records pertinent to the purchase and sale of WIC supplemental foods, including invoices, copies of purchase orders, and any other proofs of purchase, federal and state corporate and individual income tax and sales and use tax returns and all records pertinent to these returns, and books and records of all financial and business transactions. These records must be retained by the vendor for a period of three years or until any audit pertaining to these records is resolved, whichever is later. Failure or inability to provide these records or providing false records for an inventory audit shall be deemed a violation of 7 C.F.R. 246.12(l)(1)(iii)(B) and Subparagraph (g)(1) of this Rule;

(31) Submit a current accurately completed WIC Price List when signing this agreement, and by April 1 and October 1 of each year. The vendor also agrees to submit a WIC Price List within one week of any written request by the state or local WIC agency. Failure to submit a WIC Price List as required by this

Subparagraph within 30 days of the required submission date shall result in disqualification of the vendor from the WIC Program in accordance with Part (h)(1)(D) of this Rule;

(32) Reimburse the state agency within 30 days of written notification of a claim assessed due to a vendor violation that affects payment to the vendor or a claim assessed due to the unauthorized use of the WIC vendor stamp. The state agency shall deny payment or assess a claim in the amount of the full purchase price of each food instrument or cash-value voucher invalid under Subparagraphs (a)(2), (a)(5), (a)(6) or (a)(7) of Rule .0704 of this Section. Denial of payment by the state agency or payment of a claim by the vendor for a vendor violation(s) shall not absolve the vendor of the violation(s). The vendor shall also be subject to any vendor sanctions authorized under this Rule for the vendor violation(s);

(33) Not seek restitution from the WIC customer for reimbursement paid by the vendor to the state agency or for WIC food instruments or cash-value vouchers not paid or partially paid by the state agency. Additionally, the vendor shall not charge the WIC customer for authorized supplemental foods obtained with food instruments or cash-value vouchers;

(34) Not contact a WIC customer outside the store regarding the transaction or redemption of WIC food instruments or cash-value vouchers;

(35) Notify the local WIC agency in writing at least 30 days prior to a change of ownership, change in location, cessation of operations, or withdrawal from the WIC Program. Change of ownership, change in location of more than three miles from the vendor's previous location, cessation of operations, withdrawal from the WIC Program or disqualification from the WIC Program shall result in termination of the WIC Vendor Agreement by the state agency. Change of ownership, change in location, ceasing operations, withdrawal from the WIC Program or nonrenewal of the WIC Vendor Agreement shall not stop a disqualification period applicable to the store;

(36) Return the authorized WIC vendor stamp to the local WIC agency upon termination of the



- Agreement or disqualification from the WIC Program;
- (37) Offer WIC customers the same courtesies as offered to other customers;
  - (38) Not provide incentive items to WIC customers unless each incentive item is less than two dollars (\$2.00) in cost to the vendor in accordance with 42 USC 1786(h)(14). If incentive items are offered to WIC customers, no more than one incentive item per visit is permitted. Vendors shall not provide to WIC customers transportation to or from the vendor's premises, delivery of supplemental foods, lottery tickets, or cash gifts. The limitations of this Subparagraph apply only to predominantly WIC vendors;
  - (39) Reapply to continue to be authorized beyond the period of its current WIC Vendor Agreement. Additionally, a store must reapply to become authorized following the expiration of a disqualification period or termination of the Agreement. In all cases, the vendor applicant is subject to the vendor selection criteria of Paragraph (b) of this Rule; and
  - (40) Comply with all the requirements for vendor applicants of Subparagraphs (b)(3), (b)(4) and (b)(7) through (b)(16) of this Rule throughout the term of authorization. The state agency may reassess a vendor at any time during the vendor's period of authorization to determine compliance with these requirements. The state agency shall terminate the WIC Vendor Agreement of any vendor that fails to comply with Subparagraphs (b)(4), (b)(8), (b)(9), (b)(12), (b)(13) or (b)(15) of this Rule during the vendor's period of authorization, and terminate the Agreement of or sanction or both any vendor that fails to comply with Subparagraphs (b)(3), (b)(7), (b)(10), (b)(11), (b)(14) or (b)(16) of this Rule during the vendor's period of authorization.
- (d) By signing the WIC Vendor Agreement, the local agency agrees to the following:
- (1) Provide annual vendor training on WIC procedures and rules;
  - (2) Monitor the vendor's performance under the Agreement to ensure compliance with the Agreement and state and federal WIC program rules, regulations, and applicable law. A minimum of one-third of all authorized vendors shall be monitored within a contract year (October 1 through September 30) and all vendors shall be monitored at least once within three consecutive contract years. Any vendor shall be monitored within one week of written request by the state agency;
  - (3) Provide vendors with the North Carolina WIC Vendor Manual, all Vendor Manual amendments, blank WIC Price Lists, and the authorized WIC vendor stamp indicated on the signature page of the WIC Vendor Agreement; and
  - (4) Assist the vendor with questions which may arise under the Agreement or through the vendor's participation in the WIC Program.
- (e) For a food retailer or free-standing pharmacy to participate in the WIC Program, a current WIC Vendor Agreement must be signed by the vendor, the local WIC agency, and the state agency.
- (f) If an application for status as an authorized WIC vendor is denied, the applicant is entitled to an administrative appeal as described in Section .0800 of this Subchapter.
- (g) Title 7 C.F.R. 246.12(l)(1)(i) through (vi) and (xii) are incorporated by reference with all subsequent amendments and editions. In accordance with 7 C.F.R. 246.12(l)(1)(i), the state agency shall not allow imposition of a civil money penalty in lieu of disqualification for a vendor permanently disqualified. A pattern, as referenced in 7 CFR 246.12 (l)(1)(iii)(B) through (F) and 246.12(l)(iv), shall be established as follows:
- (1) claiming reimbursement for the sale of an amount of a specific supplemental food item which exceeds the store's documented inventory of that supplemental food item for six or more days within a 60-day period. The six or more days do not have to be consecutive days within the 60-day period. Failure or inability to provide records or providing false records required under Subparagraph (c)(30) of this Rule for an inventory audit shall be deemed a violation of 7 C.F.R. 246.12(l)(1)(iii)(B) and this Subparagraph;
  - (2) two occurrences of vendor overcharging within a 12-month period;
  - (3) two occurrences of receiving, transacting or redeeming food instruments or cash-value vouchers outside of authorized channels, including the use of an unauthorized vendor or an unauthorized person within a 12-month period;
  - (4) two occurrences of charging for supplemental food not received by the WIC customer within a 12-month period;
  - (5) two occurrences of providing credit or non-food items, other than alcohol, alcoholic beverages, tobacco products, cash, firearms, ammunition, explosives, or controlled substances as defined in 21 U.S.C. 802, in exchange for food instruments or cash-value vouchers within a 12-month period; or
  - (6) three occurrences of providing unauthorized food items in exchange for food instruments or cash-value vouchers, including charging for supplemental food provided in excess of those listed on the food instrument within a 12-month period.
- (h) Title 7 C.F.R. 246.12(l)(2)(i) is incorporated by reference with all subsequent amendments and editions. Except as provided in 7 C.F.R. 246.12 (l)(1)(xii), a vendor shall be

disqualified from the WIC Program for the following state-established violations in accordance with the sanction system below. The total period of disqualification shall not exceed one year for state-established violations investigated as part of a single investigation, as defined in Paragraph (i) of this Rule:

- (1) When a vendor commits any of the following violations, the state-established disqualification period is:
  - (A) 90 days for each occurrence of failure to properly transact a WIC food instrument or cash-value voucher by not completing the date or purchase price on the WIC food instrument or cash-value voucher before obtaining the signature, by not obtaining the signature in the presence of the cashier, or by accepting a WIC food instrument or cash-value voucher prior to the "Date of Issue" or after the "Participant Must Use By" dates on the food instrument or cash-value voucher;
  - (B) 60 days for each occurrence of requiring a cash purchase to transact a WIC food instrument or cash-value voucher;
  - (C) 30 days for each occurrence of requiring the purchase of a specific brand when more than one WIC supplemental food brand is available; and
  - (D) 30 days for each occurrence of failure to submit a WIC Price List as required by Subparagraph (c)(31) of this Rule.
- (2) When a vendor commits any of the following violations, the vendor shall be assessed sanction points as follows for each occurrence:
  - (A) 2.5 points for:
    - (i) stocking WIC supplemental foods outside of the manufacturer's expiration date; or
    - (ii) unauthorized use of the "WIC" acronym or the WIC logo.
  - (B) 5 points for:
    - (i) failure to attend annual vendor training;
    - (ii) failure to stock minimum inventory;
    - (iii) failure to mark the current shelf prices of all WIC supplemental foods on the foods or have the prices posted on the shelf or display case; or
    - (iv) failure of a predominantly WIC vendor to comply with

Subparagraph (c)(38) of this Rule regarding incentive items and services.

- (C) 7.5 points for:
  - (i) discrimination on the basis of WIC participation (separate WIC lines, denying trading stamp); or
  - (ii) contacting a WIC customer in an attempt to recoup funds for a food instrument or a cash-value voucher or contacting a WIC customer outside the store regarding the transaction or redemption of a WIC food instrument or a cash-value voucher.
- (D) 15 points for:
  - (i) failure to allow monitoring of a store by WIC staff when required;
  - (ii) failure to provide WIC food instruments or cash-value vouchers for review when requested;
  - (iii) failure to provide store inventory records when requested by WIC staff, except as provided in Subparagraph (c)(30) and Subparagraph (g)(1) of this Rule for failure or inability to provide records for an inventory audit;
  - (iv) nonpayment of a claim assessed by the state agency;
  - (v) providing false information on vendor records (application, vendor agreement, price list, WIC food instruments, cash-value vouchers or monitoring forms), except as provided in Subparagraph (c)(30) and Subparagraph (g)(1) of this Rule for providing false records for an inventory audit; or
  - (vi) failure to purchase infant formula, exempt infant formula, and WIC-eligible medical food from an authorized supplier as required by Subparagraphs (b)(3) and (c)(40) of this Rule.
- (3) For the violations listed in Subparagraph (h)(2) of this Rule, all sanction points assessed

against a vendor remain on the vendor's record for 12 months or until the vendor is disqualified as a result of those points. If a vendor accumulates 15 or more points, the vendor shall be disqualified. The nature of the violation(s) and the number of violations, as represented by the points assigned in Subparagraph (h)(2) of this Rule, are used to calculate the period of disqualification. The formula used to calculate the disqualification period is the number of points assigned to the violation carrying the highest number of sanction points multiplied by 18 days. Additionally, if the vendor has accumulated more than 15 points, 18 days shall be added to the disqualification period for each point over 15 points.

(i) For investigations pursuant to this Section, a single investigation is:

(1) Compliance buy(s) conducted by undercover investigators within a 12-month period to detect the following violations:

- (A) buying or selling food instruments or cash-value vouchers for cash (trafficking);
- (B) selling firearms, ammunition, explosives, or controlled substances as defined in 21 U.S.C. 802, in exchange for food instruments or cash-value vouchers;
- (C) selling alcohol or alcoholic beverages or tobacco products in exchange for food instruments or cash-value vouchers;
- (D) vendor overcharging;
- (E) receiving, transacting, or redeeming food instruments or cash-value vouchers outside of authorized channels, including the use of an unauthorized vendor or an unauthorized person;
- (F) charging for supplemental food not received by the WIC customer;
- (G) providing credit or non-food items, other than alcohol, alcoholic beverages, tobacco products, cash, firearms, ammunition, explosives, or controlled substances as defined in 21 U.S.C. 802, in exchange for food instruments or cash-value vouchers;
- (H) providing unauthorized food items in exchange for food instruments or cash-value vouchers, including charging for supplemental food provided in excess of those listed on the food instrument;
- (I) failure to properly transact a WIC food instrument or cash-value voucher;

- (J) requiring a cash purchase to transact a WIC food instrument or cash-value voucher; or
- (K) requiring the purchase of a specific brand when more than one WIC supplemental food brand is available.

(2) Monitoring reviews of a vendor conducted by WIC staff within a 12-month period which detect the following violations:

- (A) failure to stock minimum inventory;
- (B) stocking WIC supplemental food outside of the manufacturer's expiration date;
- (C) failure to allow monitoring of a store by WIC staff when required;
- (D) failure to provide WIC food instruments or cash-value vouchers for review when requested;
- (E) failure to provide store inventory records when requested by WIC staff;
- (F) failure to mark the current shelf prices of all WIC supplemental foods on the foods or have the prices posted on the shelf or display case;
- (G) failure of a predominantly WIC vendor to comply with Subparagraph (c)(38) of this Rule regarding incentive items and services; or
- (H) unauthorized use of the "WIC" acronym or the logo.

(3) Any other method used by the state or local agency to detect the following violations by a vendor within a 12-month period:

- (A) failure to attend annual vendor training;
- (B) failure to submit a WIC Price List as required by Subparagraph (c)(31) of this Rule;
- (C) discrimination on the basis of WIC participation (separate WIC lines, denying trading stamps);
- (D) contacting a WIC customer in an attempt to recoup funds for food instruments or cash-value vouchers or contacting a WIC customer outside the store regarding the transaction or redemption of WIC food instruments or cash-value vouchers;
- (E) nonpayment of a claim assessed by the state agency;
- (F) providing false information on vendor records (application, vendor agreement, price list, WIC food instruments, cash-value vouchers or monitoring forms);
- (G) claiming reimbursement for the sale of an amount of a specific supplemental food item which exceeds the store's documented

- inventory of that supplemental food item for a specific period of time, or failure or inability to provide records or providing false records required under Subparagraph (c)(30) of this Rule for an inventory audit; or
- (H) failure to purchase infant formula, exempt infant formula or WIC-eligible medical foods from an authorized supplier.
- (j) The SNAP disqualification provisions in 7 C.F.R. 246.12(l)(1)(vii) are incorporated by reference with all subsequent amendments and editions.
- (k) The participant access provisions of 7 C.F.R. 246.12(l)(1)(ix) and 246.12(l)(8) are incorporated by reference with all subsequent amendments and editions. The existence of any of the factors listed in Parts (l)(3)(A), (l)(3)(B) or (l)(3)(C) of this Rule shall conclusively show lack of inadequate participant access provided there is no geographic barrier, such as an impassable mountain or river, to using the other authorized WIC vendors referenced in these Subparagraphs. The agency shall not consider other indicators of inadequate participant access when any of these factors exist.
- (l) The following provisions apply to civil money penalties assessed in lieu of disqualification of a vendor:
- (1) The civil money penalty formula in 7 C.F.R. 246.12(l)(1)(x) is incorporated by reference with all subsequent amendments and editions, provided that the vendor's average monthly redemptions shall be calculated by using the six-month period ending with the month immediately preceding the month during which the notice of administrative action is dated.
  - (2) The state agency may also impose civil money penalties in accordance with G.S. 130A-22(c1) in lieu of disqualification of a vendor for the state-established violations listed in Paragraph (h) of this Rule when the state agency determines that disqualification of a vendor would result in participant hardship in accordance with Subparagraph (l)(3) of this Rule.
  - (3) In determining whether to disqualify a WIC vendor for the state-established violations listed in Paragraph (h) of this Rule, the agency shall not consider other indicators of hardship if any of the following factors, which conclusively show lack of hardship, are found to exist:
    - (A) the noncomplying vendor is located outside of the limits of a city, as defined in G.S. 160A-2, and another WIC vendor is located within seven miles of the noncomplying vendor;
    - (B) the noncomplying vendor is located within the limits of a city, as defined in G.S. 160A-2, and another WIC vendor is located within three miles of the noncomplying vendor; or
    - (C) a WIC vendor, other than the noncomplying vendor, is located within one mile of the local agency at which WIC participants pick up their food instruments or cash-value vouchers.
  - (4) The provisions for failure to pay a civil money penalty in 7 C.F.R. 246.12(l)(6) are incorporated by reference with all subsequent amendments and editions.
  - (m) The provisions of 7 C.F.R. 246.12(l)(1)(viii) prohibiting voluntary withdrawal from the WIC Program or nonrenewal of the WIC Vendor Agreement as an alternative to disqualification are incorporated by reference with all subsequent amendments and editions.
  - (n) The provision in 42 USC 1786 (f)(26) regarding prior warning to vendors is incorporated by reference with all subsequent amendments and editions.
  - (o) The state agency may offset payments to an authorized vendor if the vendor fails to reimburse the state agency in accordance with Subparagraph (c)(32) of this Rule.
  - (p) In accordance with 7 C.F.R. 246.12(l)(7) or 246.12(u)(5) or both, North Carolina's procedures for dealing with abuse of the WIC program by authorized WIC vendors do not exclude or replace any criminal or civil sanctions or other remedies that may be applicable under any federal or state law.
  - (q) Notwithstanding other provisions of this Rule, for the purpose of providing a one-time payment to a non-authorized store for WIC food instruments or cash-value vouchers accepted by the store, an agreement for a one-time payment need only be signed by the store manager and the state agency. The store may request such one-time payment directly from the state agency. The store manager shall sign an agreement indicating that the store has provided foods as prescribed on the food instrument or as allowed with the cash-value voucher, charged current shelf prices or less than current shelf prices, not charged sales tax, and verified the identity of the WIC customer. Any agreement entered into in this manner shall automatically terminate upon payment of the food instruments or cash-value vouchers. After entering into an agreement for a one-time payment, a non-authorized store shall not be allowed to enter into any further one-time payment agreements for WIC food instruments or cash-value vouchers accepted thereafter.
  - (r) Except as provided in 7 C.F.R. 246.18(a)(2), an authorized WIC vendor shall be given at least 15 days advance written notice of any adverse action which affects the vendor's participation in the WIC Program. The vendor appeal procedures shall be in accordance with 10A NCAC 43D .0800.

*History Note:* Authority G.S. 130A-361; 7 C.F.R. 246; 42 U.S.C. 1786;  
 Eff. July 1, 1981;  
 Amended Eff. August 1, 1995; October 1, 1993; May 1, 1991;  
 December 1, 1990;  
 Temporary Amendment Eff. June 23, 2000; May 17, 2000;  
 Amended Eff. April 1, 2001;  
 Temporary Amendment Eff. September 1, 2002; July 1, 2002;

*Amended Eff. November 1, 2005; August 1, 2004;  
Temporary Amendment Eff. July 1, 2006;  
Amended Eff. October 1, 2009; February 1, 2008; April 1, 2007.*

**10A NCAC 43D .1001 ADMINISTRATION**

*History Note: Authority G.S. 130A-361; 42 U.S.C. 1761;  
Eff. February 1, 1976;  
Readopted Eff. December 5, 1977;  
Amended Eff. December 6, 1991; November 1, 1990;  
Repealed Eff. October 1, 2009.*

**10A NCAC 43D .1003 PUBLIC HEALTH DIETITIANS  
10A NCAC 43D .1004 NUTRITION PROGRAM  
CONSULTANTS**

*History Note: Authority G.S. 130A-361;  
Eff. February 1, 1976;  
Readopted Eff. December 5, 1977;  
Amended Eff. July 1, 1985;  
Repealed Eff. October 1, 2009.*

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

**15A NCAC 02B .0225 OUTSTANDING RESOURCE  
WATERS**

(a) General. In addition to the existing classifications, the Commission may classify unique and special surface waters of the state as outstanding resource waters (ORW) upon finding that such waters are of exceptional state or national recreational or ecological significance and that the waters have exceptional water quality while meeting the following conditions:

- (1) that the water quality is rated as excellent based on physical, chemical or biological information;
- (2) the characteristics which make these waters unique and special may not be protected by the assigned narrative and numerical water quality standards.

(b) Outstanding Resource Values. In order to be classified as ORW, a water body must exhibit one or more of the following values or uses to demonstrate it is of exceptional state or national recreational or ecological significance:

- (1) there are outstanding fish (or commercially important aquatic species) habitat and fisheries;
- (2) there is an unusually high level of water-based recreation or the potential for such recreation;
- (3) the waters have already received some special designation such as a North Carolina or National Wild and Scenic River, Native or Special Native Trout Waters or National Wildlife Refuge, which do not provide any water quality protection;
- (4) the waters represent an important component of a state or national park or forest; or

- (5) the waters are of special ecological or scientific significance such as habitat for rare or endangered species or as areas for research and education.

(c) Quality Standards for ORW

- (1) Freshwater: Water quality conditions shall be maintained to protect the outstanding resource values of waters classified ORW. Management strategies to protect resource values shall be developed on a site specific basis during the proceedings to classify waters as ORW. No new discharges or expansions of existing discharges shall be permitted, and stormwater controls for all new development activities requiring an Erosion and Sedimentation Control Plan in accordance with rules established by the NC Sedimentation Control Commission or an appropriate local erosion and sedimentation control program shall be required to follow the stormwater provisions as specified in 15A NCAC 02H .1000. Specific stormwater requirements for ORW areas are described in 15A NCAC 02H .1007.

- (2) Saltwater: Water quality conditions shall be maintained to protect the outstanding resource values of waters classified ORW. Management strategies to protect resource values shall be developed on a site-specific basis during the proceedings to classify waters as ORW. New development shall comply with the stormwater provisions as specified in 15A NCAC 02H .1000. Specific stormwater management requirements for saltwater ORWs are described in 15A NCAC 02H .1007. New non-discharge permits shall meet reduced loading rates and increased buffer zones, to be determined on a case-by-case basis. No dredge or fill activities shall be allowed if those activities would result in a reduction of the beds of submerged aquatic vegetation or a reduction of shellfish producing habitat as defined in 15A NCAC 03I .0101(b)(20)(A) and (B), except for maintenance dredging, such as that required to maintain access to existing channels and facilities located within the designated areas or maintenance dredging for activities such as agriculture. A public hearing is mandatory for any proposed permits to discharge to waters classified as ORW.

Additional actions to protect resource values shall be considered on a site specific basis during the proceedings to classify waters as ORW and shall be specified in Paragraph (e) of this Rule. These actions may include anything within the powers of the Commission. The Commission shall also consider local actions which have been taken to protect a water body in determining the appropriate state protection options. Descriptions of boundaries of waters classified as ORW are included in Paragraph (e) of this Rule and in the Schedule of Classifications

(15A NCAC 02B .0302 through 02B .0317) as specified for the appropriate river basin and shall also be described on maps maintained by the Division of Water Quality.

(d) Petition Process. Any person may petition the Commission to classify a surface water of the state as an ORW. The petition shall identify the exceptional resource value to be protected, address how the water body meets the general criteria in Paragraph (a) of this Rule, and the suggested actions to protect the resource values. The Commission may request additional supporting information from the petitioner. The Commission or its designee shall initiate public proceedings to classify waters as ORW or shall inform the petitioner that the waters do not meet the criteria for ORW with an explanation of the basis for this decision. The petition shall be sent to:

Director  
DENR/Division of Water Quality  
1617 Mail Service Center  
Raleigh, North Carolina 27699-1617

The envelope containing the petition shall clearly bear the notation: **RULE-MAKING PETITION FOR ORW CLASSIFICATION.**

(e) Listing of Waters Classified ORW with Specific Actions  
Waters classified as ORW with specific actions to protect exceptional resource values are listed as follows:

- (1) Roosevelt Natural Area [White Oak River Basin, Index Nos. 20-36-9.5-(1) and 20-36-9.5-(2)] including all fresh and saline waters within the property boundaries of the natural area shall have only new development which complies with the low density option in the stormwater rules as specified in 15A NCAC 2H .1005(2)(a) within 575 feet of the Roosevelt Natural Area (if the development site naturally drains to the Roosevelt Natural Area).
- (2) Chattooga River ORW Area (Little Tennessee River Basin and Savannah River Drainage Area): the following undesignated waterbodies that are tributary to ORW designated segments shall comply with Paragraph (c) of this Rule in order to protect the designated waters as per Rule .0203 of this Section. However, expansions of existing discharges to these segments shall be allowed if there is no increase in pollutant loading:
  - (A) North and South Fowler Creeks;
  - (B) Green and Norton Mill Creeks;
  - (C) Cane Creek;
  - (D) Ammons Branch;
  - (E) Glade Creek; and
  - (F) Associated tributaries.
- (3) Henry Fork ORW Area (Catawba River Basin): the following undesignated waterbodies that are tributary to ORW designated segments shall comply with Paragraph (c) of this Rule in order to protect the designated waters as per Rule .0203 of this Section:
  - (A) Ivy Creek;

- (B) Rock Creek; and
  - (C) Associated tributaries.
- (4) South Fork New and New Rivers ORW Area [New River Basin (Index Nos. 10-1-33.5 and 10)]: the following management strategies, in addition to the discharge requirements specified in Subparagraph (c)(1) of this Rule, shall be applied to protect the designated ORW areas:
- (A) Stormwater controls described in Subparagraph (c)(1) of this Rule shall apply to land within one mile of and that drains to the designated ORW areas;
  - (B) New or expanded NPDES permitted wastewater discharges located upstream of the designated ORW shall be permitted such that the following water quality standards are maintained in the ORW segment:
    - (i) the total volume of treated wastewater for all upstream discharges combined shall not exceed 50 percent of the total instream flow in the designated ORW under 7Q10 conditions, which are defined in Rule .0206(a)(1) of this Section;
    - (ii) a safety factor shall be applied to any chemical allocation such that the effluent limitation for a specific chemical constituent shall be the more stringent of either the limitation allocated under design conditions (pursuant to 15A NCAC 02B .0206) for the normal standard at the point of discharge, or the limitation allocated under design conditions for one-half the normal standard at the upstream border of the ORW segment;
    - (iii) a safety factor shall be applied to any discharge of complex wastewater (those containing or potentially containing toxicants) to protect for chronic toxicity in the ORW segment by setting the whole effluent toxicity limitation at the higher (more stringent) percentage effluent determined under design conditions (pursuant to 15A

- NCAC 02B .0206) for either the instream effluent concentration at the point of discharge or twice the effluent concentration calculated as if the discharge were at the upstream border of the ORW segment;
- (C) New or expanded NPDES permitted wastewater discharges located upstream of the designated ORW shall comply with the following:
- (i) Oxygen Consuming Wastes: Effluent limitations shall be as follows: BOD = 5 mg/l, and NH<sub>3</sub>-N = 2 mg/l;
  - (ii) Total Suspended Solids: Discharges of total suspended solids (TSS) shall be limited to effluent concentrations of 10 mg/l for trout waters and to 20 mg/l for all other waters;
  - (iii) Emergency Requirements: Failsafe treatment designs shall be employed, including stand-by power capability for entire treatment works, dual train design for all treatment components, or equivalent failsafe treatment designs;
  - (iv) Nutrients: Where nutrient overenrichment is projected to be a concern, effluent limitations shall be set for phosphorus or nitrogen, or both.
- (5) Old Field Creek (New River Basin): the undesignated portion of Old Field Creek (from its source to Call Creek) shall comply with Paragraph (c) of this Rule in order to protect the designated waters as per Rule .0203 of this Section.
- (6) In the following designated waterbodies, no additional restrictions shall be placed on new or expanded marinas. The only new or expanded NPDES permitted discharges that shall be allowed shall be non-domestic, non-process industrial discharges. The Alligator River Area (Pasquotank River Basin) extending from the source of the Alligator River to the U.S. Highway 64 bridge including New Lake Fork, North West Fork Alligator River, Juniper Creek, Southwest Fork Alligator River, Scouts Bay, Gum Neck Creek, Georgia Bay, Winn Bay, Stumpy Creek Bay, Stumpy Creek, Swann Creek (Swann Creek Lake), Whipping Creek (Whipping Creek Lake), Grapevine Bay, Rattlesnake Bay, The Straits, The Frying Pan, Coopers Creek, Babbitt Bay, Goose Creek, Milltail Creek, Boat Bay, Sandy Ridge Gut (Sawyer Lake) and Second Creek, but excluding the Intracoastal Waterway (Pungo River-Alligator River Canal) and all other tributary streams and canals.
- (7) In the following designated waterbodies, the only type of new or expanded marina that shall be allowed shall be those marinas located in upland basin areas, or those with less than 10 slips, having no boats over 21 feet in length and no boats with heads. The only new or expanded NPDES permitted discharges that shall be allowed shall be non-domestic, non-process industrial discharges.
- (A) The Northeast Swanquarter Bay Area including all waters northeast of a line from a point at Lat. 35E 23N 51O and Long. 76E 21N 02O thence southeast along the Swanquarter National Wildlife Refuge hunting closure boundary (as defined by the 1935 Presidential Proclamation) to Drum Point.
  - (B) The Neuse-Southeast Pamlico Sound Area (Southeast Pamlico Sound Section of the Southeast Pamlico, Core and Back Sound Area); (Neuse River Basin) including all waters within an area defined by a line extending from the southern shore of Ocracoke Inlet northwest to the Tar-Pamlico River and Neuse River basin boundary, then southwest to Ship Point.
  - (C) The Core Sound Section of the Southeast Pamlico, Core and Back Sound Area (White Oak River Basin), including all waters of Core Sound and its tributaries, but excluding Nelson Bay, Little Port Branch and Atlantic Harbor at its mouth, and those tributaries of Jarrett Bay that are closed to shellfishing.
  - (D) The Western Bogue Sound Section of the Western Bogue Sound and Bear Island Area (White Oak River Basin) including all waters within an area defined by a line from Bogue Inlet to the mainland at SR 1117 to a line across Bogue Sound from the southwest side of Gales Creek to Rock Point, including Taylor Bay and the Intracoastal Waterway.
  - (E) The Stump Sound Area (Cape Fear River Basin) including all waters of Stump Sound and Alligator Bay from

- marker Number 17 to the western end of Permuda Island, but excluding Rogers Bay, the Kings Creek Restricted Area and Mill Creek.
- (F) The Topsail Sound and Middle Sound Area (Cape Fear River Basin) including all estuarine waters from New Topsail Inlet to Mason Inlet, including the Intracoastal Waterway and Howe Creek, but excluding Pages Creek and Futch Creek.
- (8) In the following designated waterbodies, no new or expanded NPDES permitted discharges and only new or expanded marinas with less than 10 slips, having no boats over 21 feet in length and no boats with heads shall be allowed:
- (A) The Swanquarter Bay and Juniper Bay Area (Tar-Pamlico River Basin) including all waters within a line beginning at Juniper Bay Point and running south and then west below Great Island, then northwest to Shell Point and including Shell Bay, Swanquarter and Juniper Bays and their tributaries, but excluding all waters northeast of a line from a point at Lat. 35E 23N 51O and Long. 76E 21N 02O thence southeast along the Swanquarter National Wildlife Refuge hunting closure boundary (as defined by the 1935 Presidential Proclamation) to Drum Point and also excluding the Blowout Canal, Hydeland Canal, Juniper Canal and Quarter Canal.
- (B) The Back Sound Section of the Southeast Pamlico, Core and Back Sound Area (White Oak River Basin) including that area of Back Sound extending from Core Sound west along Shackleford Banks, then north to the western most point of Middle Marshes and along the northwest shore of Middle Marshes (to include all of Middle Marshes), then west to Rush Point on Harker's Island, and along the southern shore of Harker's Island back to Core Sound.
- (C) The Bear Island Section of the Western Bogue Sound and Bear Island Area (White Oak River Basin) including all waters within an area defined by a line from the western most point on Bear Island to the northeast mouth of Goose Creek on the mainland, east to the southwest mouth of Queen Creek, then south to green marker No. 49, then northeast to the northern most point on Huggins Island, then southeast along the shoreline of Huggins Island to the southeastern most point of Huggins Island, then south to the northeastern most point on Dudley Island, then southwest along the shoreline of Dudley Island to the eastern tip of Bear Island.
- (D) The Masonboro Sound Area (Cape Fear River Basin) including all waters between the Barrier Islands and the mainland from Carolina Beach Inlet to Masonboro Inlet.
- (9) Black and South Rivers ORW Area (Cape Fear River Basin) [Index Nos. 18-68-(0.5), 18-68-(3.5), 18-68-(11.5), 18-68-12-(0.5), 18-68-12-(11.5), and 18-68-2]: the following management strategies, in addition to the discharge requirements specified in Subparagraph (c)(1) of this Rule, shall be applied to protect the designated ORW areas:
- (A) Stormwater controls described in Subparagraph (c)(1) of this Rule shall apply to land within one mile of and that drains to the designated ORW areas;
- (B) New or expanded NPDES permitted wastewater discharges located one mile upstream of the stream segments designated ORW (upstream on the designated mainstem and upstream into direct tributaries to the designated mainstem) shall comply with the following discharge restrictions:
- (i) Oxygen Consuming Wastes: Effluent limitations shall be as follows: BOD = 5 mg/l and NH<sub>3</sub>-N = 2 mg/l;
- (ii) Total Suspended Solids: Discharges of total suspended solids (TSS) shall be limited to effluent concentrations of 20 mg/l;
- (iii) Emergency Requirements: Failsafe treatment designs shall be employed, including stand-by power capability for entire treatment works, dual train design for all treatment components, or equivalent failsafe treatment designs;
- (iv) Nutrients: Where nutrient overenrichment is projected to be a concern, effluent limitations shall be set for



- phosphorus or nitrogen, or both.
- (v) Toxic substances: In cases where complex discharges (those containing or potentially containing toxicants) may be currently present in the discharge, a safety factor shall be applied to any chemical or whole effluent toxicity allocation. The limit for a specific chemical constituent shall be allocated at one-half of the normal standard at design conditions. Whole effluent toxicity shall be allocated to protect for chronic toxicity at an effluent concentration equal to twice that which is acceptable under flow design criteria (pursuant to 15A NCAC 02B .0206).
- (10) Lake Waccamaw ORW Area (Lumber River Basin) [Index No. 15-2]: all undesignated waterbodies that are tributary to Lake Waccamaw shall comply with Paragraph (c) of this Rule in order to protect the designated waters as per Rule .0203 of this Section.
- (11) Swift Creek and Sandy Creek ORW Area (Tar-Pamlico River Basin) [portion of Index No. 28-78-(0.5) and Index No. 28-78-1-(19)]: all undesignated waterbodies that drain to the designated waters shall comply with Paragraph (c) of this Rule in order to protect the designated waters as per Rule .0203 of this Section and to protect outstanding resource values found in the designated waters as well as in the undesignated waters that drain to the designated waters.
- (12) Fontana Lake North Shore ORW Area (Little Tennessee River Basin and Savannah River Drainage Area) [Index Nos. 2-96 through 2-164 (excluding all waterbodies that drain to the south shore of Fontana Lake) consists of the entire watersheds of all creeks that drain to the north shore of Fontana Lake between Eagle and Forney Creeks, including Eagle and Forney Creeks. In addition to the requirements specified in Subparagraph (c)(1) of this Rule, any person conducting development activity disturbing greater than or equal to 5,000 square feet of land area in the designated ORW area shall undertake the following actions to protect the outstanding resource values of the designated ORW and downstream waters:
- (A) investigate for the presence of and identify the composition of acid-producing rocks by exploratory drilling or other means and characterize the net neutralization potential of the acid-producing rocks prior to commencing the land-disturbing activity;
- (B) avoid areas to the maximum extent practical where acid-producing rocks are found with net neutralization potential of -5 or less;
- (C) establish background levels of acidity and mineralization prior to commencing land-disturbing activity, and monitor and maintain baseline water quality conditions for the duration of the land-disturbing activity and for any period thereafter not less than two years as determined by the Division as part of a certification issued in accordance with 15A NCAC 02H .0500 or stormwater permit issued pursuant to this Rule;
- (D) obtain a National Pollutant Discharge Elimination System permit for construction pursuant to Rule 15A NCAC 02H .0126 prior to initiating land-disturbing activity;
- (E) design stormwater control systems to control and treat stormwater runoff generated from all surfaces generated by one inch of rainfall in accordance with 15A NCAC 02H. 1008; and
- (F) replicate pre-development runoff characteristics and mimic the natural and unique hydrology of the site, post development.
- (13) Horsepasture River ORW Area (Savannah Drainage Area) [Index No. 4-13-(0.5) and Index No. 4-13-(12.5)]: all undesignated waterbodies that are located within the Horsepasture River watershed shall comply with Paragraph (c) of this Rule in order to protect the designated waters as per Rule .0203 of this Section and to protect outstanding resource values found throughout the watershed. However, new domestic wastewater discharges and expansions of existing wastewater discharges may be allowed provided that:
- (A) Oxygen Consuming Wastes: Effluent limitations shall be as follows: BOD = 5 mg/l, and NH<sub>3</sub>-N = 2 mg/l;
- (B) Total Suspended Solids: Discharges of total suspended solids (TSS) shall be limited to effluent concentrations of 10 mg/l for trout waters and to 20 mg/l for all other waters except for mining operations, which will be held

- to their respective NPDES TSS permit limits;
- (C) Nutrients: Where nutrient overenrichment is projected to be a concern, effluent limitations shall be set for phosphorus or nitrogen, or both; and
- (D) Volume: The total volume of treated wastewater for all discharges combined shall not exceed 25 percent of the total instream flow in the designated ORW under 7Q10 conditions, which are defined in Rule .0206(a)(1) of this Section.

*History Note: Authority G.S. 143-214.1; S.L. 2005-97; Eff. October 1, 1995;*  
*Amended Eff. August 1, 2003 (see S.L. 2003-433, s.2); August 1, 2000; April 1, 1996; January 1, 1996;*  
*Temporary Amendment Eff. October 7, 2003;*  
*Amended Eff. July 1, 2009; January 1, 2007; June 1, 2004.*

**15A NCAC 02B .0303 LITTLE TENN RIVER BASIN AND SAVANNAH RIVER DRAINAGE AREA**

(a) The Little Tenn River Basin and Savannah River Drainage Area Schedule of Classifications and Water Quality Standards may be inspected at the following places:

- (1) the Internet at <http://h2o.enr.state.nc.us/csu/>; and
- (2) the North Carolina Department of Environment and Natural Resources:
  - (A) Asheville Regional Office  
2090 US Highway 70  
Swannanoa, North Carolina
  - (B) Division of Water Quality  
Central Office  
512 North Salisbury Street  
Raleigh, North Carolina.

(b) Unnamed Streams. Such streams entering Georgia or Tennessee shall be classified "C Tr." Such streams in the Savannah River drainage area entering South Carolina shall be classified "B Tr."

(c) The Little Tennessee River Basin and Savannah River Drainage Area Schedule of Classifications and Water Quality Standards was amended effective:

- (1) February 16, 1977;
- (2) March 1, 1977;
- (3) July 13, 1980;
- (4) February 1, 1986;
- (5) October 1, 1987;
- (6) March 1, 1989;
- (7) January 1, 1990;
- (8) July 1, 1990;
- (9) August 1, 1990;
- (10) March 1, 1991;
- (11) August 3, 1992;
- (12) February 1, 1993;
- (13) August 1, 1994;
- (14) September 1, 1996;

- (15) August 1, 1998;
- (16) August 1, 2000;
- (17) April 1, 2003;
- (18) January 1, 2007;
- (19) November 1, 2007;
- (20) July 1, 2009.

(d) The Schedule of Classifications of Water Quality Standards for the Little Tennessee Basin and Savannah River Drainage Area was amended effective March 1, 1989 as follows:

- (1) Nantahala River (Index No. 2-57) from source to the backwaters of Nantahala Lake and all tributary waters were reclassified from Class B-trout, Class C-trout and Class C to Class B-trout ORW, Class C-trout ORW and Class C ORW.
- (2) Chattooga River (Index No. 3) including Scotsman Creek, Overflow Creek, Big Creek, Talley Mill Creek and all tributary waters were reclassified from Class B-trout, Class C-trout and Class C to Class B-trout ORW, Class C-trout ORW and Class C ORW and Clear Creek and all tributary waters were reclassified from Class C-trout and Class C to Class B-trout and Class B.

(e) The Schedule of Classifications and Water Quality Standards for the Little Tennessee River Basin and Savannah River Drainage Area was amended effective January 1, 1990 as follows:

- (1) North Fork Coweeta Creek (Index No. 2-10-4) and Falls Branch (Index No. 2-10-4-1) were reclassified from Class C to Class B.
- (2) Burningtown Creek (Index No. 2-38) was reclassified from C-trout to B-trout.

(f) The Schedule of Classifications and Water Quality Standards for the Little Tennessee River Basin and Savannah River Drainage Area was amended effective July 1, 1990 by the reclassification of Alarka Creek (Index No. 2-69) from source to Upper Long Creek (Index No. 2-69-2) including all tributaries from Classes C and C Tr to Classes C HQW and C Tr HQW.

(g) The Schedule of Classifications and Water Quality Standards for the Little Tennessee River Basin and Savannah River Drainage Area was amended effective March 1, 1991 as follows:

- (1) Cartoogechaye Creek [Index Nos. 2-19-(1) and 2-19-(16)] from Gibson Cove Branch to bridge at U.S. Hwy. 23 and 441 and from the bridge at U.S. Hwy. 23 and 441 to the Little Tennessee River was reclassified from Classes WS-III Tr and C Tr to Classes WS-III and B Tr and B Tr respectively.
- (2) Coweeta Creek (Index Nos. 2-10) from its source to the Little Tennessee River including all tributaries except Dryman Fork (Index No. 2-10-3) and North Fork Coweeta Creek (Index No. 2-10-4) was reclassified from Classes C and C Tr to Classes B and B Tr.

(h) The Schedule of Classifications and Water Quality Standards for the Little Tennessee River Basin and Savannah River Drainage Area was amended effective August 3, 1992

with the reclassification of all water supply waters (waters with a primary classification of WS-I, WS-II or WS-III). These waters were reclassified to WS-I, WS-II, WS-III, WS-IV or WS-V as defined in the revised water supply protection rules, (15A NCAC 02B .0100, .0200 and .0300) which became effective on August 3, 1992. In some cases, streams with primary classifications other than WS were reclassified to a WS classification due to their proximity and linkage to water supply waters. In other cases, waters were reclassified from a WS classification to an alternate appropriate primary classification after being identified as downstream of a water supply intake or identified as not being used for water supply purposes.

(i) The Schedule of Classifications and Water Quality Standards for the Little Tennessee River Basin and Savannah River Drainage Area has been amended effective February 1, 1993 as follows:

- (1) Bearwallow Creek from its source to 2.3 miles upstream of the Toxaway River [Index No. 4-7-(1)] was revised to indicate the application of an additional management strategy (referencing 15A NCAC 02B .0201(d) to protect downstream waters; and
- (2) the Tuckasegee River from its source to Tennessee Creek [Index No. 2-79-(0.5)] including all tributaries was reclassified from Classes WS-III&B Tr HQW, WS-III HQW and WS-III to Classes WS-III Tr ORW and WS-III ORW.

(j) The Schedule of Classifications and Water Quality Standards for the Little Tennessee River Basin and Savannah River Drainage Area was amended effective August 1, 1994 with the reclassification of Deep Creek [Index Nos. 2-79-63-(1) and 2-79-63-(16)] from its source to the Great Smokey Mountains National Park Boundary including tributaries from Classes C Tr, B Tr and C Tr HQW to Classes WS-II Tr and WS-II Tr CA.

(k) The Schedule of Classifications and Water Quality Standards for the Little Tennessee River Basin and Savannah River Drainage Area was amended effective September 1, 1996 as follows:

- (1) Deep Creek from the Great Smoky Mountains National Park Boundary to the Tuckasegee River [Index no. 2-79-63-(21)] was reclassified from Class C Tr to Class B Tr; and
- (2) the Tuckasegee River from the West Fork Tuckasegee River to Savannah Creek and from Macks Town Branch to Cochran Branch [Index Nos. 2-79-(24), 2-79(29.5) and 2-79-(38)] was reclassified from Classes WS-III Tr, WS-III Tr CA and C to Classes WS-III&B Tr, WS-III&B Tr CA and B.

(l) The Schedule of Classifications and Water Quality Standards for the Little Tennessee River Basin and Savannah River Drainage Area was amended effective August 1, 1998 with the reclassifications of Thorpe Reservoir (Lake Glenville), Hurricane Creek, and Laurel Branch [Index Nos. 2-79-23-(1), 2-79-23-2, and 2-79-23-2-1 respectively] from classes WS-III&B, WS-III Tr and WS-III to classes WS-III&B HQW, WS-III Tr HQW, and WS-III HQW.

(m) The Schedule of Classifications and Water Quality Standards for the Little Tennessee River Basin and Savannah River Drainage Area was amended August 1, 2000 with the reclassification of Wesser Creek [Index No. 2-79-52-5-1] from its source to Williams Branch from Class C to Class C Tr.

(n) The Schedule of Classifications and Water Quality Standards for the Little Tennessee River Basin and Savannah River Drainage Area was amended April 1, 2003 with the reclassification of a portion of the Little Tennessee River [Index No. 2-(1)] from a point 0.4 mile upstream of N.C. Highway 28 to Nantahala River Arm of Fontana Lake from Class C to Class B.

(o) The Schedule of Classifications and Water Quality Standards for the Little Tennessee River Basin and Savannah River Drainage Area was amended January 1, 2007 with the reclassification of the entire watersheds of all creeks that drain to the north shore of Fontana Lake between Eagle and Forney Creeks, including Eagle and Forney Creeks, [Index Nos. 2-96 through 2-164 (excluding all waterbodies that drain to the south shore of Fontana Lake)] from Class B, C Tr, WS-IV Tr CA, WS-IV Tr, and WS-IV & B CA to Class B ORW, C Tr ORW, WS-IV Tr ORW CA, WS-IV Tr ORW, and WS-IV & B ORW CA, respectively. Additional site-specific management strategies are outlined in Rule 15A NCAC 02B .0225(e)(12).

(p) The Schedule of Classifications and Water Quality Standards for the Little Tennessee River Basin and Savannah River Drainage Area was amended effective November 1, 2007 with the reclassification of Richland Balsam Seep near Beechflat Creek [Index No. 2-79-28-3-2] to Class WL UWL as defined in 15A NCAC 02B. 0101. The Division of Water Quality maintains a Geographic Information Systems data layer of the UWL.

(q) The Schedule of Classifications and Water Quality Standards for the Little Tennessee River Basin and Savannah River Drainage Area was amended July 1, 2009 with the reclassification of the watershed of the lower portion of the Horsepasture River [portion of Index Number 4-13-(12.5)] from a point approximately 0.60 miles downstream of N.C. 281 (Bohaynee Road) to the NC-SC state line from Class B Tr to Class B Tr ORW, and the watershed of the upper portion of the Horsepasture River [Index Number 4-13-(0.5) and a portion of Index Number 4-13-(12.5)] from source to a point approximately 0.60 miles downstream of N.C. 281 (Bohaynee Road) to include only the ORW management strategy as represented by "+". The "+" symbol as used in this paragraph means that all undesignated waterbodies that are located within the watershed of the upper portion of Horsepasture River shall comply with Paragraph (c) of Rule .0225 of this Subchapter in order to protect the designated waters as per Rule .0203 of this Subchapter and to protect outstanding resource values found throughout the entire Horsepasture River watershed. Site-specific management strategies are outlined in 15A NCAC 02B .0225(e)(13).

*History Note: Authority G.S. 143-214.1; 143-215.1; 143-215.3(a)(1); S.L. 2005-97;*

*Eff. February 1, 1976;*

*Amended Eff. July 1, 2009; November 1, 2007; January 1, 2007; April 1, 2003; August 1, 2000; August 1, 1998; September 1,*

1996; August 1, 1994; February 1, 1993; August 3, 1992; March 1, 1991.

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#### 15A NCAC 02Q .0701 APPLICABILITY

(a) With the exceptions in Rule .0702 of this Section, no person shall cause or allow any toxic air pollutant named in 15A NCAC 02D .1104 to be emitted from any facility into the atmosphere at a rate that exceeds the applicable rate(s) in Rule .0711 of this Section without having received a permit to emit toxic air pollutants as follows:

- (1) new facilities according to Rule .0704 of this Section;
- (2) existing facilities according to Rule .0705 of this Section;
- (3) modifications according to Rule .0706 of this Section.

(b) The Division shall assess risks from all existing exempt combustion sources using exposure and risk assessment methodologies and information and report findings to the EMC no later than July 1, 2014, and every five years thereafter. Based on these findings, the EMC shall determine if amendments to this Section are appropriate and necessary.

(c) Facilities required to comply with MACT standards under 15A NCAC 02D .1109, .1111, or .1112 or 40 CFR Part 63 shall be deemed in compliance with this Subchapter and 15A NCAC 02D .1100 unless the Division determines that modeled emissions result in one or more acceptable ambient levels in 15A NCAC 02D .1104 being exceeded. This review shall be made according to the procedures in 15A NCAC 02D .1106. Once a facility demonstrates compliance with the acceptable ambient levels in 15A NCAC 02D .1104, future demonstrations shall only be required on a five-year basis. When an acceptable ambient level for a toxic air pollutant in 15A NCAC 02D .1104 is changed, any condition that has previously been put in a permit to protect the previous acceptable ambient level for that toxic air pollutant shall not be changed until the permit is renewed, at which time the owner or operator of the facility shall submit an air toxic evaluation showing that the new acceptable ambient level will not be exceeded.

*History Note:* Authority G.S. 143-215.3(a)(1); 143-215.108; 143B-282; S.L. 1989, c. 168, s. 45;

*Rule originally codified as part of 15A NCAC 2H .0610;*

*Eff. July 1, 1998;*

*Amended Eff. February 1, 2005;*

*Amended Eff. Pending Legislative Review.*

#### 15A NCAC 02Q .0702 EXEMPTIONS

(a) A permit to emit toxic air pollutants shall not be required under this Section for:

- (1) residential wood stoves, heaters, or fireplaces;
- (2) hot water heaters that are used for domestic purposes only and are not used to heat process water;
- (3) maintenance, structural changes, or repairs that do not change capacity of that process, fuel-burning, refuse-burning, or control equipment,

and do not involve any change in quality or nature or increase in quantity of emission of any regulated air pollutant or toxic air pollutant;

- (4) housekeeping activities or building maintenance procedures, including painting buildings, resurfacing floors, roof repair, washing, portable vacuum cleaners, sweeping, use and associated storage of janitorial products, or non-asbestos bearing insulation removal;
- (5) use of office supplies, supplies to maintain copying equipment, or blueprint machines;
- (6) paving parking lots;
- (7) replacement of existing equipment with equipment of the same size, type, and function if the new equipment:
  - (A) does not result in an increase to the actual or potential emissions of any regulated air pollutant or toxic air pollutant;
  - (B) does not affect compliance status; and
  - (C) fits the description of the existing equipment in the permit, including the application, such that the replacement equipment can be operated under that permit without any changes to the permit;
- (8) comfort air conditioning or comfort ventilation systems that do not transport, remove, or exhaust regulated air pollutants to the atmosphere;
- (9) equipment used for the preparation of food for direct on-site human consumption;
- (10) non-self-propelled non-road engines, except generators, regulated by rules adopted under Title II of the federal Clean Air Act;
- (11) stacks or vents to prevent escape of sewer gases from domestic waste through plumbing traps;
- (12) use of fire fighting equipment;
- (13) the use for agricultural operations by a farmer of fertilizers, pesticides, or other agricultural chemicals containing one or more of the compounds listed in 15A NCAC 02D .1104 if such compounds are applied according to agronomic practices acceptable to the North Carolina Department of Agriculture;
- (14) asbestos demolition and renovation projects that comply with 15A NCAC 02D .1110 and that are being done by persons accredited by the Department of Health and Human Services under the Asbestos Hazard Emergency Response Act;
- (15) incinerators used only to dispose of dead animals or poultry as identified in 15A NCAC 02D .1201(c)(4) or incinerators used only to dispose of dead pets as identified in 15A NCAC 02D .1208(a)(2)(A);

- (16) refrigeration equipment that is consistent with Section 601 through 618 of Title VI (Stratospheric Ozone Protection) of the federal Clean Air Act, 40 CFR Part 82, and any other regulations promulgated by EPA under Title VI for stratospheric ozone protection, except those units used as or with air pollution control equipment;
- (17) laboratory activities:
  - (A) bench-scale, on-site equipment used exclusively for chemical or physical analysis for quality control purposes, staff instruction, water or wastewater analyses, or non-production environmental compliance assessments;
  - (B) bench scale experimentation, chemical or physical analyses, training or instruction from nonprofit, non-production educational laboratories;
  - (C) bench scale experimentation, chemical or physical analyses, training or instruction from hospital or health laboratories pursuant to the determination or diagnoses of illnesses; and
  - (D) research and development laboratory activities that are not required to be permitted under Section .0500 of this Subchapter provided the activity produces no commercial product or feedstock material;
- (18) combustion sources as defined in 15A NCAC 02Q .0703 except new or modified combustion sources permitted on or after [the effective date to be determined pending action of the legislature]. The DAQ shall review and recommend to the EMC no later than July 1, 2014, and every five years thereafter, whether the exemption shall remain in place or be removed.
- (19) storage tanks used only to store:
  - (A) inorganic liquids with a true vapor pressure less than 1.5 pounds per square inch absolute;
  - (B) fuel oils, kerosene, diesel, crude oil, used motor oil, lubricants, cooling oils, natural gas, liquefied petroleum gas, or petroleum products with a true vapor pressure less than 1.5 pounds per square inch absolute;
- (20) dispensing equipment used solely to dispense diesel fuel, kerosene, lubricants or cooling oils;
- (21) portable solvent distillation systems that are exempted under 15A NCAC 02Q .0102(c)(1)(I).
- (22) processes:
  - (A) electric motor burn-out ovens with secondary combustion chambers or afterburners;
  - (B) electric motor bake-on ovens;
  - (C) burn-off ovens for paint-line hangers with afterburners;
  - (D) hosiery knitting machines and associated lint screens, hosiery dryers and associated lint screens, and hosiery dyeing processes where bleach or solvent dyes are not used;
  - (E) blade wood planers planing only green wood;
  - (F) saw mills that saw no more than 2,000,000 board feet per year provided only green wood is sawed;
  - (G) perchloroethylene drycleaning processes with 12-month rolling total consumption of:
    - (i) less than 1366 gallons of perchloroethylene per year for facilities with dry-to-dry machines only;
    - (ii) less than 1171 gallons of perchloroethylene per year for facilities with transfer machines only; or
    - (iii) less than 1171 gallons of perchloroethylene per year for facilities with both transfer and dry-to-dry machines;
- (23) wood furniture manufacturing operations as defined in 40 CFR 63.801(a) that comply with the emission limitations and other requirements of 40 CFR Part 63 Subpart JJ, provided that the terms of this exclusion shall not affect the authority of the Director under 15A NCAC 02Q .0712;
- (24) wastewater treatment systems at pulp and paper mills for hydrogen sulfide and methyl mercaptan only;
- (25) gasoline dispensing facilities or gasoline service station operations that comply with 15A NCAC 02D .0928 and .0932 and that receive gasoline from bulk gasoline plants or bulk gasoline terminals that comply with 15A NCAC 02D .0524, .0925, .0926, .0927, .0932, and .0933 via tank trucks that comply with 15A NCAC 02D .0932;
- (26) the use of ethylene oxide as a sterilant in the production and subsequent storage of medical devices or the packaging and subsequent storage of medical devices for sale if the emissions from all new and existing sources at the facility described in 15A NCAC 02D .0538(d) are controlled at least to the degree described in 15A NCAC 02D .0538(d) and the

- facility complies with 15A NCAC 02D .0538(e) and (f);
- (27) bulk gasoline plants, including the storage and handling of fuel oils, kerosenes, and jet fuels but excluding the storage and handling of other organic liquids, that comply with 15A NCAC 02D .0524, .0925, .0926, .0932, and .0933; unless the Director finds that a permit to emit toxic air pollutants is required under Paragraph (b) of this Rule or Rule .0712 of this Section for a particular bulk gasoline plant; or
- (28) bulk gasoline terminals, including the storage and handling of fuel oils, kerosenes, and jet fuels but excluding the storage and handling of other organic liquids, that comply with 15A NCAC 02D .0524, .0925, .0927, .0932, and .0933 if the bulk gasoline terminal existed before November 1, 1992; unless:
- (A) the Director finds that a permit to emit toxic air pollutants is required under Paragraph (b) of this Rule or Rule .0712 of this Section for a particular bulk gasoline terminal, or
- (B) the owner or operator of the bulk gasoline terminal meets the requirements of 15A NCAC 02D .0927(i).

(b) Emissions from the activities identified in Subparagraphs (a)(25) through (a)(28) of this Rule shall be included in determining compliance with the toxic air pollutant requirements in this Section and shall be included in the permit if necessary to assure compliance. Emissions from the activities identified in Subparagraphs (a)(1) through (a)(24) of this Rule shall not be included in determining compliance with the toxic air pollutant requirements in this Section.

(c) The addition or modification of an activity identified in Paragraph (a) of this Rule shall not cause the source or facility to be evaluated for emissions of toxic air pollutants.

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

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.108; 143B-282; S.L. 1989, c. 168, s. 45;*

*Rule originally codified as part of 15A NCAC 02H .0610;*

*Eff. July 1, 1998;*

*Amended Eff. April 1, 2005; July 1, 2002; July 1, 2000;*

*Amended Eff. Pending Legislative Review.*

### **15A NCAC 02Q .0706 MODIFICATIONS**

(a) For modification of any facility undertaken after September 30, 1993, that:

- (1) is required to have a permit because of applicability of a Section, other than Section .1100, in Subchapter 02D of this Chapter except for facilities whose emissions of toxic air pollutants result only from insignificant

activities as defined in 15A NCAC 02Q .0103(20) or sources exempted under Rule .0102 of this Subchapter;

(2) has one or more sources subject to a MACT or GACT standard that has previously been promulgated under Section 112(d) of the federal Clean Air Act or established under Section 112(e) or 112(j) of the Clean Air Act; or

(3) has a standard industrial classification code that has previously been called under Rule .0705 of this Section;

the owner or operator of the facility shall comply with Paragraphs (b) and (c) of this Rule.

(b) The owner or operator of the facility shall submit a permit application to comply with 15A NCAC 02D .1100 if the modification results in:

(1) a net increase in emissions or ambient concentration of any toxic air pollutant that the facility was emitting before the modification; or

(2) emissions of any toxic air pollutant that the facility was not emitting before the modification if such emissions exceed the levels contained in Rule .0711 of this Section.

(c) The permit application filed pursuant to this Rule shall include an evaluation for all toxic air pollutants covered under 15A NCAC 02D .1104 for which there is:

(1) a net increase in emissions of any toxic air pollutant that the facility was emitting before the modification; and

(2) emission of any toxic air pollutant that the facility was not emitting before the modification if such emissions exceed the levels contained in Rule .0711 of this Section.

All sources at the facility, excluding sources exempt from evaluation in Rule .0702 of this Section, emitting these toxic air pollutants shall be included in the evaluation. Notwithstanding 02Q .0702(a)(18), on and after [the effective date to be determined pending action of the legislature], an evaluation of a modification to a combustion source shall also include emissions from all permitted combustion sources as defined in 02Q .0703. A permit application filed pursuant to Subparagraph (b)(2) of this Rule shall include an evaluation for all toxic air pollutants identified by the Director as causing an acceptable ambient level in 15A NCAC 02D .1104 to be exceeded.

(d) If a source is included in an air toxic evaluation, but is not the source that is being added or modified at the facility, and if the emissions from this source must be reduced in order for the facility to comply with the rules in this Section and 15A NCAC 02D .1100, then the emissions from this source shall be reduced by the time that the new or modified source begins operating such that the facility shall be in compliance with the rules in this Section and 15A NCAC 02D .1100.

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.108; 143B-282; S.L. 1989, C. 168, S. 45;*

*Rule originally codified as part of 15A NCAC 2H .0610;*

*Eff. July 1, 1998;*

*Amended Eff. December 1, 2005; April 1, 2005;  
Amended Eff. Pending Legislative Review.*

### 15A NCAC 02Q .0709 DEMONSTRATIONS

(a) Demonstrations. The owner or operator of a source who is applying for a permit or permit modification to emit toxic air pollutants shall:

- (1) demonstrate to the satisfaction of the Director through dispersion modeling that the emissions of toxic air pollutants from the facility will not cause any acceptable ambient level listed in 15A NCAC 02D .1104 to be exceeded beyond the premises (adjacent property boundary); or
- (2) demonstrate to the satisfaction of the Commission or its delegate that the ambient concentration beyond the premises (adjacent property boundary) for the subject toxic air pollutant shall not adversely affect human health (e.g., a risk assessment specific to the facility) though the concentration is higher than the acceptable ambient level in 15A NCAC 02D .1104 by providing one of the following demonstrations:
  - (A) the area where the ambient concentrations are expected to exceed the acceptable ambient levels in 15A NCAC 02D .1104 is not inhabitable or occupied for the duration of the averaging time of the pollutant of concern, or
  - (B) new toxicological data that show that the acceptable ambient level in 15A NCAC 02D .1104 for the pollutant of concern is too low and the facility's ambient impact is below the level indicated by the new toxicological data.

(b) Technical Infeasibility and Economic Hardship. This Paragraph shall not apply to any incinerator covered under 15A NCAC 02D .1200. The owner or operator of any source constructed before May 1, 1990, or a perchloroethylene dry cleaning facility subject to a GACT standard under 40 CFR 63.320 through 63.325, or a combustion source as defined in Rule .0703 of this Section permitted before [the effective date to be determined pending action of the legislature], who cannot supply a demonstration described in Paragraph (a) of this Rule shall:

- (1) demonstrate to the satisfaction of the Commission or its delegate that complying with the guidelines in 15A NCAC 02D .1104 is technically infeasible (the technology necessary to reduce emissions to a level to prevent the acceptable ambient levels in 15A NCAC 02D .1104 from being exceeded does not exist); or
- (2) demonstrate to the satisfaction of the Commission or its delegate that complying with the guidelines in 15A NCAC 02D .1104

would result in serious economic hardship. (In deciding if a serious economic hardship exists, the Commission or its delegate shall consider market impact; impacts on local, regional and state economy; risk of closure; capital cost of compliance; annual incremental compliance cost; and environmental and health impacts.)

If the owner or operator makes a demonstration to the satisfaction of the Commission or its delegate pursuant to Subparagraphs (1) or (2) of this Paragraph, the Director shall require the owner or operator of the source to apply maximum feasible control. Maximum feasible control shall be in place and operating within three years from the date that the permit is issued for the maximum feasible control.

(c) Pollution Prevention Plan. The owner or operator of any facility using the provisions of Part (a)(2)(A) or Paragraph (b) of this Rule shall develop and implement a pollution prevention plan consisting of the following minimum elements:

- (1) statement of corporate and facility commitment to pollution prevention;
- (2) identification of current and past pollution prevention activities;
- (3) timeline and strategy for implementation;
- (4) description of ongoing and planned employee education efforts;
- (5) identification of internal pollution prevention goal selected by the facility and expressed in either qualitative or quantitative terms.

The facility shall submit along with the permit application the pollution prevention plan. The pollution prevention plan shall be maintained on site. A progress report on implementation of the plan shall be prepared by the facility annually and be made available to Division personnel for review upon request.

(d) Modeling Demonstration. If the owner or operator of a facility demonstrates by modeling that no toxic air pollutant emitted from the facility exceeds the acceptable ambient level values given in 15A NCAC 02D .1104 beyond the facility's premises, further modeling demonstration is not required with the permit application. However, the Commission may still require more stringent emission levels according to its analysis under 15A NCAC 02D .1107.

(e) Change in Acceptable Ambient Level. When an acceptable ambient level for a toxic air pollutant in 15A NCAC 02D .1104 is changed, any condition that has previously been put in a permit to protect the previous acceptable ambient level for that toxic air pollutant shall not be changed until:

- (1) The permit is renewed, at which time the owner or operator of the facility shall submit an air toxic evaluation showing that the new acceptable ambient level will not be exceeded (If additional time is needed to bring the facility into compliance with the new acceptable ambient level, the owner or operator shall negotiate a compliance schedule with the Director. The compliance schedule shall be written into the facility's permit and final compliance shall not exceed two years from the effective date of the change in the acceptable ambient level.); or

- (2) The owner or operator of the facility requests that the condition be changed and submits along with that request an air toxic evaluation showing that the new acceptable ambient level shall not be exceeded.

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.108; 143B-282; S.L. 1989, c. 168, s. 45;*

*Rule originally codified as part of 15A NCAC 2H .0610;*

*Eff. July 1, 1998;*

*Amended Eff. February 1, 2005;*

*Amended Eff. Pending Legislative Review.*

**15A NCAC 07H .0308 SPECIFIC USE STANDARDS  
FOR OCEAN HAZARD AREAS**

**(a) Ocean Shoreline Erosion Control Activities:**

- (1) Use Standards Applicable to all Erosion Control Activities:
- (A) All oceanfront erosion response activities shall be consistent with the general policy statements in 15A NCAC 07M .0200.
- (B) Permanent erosion control structures may cause significant adverse impacts on the value and enjoyment of adjacent properties or public access to and use of the ocean beach, and, therefore, are prohibited. Such structures include bulkheads, seawalls, revetments, jetties, groins and breakwaters.
- (C) Rules concerning the use of oceanfront erosion response measures apply to all oceanfront properties without regard to the size of the structure on the property or the date of its construction.
- (D) All permitted oceanfront erosion response projects, other than beach bulldozing and temporary placement of sandbag structures, shall demonstrate sound engineering for their planned purpose.
- (E) Shoreline erosion response projects shall not be constructed in beach or estuarine areas that sustain substantial habitat for fish and wildlife species, as identified by natural resource agencies during project review, unless mitigation measures are incorporated into project design, as set forth in Rule .0306(i) of this Section.
- (F) Project construction shall be timed to minimize adverse effects on biological activity.
- (G) Prior to completing any erosion response project, all exposed remnants of or debris from failed

- erosion control structures must be removed by the permittee.
- (H) Erosion control structures that would otherwise be prohibited by these standards may be permitted on finding that:
- (i) the erosion control structure is necessary to protect a bridge which provides the only existing road access on a barrier island, that is vital to public safety, and is imminently threatened by erosion as defined in provision (a)(2)(B) of this subchapter;
- (ii) the erosion response measures of relocation, beach nourishment or temporary stabilization are not adequate to protect public health and safety; and
- (iii) the proposed erosion control structure will have no adverse impacts on adjacent properties in private ownership or on public use of the beach.
- (I) Structures that would otherwise be prohibited by these standards may also be permitted on finding that:
- (i) the structure is necessary to protect a state or federally registered historic site that is imminently threatened by shoreline erosion as defined in provision (a)(2)(B) of this subchapter; and
- (ii) the erosion response measures of relocation, beach nourishment or temporary stabilization are not adequate and practicable to protect the site; and
- (iii) the structure is limited in extent and scope to that necessary to protect the site; and
- (iv) any permit for a structure under this Part (I) may be issued only to a sponsoring public agency for projects where the public benefits outweigh the short or long range adverse impacts. Additionally, the permit shall include conditions providing for mitigation or minimization by that agency



- of any unavoidable adverse impacts on adjoining properties and on public access to and use of the beach.
- (J) Structures that would otherwise be prohibited by these standards may also be permitted on finding that:
  - (i) the structure is necessary to maintain an existing commercial navigation channel of regional significance within federally authorized limits; and
  - (ii) dredging alone is not practicable to maintain safe access to the affected channel; and
  - (iii) the structure is limited in extent and scope to that necessary to maintain the channel; and
  - (iv) the structure shall not adversely impact fisheries or other public trust resources; and any permit for a structure under this Part (J) may be issued only to a sponsoring public agency for projects where the public benefits outweigh the short or long range adverse impacts. Additionally, the permit shall include conditions providing for mitigation or minimization by that agency of any unavoidable adverse impacts on adjoining properties and on public access to and use of the beach.
- (K) The Commission may renew a permit for an erosion control structure issued pursuant to a variance granted by the Commission prior to 1 July 1995. The Commission may authorize the replacement of a permanent erosion control structure that was permitted by the Commission pursuant to a variance granted by the Commission prior to 1 July 1995 if the Commission finds that:
  - (i) the structure will not be enlarged beyond the dimensions set out in the permit;
  - (ii) there is no practical alternative to replacing the structure that will provide the same or similar benefits; and
- (iii) the replacement structure will comply with all applicable laws and with all rules, other than the rule or rules with respect to which the Commission granted the variance, that are in effect at the time the structure is replaced.
- (L) Proposed erosion response measures using innovative technology or design shall be considered as experimental and shall be evaluated on a case-by-case basis to determine consistency with 15A NCAC 07M .0200 and general and specific use standards within this Section.
- (2) Temporary Erosion Control Structures:
  - (A) Permittable temporary erosion control structures shall be limited to sandbags placed landward of mean high water and parallel to the shore.
  - (B) Temporary erosion control structures as defined in Part (2)(A) of this Subparagraph shall be used to protect only imminently threatened roads and associated right of ways, and buildings and their associated septic systems. A structure shall be considered imminently threatened if its foundation, septic system, or right-of-way in the case of roads, is less than 20 feet away from the erosion scarp. Buildings and roads located more than 20 feet from the erosion scarp or in areas where there is no obvious erosion scarp may also be found to be imminently threatened when site conditions, such as a flat beach profile or accelerated erosion, increase the risk of imminent damage to the structure.
  - (C) Temporary erosion control structures shall be used to protect only the principal structure and its associated septic system, but not appurtenances such as pools gazebos, decks or any amenity that is allowed as an exception to the erosion setback requirement.
  - (D) Temporary erosion control structures may be placed seaward of a septic system when there is no alternative to relocate it on the same or adjoining lot so that it is landward of or in line with the structure being protected.

- (E) Temporary erosion control structures shall not extend more than 20 feet past the sides of the structure to be protected. The landward side of such temporary erosion control structures shall not be located more than 20 feet seaward of the structure to be protected or the right-of-way in the case of roads. If a building or road is found to be imminently threatened and at an increased risk of imminent damage due to site conditions such as a flat beach profile or accelerated erosion, temporary erosion control structures may be located more than 20 feet seaward of the structure being protected. In cases of increased risk of imminent damage, the location of the temporary erosion control structures shall be determined by the Director of the Division of Coastal Management or their designee.
- (F) Temporary erosion control structures may remain in place for up to two years after the date of approval if they are protecting a building with a total floor area of 5000 sq. ft. or less and its associated septic system, or, for up to five years for a building with a total floor area of more than 5000 sq. ft. and its associated septic system. Temporary erosion control structures may remain in place for up to five years if they are protecting a bridge or a road. The property owner shall be responsible for removal of the temporary structure within 30 days of the end of the allowable time period.
- (G) Temporary sandbag erosion control structures may remain in place for up to five years from the date of approval if they are located in a community that is actively pursuing a beach nourishment project, and for up to eight years from the date of approval if they are located in an Inlet Hazard Area adjacent to an inlet for which a community is actively pursuing an inlet relocation project. For purposes of this Rule, a community is considered to be actively pursuing a beach nourishment or inlet relocation project if it has:
- (i) an active CAMA permit, where necessary, approving such project; or
  - (ii) been identified by a U.S. Army Corps of Engineers'
- Beach Nourishment Reconnaissance Study, General Reevaluation Report, Coastal Storm Damage Reduction Study or an ongoing feasibility study by the U.S. Army Corps of Engineers and a commitment of local or federal money, when necessary; or
- (iii) received a favorable economic evaluation report on a federal project; or
  - (iv) is in the planning stages of a project that has been designed by the U.S. Army Corps of Engineers or persons meeting applicable State occupational licensing requirements and has been initiated by a local government or community with a commitment of local or state funds to construct the project and the identification of the financial resources or funding bases necessary to fund the beach nourishment or inlet relocation project.
- If beach nourishment or inlet relocation is rejected by the sponsoring agency or community, or ceases to be actively planned for a section of shoreline, the time extension is void for that section of beach or community and existing sandbags are subject to all applicable time limits set forth in Part (F) of this Subparagraph.
- (H) Once the temporary erosion control structure is determined to be unnecessary due to relocation or removal of the threatened structure, a storm protection project constructed by the U.S. Army Corps of Engineers, a large-scale beach nourishment project or an inlet relocation project, it shall be removed by the property owner within 30 days of official notification from the Division of Coastal Management regardless of the time limit placed on the temporary erosion control structure.
- (I) Removal of temporary erosion control structures shall not be required if they are covered by dunes with stable and natural vegetation.
- (J) The property owner shall be responsible for the removal of

- remnants of all portions of any damaged temporary erosion control structure.
- (K) Sandbags used to construct temporary erosion control structures shall be tan in color and three to five feet wide and seven to 15 feet long when measured flat. Base width of the structure shall not exceed 20 feet, and the height shall not exceed six feet.
- (L) Soldier pilings and other types of devices to anchor sandbags shall not be allowed.
- (M) An imminently threatened structure may be protected only once, regardless of ownership unless the threatened structure is located in an Inlet Hazard Area and in a community that is actively pursuing an inlet relocation project in accordance with Part (G) of this Subparagraph. Existing temporary erosion control structures located in Inlet Hazard Areas may be eligible for an additional eight year permit extension provided that the structure being protected is still imminently threatened, the temporary erosion control structure is in compliance with requirements of this Subchapter and the community in which it is located is actively pursuing an inlet relocation project in accordance with Part (G) of this Subparagraph. In the case of a building, a temporary erosion control structure may be extended, or new segments constructed, if additional areas of the building become imminently threatened. Where temporary structures are installed or extended incrementally, the time period for removal under Part (F) or (G) of this Subparagraph shall begin at the time the initial erosion control structure is installed. For the purpose of this Rule:
- (i) a building and septic system shall be considered as separate structures.
  - (ii) a road or highway shall be allowed to be incrementally protected as sections become imminently threatened. The time period for removal of each section of sandbags shall begin at the time that section is installed in accordance with Part (F) or (G) of this Subparagraph.
- (N) Existing sandbag structures may be repaired or replaced within their originally permitted dimensions during the time period allowed under Part (F) or (G) of this Subparagraph.
- (3) Beach Nourishment. Sand used for beach nourishment shall be compatible with existing grain size and type. Sand to be used for beach nourishment shall be taken only from those areas where the resulting environmental impacts will be minimal.
- (4) Beach Bulldozing. Beach bulldozing (defined as the process of moving natural beach material from any point seaward of the first line of stable vegetation to create a protective sand dike or to obtain material for any other purpose) is development and may be permitted as an erosion response if the following conditions are met:
- (A) The area on which this activity is being performed shall maintain a slope of adequate grade so as to not endanger the public or the public's use of the beach and shall follow the pre-emergency slope as closely as possible. The movement of material utilizing a bulldozer, front end loader, backhoe, scraper, or any type of earth moving or construction equipment shall not exceed one foot in depth measured from the pre-activity surface elevation;
  - (B) The activity shall not exceed the lateral bounds of the applicant's property unless he has permission of the adjoining land owner(s);
  - (C) Movement of material from seaward of the mean low water line will require a CAMA Major Development and State Dredge and Fill Permit;
  - (D) The activity shall not increase erosion on neighboring properties and shall not have an adverse effect on natural or cultural resources;
  - (E) The activity may be undertaken to protect threatened on-site waste disposal systems as well as the threatened structure's foundations.
- (b) Dune Establishment and Stabilization. Activities to establish dunes shall be allowed so long as the following conditions are met:
- (1) Any new dunes established shall be aligned to the greatest extent possible with existing adjacent dune ridges and shall be of the same general configuration as adjacent natural dunes.

- (2) Existing primary and frontal dunes shall not, except for beach nourishment and emergency situations, be broadened or extended in an oceanward direction.
- (3) Adding to dunes shall be accomplished in such a manner that the damage to existing vegetation is minimized. The filled areas shall be immediately replanted or temporarily stabilized until planting can be successfully completed.
- (4) Sand used to establish or strengthen dunes shall be of the same general characteristics as the sand in the area in which it is to be placed.
- (5) No new dunes shall be created in inlet hazard areas.
- (6) Sand held in storage in any dune, other than the frontal or primary dune, may be redistributed within the AEC provided that it is not placed any farther oceanward than the crest of a primary dune or landward toe of a frontal dune.
- (7) No disturbance of a dune area shall be allowed when other techniques of construction can be utilized and alternative site locations exist to avoid unnecessary dune impacts.

(c) Structural Accessways:

- (1) Structural accessways shall be permitted across primary dunes so long as they are designed and constructed in a manner that entails negligible alteration on the primary dune. Structural accessways shall not be considered threatened structures for the purpose of Paragraph (a) of this Rule.
- (2) An accessway shall be conclusively presumed to entail negligible alteration of a primary dune provided that:
  - (A) The accessway is exclusively for pedestrian use;
  - (B) The accessway is less than six feet in width;
  - (C) The accessway is raised on posts or pilings of five feet or less depth, so that wherever possible only the posts or pilings touch the frontal dune. Where this is deemed impossible, the structure shall touch the dune only to the extent absolutely necessary. In no case shall an accessway be permitted if it will diminish the dune's capacity as a protective barrier against flooding and erosion; and
  - (D) Any areas of vegetation that are disturbed are revegetated as soon as feasible.
- (3) An accessway which does not meet Part (2)(A) and (B) of this Paragraph shall be permitted only if it meets a public purpose or need which cannot otherwise be met and it meets Part (2)(C) of this Paragraph. Public fishing piers

shall not be deemed to be prohibited by this Rule, provided all other applicable standards are met.

- (4) In order to avoid weakening the protective nature of primary and frontal dunes a structural accessway (such as a "Hatteras ramp") shall be provided for any off-road vehicle (ORV) or emergency vehicle access. Such accessways shall be no greater than 10 feet in width and shall be constructed of wooden sections fastened together over the length of the affected dune area.

(d) Building Construction Standards. New building construction and any construction identified in .0306(a)(5) and 07J .0210 shall comply with the following standards:

- (1) In order to avoid danger to life and property, all development shall be designed and placed so as to minimize damage due to fluctuations in ground elevation and wave action in a 100-year storm. Any building constructed within the ocean hazard area shall comply with relevant sections of the North Carolina Building Code including the Coastal and Flood Plain Construction Standards and the local flood damage prevention ordinance as required by the National Flood Insurance Program. If any provision of the building code or a flood damage prevention ordinance is inconsistent with any of the following AEC standards, the more restrictive provision shall control.
- (2) All building in the ocean hazard area shall be on pilings not less than eight inches in diameter if round or eight inches to a side if square.
- (3) All pilings shall have a tip penetration greater than eight feet below the lowest ground elevation under the structure. For those structures so located on or seaward of the primary dune, the pilings shall extend to five feet below mean sea level.
- (4) All foundations shall be adequately designed to be stable during applicable fluctuations in ground elevation and wave forces during a 100-year storm. Cantilevered decks and walkways shall meet this standard or shall be designed to break-away without structural damage to the main structure.

*History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b)(6)a.,b.,d.; 113A-124; Eff. June 1, 1979; Filed as a Temporary Amendment Eff. June 20, 1989, for a period of 180 days to expire on December 17, 1989; Amended Eff. August 3, 1992; December 1, 1991; March 1, 1990; December 1, 1989; RRC Objection Eff. November 19, 1992 due to ambiguity; RRC Objection Eff. January 21, 1993 due to ambiguity; Amended Eff. March 1, 1993; December 28, 1992; RRC Objection Eff. March 16, 1995 due to ambiguity;*

*Amended Eff. April 1, 1999; February 1, 1996; May 4, 1995;  
Temporary Amendment Eff. July 3, 2000; May 22, 2000;  
Amended Eff. July 1, 2009; April 1, 2008; February 1, 2006;  
August 1, 2002.*

**15A NCAC 07H .1101 PURPOSE**

A permit under this Section shall allow the construction of bulkheads and riprap revetments for shoreline protection in the public trust waters and estuarine waters AECs according to authority provided in Subchapter 07J .1100 and according to the Rules in this Section. This permit shall not apply to shoreline protection along the oceanfront or to waters and shorelines adjacent to the Ocean Hazard AEC with the exception of those shorelines that feature characteristics of the Estuarine Shoreline AEC. Such features include the presence of wetland vegetation, lower wave energy and lower erosion rates than the adjoining Ocean Erodible Area.

*History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b); 113A-118.1; 113A-124;  
Eff. March 1, 1984;  
Amended Eff. July 1, 2009; April 1, 2003.*

**15A NCAC 07H .1102 APPROVAL PROCEDURES**

(a) An applicant for a General Permit under this Subchapter shall contact the Division of Coastal Management and request approval for development. The applicant shall provide information on site location, dimensions of the project area, and the applicant's name and address.

(b) The applicant shall provide:

- (1) confirmation that a written statement has been obtained signed by the adjacent riparian property owners indicating that they have no objections to the proposed work; or
- (2) confirmation that the adjacent riparian property owners have been notified by certified mail of the proposed work. The notice shall instruct adjacent property owners to provide written comments on the proposed development to the Division of Coastal Management within 10 days of receipt of the notice, and, indicate that no response shall be interpreted as no objection. The Division of Coastal Management shall review all comments and determine, based on their relevance to the potential impacts of the proposed project, if the proposed project can be approved by a General Permit. If the Division of Coastal Management determines that the project exceeds the guidelines established by the General Permit Process, DCM shall notify the applicant that an application for a major development permit shall be required.

(c) No work shall begin until an on-site meeting is held with the applicant and a Division of Coastal Management representative so that the proposed alignment may be marked. Written authorization to proceed with the proposed development shall be issued if the Division representative finds that the application

meets all the requirements of this Subchapter. Construction of the bulkhead or riprap revetment shall be completed within 120 days of the issuance of the general authorization or the authorization shall expire and it shall be necessary to re-examine the alignment to determine if the general authorization may be reissued.

*History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b); 113A-118.1; 113A-124;  
Eff. March 1, 1984;  
Amended Eff. July 1, 2009; October 1, 2007; September 1, 2006;  
January 1, 1990; December 1, 1987.*

**15A NCAC 07H .1103 PERMIT FEE**

The applicant shall pay a permit fee of two hundred dollars (\$200.00) for riprap revetments sited at or above normal high water or normal water level, or a permit fee of four hundred dollars (\$400.00) for riprap revetments sited below normal high water or normal water level. The applicant shall pay a permit fee of four hundred dollars (\$400.00) for bulkheads. Permit fees shall be paid by check or money order payable to the Department.

*History Note: Authority G.S. 113A-107; 113A-113(b); 113A-118.1; 113A-119; 113-119.1; 113A-124;  
Eff. March 1, 1984;  
Amended Eff. September 1, 2006; August 1, 2000; March 1, 1991;  
Amended Eff. Pending Consultation pursuant to G.S. 12-3.1.*

**15A NCAC 07H .1104 GENERAL CONDITIONS**

(a) This permit authorizes only the construction of bulkheads and riprap revetments conforming to the standards herein.

(b) Individuals shall allow authorized representatives of the Department of Environment and Natural Resources to make periodic inspections at any time deemed necessary in order to ensure that the activity being performed under authority of this general permit is in accordance with the terms and conditions prescribed herein.

(c) There shall be no interference with the use of the waters by the public by the existence of the bulkhead or the riprap revetment authorized herein. Bulkheads and riprap revetments authorized in this Rule shall not interfere with the established or traditional rights of navigation of the waters by the public.

(d) This permit shall not be applicable to proposed construction where the Division of Coastal Management has determined, based on an initial review of the application, that notice and review pursuant to G.S. 113A-119 is necessary because there are unresolved questions concerning the proposed activity's impact on adjoining properties or on water quality; air quality; coastal wetlands; cultural or historic sites; wildlife; fisheries resources; or public trust rights.

(e) This permit shall not eliminate the need to obtain any other required state, local, or federal authorization.

(f) Development carried out under this permit shall be consistent with all local requirements, AEC rules, and local land use plans current at the time of authorization.

*History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b); 113A-118.1; 113A-124; Eff. March 1, 1984; Amended Eff. May 1, 1990; December 1, 1987; RRC Objection due to ambiguity Eff. May 19, 1994; Amended Eff. July 1, 2009; August 1, 1998; July 1, 1994.*

**15A NCAC 07H .1105 SPECIFIC CONDITIONS**

- (a) Along shorelines void of wetland vegetation:
- (1) New bulkheads shall have an average approximation of normal high water or normal water level. The bulkhead position shall not exceed a distance of five feet waterward of normal high water or normal water level at any point along its alignment.
  - (2) New bulkheads or riprap revetments on shorelines within manmade upland basins, canals, and ditches, shall be positioned so as not to exceed an average distance of two feet and maximum distance of five feet waterward of normal high water or normal water level.
  - (3) When replacing an existing bulkhead, the new alignment shall be positioned so as not to exceed a maximum distance of two feet waterward of the current bulkhead alignment. To tie into a like structure on the adjacent property, replacement bulkhead position shall not exceed a maximum distance of five feet waterward of the current bulkhead alignment. When replacing a bulkhead where lands landward of the bulkhead were lost in the last year, bulkheads shall be positioned a maximum of two feet waterward of the original/existing alignment.
  - (4) Riprap revetments shall be positioned so as not to exceed a maximum distance of 10 feet waterward of the normal high water or normal water level at any point along its alignment.
- (b) Along shorelines with wetland vegetation, bulkheads and riprap revetments shall be positioned so that all construction is to be accomplished landward of such vegetation.
- (c) Bulkheads shall be constructed of vinyl, or steel sheet pile, concrete, stone, timber, or other suitable materials approved by the Division of Coastal Management.
- (d) Riprap revetments shall be constructed of granite, marl, concrete without exposed rebar, or other suitable materials approved by the Division of Coastal Management.
- (e) Revetment material shall be free from loose dirt or other pollutants.
- (f) Revetment material shall be of sufficient size to prevent movement from the site by wave action or currents.
- (g) Construction design for riprap revetments shall take into consideration the height of the area to be protected (i.e. bulkhead height, escarpment height, water depth) and the alignment shall allow for a slope no flatter than three feet horizontal per one foot vertical and no steeper than 1½ feet horizontal per one foot vertical.
- (h) All backfill material shall be obtained from an upland source pursuant to 15A NCAC 07H .0208. The bulkhead or riprap

revetment shall be constructed prior to any backfilling activities and shall be structurally tight so as to prevent seepage of backfill materials through the structure.

- (i) No excavation, grading or fill shall be permitted except for that which may be required for the construction of the bulkhead or riprap revetment. This permit shall not authorize any excavation waterward of the approved alignment.
- (j) Runoff from construction shall not visibly increase the amount of suspended sediments in adjacent waters. Appropriate sedimentation and erosion control devices, measures or structures shall be implemented to ensure that eroded materials do not enter adjacent wetlands, watercourses and property (e.g. silt fence, diversion swales or berms, sand fence, etc.).
- (k) If one contiguous acre or more of property is to be excavated or filled, an erosion and sedimentation control plan shall be filed with the Division of Land Resources, Land Quality Section, or appropriate local government having jurisdiction. This plan shall be approved prior to commencing the land-disturbing activity.
- (l) For the purposes of these Rules, the Atlantic Intracoastal Waterway (AIWW) is considered a natural shoreline.
- (m) Construction authorized by this general permit shall be limited to a maximum shoreline length of 500 feet.

*History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b); 113A-118.1; 113A-124; Eff. March 1, 1984; Amended Eff. July 1, 2009; April 1, 2005; December 1, 1991; January 1, 1989; December 1, 1987.*

**15A NCAC 07H .1201 PURPOSE**

A permit under this Section shall allow the construction of new piers and docking facilities (including pile supported or floating) in the estuarine and public trust waters AECs and construction of new piers and docks within coastal wetlands AECs according to the authority provided in Subchapter 07J .1100 and according to the Rules in this Section. This permit shall not apply to oceanfront shorelines or to waters and shorelines adjacent to the Ocean Hazard AEC with the exception of those shorelines that feature characteristics of the Estuarine Shoreline AEC. Such features include the presence of wetland vegetation, lower wave energy, and lower erosion rates than the adjacent Ocean Erodible Area.

*History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b); 113A-118.1; 113A-124; Eff. March 1, 1984; Amended Eff. July 1, 2009; April 1, 2003.*

**15A NCAC 07H .1204 GENERAL CONDITIONS**

- (a) Piers and docking facilities authorized by this general permit shall be for the exclusive use of the land owner, or occupant and shall not be leased or rented or used for any commercial purpose. Except in the cases of shared piers as described in Rule .1205 of this Section, piers and docking facilities designed to provide docking space for more than two boats shall, because of their greater potential for adverse impacts, be reviewed through the major permitting process and, therefore, are not authorized by this general permit.

(b) Individuals shall allow authorized representatives of the Department of Environment and Natural Resources to make periodic inspections at any time deemed necessary in order to be sure that the activity being performed under the authority of this general permit is in accordance with the terms and conditions prescribed herein.

(c) There shall be no interference with navigation or use of the waters by the public by the existence of piers and docking facilities.

(d) This permit shall not be applicable to proposed construction where the Department determines that the proposed activity will endanger adjoining properties or significantly affect historic, cultural, scenic, conservation or recreation values, identified in G.S. 113A-102 and G.S. 113A-113(b)(4).

(e) This permit does not eliminate the need to obtain any other required state, local, or federal authorization.

(f) Development carried out under this permit shall be consistent with all local requirements, AEC Guidelines, and local land use plans current at the time of authorization.

*History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b); 113A-118.1; 113A-124;*

*Eff. March 1, 1984;*

*Amended Eff. May 1, 1990;*

*RRC Objection due to ambiguity Eff. May 19, 1994;*

*Amended Eff. July 1, 2009; August 1, 1998; July 1, 1994.*

#### **15A NCAC 07H .1205 SPECIFIC CONDITIONS**

(a) Piers and docking facilities may extend or be located up to a maximum of 400 feet waterward from the normal high water line or the normal water level, whichever is applicable.

(b) Piers and docking facilities shall not extend beyond the established pier length along the same shoreline for similar use. This restriction shall not apply to piers and docking facilities 100 feet or less in length unless necessary to avoid interference with navigation or other uses of the waters by the public such as blocking established navigation routes or interfering with access to adjoining properties. The length of piers and docking facilities shall be measured from the waterward edge of any wetlands that border the water body.

(c) Piers and docking facilities longer than 200 feet shall be permitted only if the proposed length gives access to deeper water at a rate of at least one foot at each 100 foot increment of pier length longer than 200 feet, or if the additional length is necessary to span some obstruction to navigation. Measurements to determine pier and docking facility lengths shall be made from the waterward edge of any coastal wetland vegetation, which borders the water body.

(d) Piers shall be no wider than six feet and shall be elevated at least three feet above any coastal wetland substrate as measured from the bottom of the decking.

(e) The total square footage of shaded impact for docks and mooring facilities (excluding the pier) allowed shall be 8 square feet per linear foot of shoreline with a maximum of 800 square feet. In calculating the shaded impact, uncovered open water slips shall not be counted in the total.

(f) The maximum size of any individual component of the docking facility authorized by this General Permit shall not exceed 400 square feet.

(g) Docking facilities shall not be constructed in a designated Primary Nursery Area with less than two feet of water at normal low water level or normal water level (whichever is applicable) under this permit without prior approval from the Division of Marine Fisheries or the Wildlife Resources Commission (whichever is applicable).

(h) Piers and docking facilities located over shellfish beds or submerged aquatic vegetation (as defined by the Marine Fisheries Commission) may be constructed without prior consultation from the Division of Marine Fisheries or the Wildlife Resources Commission (whichever is applicable) if the following two conditions are met:

(1) Water depth at the docking facility location is equal to or greater than two feet of water at normal low water level or normal water level (whichever is applicable).

(2) The pier and docking facility is located to minimize the area of submerged aquatic vegetation or shellfish beds under the structure.

(i) Floating piers and floating docking facilities located in PNAs, over shellfish beds, or over submerged aquatic vegetation shall be allowed if the water depth between the bottom of the proposed structure and the substrate is at least 18 inches at normal low water level or normal water level, whichever is applicable.

(j) Docking facilities shall have no more than six feet of any dimension extending over coastal wetlands and shall be elevated at least three feet above any coastal wetland substrate as measured from the bottom of the decking.

(k) The width requirements established in Paragraphs (d), (e), (f), (g), (h), (i), and (j), of this Rule shall not apply to pier structures in existence on or before July 1, 2001 when structural modifications are needed to prevent or minimize storm damage. In these cases, pilings and cross bracing may be used to provide structural support as long as they do not extend more than of two feet on either side of the principal structure. These modifications shall not be used to expand the floor decking of platforms and piers.

(l) Boathouses shall not exceed a combined total of 400 square feet and shall have sides extending no further than one-half the height of the walls as measured in a downward direction from the top wall plate or header and only covering the top half of the walls. Measurements of square footage shall be taken of the greatest exterior dimensions. Boathouses shall not be allowed on lots with less than 75 linear feet of shoreline.

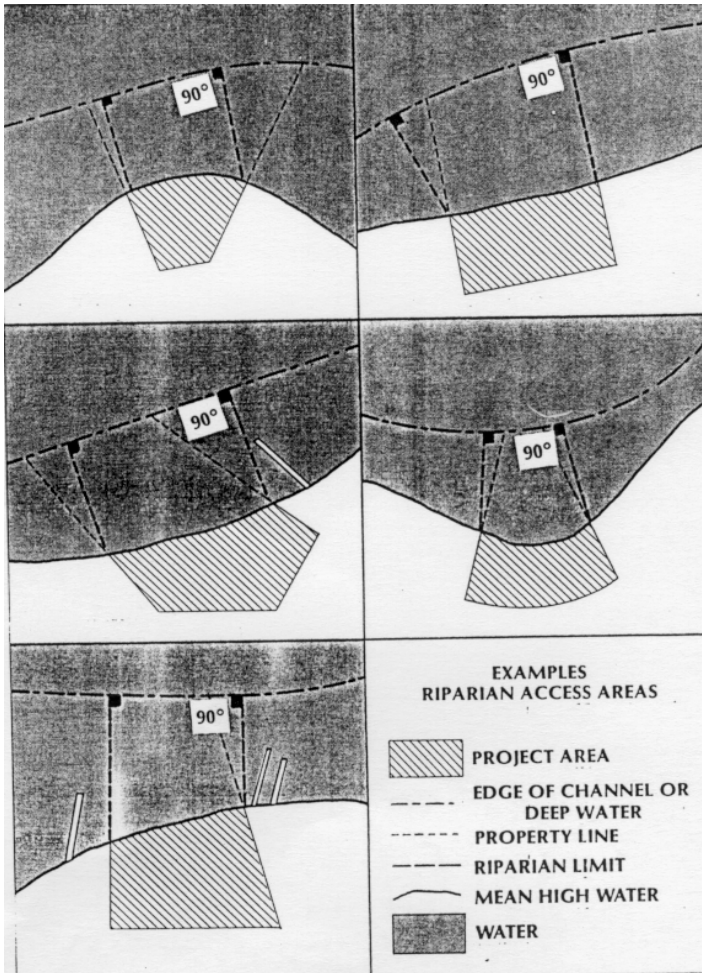
(m) The area enclosed by a boat lift shall not exceed 400 square feet.

(n) Piers and docking facilities shall be single story. They may be roofed but shall not allow second story use.

(o) Pier and docking facility alignments along federally maintained channels shall also meet Corps of Engineers regulations for construction pursuant to Section 10 of the Rivers and Harbors Act.

(p) Piers and docking facilities shall in no case extend more than 1/4 the width of a natural water body, human-made canal or basin. Measurements to determine widths of the water body, human-made canals or basins shall be made from the waterward edge of any coastal wetland vegetation which borders the water

body. The 1/4 length limitation shall not apply when the proposed pier and docking facility is located between longer structures within 200 feet of the applicant's property. However, the proposed pier and docking facility shall not be longer than the pier head line established by the adjacent piers and docking facilities nor longer than 1/3 the width of the water body.



(q) Piers and docking facilities shall not interfere with the access to any riparian property, and shall have a minimum setback of 15 feet between any part of the pier and docking facility and the adjacent property lines extended into the water at the points that they intersect the shoreline. The minimum setbacks provided in the rule may be waived by the written agreement of the adjacent riparian owner(s), or when two adjoining riparian owners are co-applicants. Should the adjacent property be sold before construction of the pier commences, the applicant shall obtain a written agreement with the new owner waiving the minimum setback and submit it to the Division of Coastal Management prior to initiating any development of the pier or docking facility. The line of division of areas of riparian access shall be established by drawing a line along the channel or deep water in front of the property, then drawing a line perpendicular to the line of the channel so that it intersects with the shore at the point the upland property line meets the water's edge. Application of this Rule may be aided by reference to the approved diagram in Paragraph (t) of this Rule illustrating the rule as applied to various shoreline configurations. Copies of the diagram may be obtained from the Division of Coastal

Management. When shoreline configuration is such that a perpendicular alignment cannot be achieved, the pier or docking facility shall be aligned to meet the intent of this Rule to the maximum extent practicable.

(r) Piers and docking facilities shall be designed to provide docking space for no more than two boats.

(s) Applicants for authorization to construct a pier or docking facility shall provide notice of the permit application to the owner of any part of a shellfish franchise or lease over which the proposed pier or docking facility would extend. The applicant shall allow the lease holder the opportunity to mark a navigation route from the pier to the edge of the lease.

(t) The diagram shown below illustrates various shoreline configurations:

(u) Shared piers or docking facilities shall be allowed and encouraged provided that in addition to complying with Paragraphs (a) through (t) of this Rule the following shall also apply:

- (1) The shared pier or docking facility shall be confined to two adjacent riparian property owners and the landward point of origination of the structure shall overlap the shared property line.
- (2) Shared piers and docking facilities shall be designed to provide docking space for no more than four boats.
- (3) The total square footage of shaded impact for docks and mooring facilities shall be calculated using Paragraph (e) of this Rule and in addition shall allow for combined shoreline of both properties.
- (4) The property owners of the shared pier shall not be required to obtain a 15-foot waiver from each other as described in Paragraph (q) of this Rule as is applies to the shared riparian line for any work associated with the shared pier, provided that the title owners of both properties have executed a shared pier agreement that has become a part of the permit file.
- (5) The construction of a second access pier or docking facility not associated with the shared pier shall require authorization through the CAMA Major full review permit process.

*History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b); 113A-118.1; 113A-124;*

*Eff. March 1, 1984;*

*Amended Eff. December 1, 1991; May 1, 1990; March 1, 1990;*

*RRC Objection due to ambiguity Eff. March 18, 1993;*

*Amended Eff. August 1, 1998; April 23, 1993;*

*Temporary Amendment Eff. December 20, 2001;*

*Amended Eff. July 1, 2009; April 1, 2003.*

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**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:
 

224985.481182,	Northing =
348767.698377	Easting =
224912.319514,	Northing =
348805.193732,	Easting =

 encompassing all waters to a line 200 yards south of the bridge defined by a line extending shore to shore from state plane coordinates:
 

224723.881492,	Northing =
348679.284125	Easting =
224835.222394,	Northing =
348534.751513;	Easting =
  - (H) Canal Bridge Boating Access Area: within 50 yards of the Canal Bridge Boating Access area dock;
  - (I) South Pointe/Dry Creek Community Piers in the vicinity of the point of land at Lot 86 at the South Pointe Subdivision. Area defined using the North American Datum of 1983 and encompassing waters off the point; from the shoreline, 50 yards out to a perimeter defined by the following State Plane Coordinates:
 

226977.08583,	Northing =
353148.128305;	Easting =
226950.431724,	Northing =
353076.195527;	Easting =
227004.286569,	Northing =
353011.808157;	Easting =

 and Northing =

227082.795442, Easting =  
353042.59595.

(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. July 1, 2009; May 1, 2009; August 1, 2002.*

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

**CHAPTER 14 – BOARD OF COSMETIC ART EXAMINERS**

**21 NCAC 14J .0207 LIVE MODEL/MANNEQUIN PERFORMANCE REQUIREMENTS**

(a) The following minimum live model/mannequin performance completions shall be done by each student in the advanced department before the student is eligible to take the cosmetologist's examination. Sharing of performance completions shall not be allowed. Credit for a performance shall be given to only one student.

	1200 Hours		1500 Hours	
	Live Model	Maniq.	Live Model	Maniq.
(1) scalp and hair treatments w/massage	8		10	
(2) fullhead fingerwave and style	3	OR 3	5	OR 5
(3) fullhead pincurl and style	3	OR 3	5	OR 5
(4) Hair Styling – sets, blowdrying				

	Thermal press/flat iron, artificial hair	80	56	100	70
(5)	haircuts	60	8	75	10
(6)	chemical reformation or permanent waving & relaxers	16	12	20	15
(7)	temporary color	3		5	
(8)	Color Application – semi, demi, Permanent color, and hair lightening	24	8	30	10
(9)	Multidimensional Color – low/high Lighting, cap, bleach	3	8	5	10
(10)	lash & brow tinting	2		4	
(11)	Nail Care – manicures and pedicures	12			15
(12)	artificial nails (sets)	4	OR 4	4	OR 4
(13)	facials with massage/makeup	3		10	
(14)	hair removal	3		5	

(b) Certification of live model or mannequin performance completions shall be required along with the application for the examination.

(c) A live model may be substituted for a mannequin for any mannequin service.

(d) All mannequin services may be performed using a simulated product.

*History Note: Authority G.S. 88-23;  
Eff. August 1, 1998;  
Amended Eff. July 1, 2009; November 1, 2005.*

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## CHAPTER 54 – PSYCHOLOGY BOARD

### 21 NCAC 54 .1803 LICENSED PSYCHOLOGIST

(a) Licensure for the level of licensed psychologist requires a doctoral degree based on a planned and directed program of studies in psychology from an institution of higher education. The applicant's doctoral program, hereinafter referred to as "program," shall be one which was accredited by the American Psychological Association or the Canadian Psychological Association at the time of the individual's graduation from the program, or one which meets all of the following requirements:

- (1) The program shall be publicly identified and labeled as a psychology program; such a program shall specify in pertinent institutional catalogues its intent to educate and train psychologists to engage in the activities which constitute the practice of psychology as defined in G.S. 90-270.2(8).
- (2) The program shall maintain authority and primary responsibility for the core and specialty areas whether or not the program crosses administrative lines.
- (3) The program shall have an identifiable body of students in residence at the institution who are matriculated in that program for a degree.
- (4) There shall be an identifiable full-time psychology faculty in residence at the institution, sufficient in size and breadth to carry out its responsibilities, employed by and providing instruction at the home campus of the institution.
- (5) There shall be a psychologist responsible for the applicant's program either as the

administrative head of the program, or as the advisor, major professor, or committee chair for the individual applicant's program.

- (6) The program shall be an integrated, organized sequence of study in psychology as demonstrated by an identifiable curriculum track or tracks wherein course sequences are outlined.
- (7) The program shall encompass the equivalent of a minimum of three academic years of full-time graduate study, two years of which are at the institution from which the degree is granted, and one year of which is in residence at the institution from which the degree is granted. Residence requires interaction with psychology faculty and other matriculated psychology students. One year's residence is defined as 30 semester (45 quarter or 40 trimester) hours taken on a full-time or part-time basis at the institution.
- (8) The program shall include practicum, internship, field experiences, or laboratory training appropriate to the area of specialty and the practice of psychology; this experience shall be supervised by a psychologist.
- (9) Except as provided in Paragraph (b) of this Rule, the program of study shall include a minimum of 60 semester (90 quarter or 80 trimester) hours of graduate study in standard psychology courses, exclusive of credits for internship/practicum and thesis/dissertation, including instruction in scientific and professional ethics and standards, research design and methodology, statistics and psychometrics, and the specialty area. No

credit shall be allowed for audited courses or courses taken at an institution which does not meet the definition of an "institution of higher education" as defined by G.S. 90-270.2(5).

- (10) The program shall include demonstrated competency in the four substantive content areas identified in this Subparagraph; this shall be met through a minimum of three semester (five quarter or four trimester) hours in each of these content areas:

- (A) biological bases of behavior (e.g., physiological psychology, comparative psychology, neuropsychology, sensation and perception, psychopharmacology);
- (B) cognitive-affective bases of behavior (e.g., cognition, memory, learning, thinking, motivation, emotion);
- (C) social bases of behavior (e.g., social psychology, group processes, organizational and systems theory, cultural and ethnic bases, sex roles);
- (D) individual differences (e.g., personality theory, human development, abnormal psychology, individual differences).

(b) If an individual's degree program did not include a minimum of 60 semester (90 quarter or 80 trimester) hours in standard psychology courses, as specified in Subparagraphs (a)(9) and (a)(10) of this Rule, but included a minimum of 54 semester (81 quarter or 72 trimester) hours of graduate study in standard psychology courses, as specified in Subparagraphs (a)(9) and (a)(10) of this Rule, exclusive of credits for internship/practicum and thesis/dissertation, the individual shall be allowed to take, and must pass with a grade of "B" or above, additional graduate level course work to meet the hourly requirement specified in Subparagraphs (a)(9) and (a)(10) of this Rule. The individual shall complete specified course content, as defined by Subparagraphs (a)(9) and (a)(10) of this Rule, to meet the minimum educational requirements to apply for licensure. The aforementioned course work shall be completed at an institution of higher education, as defined by G.S. 90-270.2(5), in a graduate psychology program in the same specialty area as the degree program completed by the individual and shall be reported on an official transcript. Alternately, the aforementioned course work may be completed in a formal re-specialization program in psychology, which shall be reported on an official transcript. The institution of higher education which permits a student to take additional course work shall be construed as being responsible only for the specific course work taken at that institution and not for the student's entire course of study, unless the student's entire graduate program was completed at that institution. No credit shall be accepted by the Board for audited courses. This additional graduate level course work shall not duplicate course work taken by the individual in his or her degree program or prior to admittance to his or her degree program.

(c) If an individual's degree program did not include a minimum of 54 semester (81 quarter or 72 trimester) hours of graduate

study in standard psychology courses, as specified in Subparagraphs (a)(9) and (a)(10) of this Rule, exclusive of credits for internship/practicum and thesis/dissertation, the individual shall not be allowed to obtain additional hours at a post-graduate level to meet the hourly requirements in Subparagraphs (a)(9) and (a)(10).

*History Note: Authority G.S. 90-270.9; 90-270.11(a); Eff. June 1, 1988; Amended Eff. July 1, 2009; July 1, 1997; October 1, 1991; March 1, 1989.*

## **21 NCAC 54 .2701 ACTIVITIES**

(a) Health services in psychology include services provided directly to clients/patients or groups of clients/patients. Such services include the following:

- (1) the diagnosis, evaluation, treatment, remediation, and prevention of:
  - (A) mental, emotional, and behavioral disorder;
  - (B) substance abuse and dependency; and
  - (C) psychological aspects of physical illness, accident, injury, and disability.
- (2) psychotherapy, counseling, psychoeducational, and neuropsychological services related to services described in Subparagraph (a)(1) of this Rule;
- (3) psychological assessment and report writing, including scoring of test protocols;
- (4) documentation of services provided to clients/patients (e.g., progress or process notes, clinical entries in records);
- (5) collateral contacts by a psychologist with family members, caretakers, and other individuals for the purpose of benefiting a client/patient of that psychologist; and
- (6) consultation with other professionals in service to the psychologist's clients/patients.

(b) Health services in psychology do not include the following:

- (1) supervision of other professionals who provide health services to clients/patients;
- (2) psychoeducational instruction to individuals who are not identified clients/patients of the psychologist providing such instruction;
- (3) career counseling, to include assessment of interests and aptitudes;
- (4) vocational and educational guidance;
- (5) the teaching of psychology;
- (6) the conduct of psychological research and the provision of psychological services or consultations to organizations or institutions, except when such activities involve the delivery of direct health services to individuals or groups of individuals who are themselves the intended beneficiaries of such services; or
- (7) administrative tasks associated with the delivery of health services, (e.g., billing and insurance communications).

*History Note:* Authority G.S. 90-270.2(4); 90-270.2(8); 90-270.9;

*Temporary Adoption Eff.* April 20, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;

*Eff.* July 1, 1994;

*Amended Eff.* July 1, 2009.

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## **CHAPTER 56 – BOARD OF EXAMINERS FOR ENGINEERS AND SURVEYORS**

### **21 NCAC 56 .0402 RECORDS OF APPLICATIONS**

All records of applications for licensure which are active are retained at the office of the Board. However, application files once submitted to the Board are Board property and are not returnable. During the time records are physically held in the Board office an applicant can obtain a copy of the application form by request to the Board office. Inactive applications shall be destroyed after one year after giving 30 day notice to the last known address of the applicant, upon approval of the Department of Cultural Resources in accordance with G.S. 121-5.

*History Note:* Authority G.S. 89C-10(a); 89C-12;

*Eff.* February 1, 1976;

*Readopted Eff.* September 29, 1977;

*Amended Eff.* July 1, 2009; August 1, 2000; January 1, 1982.

### **21 NCAC 56 .0601 REQUIREMENTS FOR LICENSING**

(a) Education. The following terms used by the Board for the specific education requirements to be eligible to be licensed as a Professional Land Surveyor are defined by the Board as follows:

- (1) B.S. in Surveying or Other Equivalent Curriculum. These degrees must contain a minimum of 45 semester hours, or their quarter-hour equivalents, of subjects directly related to the practice of surveying. Of the 45 semester hours, a minimum of 12 semester hours of surveying fundamentals, 12 semester hours of applied surveying practice and 12 semester hours of advanced or theoretical surveying courses are required. The remainder of the required surveying courses may be elective-type courses directly related to surveying; and
- (2) Associate Degree in Surveying Technology. This degree must contain a minimum of 20 semester hours, or quarter-hour equivalents, of subjects directly related to the practice of surveying. Courses in surveying practices, subdivision design and planning, surface drainage and photogrammetry must be successfully completed.

(b) Experience:

- (1) Definition. As used in the North Carolina Engineering and Land Surveying Act, the term "progressive practical surveying experience" means that during the period of time in which an applicant has made a practical utilization of the knowledge of the principles of geometry and trigonometry in determining the shape, boundaries, position and extent of the earth's surface, continuous improvement, growth and development in the utilization of that knowledge have been shown. In addition, the applicant must show the continuous assumption of greater individual responsibility for the work product over that period of time.
  - (2) Experience Accepted. In evaluating the work experience required, the Board may consider the total experience record and the progressive nature of the record. (Not less than half of required land surveying experience shall be of a professional grade and character, and shall be performed under the responsible charge of a Professional Land Surveyor, or if not, a written explanation shall be submitted showing why the experience should be considered acceptable and the Board may approve if satisfied of the grade and character of the progressive experience.)
  - (3) Other Experience. Work done in the following areas requires evidence to the Board of its equivalency to land surveying:
    - (A) construction layout;
    - (B) engineering surveying; or
    - (C) part-time surveying work.
- (c) Exhibits, Drawings, Plats:
- (1) Required Exhibit Before Fundamentals of Surveying Examination. The applicant must submit, along with the application, an actual plat or an example plat prepared by, or under the direct supervision of, the applicant which discloses that the applicant is knowledgeable in the elements of good mapping practices.
  - (2) Required Exhibit Before Principles and Practice of Surveying Examination:
    - (A) General. The applicant must submit, along with the application, an actual plat of a boundary survey of an actual project prepared by, or under the direct supervision of, the applicant which discloses that the applicant is knowledgeable of the contents of the Standards of Practice for Land Surveying in North Carolina (Section .1600) and also is able to apply this knowledge by preparing a plat in accordance with the various legal and professional requirements of land surveying.
    - (B) Physical Requirement. The map submitted must be a clean, clear,

- legible print of an original map in the file of a Professional Land Surveyor.
- (3) Specific Requirements. The specific details that shall be evaluated are those applicable to the particular project as described in the Standards of Practice for Land Surveying in North Carolina (Section .1600) and as described in G.S. 47-30. In addition, the exhibit shall contain a statement that the field work, calculation and mapping were performed by the applicant under the supervision of a Professional Land Surveyor, attested to by the Professional Land Surveyor.
  - (4) Requirements for Comity Applicant. The map submitted by an applicant under comity may be a sample plat of a project or work performed in the state of licensure which shall be evaluated in accordance with legal requirements of North Carolina.

*History Note: Authority G.S. 47-30; 89C-10; 89C-13; Eff. February 1, 1976; Readopted Eff. September 29, 1977; Amended Eff. July 1, 2009; August 1, 2000; August 1, 1998; November 2, 1992; April 1, 1989; December 1, 1984; January 1, 1982.*

#### **21 NCAC 56 .1103 STANDARD CERTIFICATION REQUIREMENTS**

(a) Certification of Final Drawings. Drawings or maps not conforming to Paragraph (c) of this Rule shall conform to the following:

- (1) Certification is required on reproducibles or original drawings;
- (2) The seal may be a rubber stamp, embossed seal, computer-generated seal, or other facsimile that becomes a permanent addition to a plan sheet or map;
- (3) The licensee's written signature must be placed over, or adjacent to, the seal on the original document. A facsimile signature is not acceptable;
- (4) The date of signing must be annotated on the original document;
- (5) All sheets of engineering and surveying drawings must be certified;
- (6) The name, address and license number of the licensee's firm shall be included on each sheet of engineering drawings. For surveys, the name, address and license number of the licensee's firm shall be included on the first sheet of the survey or title sheet; and
- (7) Any revision on a drawing after a licensee's certification is affixed shall be described and dated and if not done under the responsible charge of the same licensee shall be separately certified.

(b) Certification of Specifications and Reports. All specifications, reports, or other documents, including letter

reports and calculations, not conforming to Paragraph (c) of this Rule shall conform to the following:

- (1) Certification is required on original specifications, reports, or other documents, including letter reports and calculations;
- (2) The seal may be a rubber stamp, or other facsimile;
- (3) The licensee's written signature must be placed over, or adjacent to, the seal on the original document. A facsimile signature is not acceptable;
- (4) The date of signing must be annotated on the original document;
- (5) The title sheet of engineering specifications or other reports must be certified and bear the name, address and license number of the licensee's firm. The title sheet of any survey report or written description of property shall include the name, address and license number of the licensee's firm; and
- (6) Any revision in the document after a licensee's certification is affixed shall be described and dated and if not done under the responsible charge of the same licensee shall be separately certified.

(c) Exceptions to Required Certification. The certification of a licensee on a map, drawing, plan, specification, plat, document, or report shall signify that it is the final work of the licensee unless the work is stamped or marked substantially as follows so as to put the public on notice not to use as a final product, in which case certification is optional:

- (1) "Preliminary - Do not use for construction";
- (2) "Progress Drawings - Do not use for construction";
- (3) "Preliminary Plat - Not for recordation, conveyances, or sales";
- (4) "Final Drawing - Not released for construction";
- (5) "Final Drawing - For Review Purposes Only";
- (6) "Not a Certified Document - This document originally issued and sealed by (name of licensee), (license number), on (date of sealing). This document shall not be considered a certified document";
- (7) "Not a Certified Document as to the Original Document but Only as to the Revisions - This document originally issued and sealed by (name of licensee), (license number), on (date of sealing). This document is only certified as to the revisions".

(d) Electronically Transmitted Documents. Documents, including drawings, specifications and reports, that are transmitted electronically beyond the direct control of the licensee shall have the computer-generated seal removed from the original file, unless signed with a digital signature as defined in Paragraph (e) of this Rule. After removal of the seal the electronic media shall have the following inserted in lieu of the signature and date: "This document originally issued and sealed by (name of sealer), (license number), on (Date of sealing). This

medium shall not be considered a certified document." Hardcopy documents containing the original seal, signature and date of the licensee may be duplicated by photocopy or electronic scanning processes and distributed either in hardcopy or electronic medium. The scanned digital files of certified documents are not subject to the requirements of this Paragraph. The electronic transmission beyond the direct control of the licensee of CAD, vector or other files subject to easy editing are subject to the requirements of this paragraph. Easy editing is based on the file consisting of separate elements that can be individually modified or deleted. Documents that are excepted from certification by a statement meeting the requirements of Subparagraphs (c)(1) through (c)(5) of this Rule are not subject to the requirements of this Paragraph.

(e) Documents to be electronically transmitted beyond the direct control of the licensee that are signed using a digital signature, shall contain the authentication procedure in a secure mode and a list of the hardware, software and parameters used to prepare the document(s). Secure mode means that the authentication procedure has protective measures to prevent alteration or overriding of the authentication procedure. The term "digital signature" shall be an electronic authentication process that is attached to or logically associated with an electronic document. The digital signature shall be:

- (1) Unique to the licensee using it;
- (2) Capable of verification;
- (3) Under the sole control of the licensee; and
- (4) Linked to a document in such a manner that the digital signature is invalidated if any data in the document is changed.

(f) A digital signature process may be submitted to the Board for approval that it meets the criteria set forth in Subparagraphs (e)(1) through (4) of this Rule. The licensee shall confirm that if another process is used, that it meets the criteria.

*History Note: Authority G.S. 89C-10; 89C-16;*

*Eff. February 1, 1976;*

*Readopted Eff. September 29, 1977;*

*Amended Eff. July 1, 2009; May 1, 2009; August 1, 2002; August 1, 2000; August 1, 1998; February 1, 1996; May 1, 1994; April 1, 1989; December 1, 1984.*

## **21 NCAC 56 .1301 IMPROPER PRACTICE BY A LICENSEE**

(a) General. Alleged practice that may violate the Board Rules 21 NCAC 56 or G.S. 89C by a licensee is subject to Board investigation and disciplinary action by the Board if necessary.

(b) Preferring Charges. Any person who believes that any licensed Professional Engineer, Professional Land Surveyor or firm holding a certificate of authorization is in violation of the provisions of G.S. 89C or the rules in this Chapter may prefer charges against that person or firm by setting forth in writing those charges and swearing to their authenticity, along with providing corroborative evidence. The charges shall be filed with the Board's office in Raleigh, North Carolina.

(c) Preliminary Review:

- (1) Upon receipt of a properly filed charge, a case shall be opened.

(2) A field investigation may be performed if determined necessary by the Executive Director.

(3) If the Executive Director determines that the charges are corroborated by evidence, a written notice and explanation of the charge shall be forwarded to the person or firm against whom the charge is made and a response is requested of the person or firm so charged to show compliance with all lawful requirements for retention of the license. Notice of the charge and of the alleged facts or alleged conduct shall be given personally or by certified mail, return receipt request.

(4) After preliminary evidence has been obtained, the matter shall be referred to the Board's review committee which is made up of the following individuals:

- (A) one member of the Board who is licensed in the respective profession,
- (B) the legal counsel of the Board, and
- (C) the Executive Director of the Board.

(5) Upon review of the available evidence, the review committee shall present to the Board a written recommendation that:

- (A) the charge be dismissed as unfounded or trivial;
- (B) when the charge is admitted as true, the Board accept the admission of guilt by the person charged and order that person not to commit in the future the specific act or acts admitted and also not to violate any of the provisions of the Board Rules or the statutes at any time in the future;
- (C) the charge, whether admitted or denied, be presented to the full Board for a hearing and determination by the Board on the merits of the charge in accordance with the substantive and procedural requirements of the provisions of Section .1400 of this Chapter and the provisions of G.S. 150B; or
- (D) whether the charge is admitted or denied, the Board give notice to the licensee of a contemplated action as set out in Rule .1403(b) of this Chapter.

(d) Consultant. A consultant to the review committee shall be designated by the Board Chair if a board member is a complainant, witness or respondent in a case. The consultant shall be a licensed professional engineer or professional land surveyor, depending on the nature of the case, and selected from a list provided by the Executive Director of former Board members or other licensed professionals who are knowledgeable with the Board's processes. The consultant shall review all case materials and make a recommendation for consideration by the review committee as to the merits of the case. The consultant

shall review any new information presented in the event of a settlement conference and make a recommendation to the settlement conference committee.

(e) Board Decision. Notice of the decision by the Board on recommendations of the review committee shall be given to the party against whom the charges have been brought and the party submitting the charge. Though it is not forbidden to do so, the Board is not required to notify the parties of the reasons of the Board in making its determination.

(f) Settlement Conference. When the Board issues a citation for hearing or notice of a contemplated action, the licensee may request in writing a settlement conference to pursue resolution of the issue(s) through informal procedures. If, after the completion of a settlement conference, the licensee and Board's settlement committee do not agree to a resolution of the dispute for the full Board's consideration, the original administrative proceeding shall commence. During the course of the settlement conference, no sworn testimony shall be taken nor shall any witnesses be cross-examined.

- (1) The Board's settlement committee shall be made up of the following individuals:
  - (A) the member of the Board who served on the review committee or the replacement if the member is not available,
  - (B) one public member from the Board,
  - (C) the legal counsel of the Board, and
  - (D) the Executive Director of the Board.
- (2) Upon review of the available evidence, the settlement committee shall present to the Board a written recommendation that:
  - (A) the charge be dismissed as unfounded or trivial;
  - (B) when the charge is admitted as true, the Board accept the admission of guilt by the person charged and order the person not to commit in the future the specific act or acts admitted and, also, not to violate any provisions of the Board Rules or the statutes at any time in the future;
  - (C) the charge, whether admitted or denied, be presented to the full Board for a hearing and determination by the Board on the merits of the charge in accordance with the substantive and procedural requirements of the provisions of Section .1400 of this Chapter and the provisions of G.S. 150B; or
  - (D) whether the charge is admitted or denied, the Board give notice to the licensee of a contemplated action as set out in Rule .1403(b) of this Chapter.

*Amended Eff. July 1, 2009; May 1, 2009; August 1, 2000; August 1, 1998; March 1, 1996; April 1, 1989; December 1, 1984; January 1, 1982.*

**21 NCAC 56 .1608 CLASSIFICATION/LAND INFORMATION SYSTEM/GEOGRAPHIC INFORMATION SYSTEM SURVEYS**

(a) General: Land Information System/Geographic Information System (LIS/GIS) surveys are defined as the measurement of existing surface and subsurface features for the purpose of determining their accurate geospatial location for inclusion in an LIS/GIS database. All LIS/GIS surveys as they relate to property lines, rights-of-way, easements, subdivisions of land, the position for any survey monument or reference point, the determination of the configuration or contour of the earth's surface or the position of fixed objects thereon, and geodetic surveying which includes surveying for determination of the size and shape of the earth both horizontally and vertically and the precise positioning of points on the earth utilizing angular and linear measurements through spatially oriented spherical geometry, shall be performed by a Land Surveyor who is a licensee of this Board unless exempt by G.S. 89C-25. For the purpose of specifying minimum allowable surveying standards, four general classifications of LIS/GIS surveys are established, any of which may be specified by the client. In the absence of a specified standard, the surveyor shall conform the survey to the requirements for a Class B survey. The four general classifications are:

- (1) Class A LIS/GIS surveys. For Class A LIS/GIS surveys in North Carolina, the relative accuracy shall be equal to or less than 0.5 meter (1.64 feet);
- (2) Class B LIS/GIS surveys. For Class B LIS/GIS surveys in North Carolina, the relative accuracy shall be equal to or less than 1.0 meter (3.28 feet);
- (3) Class C LIS/GIS surveys. For Class C LIS/GIS surveys in North Carolina, the relative accuracy shall be equal to or less than 2 meters (6.56 feet); and
- (4) Class D LIS/GIS surveys. For Class D LIS/GIS surveys in North Carolina, the relative accuracy shall be equal to or less than 5 meters (16.40 feet).

(b) Nothing in this Rule negates or replaces the relative accuracy standards found in Rules .1601 through .1607 of this Chapter.

(c) The Professional Land Surveyor in responsible charge of the LIS/GIS boundary or geodetic control survey shall certify to all of the following in either written or digital form:

- (1) Class of LIS/GIS survey. Method used to evaluate the accuracy shall be described as either statistical testing or least squares adjustment results, comparison with values of higher accuracy, and repeat measurements. The reporting standard in the horizontal component is the radius of a circle of uncertainty, such that the true or theoretical location of the point falls within that circle 95

*History Note: Authority G.S. 89C-10; 89C-21; 89C-22; Eff. February 1, 1976; Readopted Eff. September 29, 1977;*

- percent of the time. For vertical accuracy requirements, see Rule .1606,
- (2) Method of measurement (i.e. global positioning system, theodolite and electronic distance meter, transit and tape),
  - (3) Date(s) of the survey, and
  - (4) Datum used for the survey.

*History Note:* Authority G.S. 89C-10; 89C-20;  
*Eff. February 1, 1996;*  
*Amended Eff. July 1, 2009; May 1, 2009; August 1, 2002;*  
*August 1, 2000.*

#### **21 NCAC 56 .1710 DUAL LICENSEES**

The number of PDH units required shall remain the same for persons who hold a second license as engineer or land surveyor. Holders of a second license must obtain a minimum of one-third of the total PDH requirements in each field. The remaining one-third requirement may be obtained in either field at the sole discretion of the licensee.

*History Note:* Authority G.S. 89C-10(a); 89C-17;  
*Eff. December 1, 1994;*  
*Amended Eff. July 1, 2009.*

#### **21 NCAC 56 .1711 FORMS**

Renewal applications may require the completion of a continuing education form specified by the board outlining PDH credit claimed. The licensee must supply sufficient detail on the form to permit audit verification, must certify and sign the

continuing education form, and submit the form with the renewal application and fee.

*History Note:* Authority G.S. 89C-10(a); 89C-17;  
*Eff. December 1, 1994;*  
*Amended Eff. July 1, 2009; August 1, 1998.*

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### **TITLE 23 – DEPARTMENT OF COMMUNITY COLLEGES**

#### **23 NCAC 02E .0401 CUSTOMIZED TRAINING PROGRAM**

(a) Local colleges shall provide customized training programs for companies experiencing job growth, productivity enhancement needs, or creating technology investment to support the economic development of the State. Training programs for these companies shall be administered by the local college, with consultation and assistance from the department's System Office Economic Development staff.

(b) State funds are appropriated to the North Carolina Community College System office in a separate line to support the Customized Training Program. These funds shall be used only to support companies experiencing job growth, productivity enhancement or technology investment.

*History Note:* Authority G.S. 115D-5;  
*Eff. February 1, 1976;*  
*Readopted Eff. January 5, 1978;*  
*Amended Eff. July 1, 2009; September 1, 1993; December 1, 1984.*



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## **RULES REVIEW COMMISSION**

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*This Section contains information for the meeting of the Rules Review Commission on Thursday, August 20, 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 2<sup>nd</sup> 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**

August 20, 2009      September 17, 2009  
October 15, 2009      November 19, 2009

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### **AGENDA**

#### **RULES REVIEW COMMISSION Thursday, August 20, 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. Criminal Justice Education and Training Standards Commission – 12 NCAC 09B .0301 (Bryan)
  - B. Licensing Board for General Contractors – 21 NCAC 12 .0202 (DeLuca)
  - C. Board of Examiners for Engineers and Surveyors – 21 NCAC 56 .0103, .0503 (DeLuca)
  - D. Board of Examiners for Speech and Language Pathologists and Audiologists – 21 NCAC 64 .0212 (DeLuca)
- IV. Review of Log of Permanent Rule filings for rules filed between June 23, 2009 and July 20, 2009 (attached)
- V. Review of Temporary Rules
- VI. Commission Business
  - Next meeting: September 17, 2009

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#### **Commission Review**

**Log of Permanent Rule Filings  
June 23, 2009 through July 20, 2009**

### **INSURANCE, DEPARTMENT OF**

The rules in Chapter 5 deal with fire and rescue services division.

The rules in Subchapter 5A include general provisions (.0100); state volunteer fire department (.0200); firemen's relief fund (.0300); administration of other funds (.0400); initial certification/re-inspection fire departments (.0500); volunteer fire department fund

(.0600); volunteer rescue/ems fund (.0700); and cigarette fire-safety standards (.0800).

Certifications  
Adopt/\*

11 NCAC 05A .0801

The rules in Chapter 12 cover life and health insurance including general provisions applicable to all rules and all life and health insurance policies (.0100 - .0300); general life insurance provisions (.0400); general accident and health insurance provisions (.0500); replacement of insurance (.0600); credit insurance (.0700); medicare supplement insurance (.0800); long-term care insurance (.1000); mortgage insurance consolidations (.1100); accelerated benefits (.1200); small employer group health coverage (.1300); HMO and point-of-service coverage (.1400); uniform claim forms (.1500); retained asset accounts (.1600); viatical settlements (.1700); and preferred provider plan product limitations (.1800).

Refund of Unearned Premium at Death: Credit Life/Credit A...  
Repeal/\*

11 NCAC 12 .0705

## **SHERIFFS EDUCATION AND TRAINING STANDARDS COMMISSION**

Rules in Subchapter 10B are from the N. C. Sheriffs' Education and Training Standards Commission. These rules govern the commission organization and procedure (.0100); enforcement rules (.0200); minimum standards for employment as a justice officer (deputy or jailer) (.0300); certification of justice officers (.0400); standards and accreditation for justice officers schools, training programs, and the instructors (.0500-.0900); certificate and awards programs for sheriffs, deputies, justice officers, jailers, reserve officers, and telecommunicators (.1000-.1700); in-service training (.2000); and firearms in-service training and re-qualification (.2100).

Detention Officer Certification Course  
Amend/\*

12 NCAC 10B .0601

## **ALARM SYSTEMS LICENSING BOARD**

The rules in Chapter 11 are from the N.C Alarm Systems Licensing Board and cover the organization and general provisions (.0100); license applications and requirements (.0200); registration of employees of licensees (.0300); the recovery fund (.0400); and continuing education for licensees (.0500).

Records Retention  
Amend/\*

12 NCAC 11 .0206

## **ENVIRONMENTAL MANAGEMENT COMMISSION**

The rules in Chapter 2 concern environmental management and are promulgated by the Environmental Management Commission or the Department of Environment and Natural Resources.

The rules in Subchapter 2B pertain to surface water standards and monitoring including procedures for assignment of water quality standards (.0100); the standards used to classify the waters of the state (.0200); stream classifications (.0300); effluent limitations (.0400); monitoring and reporting requirements (.0500); and water quality management plans (.0600).

French Broad River Basin  
Amend/\*

15A NCAC 02B .0304

Cape Fear River Basin  
Amend/\*

15A NCAC 02B .0311

The rules in Chapter 2 concern environmental management and are promulgated by the Environmental Management Commission or the Department of Environment and Natural Resources. The rules in Subchapter 02C concern well construction standards including criteria and standards applicable to water-supply and certain other type wells (.0100); criteria and standards applicable to injection wells (.0200); and permitting and inspection of private drinking water wells (.0300).

Definitions  
Amend/\*

15A NCAC 02C .0102

Registration  
Repeal/\*

15A NCAC 02C .0103

<u>Permits</u>	15A	NCAC	02C	.0105
Amend/*				
<u>Standards of Construction: Water Supply Wells</u>	15A	NCAC	02C	.0107
Amend/*				
<u>Standards of Construction: Wells Other than Water Supply</u>	15A	NCAC	02C	.0108
Amend/*				
<u>Pumps and Pumping Equipment</u>	15A	NCAC	02C	.0109
Amend/*				
<u>Well Tests for Yield</u>	15A	NCAC	02C	.0110
Amend/*				
<u>Disinfection of Water Supply Wells</u>	15A	NCAC	02C	.0111
Amend/*				
<u>Well Maintenance: Repair: Groundwater Resources</u>	15A	NCAC	02C	.0112
Amend/*				
<u>Abandonment of Wells</u>	15A	NCAC	02C	.0113
Amend/*				
<u>Data and Records Required</u>	15A	NCAC	02C	.0114
Amend/*				
<u>Designated Areas: Wells Cased to Less than 20 Feet</u>	15A	NCAC	02C	.0116
Amend/*				
<u>Designated Areas: Water Supply Wells Cased to Minimum Dep...</u>	15A	NCAC	02C	.0117
Amend/*				
<u>Variance</u>	15A	NCAC	02C	.0118
Amend/*				
<u>Delegation</u>	15A	NCAC	02C	.0119
Amend/*				

The rules in Subchapter 2D are air pollution control requirements including definitions and references (.0100); air pollution sources (.0200); air pollution emergencies (.0300); ambient air quality standards (.0400); emission control standards (.0500); air pollutants monitoring and reporting (.0600); complex sources (.0800); volatile organic compounds (.0900); motor vehicle emission control standards (.1000); control of toxic air pollutants (.1100); control of emissions from incinerators (.1200); oxygenated gasoline standard (.1300); nitrogen oxide standards (.1400); transportation conformity (.1500); general conformity for federal actions (.1600); emissions at existing municipal solid waste landfills (.1700); control of odors (.1800); open burning (.1900); transportation conformity (.2000); risk management program (.2100); special orders (.2200); emission reduction credits (.2300); clean air interstate rules (.2400); mercury rules for electric generators (.2500); and source testing (.2600).

<u>Heavy-Duty Vehicle Idling Restrictions</u>	15A	NCAC	02D	.1010
Adopt/*				

## **BARBER EXAMINERS, BOARD OF**

The rules in Subchapter 06F concern barber schools.

<u>Physical Structure</u>	21	NCAC	06F	.0101
Amend/*				
<u>Instructors</u>	21	NCAC	06F	.0104
Amend/*				
<u>Roster and Student Records</u>	21	NCAC	06F	.0110
Amend/*				
<u>Copies of Barber School Records</u>	21	NCAC	06F	.0111
Amend/*				
<u>Uniforms and Identification</u>	21	NCAC	06F	.0122
Adopt/*				
<u>Time Clock and Recordation of Student Hours</u>	21	NCAC	06F	.0123

Adopt/*				
<u>Student Hours</u>	21	NCAC	06F	.0124
Adopt/*				
<u>School Handbooks and Enrollment Agreements</u>	21	NCAC	06F	.0125
Adopt/*				
The rules in Subchapter 06J concern apprentice barbers.				
<u>Notification of Address Change</u>	21	NCAC	06J	.0110
Adopt/*				
The rules in Subchapter 06K concern registered barbers.				
<u>Notification of Change of Address</u>	21	NCAC	06K	.0111
Adopt/*				
The rules in Subchapter 06L concern barber shops.				
<u>Measurements of Barber Shop</u>	21	NCAC	06L	.0102
Amend/*				
<u>Equipment</u>	21	NCAC	06L	.0103
Amend/*				
<u>Moved Shop</u>	21	NCAC	06L	.0108
Amend/*				
<u>Notification of Change of Address</u>	21	NCAC	06L	.0120
Amend/*				
The rules in Subchapter 6N establish fees and provide for the use of various forms.				
<u>Fees</u>	21	NCAC	06N	.0101
Amend/*				
The rules in Subchapter 6O govern the assessing of civil penalties.				
<u>Unsupervised Apprentice</u>	21	NCAC	06O	.0104
Amend/*				
<u>Identification</u>	21	NCAC	06O	.0112
Amend/*				
<u>School Failing to Maintain, Falsifying, or Failing to Sub...</u>	21	NCAC	06O	.0115
Amend/*				
<u>Unlicensed School Instructors</u>	21	NCAC	06O	.0116
Amend/*				
The rules in Subchapter 6Q concern prohibited acts.				
<u>Effect of Notice of Violation on License or Certificate</u>	21	NCAC	06Q	.0104
Adopt/*				
The rules in Subchapter 6R concern advertising.				
<u>Display of Sign or Barber Pole</u>	21	NCAC	06R	.0101
Amend/*				
The rules in Subchapter 6S concern examinations.				

General Examination Instructions 21 NCAC 06S .0101  
 Adopt/\*

## **DENTAL EXAMINERS, BOARD OF**

The rules in Chapter 16 are from the Board of Dental Examiners.

The rules in Subchapter 16D concern provisional licensure for dentists including general provisions (.0100); and examinations (.0200).

Clinical Examination 21 NCAC 16D .0201  
 Repeal/\*

The rules in Subchapter 16G concern dental hygienists.

Dental Hygiene School Extension Facilities and Off Campus... 21 NCAC 16G .0106  
 Adopt/\*

The rules in Subchapter 16H concern dental assistants including classification and training (.0100); and permitted functions of dental assistant (.0200).

Permitted Functions of Dental Assistant II 21 NCAC 16H .0203  
 Amend/\*

## **MEDICAL BOARD**

The rules in Chapter 32 are from the Medical Board.

The rules in Subchapter 32O concern physician assistant regulations.

Locum Tenens Permit 21 NCAC 32O .0118  
 Repeal/\*

Title and Practice Protection 21 NCAC 32O .0119  
 Repeal/\*

Identification Requirements 21 NCAC 32O .0120  
 Repeal/\*

Fees 21 NCAC 32O .0121  
 Repeal/\*

The rules in Subchapter 32S regulate physician assistants including physician assistant registration (.0200).

Definitions 21 NCAC 32S .0101  
 Repeal/\*

Qualifications for License 21 NCAC 32S .0102  
 Repeal/\*

Inactive License Status 21 NCAC 32S .0104  
 Repeal/\*

Annual Registration 21 NCAC 32S .0105  
 Repeal/\*

Continuing Medical Education 21 NCAC 32S .0106  
 Repeal/\*

Exemption from License 21 NCAC 32S .0107  
 Repeal/\*

Scope of Practice 21 NCAC 32S .0108  
 Repeal/\*

Prescriptive Authority 21 NCAC 32S .0109  
 Repeal/\*

<u>Supervision of Physician Assistants</u>	21	NCAC	32S	.0110
Repeal/*				
<u>Supervising Physicians</u>	21	NCAC	32S	.0111
Repeal/*				
<u>Notification of Intent to Practice</u>	21	NCAC	32S	.0112
Repeal/*				
<u>Violations</u>	21	NCAC	32S	.0113
Repeal/*				
<u>Title and Practice Protection</u>	21	NCAC	32S	.0115
Repeal/*				
<u>Identification Requirements</u>	21	NCAC	32S	.0116
Repeal/*				
<u>Fees</u>	21	NCAC	32S	.0117
Repeal/*				
<u>Practice During A Disaster</u>	21	NCAC	32S	.0118
Repeal/*				
<u>Definitions</u>	21	NCAC	32S	.0201
Adopt/*				
<u>Qualifications and Requirements for License</u>	21	NCAC	32S	.0202
Adopt/*				
<u>Mandatory Notification of Intent to Practice</u>	21	NCAC	32S	.0203
Adopt/*				
<u>Annual Renewal</u>	21	NCAC	32S	.0204
Adopt/*				
<u>Inactive License Status</u>	21	NCAC	32S	.0205
Adopt/*				
<u>License Reactivation</u>	21	NCAC	32S	.0206
Adopt/*				
<u>License Reinstatement</u>	21	NCAC	32S	.0207
Adopt/*				
<u>Limited Volunteer License</u>	21	NCAC	32S	.0208
Adopt/*				
<u>Non Applicability</u>	21	NCAC	32S	.0209
Adopt/*				
<u>Identification Requirements</u>	21	NCAC	32S	.0210
Adopt/*				
<u>Agency</u>	21	NCAC	32S	.0211
Adopt/*				
<u>Prescriptive Authority</u>	21	NCAC	32S	.0212
Adopt/*				
<u>Supervision of Physician Assistants</u>	21	NCAC	32S	.0213
Adopt/*				
<u>Supervising Physician</u>	21	NCAC	32S	.0214
Adopt/*				
<u>Responsibilities of Primary Supervising Physician in Rega...</u>	21	NCAC	32S	.0215
Adopt/*				
<u>Continuing Medical Education</u>	21	NCAC	32S	.0216
Adopt/*				
<u>Violations</u>	21	NCAC	32S	.0217
Adopt/*				
<u>Title and Practice Protection</u>	21	NCAC	32S	.0218
Adopt/*				

<u>Practice During a Disaster</u>	21	NCAC	32S	.0219
Adopt/*				

### **FUNERAL SERVICE, BOARD OF**

The rules in Subchapter 34B are funeral service rules including rules relating to resident trainees (.0100); examinations (.0200); licensing (.0300); continuing education (.0400); out-of-state licensees (.0500); funeral establishments (.0600); and preparation of dead bodies (.0700).

<u>Accreditation of Prerecorded Programs and Live Programs B...</u>	21	NCAC	34B	.0413
Amend/*				

<u>Body Identification Tags</u>	21	NCAC	34B	.0616
Adopt/*				

<u>Registration of Embalming Facility Located Outside a Fune...</u>	21	NCAC	34B	.0706
Adopt/*				

The rules in Subchapter 34C concern crematories including general provisions (.0100); equipment and processing (.0200); and authorizations, reports, records (.0300).

<u>Records of Cremation and Delivery</u>	21	NCAC	34C	.0303
Amend/*				

The rules in Subchapter 34D are preneed funeral contract rules including general provisions (.0100); licensing (.0200); operations (.0300); and preneed recovery fund (.0400).

<u>Annual Report</u>	21	NCAC	34D	.0302
Amend/*				

### **RECREATIONAL THERAPY LICENSURE, BOARD OF**

The rules in Chapter 65 cover the practice of recreational therapy including general provisions (.0100); requirements for practice (.0200); requirements for licensure (.0300); application (.0400); fees (.0500); license renewal requirements (.0600); reinstatement (.0700); inactive status (.0800); reciprocity (.0900); and revocation, suspension or denial of licensure (.1000).

<u>Licensure Fees</u>	21	NCAC	65	.0501
Amend/*				

<u>Renewal Requirements for Licensed Recreational Therapist</u>	21	NCAC	65	.0602
Amend/*				

### **COMMUNITY COLLEGES, BOARD OF**

The rules in Chapter 2 concern Community Colleges.

The rules in Subchapter 2E cover educational programs including program classification (.0100); curriculum programs (.0200); adult, extension, and community service programs (.0300); industrial services (.0400); articulation (.0500); and vocational curriculum (.0600).

<u>Work Station Occupational Skills Training</u>	23	NCAC	02E	.0402
Repeal/*				

### **BUILDING CODE COUNCIL**

<u>NC Plumbing Code - Venting Required</u>	901.2.1
Amend/*	

<u>NC Plumbing Code - Subsurface Irrigation Systems</u>	Appendix C
Adopt/*	

*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>
<b><u>ALCOHOL BEVERAGE CONTROL COMMISSION</u></b>				
NC Alcoholic Beverage Control Commission v. Ciro Maya Maya, T/A Carolina Sports Arena	08 ABC 2411	Overby	06/29/09	
N.C. Alcoholic Beverage Control Commission v. Du Cong Phan T/A Good Food Market	09 ABC 0565	May	05/18/09	
<b><u>CRIME VICTIMS COMPENSATION</u></b>				
Robert Melvin v. Janice Carmichael, NC Crime Victim Compensation	08 CPS 2634	Elkins	06/01/09	
B-Red Enterprises, Inc., Linda Parrish v. Secretary of Crime Control and Public Safety	08 CPS 3043	Webster	06/23/09	
Allen Bender, AB's Gravel Driveways, LLC v. North Carolina State Highway Patrol, Motor Carrier Enforcement Section	09 CPS 1259	Gray	06/29/09	
Cape Romain Contractors, Inc., Andrew Dupre v. North Carolina Department of Crime Control and Public Safety, Division of State Highway Patrol, Motor Carrier Enforcement Section	09 CPS 1599	Gray	07/02/09	
John Emiliani, Jr., v. N.C. Division of Motor Vehicles	09 CPS 1604	Brooks	06/15/09	
Rowland L. Simmons v. North Carolina State Highway Patrol	09 CPS 2087	Brooks	05/19/09	
Cynthia K. Shreve v. Victims Compensation Program	09 CPS 2404	May	06/23/09	
Allen Robinson v. NCSHP	09 CPS 2449	Overby	06/17/09	
Jeffrey Andrew Kennedy v. NC State Highway Patrol, Citation and Notice of Assessment	09 CPS 2511	May	07/09/09	
Rowland L. Simmons v. North Carolina State Highway Patrol	09 CPS 2885	May	06/11/09	

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**

Patricia L. Tiller v. NC Dept. of Health & Human Ser., Health Care Personnel Registry Sec	07 DHR 0302	Lassiter	07/14/09	
Envisions of Life LLC v. Hearing Office – 05 Division of Medical Assistance	08 DHR 0967	Lassiter	07/01/09	
Choices Group Home Inc., Victor Vega v. N.C. Department of Health and Human Service Regulation	08 DHR 2404	Gray	07/16/09	
Choices Group Home Inc, Victor Vega v. Office of Administrative Hearings, Department of Health and Human Services	08 DHR 2512	Gray	07/16/09	
Abudant Life Child Care Center, Tiffany D. Monroe v. Division of Child Development, June Locklear, Brenda Faircloth	08 DHR 2954	Elkins	06/03/09	
Amy G. Poteat v. Health Care Personnel Registry	08 DHR 3489	May	06/03/09	



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**CONTESTED CASE DECISIONS**

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Victoria Martin v. Surry County Dept of Health and Human Services AFDC/Work First	09 DHR 1533	May	06/04/09
Michael Parks Fresh Start Residential Services Inc. v. NC DHHS Division of Health Service Regulation Mental Health Licensure Certification	09 DHR 1474	Overby	06/17/09
Spring House Residential Facility v. N.C. Dept. of Health and Human Services DHSR MHLIC	09 DHR 1482	May	06/19/09
Yolanda Portillo v. N.C. Department of Health and Human Services	09 DHR 1558	Webster	07/17/09
Regina T. Jones v. N.C. Department of Health and Human Services	09 DHR 1859	Webster	06/23/09
Sharay C. Vinson v. North Carolina Department of Health and Human Services, Division of Health Service Regulation	09 DHR 1884	Brooks	07/10/09
Jason M. Paris (petitioner, Christine O. Jacobs (representing petitioner) v. N.C. Department of Health and Human Services (DHHS)	09 DHR 2296	May	07/10/09
Helen Webb v. Department of Health and Human Dept. of Child Dept	09 DHR 2589	Webster	07/17/09
Brenda V. Patterson v. State Department of Social Services	09 DHR 2654	Webster	07/17/09
Brenda V. Patterson v. State Department of Social Services	09 DHR 2655	Webster	07/17/09
Angela Conner Tawes, Conner's Cape Hatteras Supermarket, Inc v. North Carolina Department of Health and Human Services, Division of Public Health, Women's and Children's Health Section	09 DHR 2717	Gray	06/15/09
Trinia E. McCorkle v. North Carolina Department of Health and Human Services, Division of Medical Assistance	09 DHR 2829	Brooks	07/10/09
Kasina L. Davis v. North Carolina Department of Health and Human Services, Division of Health Service Regulation, Health Care Personnel Registry Section	09 DHR 2832	Gray	07/01/09
Brenda V. Patterson v. N.C. State Department of Social Services	09 DHR 2836	Webster	07/17/09
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**DEPARTMENT OF ADMINISTRATION**

Meherrin Tribe of North Carolina by and through Douglas Patterson v. North Carolina Commission of Indian Affairs	09 DOA 2367	Morrison	06/15/09
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**DEPARTMENT OF CORRECTION**

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Ross Patton Gilmore v. North Carolina Alarm Licensing Board	09 DOJ 2452	Morrison	06/04/09
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Old Mill Forestry, LLC v. N.C. Department of Environment and Natural Resources, Division of Water Quality	08 EHR 1806	Lassiter	05/08/09
Cherokee County Health Department James Pann(managing member, Creek Ridge Holdings, LLC) v. N.C. Department of Environment and Natural Resources	08 EHR 2986	Gray	05/27/09
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