

# ***NORTH CAROLINA REGISTER***

**VOLUME 27 • ISSUE 03 • Pages 291 - 396**

**August 1, 2012**

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

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

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

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

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

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

### **Fiscal Notes & Economic Analysis and Governor's Review**

Office of State Budget and Management  
116 West Jones Street (919) 807-4700  
Raleigh, North Carolina 27603-8005 (919) 733-0640 FAX  
Contact: Anca Grozav, Economic Analyst osbmruleanalysis@osbm.nc.gov (919) 807-4740

NC Association of County Commissioners  
215 North Dawson Street (919) 715-2893  
Raleigh, North Carolina 27603  
contact: Amy Bason amy.bason@ncacc.org

NC League of Municipalities (919) 715-4000  
215 North Dawson Street  
Raleigh, North Carolina 27603  
contact: Erin L. Wynia ewynia@nclm.org

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

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

contact: Karen Cochrane-Brown, Staff Attorney Karen.cochrane-brown@ncleg.net  
Jeff Hudson, Staff Attorney Jeffrey.hudson@ncleg.net

**NORTH CAROLINA REGISTER**  
Publication Schedule for January 2012 – December 2012

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
26:13	01/03/12	12/08/11	01/18/12	03/05/12	03/20/12	05/01/12	05/16/12	09/29/12
26:14	01/17/12	12/21/11	02/01/12	03/19/12	03/20/12	05/01/12	05/16/12	10/13/12
26:15	02/01/12	01/10/12	02/16/12	04/02/12	04/20/12	06/01/12	01/30/13	10/28/12
26:16	02/15/12	01/25/12	03/01/12	04/16/12	04/20/12	06/01/12	01/30/13	11/11/12
26:17	03/01/12	02/09/12	03/16/12	04/30/12	05/21/12	07/01/12	01/30/13	11/26/12
26:18	03/15/12	02/23/12	03/30/12	05/14/12	05/21/12	07/01/12	01/30/13	12/10/12
26:19	04/02/12	03/12/12	04/17/12	06/01/12	06/20/12	08/01/12	01/30/13	12/28/12
26:20	04/16/12	03/23/12	05/01/12	06/15/12	06/20/12	08/01/12	01/30/13	01/11/13
26:21	05/01/12	04/10/12	05/16/12	07/02/12	07/20/12	09/01/12	01/30/13	01/26/13
26:22	05/15/12	04/24/12	05/30/12	07/16/12	07/20/12	09/01/12	01/30/13	02/09/13
26:23	06/01/12	05/10/12	06/16/12	07/31/12	08/20/12	10/01/12	01/30/13	02/26/13
26:24	06/15/12	05/24/12	06/30/12	08/14/12	08/20/12	10/01/12	01/30/13	03/12/13
27:01	07/02/12	06/11/12	07/17/12	08/31/12	09/20/12	11/01/12	01/30/13	03/29/13
27:02	07/16/12	06/22/12	07/31/12	09/14/12	09/20/12	11/01/12	01/30/13	04/12/13
27:03	08/01/12	07/11/12	08/16/12	10/01/12	10/22/12	12/01/12	01/30/13	04/28/13
27:04	08/15/12	07/25/12	08/30/12	10/15/12	10/22/12	12/01/12	01/30/13	05/12/13
27:05	09/04/12	08/13/12	09/19/12	11/05/12	11/20/12	01/01/13	01/30/13	06/01/13
27:06	09/17/12	08/24/12	10/02/12	11/16/12	11/20/12	01/01/13	01/30/13	06/14/13
27:07	10/01/12	09/10/12	10/16/12	11/30/12	12/20/12	02/01/13	05/2014	06/28/13
27:08	10/15/12	09/24/12	10/30/12	12/14/12	12/20/12	02/01/13	05/2014	07/12/13
27:09	11/01/12	10/11/12	11/16/12	12/31/12	01/22/13	03/01/13	05/2014	07/29/13
27:10	11/15/12	10/24/12	11/30/12	01/14/13	01/22/13	03/01/13	05/2014	08/12/13
27:11	12/03/12	11/07/12	12/18/12	02/01/13	02/20/13	04/01/13	05/2014	08/30/13
27:12	12/17/12	11/26/12	01/01/13	02/15/13	02/20/13	04/01/13	05/2014	09/13/13

## **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.

# State of North Carolina



BEVERLY EAVES PERDUE  
GOVERNOR

## EXECUTIVE ORDER NUMBER 119

### EXTENDING THE GOVERNOR'S GANG TASK FORCE

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

Executive Order Number 69, *Governor's Gang Task Force*, is hereby extended until June 30, 2013. The terms of the members of the Task Force are hereby extended until June 30, 2013.

This order is effective immediately.

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



  
Beverly Eaves Perdue  
Governor

ATTEST:

  
Elaine F. Marshall  
Secretary of State

# State of North Carolina



BEVERLY EAVES PERDUE  
GOVERNOR

## EXECUTIVE ORDER NO. 120

### EMERGENCY RELIEF FOR TROPICAL STORM DEBBY

WHEREAS, due to the impact and disaster associated with Tropical Storm Debby, vehicles bearing equipment and supplies to relieve the damage to Florida and other states impacted by the storm need to be moved on the highways of North Carolina; and

WHEREAS, under the provisions of N.C.G.S. §§ 166A-5(1)(a)(1) and 166A-6(c)(3) the Governor, with the concurrence of the Council of State, may regulate and control the flow of vehicular traffic and the operation of transportation services; and

WHEREAS, with the concurrence of the Council of State, I have found that vehicles bearing equipment and supplies to relieve Florida's and other states' grief-stricken areas must adhere to the registration requirements of N.C.G.S. § 20-86.1 and 20-382, fuel tax requirements of N.C.G.S. § 105-449.47, and the size and weight requirements of N.C.G.S. §§ 20-116 and 20-118. I have further found that citizens in those states have suffered losses and will likely suffer imminent further widespread damage within the meaning of N.C.G.S. § 166A-4(1a) will occur and;

WHEREAS, the prompt restoration of utility services to citizens is essential to their safety and well being; and

WHEREAS, 49 CFR § 390.23 allows the Governor of a state to suspend the rules and regulations under 49 CFR Part 395 for up to 30 days if the Governor determines that an emergency condition exists; and

WHEREAS, under N.C.G.S. §§ 166A-4 and 166A-6.03(b), the Governor may declare that the health, safety, or economic well-being of persons or property requires that the maximum hours of service for drivers prescribed by N.C.G.S. § 20-381 should be waived for persons transporting essential fuels, food, water, and medical supplies, and for restoration of utility services.

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:

**Section 1.**

The Department of Public Safety in conjunction with the North Carolina Department of Transportation shall waive the maximum hours of service for drivers prescribed by the Department of Public Safety pursuant to N.C.G.S. § 20-381.

**Section 2.**

The Department of Public Safety in conjunction with the North Carolina Department of Transportation shall waive certain size and weight restrictions and penalties arising under N.C.G.S. §§ 20-116 and 20-118, and certain registration requirements and penalties arising under N.C.G.S. §§ 20-86.1, 20-382, 105-449.47, and 105-449.49 for the vehicles transporting equipment and supplies to relieve Florida and other states impacted by the storm.

**Section 3.**

Notwithstanding the waivers set forth above, size and weight restrictions and penalties have not been waived under the following conditions:

- a. When the vehicle weight exceeds the maximum gross weight criteria established by the manufacturer (GVWR) or 90,000 pounds gross weight, whichever is less.
- b. When the tandem axle weight exceeds 42,000 pounds and the single axle weight exceeds 22,000 pounds.
- c. When a vehicle and vehicle combination exceeds 12 feet in width and a total overall vehicle combination length of 75 feet from bumper to bumper.
- d. Vehicles and vehicle combinations subject to exemptions or permits by authority of this Executive Order shall not be exempt from the requirement of having a yellow banner on the front and rear measuring a total length of 7 feet by 18 inches bearing the legend "Oversized Load" in 10 inch black letters 1.5 inches wide and red flags measuring 18 inches square to be displayed on all sides at the widest point of the load. In addition, when operating between sunset and sunrise, a certified escort shall be required for loads exceeding 8 feet 6 inches in width.

**Section 4.**

Vehicles referenced under Sections 2 and 3 shall be exempt from the following registration requirements:

- a. The \$50.00 fee listed in N.C.G.S. § 105-449.49 for a temporary trip permit is waived for the vehicles described above. No quarterly fuel tax is required because the exception in N.C.G.S. § 105-449.45(a)(1) applies.

- b. The registration requirements under N.C.G.S. § 20-382.1 concerning intrastate and interstate for-hire authority is waived; however, vehicles shall maintain the required limits of insurance as required.
- c. Non-participants in North Carolina's International Registration Plan will be permitted into North Carolina in accordance with the exemptions identified by this Executive Order.

**Section 5.**

The size and weight exemption for vehicles will be allowed on all North Carolina Interstate Highways Only.

**Section 6.**

The waiver of regulations under Title 49 of the Code of Federal Regulations (Federal Motor Carrier Safety Regulations) do not apply to the CDL and Insurance Requirements. This waiver shall be in effect for 30 days or the duration of the emergency, whichever is less.

**Section 7.**

The North Carolina State Highway Patrol shall enforce the conditions set forth in Sections 1 through 6 of this Executive Order in a manner which will implement these provisions without endangering motorists in North Carolina.

**Section 8.**

Upon request by law enforcement officers, exempted vehicles must produce documentation sufficient to establish their loads are being used for relief efforts associated with transporting equipment and supplies to relieve Florida and other states impacted by the storm.

**Section 9.**

This order is adopted pursuant to my powers under Article 1 of Chapter 166A of the General Statutes and not under my authority under Article 36A of Chapter 14 of the General Statutes. It does not trigger the limitations on weapons in N.C.G.S. § 14-288.7 or impose any limitation on the consumption, transportation, sale or purchase of alcoholic beverages.

**Section 10.**

This Executive Order is effective immediately and shall remain in effect for thirty (30) days or the duration of the emergency, whichever is less.



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



  
Beverly Eaves Perdue  
Governor

ATTEST:

  
Elaine F. Marshall  
Secretary of State



**EXECUTIVE ORDER 121**

**EMERGENCY RELIEF FOR STATES IMPACTED BY SEVERE WEATHER**

**WHEREAS**, the Governors of Maryland, Ohio, Virginia, West Virginia and the Government of the District of Columbia have proclaimed that a State of Emergency exists in those areas due to severe weather that impacted those areas on the evening of June 29<sup>th</sup> and early hours of June 30<sup>th</sup> 2012; and

**WHEREAS**, vehicles bearing equipment and supplies to relieve the damage to Maryland, Ohio, Virginia, West Virginia and the District of Columbia need to be moved on the highways of North Carolina; and

**WHEREAS**, under the provisions of N.C.G.S. §§ 166A-5(1)(a)(1) and 166A-6(c)(3) the Governor, with the concurrence of the Council of State, may regulate and control the flow of vehicular traffic and the operation of transportation services; and

**WHEREAS**, with the concurrence of the Council of State, I have found that vehicles bearing equipment and supplies to relieve Maryland, Ohio, Virginia, West Virginia and the District of Columbia must adhere to the registration requirements of N.C.G.S. § 20-86.1 and 20-382, fuel tax requirements of N.C.G.S. § 105-449.47, and the size and weight requirements of N.C.G.S. §§ 20-116 and 20-118. I have further found that citizens in those states have suffered losses and will likely suffer imminent further widespread damage within the meaning of N.C.G.S. § 166A-4(1a) and;

**WHEREAS**, the prompt restoration of utility services to citizens is essential to their safety and well being; and

**WHEREAS**, 49 CFR § 390.23 allows the Governor of a state to suspend the rules and regulations under 49 CFR Part 395 for up to 30 days if the Governor determines that an emergency condition exists; and

**WHEREAS**, under N.C.G.S. §§ 166A-4 and 166A-6.03(b), the Governor may declare that the health, safety, or economic well-being of persons or property requires that the maximum hours of service for drivers prescribed by N.C.G.S. § 20-381 should be waived for persons transporting essential fuels, food, water, and medical supplies, and for restoration of utility services.

**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**:

**Section 1.**

The Department of Public Safety in conjunction with the North Carolina Department of Transportation shall waive the maximum hours of service for drivers prescribed by the Department of Public Safety pursuant to N.C.G.S. § 20-381.

**Section 2.**

The Department of Public Safety in conjunction with the North Carolina Department of Transportation shall waive certain size and weight restrictions and penalties arising under N.C.G.S. §§ 20-116 and 20-118, and certain registration requirements and penalties arising under N.C.G.S. §§ 20-86.1, 20-382, 105-449.47, and 105-449.49 for the vehicles transporting equipment and supplies to relieve Maryland, Ohio, Virginia, West Virginia and the District of Columbia.

**Section 3.**

Notwithstanding the waivers set forth above, size and weight restrictions and penalties have not been waived under the following conditions:

- a. When the vehicle weight exceeds the maximum gross weight criteria established by the manufacturer (GVWR) or 90,000 pounds gross weight, whichever is less.
- b. When the tandem axle weight exceeds 42,000 pounds and the single axle weight exceeds 22,000 pounds.
- c. When a vehicle and vehicle combination exceeds 12 feet in width and a total overall vehicle combination length of 75 feet from bumper to bumper.

d. Vehicles and vehicle combinations subject to exemptions or permits by authority of this Executive Order shall not be exempt from the requirement of having a yellow banner on the front and rear measuring a total length of 7 feet by 18 inches bearing the legend "Oversized Load" in 10 inch black letters 1 5 inches wide and red flags measuring 18 inches square to be displayed on all sides at the widest point of the load. In addition, when operating between sunset and sunrise, a certified escort shall be required for loads exceeding 8 feet 6 inches in width.

**Section 4.**

Vehicles referenced under Sections 2 and 3 shall be exempt from the following registration requirements:

- a. The \$50.00 fee listed in N.C.G.S. § 105-449.49 for a temporary trip permit is waived for the vehicles described above. No quarterly fuel tax is required because the exception in N.C.G.S. § 105-449.45(a)(1) applies.
- b. The registration requirements under N.C.G.S. § 20-382.1 concerning intrastate and interstate for-hire authority is waived; however, vehicles shall maintain the required limits of insurance as required.
- c. Non-participants in North Carolina's International Registration Plan will be permitted into North Carolina in accordance with the exemptions identified by this Executive Order.

**Section 5.**

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**Section 6.**

The waiver of regulations under Title 49 of the Code of Federal Regulations (Federal Motor Carrier Safety Regulations) does not apply to the CDL and Insurance Requirements. This waiver shall be in effect for 30 days or the duration of the emergency, whichever is less.

**Section 7.**

The North Carolina State Highway Patrol shall enforce the conditions set forth in Sections 1 through 6 of this Executive Order in a manner which will implement these provisions without endangering motorists in North Carolina.

Section 8.

Upon request by law enforcement officers, exempted vehicles must produce documentation sufficient to establish their loads are being used for relief efforts associated with transporting equipment and supplies to relieve Maryland, Ohio, Virginia, West Virginia and the District of Columbia.

Section 9.

This order is adopted pursuant to my powers under Article I of Chapter 166A of the General Statutes and not under my authority under Article 36A of Chapter 14 of the General Statutes. It does not trigger the limitations on weapons in N.C.G.S. § 14-288.7 or impose any limitation on the consumption, transportation, sale or purchase of alcoholic beverages.

Section 10.

This Executive Order is effective immediately and shall remain in effect for thirty (30) days or the duration of the emergency, whichever is less.

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 first day of July in the year of our Lord two thousand and twelve, and of the Independence of the United States of America the two hundred and thirty-sixth.



  
Beverly Eave, Perdue  
Governor

ATTEST:

  
Elaine F. Marshall  
Secretary of State

**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-21.1, Temporary Rules.

**Citation to Existing Rule Affected by this Rule-Making:** *North Carolina Mechanical 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:** *August 28, 2012, 10:00AM, NC Department of Insurance, 322 Chapanoke Road, Classroom Downstairs, Raleigh, NC 27603. Comments on both the proposed rule and any fiscal impact will be accepted.*

**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. Comments on both the proposed rule and any fiscal impact will be accepted. Comment period expires on August 31, 2012. Adoption of these Temporary Rules will take place on September 10, 2012.*

**Statement of Subject Matter:**

**1. Request by David Smith, NC BCC, to amend the 2012 NC Residential Code, Section R602.10. The proposed amendment is as follows:**

**R602.10 Wall bracing.** Buildings shall be braced in accordance with this section. Where a building, or portion thereof, does not comply with one or more of the bracing requirements in this section, those portions shall be designed and constructed in accordance with Section R301.1.

**Exceptions:**

1. Detached one- and two-family *dwelling*s located in Seismic Design Category C are exempt from the seismic bracing requirements of this section. Wind speed provisions for bracing shall be applicable to detached one- and two-family *dwelling*s.

2. In lieu of the wall bracing requirements of Section 602.10, all stories shall be sheathed with wood structural sheathing panels. Blocking shall be installed if less than 50 percent of the wall length is sheathed. Where blocking is required, all panels shall be fastened at 3 inches (76 mm) on center along the edges and 6 inches (152 mm) on center at intermediate framing. If a wall is sheathed less than 25 percent of its length, then that wall shall be designed in accordance with approved engineering practice.

Motion for temporary and permanent rules – David Smith/Second – Mack Nixon/Granted – The request was granted unanimously.

Reason Given – The proposal provides a simple alternate method for constructing adequate wall bracing to reduce plan review time and to minimize the need for design by registered design professionals. The proposed effective date of this temporary rule is October 1, 2012.

Fiscal Statement – This rule is anticipated to provide equivalent compliance with no net decrease/increase in cost. This rule is not expected to either have a substantial economic impact or affect local and state funds. A fiscal note has not been prepared.

**2. Request by David Smith, NC BCC, to amend the 2012 NC Mechanical Code, Table 603.4. The proposed amendment is as follows:**

**TABLE 603.4**

**DUCT CONSTRUCTION MINIMUM SHEET METAL THICKNESS FOR SINGLE DWELLING UNITS**

DUCT SIZE	GALVANIZED		<b><u>Appropriate Aluminum B &amp; S Gage ALUMINUM MINIMUM THICKNESS (in.)</u></b>
	Minimum thickness (in.)	Equivalent galvanized gage no.	

**IN ADDITION**

Round ducts and Enclosed rectangular ducts			
14 inches or less	<u>0.013</u> <del>0.0157</del>	<u>30</u> <del>28</del>	<u>26</u> <del>0.0175</del>
<del>16 and 18 inches</del>	<u>0.016</u> <del>0.0187</del>	<u>28</u> <del>26</del>	<u>24</u> <del>0.018</del>
<u>Over 14 inches</u>			
<del>20 inches and over</del>	<del>0.0236</del>	<del>24</del>	<del>0.023</del>
Exposed rectangular ducts			
14 inches or less	<u>0.016</u> <del>0.0157</del>	<del>28</del>	<u>24</u> <del>0.0175</del>
Over 14 inches*	<u>0.019</u> <del>0.0187</del>	<del>26</del>	<u>22</u> <del>0.018</del>

For SI: 1 inch = 25.4 mm, 1 inch water gage = 249 Pa.

• For duct gages and reinforcement requirements at static pressure of ½ inch, 1 inch and 2 inch w.g., SMACNA *HVAC Duct Construction Standards*, Tables 2-1, 2-2, and 2-3, shall apply.

Motion for temporary and permanent rules – Ralph Euchner/Second – Mack Nixon/Granted – The request was granted unanimously.  
Reason Given – The proposal reduces the material thickness to match industry standards. The proposed effective date of this rule is October 1, 2012.

Fiscal Statement – This rule is anticipated to provide a negligible decrease in cost. This rule is not expected to either have a substantial economic impact or affect local and state funds. A fiscal note has not been prepared.

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, Mechanical, Plumbing 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 10, 2012, 9:00AM, NCSU McKimmon Center, 1101 Gorman Street, Raleigh, NC 27606. Comments on both the proposed rule and any fiscal impact will be accepted.*

**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. Comments on both the proposed rule and any fiscal impact will be accepted. Comment period expires on October 1, 2012.*

**Statement of Subject Matter:**

**1. Request by Myron Cashwell, Sampson County, to amend the 2012 NC Fire (and Building) Code, Section 903.2.8. The proposed amendment is as follows:**

*Exceptions: (no change to Exceptions 1 and 2)*

3. Any Group R Fire area meeting all of the following conditions:

3.1. Less than 1200 square feet area

3.2. Single story at grade construction

3.3. Two remote exits

3.4. Minimum III B Construction

Motion – Alan Perdue/Second – Ralph Euchner/Granted – The request was granted unanimously and sent to the Building/Fire Committees for review.

Reason Given – This proposal is intended to address migrant housing needs in rural areas. This new exception would allow small Group R buildings to be built without a sprinkler system but with size and construction limits. This would be beneficial to rural areas without municipal water systems. The size limitation keeps the building down to the size of a small single family dwelling which does not require a sprinkler system at this time. We believe that the short travel distance, limited combustible construction and being built at grade offers the occupant a very safe building without a sprinkler system. The proposed effective date of this rule is January 1, 2015.

Fiscal Statement – This new exception would allow small residential buildings 1200-square feet or less to be built without a sprinkler system. The cost savings would be estimated at approximately \$1.60 to \$6.60 per square foot depending on water availability. The cost of a well, pump, tank and fire pump in an area without municipal water would drive the cost to the higher end. Owners would be required to use some of this cost savings to build a less combustible and safer building to qualify for the exception. Therefore, the exception becomes a tradeoff option for areas without municipal water. This rule is not expected to either have a substantial economic impact or affect local and state funds. A fiscal note has not been prepared.

**2. Request by Robert Hall, Loganville, Georgia, to amend the 2012 NC Mechanical Code, Section 605.5. The proposed amendment is as follows:**

Add 605.5 International Plumbing Code Reference in Chapter 15 of IMC

Motion – Cindy Browning/Second – Mack Nixon/Granted – The request was granted unanimously and sent to the Mechanical Committee for review.



Reason Given – This proposal is a cross-reference to maintain standard references between codes. The proposed effective date of this rule is January 1, 2015.

Fiscal Statement – This rule is anticipated to provide equivalent compliance with no net decrease/increase in cost. This rule is not expected to either have a substantial economic impact or affect local and state funds. A fiscal note has not been prepared.

**3. Request by Robert Hall, Loganville, Georgia, to amend the 2012 NC Mechanical Code, Section 1202.5. The proposed amendment is as follows:**

**Table 1202.5 Hydronic Pipe Fittings**

Material	Standard
Copper & Copper Alloy	ASME B16.15; ASME B16.18; ASME B16.22; ASME B16.23; ASME B16.26; ASME B16.29; <u>ASME B16.51</u>

Motion – Cindy Browning/Second – John Hitch/Granted – The request was granted unanimously and sent to the Mechanical Committee for review.

Reason Given – The proposal is an update of national standards. ASME B16.51 was recognized as an American National Standard on December 21, 2011 with an issuance date of January 31, 2012. Code change proposals have been submitted to the International Code Council and the Mechanical Committee approved the standard at the May 2012 code hearing. The proposed effective date of this rule is January 1, 2015.

Fiscal Statement – This rule is anticipated to provide equivalent compliance with no net decrease/increase in cost. This rule is not expected to either have a substantial economic impact or affect local and state funds. A fiscal note has not been prepared.

**4. Request by Robert Hall, Loganville, Georgia, to amend the 2012 NC Mechanical Code, Section 1203.8. The proposed amendment is as follows:**

**1203.8 Copper and copper alloy tubing.** Joints between copper or copper-alloy tubing or fittings shall be brazed, mechanical, press connect or soldered joints conforming to Section 1203.3 or flared joints conforming to Section 1203.

*[Note: Above language differs slightly from Code language]*

Motion – Cindy Browning/Second – Ralph Euchner/Granted – The request was granted unanimously and sent to the Mechanical Committee for review.

Reason Given – This proposal is to recognize new products complying with ASTM B16.51. The press-connect reference is needed to maintain consistency throughout the applicable sections. The proposed effective date of this rule is January 1, 2015.

Fiscal Statement – This rule is anticipated to provide equivalent compliance with no net decrease/increase in cost. This rule is not expected to either have a substantial economic impact or affect local and state funds. A fiscal note has not been prepared.

**5. Request by Robert Hall, Loganville, Georgia, to amend the 2012 NC Mechanical Code, Section 1203.3.9. The proposed amendment is as follows:**

**1203.3.9 Press connect joints.** Press connect joints shall be installed in accordance with the manufacturers instruction. Press-connect joints shall conform to one of the standards listed in Table 1202.2.

Motion – Cindy Browning/Second – Mack Nixon/Granted – The request was granted unanimously and sent to the Mechanical Committee for review.

Reason Given – The proposal is needed to reference the ASTM B16.51 standard in the copper or copper alloy tubing section. The proposed effective date of this rule is January 1, 2015.

Fiscal Statement – This rule is anticipated to provide equivalent compliance with no net decrease/increase in cost. This rule is not expected to either have a substantial economic impact or affect local and state funds. A fiscal note has not been prepared.

**6. Request by Robert Hall, Loganville, Georgia, to amend the 2012 NC Plumbing Code, Section 605.5. The proposed amendment is as follows:**

**Table 605.5 Pipe Fittings**

Material	Standard
Copper & Copper Alloy	ASME B16.15; ASME B16.18; ASME B16.22; ASME B16.23; ASME B16.26; ASME B16.29; <u>ASME B16.51</u>

Motion – Cindy Browning/Second – Ralph Euchner/Granted – The request was granted unanimously and sent to the Mechanical Committee for review.

Reason Given – The proposal is an update of national standards. ASME B16.51 was recognized as an American National Standard on December 21, 2011 with an issuance date of January 31, 2012. Code change proposals have been submitted to the International Code Council and the Mechanical Committee approved the standard at the May 2012 code hearing. The proposed effective date of this rule is January 1, 2015.

Fiscal Statement – This rule is anticipated to provide equivalent compliance with no net decrease/increase in cost. This rule is not expected to either have a substantial economic impact or affect local and state funds. A fiscal note has not been prepared.

**7. Request by Robert Hall, Loganville, Georgia, to amend the 2012 NC Plumbing Code, Section 605.15, Copper Tubing. The proposed amendment is as follows:**

**605.15.5 Press Connect Joints.** Press connect joints shall be installed in accordance with the manufacturer's instructions. Press-connect joints shall conform to one of the standards listed in Table 605.5.

Motion – Mack Nixon /Second – Cindy Browning/Granted – The request was granted unanimously and sent to the Mechanical Committee for review.

Reason Given – The proposal is needed to reference the ASTM B16.51 standard in the copper or copper alloy tubing section. The proposed effective date of this rule is January 1, 2015.

Fiscal Statement – This rule is anticipated to provide equivalent compliance with no net decrease/increase in cost. This rule is not expected to either have a substantial economic impact or affect local and state funds. A fiscal note has not been prepared.

**8. Request by Scott McKinnon, with Comfort Solutions Incorporated, to amend the 2012 NC Energy Conservation Code, Section 403.1.2. The proposed amendment is as follows:**

**403.1.2 Heat pump supplementary heat (Mandatory Requirements).** Heat pumps having supplementary electric-resistance heat shall have controls that, except during defrost, prevent supplemental heat operation when the heat pump compressor can meet the heating load. In lieu of a heat strip outdoor temperature lockout, the following time and temperature electric-resistance control may be used. After six minutes of compressor run time in heat mode, supplemental electric heat shall energize only if the leaving air temperature from the indoor coil is below 90°F. If the indoor coil leaving air temperature exceeds 100°F, supplemental heat will automatically de-energize, but allow the compressor to continue to operate until the call is satisfied. No thermostat shall initiate supplemental electric heat at any time. Thermostat controlled emergency heat shall not be limited by outdoor temperature. Electric-resistance supplemental heat during defrost shall operate normally without limitation.

Motion – Mack Nixon /Second – Ralph Euchner/Granted – The request was granted unanimously and sent to the Energy and Mechanical Committees for review.

Reason Given – The proposal provides an alternate to the heat strip outdoor temperature lockout. Zone control systems should not be required to add an additional outdoor temperature based method to control supplementary electric-resistance heat. One advantage of zone control systems is that warm bypass air actually increases the leaving air temperature when not all zones are calling. The time and temperature control method in zone systems recognizes the higher leaving air temperature and thus prevents unneeded supplemental heat from energizing regardless of outdoor temperature. Outdoor temperatures control of supplemental electric-resistance fails to take warm bypass air into consideration. The proposed effective date of this rule is January 1, 2015.

Fiscal Statement – Requiring an outdoor temperature lockout to a zone system with a proven time and air temperature method of efficiently controlling supplemental electric-resistance heat could add \$75 to the installation cost without providing any efficiency improvement. This rule is anticipated to provide equivalent compliance with no net decrease/increase in cost. This rule is not expected to either have a substantial economic impact or affect local and state funds. A fiscal note has not been prepared.

**9. Request by Joe Mattingly, Air-Conditioning, Heating, and Refrigeration Institute, to amend the 2012 NC Energy Conservation Code, 501.1 Scope. The proposed amendment is as follows:**

**501.1 Scope.** The requirements contained in this chapter are applicable to commercial buildings, or portions of commercial buildings. These commercial buildings shall either:

1. Meet the requirements contained in this chapter, or
2. ~~Comply with the mandatory provisions of 2007 ASHRAE/IESNA Standard 90.1, *Energy Standard for Buildings Except for Low Rise Residential Buildings* and exceed the minimum level of energy efficiency it prescribes by 20% following the procedure in ASHRAE/IESNA Standard 90.1, Appendix G. Meet the requirements of ASHRAE/IESNA Standard 90.1-2010.~~

Motion – Mack Nixon /Second – Bob Ruffner/Granted – The request was granted unanimously and sent to the Energy Committee for review.

Reason Given – This proposal updates the national standard recognized by the USDOE as equivalent. The current code provision may be preempted by the federal Energy Policy and Conservation Act. The proposed effective date of this rule is January 1, 2015.

Fiscal Statement – This rule is anticipated to provide equivalent compliance with no net decrease/increase in cost. This rule is not expected to either have a substantial economic impact or affect local and state funds. A fiscal note has not been prepared.

**10. Request by Alan Meeks, with The Marwin Company, Inc., to amend the 2012 NC Residential Code, Section R302.5.1. The proposed amendment is as follows:**

**R302.5.1 Opening protection.** Openings from a private garage directly into a room used for sleeping purposes shall not be permitted. Other openings between the garage and residence shall be equipped with solid wood doors not less than 1⅜ inches (35 mm) in thickness, solid or honeycomb core steel doors not less than 1⅜ inches (35 mm) thick, or 20-minute fire-rated doors.

**Exception:** A disappearing/pull-down stairway to uninhabited attic space with minimum ⅜-inch (9.53 mm) (nominal) fire retardant-treated structural panel is deemed to meet Table R302.6 Dwelling/Garage Separation of not less than ½-inch (12.7 mm) gypsum board or equivalent applied to garage side.

Motion – David Smith /Second – Mack Nixon/Granted – The request was granted unanimously and sent to the Residential Committee for review.

Reason Given – The proposal provides an alternate compliance path for garage separation with an industry standard stairway. The proposed effective date of this rule is January 1, 2015.

Fiscal Statement – This rule is anticipated to provide equivalent compliance with no net decrease/increase in cost. This rule is not expected to either have a substantial economic impact or affect local and state funds. A fiscal note has not been prepared.

**11. Request by David Smith, NC BCC, to amend the 2012 NC Residential Code, Section R313.1. The proposed amendment is as follows:**

**R313.1 Townhouse automatic fire sprinkler systems.** An automatic residential fire sprinkler system shall be installed in townhouses.

**Exceptions:**

1. Townhouses constructed with a common 2-hour fire-resistance-rated wall assembly or separated from each other by wall or floor assemblies having not less than a 1-hour fire resistance rating tested in accordance with ASTM E 119 or UL 263 provided such walls do not contain plumbing or mechanical equipment, ducts or vents in the cavity of the common wall. The wall(s) shall be rated for fire exposure from both sides and shall extend to and be tight against exterior walls and the underside of the roof sheathing. Electrical installations in the separation walls shall be installed in accordance with the NC Electrical Code ~~Chapters 34 through 43.~~ Penetrations for electrical outlet boxes shall be in accordance with Section R302.4.
2. An automatic residential fire sprinkler system shall not be required when additions or alterations are made to existing townhouses that do not have an automatic residential fire sprinkler system installed.

Motion – David Smith /Second – Ralph Euchner/Granted – The request was granted unanimously.

Reason Given – The proposal provides an alternate compliance path for townhouse separation with two 1-hour assemblies in lieu of a common 2-hour assembly. The proposed effective date of this rule is January 1, 2015.

Fiscal Statement – This rule is anticipated to provide equivalent compliance with no net decrease/increase in cost. This rule is not expected to either have a substantial economic impact or affect local and state funds. A fiscal note has not been prepared.

**12. Request by David Smith, NC BCC, to amend the 2012 NC Residential Code, Sections R322.2.1 and R322.3.2. The proposed amendment is as follows:**

**R322.2.1 Elevation requirements.**

1. Buildings and structures shall have the lowest floors elevated to or above the base flood elevation ~~plus one foot (305 mm)~~, or the design flood elevation, whichever is higher.
2. In areas of shallow flooding (AO Zones), buildings and structures shall have the lowest floor (including basement) elevated at least as high above the highest adjacent grade as the depth number specified in feet (mm) on the FIRM ~~plus one foot (305 mm)~~, or at least 3 feet (915 mm) if a depth number is not specified.
3. Basement floors that are below grade on all sides shall be elevated to or above the base flood elevation ~~plus one foot (305 mm)~~, or the design flood elevation, whichever is higher.

**Exception:** Enclosed areas below the design flood elevation, including basements whose floors are not below grade on all sides, shall meet the requirements of Section R322.2.2.

**R322.3.2 Elevation requirements.**

1. All buildings and structures erected within coastal high hazard areas shall be elevated so that the lowest portion of all structural members supporting the lowest floor, with the exception of mat or raft foundations, piling, pile caps, columns, grade beams and bracing, is:
  - 1.1. Located at or above the design flood elevation, if the lowest horizontal structural member is oriented parallel to the direction of wave approach, where parallel shall mean less than or equal to 20 degrees (0.35 rad) from the direction of approach, or
  - 1.2. Located at the base flood elevation ~~plus 1 foot (305 mm)~~, or the design flood elevation, whichever is higher, if the lowest horizontal structural member is oriented perpendicular to the direction of wave approach, where perpendicular shall mean greater than 20 degrees (0.35 rad) from the direction of approach.
2. Basement floors that are below grade on all sides are prohibited.
3. The use of fill for structural support is prohibited.
4. Minor grading, and the placement of minor quantities of fill, shall be permitted for landscaping and for drainage purposes under and around buildings and for support of parking slabs, pool decks, patios and walkways.

**Exception:** Walls and partitions enclosing areas below the design flood elevation shall meet the requirements of Sections R322.3.4 and R322.3.5.

Motion – David Smith /Second – Mack Nixon/Granted – The request was granted unanimously and sent to the Residential Committee for review.

Reason Given – The proposal allows for flood elevation design compatible with local flood ordinances and FIRMs. This is coordination between construction and insurance regulations. The proposed effective date of this rule is January 1, 2015.

Fiscal Statement – This rule is anticipated to provide equivalent compliance with no net decrease/increase in cost. This rule is not expected to either have a substantial economic impact or affect local and state funds. A fiscal note has not been prepared.

**13. Request by David Smith, NC BCC, to amend the 2012 NC Residential Code, Table R403.1. The proposed amendment is as follows:**

**TABLE R403.1  
MINIMUM WIDTH OF CONCRETE OR  
MASONRY FOOTINGS (inches)\***

	LOAD-BEARING VALUE OF SOIL (psf)			
	1,500	2,000	3,000	4,000
Conventional light-frame construction				
1-story	12 <sup>b</sup>	12 <sup>b</sup>	12	12
2-story	15 <sup>b</sup>	12 <sup>b</sup>	12	12
3-story	23	17	12	12
4-inch brick veneer over light frame or 8-inch hollow concrete masonry				
1-story	12 <sup>b</sup>	12 <sup>b</sup>	12	12
2-story	21	16	12	12
3-story	32	24	16	12
8-inch solid or fully grouted masonry				
1-story	16	12 <sup>b</sup>	12	12

2-story	29	21	14	12
3-story	42	32	21	16

For SI: 1-inch = 25.4 mm, 1 pound per square foot = 0.0479 kPa.

a. Where minimum footing width is 12 inches, use of a single wythe of solid or fully grouted 12-inch nominal concrete masonry units is permitted.

b. ~~A minimum footing width of 12" is acceptable for monolithic slab foundations.~~

*[Note: Above widths differ slightly from Code language]*

Motion – David Smith /Second – Lon McSwain/Granted – The request was granted unanimously and sent to the Residential Committee for review.

Reason Given – The proposal allows footing widths to be constructed in accordance with the minimum footing widths included in the 2012 IRC. These minimums are seldom used due to construction tolerances. The proposed effective date of this rule is January 1, 2015.

Fiscal Statement – This rule is anticipated to provide equivalent compliance with no net decrease/increase in cost. This rule is not expected to either have a substantial economic impact or affect local and state funds. A fiscal note has not been prepared.

**14. Request by David Smith, NC BCC, to amend the 2012 NC Residential Code, Section R403.1.4. The proposed amendment is as follows:**

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

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

Motion – David Smith /Second – Lon McSwain – Motion to amend – Mack Nixon/Seconded - Granted – The request was granted unanimously and sent to the Residential Committee for review.

Reason Given – The proposal is for coordination between the text of Section R403.1.4 and Table R403.1(1). The proposed effective date of this rule is January 1, 2015.

Fiscal Statement – This rule is anticipated to provide equivalent compliance with no net decrease/increase in cost. This rule is not expected to either have a substantial economic impact or affect local and state funds. A fiscal note has not been prepared.

**15. Request by David Smith, NC BCC, to amend the 2012 NC Residential Code, Table R502.3.3(2) Footnotes. The proposed amendment is as follows:**

**Table R502.3.3(2) Footnotes:**

a. Spans are based on No. 2 Grade lumber of Douglas fir-larch, hem-fir, southern pine, and spruce-pine-fir for repetitive (3 or more) members.

b. Ratio of backspan to cantilever span shall be at least 2:1.

c. Connections capable of resisting the indicated uplift force shall be provided at the backspan support.

d. Uplift force is for a backspan to cantilever span ratio of 2:1. Tabulated uplift values are permitted to be reduced by multiplying by a factor equal to 2 divided by the actual backspan ratio provided (2/backspan ratio).

e. A full-depth rim joist shall be provided at the ~~unsupported end of the cantilever joists~~cantilever end of the joists. Solid blocking shall be provided at the ~~supported end~~cantilever support.

f. Linear interpolation shall be permitted for ground snow loads other than shown.

Motion – David Smith /Second – Ralph Euchner/Granted – The request was granted unanimously and sent to the Residential Committee for review.

Reason Given – The proposal is for coordination between the text of Table R502.3.3(1), footnote g and Table R502.3.3(2), footnote e. The proposed effective date of this rule is January 1, 2015.

Fiscal Statement – This rule is anticipated to provide equivalent compliance with no net decrease/increase in cost. This rule is not expected to either have a substantial economic impact or affect local and state funds. A fiscal note has not been prepared.

**16. Request by David Smith, NC BCC, to amend the 2012 NC Residential Code, Section R506.2.3. The proposed amendment is as follows:**

**R506.2.3 Vapor retarder.** A 6 mil (0.006 inch; 152 µm) polyethylene or *approved* vapor retarder with joints lapped not less than 6 inches (152 mm) shall be placed between the concrete floor slab and the base course or the prepared subgrade where no base course exists.

**Exception:** The vapor retarder may be omitted:

1. From detached garages, utility buildings and other unheated *accessory structures*.
2. For unheated storage rooms having an area of less than 70 square feet (6.5 m<sup>2</sup>) and carports.
3. From driveways, walks, patios and other exterior flatwork ~~not likely to be enclosed and heated at a later date.~~
4. Where *approved* by the *building official*, based on local site conditions.
5. From attached garages where floor space at parking level is unheated.

Motion – David Smith /Second – Ralph Euchner – Motion to amend – John Hitch/Second – David Smith. The request was granted unanimously and sent to the Residential Committee for review.

Reason Given – The proposal provides an exception for garage floor construction without a vapor retarder under the floor. The proposed effective date of this rule is January 1, 2015.

Fiscal Statement – This rule is anticipated to provide a negligible decrease in material cost. This rule is not expected to either have a substantial economic impact or affect local and state funds. A fiscal note has not been prepared.

**17. Request by David Smith, NC BCC, to amend the 2012 NC Residential Code, Table R602.10.4.2 Footnotes. The proposed amendment is as follows:**

**Table R602.10.4.2 Footnotes:**

a. Interpolation shall be permitted.

~~b. Braced wall panels using wood structural panel (WSP) sheathing on both sides may be used to reduce the panel lengths shown by 50 percent.~~

Motion – Steve Knight/Second – David Smith/Granted – The request was granted unanimously and sent to the Residential Committee for review.

Reason Given – The proposal removes a footnote that is not compatible with the design parameters of the Residential Code. The proposed effective date of this rule is January 1, 2015.

Fiscal Statement – This rule is anticipated to provide equivalent compliance with no net decrease/increase in cost. This rule is not expected to either have a substantial economic impact or affect local and state funds. A fiscal note has not been prepared.

**18. Request by David Smith, NC BCC, to amend the 2012 NC Residential Code, Section R703.7.6. The proposed amendment is as follows:**

**R703.7.6 Weepholes.** Weepholes shall be provided in the outside wythe of masonry walls at a maximum spacing of ~~33~~ 48 inches (~~838~~ 1219 mm) on center. Weepholes shall not be less than 3/16 inches (5 mm) in diameter. Weepholes shall be located immediately above the flashing.

Motion – David Smith/Second – Mack Nixon/Granted – The request was granted unanimously and sent to the Residential Committee for review.

Reason Given – The proposal coordinates weephole spacing with typical masonry dimension. The proposed effective date of this rule is January 1, 2015.

Fiscal Statement – This rule is anticipated to provide equivalent compliance with no net decrease/increase in cost. This rule is not expected to either have a substantial economic impact or affect local and state funds. A fiscal note has not been prepared.

**19. Request by David Smith, NC BCC, to amend the 2012 NC Residential Code, Section R905.2.6. The proposed amendment is as follows:**

**R905.2.6 Attachment.** Asphalt shingles shall have the minimum number of fasteners required by the manufacturer, but not less than four fasteners per strip shingle or two fasteners per individual shingle. Where the roof slope exceeds 21 units vertical in 12 units horizontal (21:12, 175 percent slope), shingles shall be installed as required by the manufacturer.

**Exceptions:** Asphalt strip shingles shall have a minimum of six fasteners per shingle where the roof is in one of the following categories:

1. The basic wind speed in accordance with Figure R301.2(4) is 110 miles per hour (177 km/hr) or greater and the eave is 20 feet (6096 mm) or higher above grade.
2. The basic wind speed in accordance with Figure R301.2(4) is 120 miles per hour (193 km/hr) or greater.
3. Special mountain regions in accordance with Figure R301.2(4) that meet exceptions 1 or 2 above.

Motion – David Smith/Second – Steve Knight/Granted – The request was granted unanimously and sent to the Residential Committee for review.

Reason Given – The proposal coordinates the code and manufacturer requirements for installation in high wind areas. The proposed effective date of this rule is January 1, 2015.

Fiscal Statement – This rule is anticipated to provide equivalent compliance with no net decrease/increase in cost. This rule is not expected to either have a substantial economic impact or affect local and state funds. A fiscal note has not been prepared.

**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 Medical Care Commission intends to amend the rules cited as 10A NCAC 13D .2105-.2107, .2202-.2203, .2210, .2301, .2303, .2306, .2604 and repeal the rules cited as 10A NCAC 13D .3001-.3002, .3011-.3016, .3021-.3030 and .3033.

**Link to agency website pursuant to G.S. 150B-19.1(c):**  
<http://www.ncdhhs.gov/dhsr/ruleactions.html>

**Proposed Effective Date:** January 1, 2013

### **Public Hearing:**

**Date:** September 19, 2012

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

**Location:** Room 134, Lineberger Building, NC Division of Health Service Regulation, Dorothea Dix Campus, 1205 Umstead Drive, Raleigh, NC 27603

**Reason for Proposed Action:** The proposed rule amendments and repeals are a result of the agency's rule review meetings with stakeholders. The amendments clarify the rule language to be more easily understood and interpreted. The repeals eliminate rules that are outdated since many of the types of units these rules refer to no longer exist.

**Procedure by which a person can object to the agency on a proposed rule:** An individual may object to the agency on the proposed rule by submitting written comments on the proposed rule. They may also object by attending the public hearing and personally voice their objections during that time.

**Comments may be submitted to:** Megan Lamphere, Division of Health Service Regulation, 2708 Mail Service Center, Raleigh, NC 27699-2708, fax (919)733-9379, email [dhsr.rulescoordinator@dhhs.nc.gov](mailto:dhsr.rulescoordinator@dhhs.nc.gov)

**Comment period ends:** October 1, 2012

**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 after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule 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 (check all that apply).**

- ☐ State funds affected
- ☐ Environmental permitting of DOT affected
- ☐ Analysis submitted to Board of Transportation
- ☐ Local funds affected
- ☐ Date submitted to OSBM:
- ☐ Substantial economic impact (≥\$500,000)
- ☒ Approved by OSBM
- ☐ No fiscal note required

## **SUBCHAPTER 13D – RULES FOR THE LICENSING OF NURSING HOMES**

### **SECTION .2100 - LICENSURE**

#### **10A NCAC 13D .2105 TEMPORARY CHANGE IN BED CAPACITY**

(a) A ~~life-care center, continuing care retirement community,~~ having an agreement to care for all residents regardless of level of care needs, may temporarily increase bed capacity by 10 percent or 10 beds, whichever is less, over the licensed bed capacity for a period up to ~~30~~ 60 days following notification of and approval by the ~~Department.~~ Nursing Home Licensure and Certification Section.

(b) A facility other than a ~~life-care center, continuing care retirement community~~ shall accept no more ~~patients or residents~~ than the total number for which it is licensed except in an emergency ~~situation, situation approved and confirmed in writing by the Licensure and Certification Section of the Division of Health Service Regulation.~~ Emergency authorizations shall not exceed ~~30~~ 60 calendar days and shall not exceed the total ~~licensed bed capacity for the facility.~~ number of beds licensed by the Division.

(c) The Department shall authorize, in writing, a temporary increase in licensed beds in accordance with Paragraphs (a) and (b) of this Rule, if it is determined that:

- (1) the increase is not associated with a capital expenditure; and
- (2) the increase would not jeopardize the health, safety and welfare of the patients.

Authority G.S. 131E-104; 131E-112.



**10A NCAC 13D .2106 DENIAL, AMENDMENT, OR REVOCATION OF LICENSE**

(a) The Department shall deny any licensure application upon becoming aware that the applicant is not in compliance with G.S. 131E, Article 9 and the rules adopted under that law.

(b) The Department may amend a license by reducing it from a full license to a provisional license whenever the Department finds that:

- (1) the licensee has substantially failed to comply with the provisions of G.S. 131E, Article 6 and the rules promulgated under that article; and
- (2) ~~there is a reasonable probability that the licensee can remedy the licensure deficiencies within a reasonable length of time; and there is continued non-compliance after the third revisit.~~
- (3) ~~there is a reasonable probability that the licensee will be able thereafter to remain in compliance with the licensure rules for the foreseeable future.~~

(c) The Department shall give the licensee written notice of the amendment to the license. This notice shall be given personally or by certified mail and shall set forth:

- (1) the length of the provisional license;
- (2) ~~the factual allegations; a reference to the statement of deficiencies that contains the facts;~~
- (3) the statutes or rules alleged to be violated; and
- (4) notice of the facility's right to a contested case hearing on the amendment of the license.

(d) The provisional license shall be effective ~~immediately upon its receipt by the licensee as specified in the notice~~ and shall be posted in a prominent location within the facility, accessible to public view, in lieu of the full license. The provisional license shall remain in effect until:

- (1) the Department restores the licensee to full licensure status; or
- (2) the Department revokes the licensee's license.

~~(e) If a licensee has a provisional license at the time the licensee submits the annual utilization data, the provisional license shall remain in effect unless the Department determines that the licensee can be returned to full licensure status.~~

~~(f)(e)~~ The Department may revoke a license whenever:

- (1) The Department finds that:
  - (A) the licensee has substantially failed to comply with the provisions of G.S. 131E, Article 6 and the rules promulgated under that article; and
  - (B) ~~it is not reasonably probable that the licensee can remedy the licensure deficiencies within a reasonable length of time; there continues to be non-compliance at the third revisit; or~~
- (2) ~~The Department finds that:~~
  - (A) ~~the licensee has substantially failed to comply with the provisions of G.S. 131E, Article 6; and~~

~~(B) although the licensee may be able to remedy the deficiencies within a reasonable time, is not reasonably probable that the licensee will be able to remain in compliance with licensure rules for the foreseeable future; or~~

~~(3)(2)~~ The Department finds that there has been any failure to comply with the provisions of G.S. 131E, Article 6 and the rules promulgated under that article that endanger the health, safety or welfare of the patients in the facility.

~~(g)(f)~~ The issuance of a provisional license is not a procedural prerequisite to the revocation of a license pursuant to Paragraph ~~(h)(g)~~ (e) of this Rule.

~~(h)(g)~~ The Department can, in accordance with G.S. 131E-232, petition to have a temporary manager appointed to operate a facility.

*Authority G.S. 131E-104.*

**10A NCAC 13D .2107 SUSPENSION OF ADMISSIONS**

(a) The Department may suspend the admission of ~~any new patient~~ patients to any a facility when warranted under the provisions of G.S. 131E-109(c).

(b) The Department shall notify the facility personally or by certified mail of the decision to suspend admissions. Such notice shall include:

- (1) ~~factual allegations; a reference to the statement of deficiencies that contains the facts;~~
- (2) citation of statutes and rules alleged to be violated; and
- (3) notice of the facility's right to a contested case hearing on the suspension.

(c) The suspension ~~shall be is effective when the notice is served or~~ on the date specified in the notice of ~~suspension, whichever is later.~~ suspension. The suspension shall remain effective until the facility demonstrates to the Department that conditions are no longer detrimental to the health and safety of the patients.

(d) The facility shall not admit new patients during the effective period of the suspension.

(e) Patients requiring hospitalization during the period of suspension of admissions shall be readmitted after hospitalization or on return from temporary care to the facility based on the availability of a bed and the ability of the facility to provide necessary care. Upon return from the hospital, the requirements of G.S. 131E-130 ~~shall~~ apply.

*Authority G.S. 131E-104.*

**SECTION .2200 - GENERAL STANDARDS OF ADMINISTRATION**

**10A NCAC 13D .2202 ADMISSIONS**

(a) No patient shall be admitted except by a physician ~~physician or other persons legally authorized to admit patients.~~ Admission shall be in accordance with facility policies and procedures.

~~(b) The administrator shall ensure patients receive communicable disease screening, including tuberculosis, in accordance with Rule .2209 of this Section.~~

~~(e)(b) The facility shall acquire, prior to or at the time of admission, orders for the immediate care of the patient from the admitting physician, physician or other person legally authorized to admit.~~

~~(d)(c) Within 48 hours of admission, the facility shall acquire medical information which shall include current medical findings, diagnosis, and a summary of the hospital stay if the patient is being transferred from a hospital diagnoses, and other information necessary to formalize the initial plan of care.~~

~~(e) If a patient is admitted from somewhere other than a hospital, the facility shall acquire a copy of the patient's most recent medical history and physical, which shall have been updated within the preceding six months.~~

~~(f)(d) Only persons who are 18 years of age or older shall be admitted to the adult care home portion of a combination facility.~~

*Authority G.S. 131E-104.*

#### **10A NCAC 13D .2203 PATIENTS NOT TO BE ADMITTED**

(a) Patients who require health, habilitative or rehabilitative care ~~or training~~ beyond those for which the facility is licensed and is capable of providing shall not be ~~admitted~~ admitted to the licensed nursing home.

(b) No person requiring continuous nursing care shall be admitted to an adult care home bed in a combination facility, except under emergency situations as described in Rule .2105 of this Subchapter. Should an existing resident of an adult care home bed require continuous nursing care, the administrator shall either discharge the resident or provide the next available nursing facility bed (that is not needed to comply with G.S. 131E-130) to the resident to ensure continuity of care and to prevent unnecessary discharge from the facility. During the resident's stay in the adult care section of the combination facility, the administrator shall ensure that necessary nursing services are provided. Should the facility be unable to provide necessary services the resident requires, whether in the adult care or nursing section, the facility shall follow discharge procedures according to Rule .2205 of this Subchapter.

*Authority G.S. 131E-104.*

#### **10A NCAC 13D .2210 REPORTING AND INVESTIGATING ABUSE, NEGLECT OR MISAPPROPRIATION**

(a) A facility shall take measures to prevent patient abuse, patient neglect, or misappropriation of patient property, including orientation and instruction of facility staff on patients' rights, and the screening of and requesting of references for all prospective employees.

(b) The administrator shall ensure that the Health Care Personnel Registry Section of the Division of Health Service Regulation is notified within 24 hours one working day of the health care facility becoming aware of all allegations against health care personnel as defined in G.S. 131E-256(a)(1), which

includes abuse, neglect, misappropriation of resident property, misappropriation of the property of the facility, diversion of drugs belonging to a health care facility or a resident, fraud against a health care facility or a resident, and injuries of unknown source in accordance with 42 CFR subsection 483.13 which is incorporated by reference.

(c) The facility shall investigate allegations of patient abuse, patient neglect, or misappropriation of patient property ~~in accordance with 42 CFR subsection 483.13 which is incorporated by reference, including subsequent amendments,~~ and shall document all relevant information pertaining to such investigation and shall take the necessary steps to prevent further incidents of abuse, neglect or misappropriation of patient property while the investigation is in progress. The Code of Federal Regulations, Title 42, Public Health, Part 430 to the end, revised as of October 1, 2005, Description Item 572-B, may be purchased from the U.S. Government Printing Office, P.O. Box 979050, St. Louis, MO 63197-9000, by a direct telephone call to the G.P.O. at (866) 512-1800 or online at <http://bookstore.gpo.gov/> or accessed electronically at <http://ecfr.gpoaccess.gov/>.

(d) The administrator shall ensure that the report of investigation is printed or typed and postmarked to the Health Care Personnel Registry Section of the Division of Health Service Regulation within five working days of the allegation.

The report shall include:

- (1) the date and time of the alleged incident of abuse, neglect or misappropriation of property;
- (2) the patient's full name and room number;
- (3) details of the allegation and any injury;
- (4) names of the accused and any witnesses;
- (5) names of the facility staff who investigated the allegation;
- (6) results of the investigation;
- (7) and any corrective action that may have been taken by the facility.

*Authority G.S. 131E-104; 131E-131; 131E-255; 131E-256.*

#### **SECTION .2300 - PATIENT AND RESIDENT CARE AND SERVICES**

##### **10A NCAC 13D .2301 PATIENT ASSESSMENT AND PLAN OF CARE**

(a) At the time each patient is admitted, the facility shall ensure medical orders are available for the patient's immediate care and that, within 24 hours, a nursing assessment of immediate needs is completed by a registered nurse and measures implemented as appropriate.

(b) The facility shall perform, within 14 days of admission and at least annually, a comprehensive, accurate, documented assessment of each patient's capability to perform daily life functions. This comprehensive assessment shall be coordinated by a registered nurse and shall include at least the following:

- (1) current medical diagnoses;
- (2) medical status measurements, including current cognitive status, stability of current conditions and diseases, vital signs, and

- (3) abnormal lab values and diagnostic tests that are a part of the medical history;
- (3) the patient's ability to perform activities of daily living, including the need for staff assistance and assistive devices, and the patient's ability to make decisions;
- (4) presence of neurological or muscular deficits;
- (5) nutritional status measurements and requirements, including but not limited to height, weight, lab work, eating habits and preferences, and any dietary restrictions;
- (6) special care needs, including but not limited to pressure sores, enteral feedings, specialized rehabilitation services or respiratory care;
- (7) indicators of special needs related to patient behavior or mood, interpersonal relationships and other psychosocial needs;
- (8) facility's expectation of discharging the patient within the three months following admission;
- (9) condition of teeth and gums, and need and use of dentures or other dental appliances;
- (10) patient's ability and desire to take part in activities, including an assessment of the patient's normal routine and lifetime preferences;
- (11) patient's ability to improve in functional abilities through restorative care;
- (12) presence of visual, hearing or other sensory deficits; and
- (13) drug therapy.

(c) The facility shall develop a comprehensive ~~care~~ plan of care for each patient and shall include measurable objectives and timetables to meet needs identified in the comprehensive assessment. The facility shall ensure the comprehensive ~~care~~ plan of care is developed within seven days of completion of the comprehensive assessment by an interdisciplinary team that includes a registered nurse with responsibility for the patient and representatives of other appropriate disciplines as dictated by the needs of the patient. To the extent practicable, preparation of the comprehensive ~~care~~ plan of care shall include the participation of the patient and the patient's family or legal representative. The physician may participate by alternative methods, including, but not limited to, telephone or face-to-face discussion, or written notice.

(d) The facility shall review comprehensive assessments and ~~care~~ plans of care no less frequently than once every 90 days and make necessary revisions to ensure accuracy.

*Authority G.S. 131E-104.*

#### **10A NCAC 13D .2303 NURSE STAFFING REQUIREMENTS**

(a) The facility shall provide licensed nursing personnel consistent with applicable occupational regulations and sufficient to accomplish the following:

- (1) patient needs assessment;
- (2) patient care planning; and

- (3) supervisory functions in accordance with the levels of patient care advertised or offered by the facility.

(b) ~~The facility shall provide other nursing personnel sufficient to ensure that activities of daily living, personal care, delegated restorative nursing tasks and other health care needs, as identified in each patient's plan of care, are met. must have sufficient nursing staff to provide nursing and related services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each patient, as determined by patient assessments and individual plans of care.~~

(c) A multi-storied facility shall have at least one direct-care staff member on duty on each patient care floor at all times.

(d) Except for designated units with higher staffing requirements noted elsewhere in this Subchapter, daily direct patient care nursing staff, licensed and unlicensed, shall ~~equal or exceed 2.1 nursing hours per patient per day. (This is sometimes referred to as nursing hours per patient day or NHPPD or NH/PD.) include:~~

- (1) ~~Inclusive in these nursing hours is the requirement that at~~ At least one licensed nurse is on duty for direct patient care at all times.

- (2) ~~Nursing care shall include the services of a~~ A registered nurse for at least eight consecutive hours a day, seven days a week. This coverage can be spread over more than one shift if such a need exists. The director of nursing may be counted as meeting the requirements for both the director of nursing and patient staffing for facilities with a total census of 60 nursing beds or less.

- (3) ~~Nursing support personnel, including ward clerks, secretaries, nurse educators and persons in primarily administrative management positions and not actively involved in direct patient care, shall not be counted toward compliance with minimum daily requirements for direct care staffing.~~

~~(e) An exception to meeting the minimum staffing requirements shall be reported to the Department at the end of each month. Staffing waivers granted by the federal government for Medicare and Medicaid certified beds shall be accepted for licensure purposes.~~

*Authority G.S. 131E-104.*

#### **10A NCAC 13D .2306 MEDICATION ADMINISTRATION**

(a) The facility shall ensure that medications are administered in accordance with ~~standards of professional practice and applicable occupational licensure regulations. regulations and manufacturer's recommendations.~~

(b) The facility shall ensure that each patient's drug regimen is free from drugs used in excessive dose or duplicative therapy, for excessive duration or without ~~adequate~~ adequate indications for the prescription of the drug. Drugs shall not be used without ~~adequate~~ adequate monitoring or in the presence of adverse conditions that indicate the drugs' usage should be modified or discontinued. As used in this Paragraph:

- (1) "Excessive dose" means the total amount of any medication (including duplicate therapy) given at one time or over a period of time that is greater than the amount recommended by the manufacturer for a resident's age and condition.
- (2) "Excessive Duration" means the medication is administered beyond the manufacturer's recommended time frames or facility-established stop order policies or without either evidence of additional therapeutic benefit for the resident or clinical evidence that would warrant the continued use of the medication.
- (3) "Duplicative Therapy" means multiple medications of the same pharmacological class or category or any medication therapy that replicates a particular effect of another medication that the individual is taking.
- (4) "Indications for the prescription" means a documented clinical rationale for administering a medication that is based upon an assessment of the resident's condition and therapeutic goals and is consistent with manufacturer's recommendations.
- (5) "Monitoring" means ongoing collection and analysis of information (such as observations and diagnostic test results) and comparison to baseline data in order to:
  - (A) Ascertain the individual's response to treatment and care, including progress or lack of progress toward a therapeutic goal;
  - (B) Detect any complications or adverse consequences of the condition or of the treatments; and
  - (C) Support decisions about modifying, discontinuing, or continuing any interventions.

(c) Antipsychotic therapy shall not be initiated on any patient unless necessary to treat a clinically diagnosed and clinically documented condition. When antipsychotic therapy is prescribed, unless clinically contraindicated, gradual dose reductions and behavioral interventions shall be employed in an effort to discontinue these drugs. "Gradual dose reduction" means the stepwise tapering of a dose to determine if symptoms, conditions or risks can be managed by a lower dose or if the dose or the medication can be discontinued.

(d) The facility shall ensure that procedures aimed at minimizing medication error rates ~~include, but are not limited to,~~ include the following:

- (1) All medications or drugs and treatments shall be administered and discontinued in accordance with signed medical orders which are recorded in the patient's medical record. Such orders shall be complete and include drug name, strength, quantity to be administered, route of administration,

frequency and, if ordered on an as-needed basis, a ~~clearly~~ clearly-stated indication for use.

- (2) The requirements for self-administration of medication shall ~~include, but not be limited to,~~ include the following:
  - (A) determination by the interdisciplinary team that this practice is safe;
  - (B) administration ordered by the physician or other person legally authorized to prescribe medications;
  - (C) ~~specific~~ specific instructions for administration printed on the medication label; and
  - (D) administration of medication monitored by the ~~licensed~~ licensed nursing staff and consultant pharmacist.
- (3) The administration of one patient's medications to another patient is prohibited except in the case of an emergency. In the event of such emergency, ~~steps shall be taken to the facility shall ensure that the borrowed medications are replaced promptly and so documented.~~ steps shall be taken to the facility shall ensure that the borrowed medications are replaced promptly and so documented.
- (4) Omission of medications and the reason for omission shall be indicated in the patient's medical record.
- (5) Medication administration records shall provide time of administration, identification of the drug and strength of drug, quantity of drug administered, route of administration, frequency, documentation sufficient to determine the staff who administered the drugs. Medication administration records shall indicate documentation of injection sites and topical medication sites requiring ~~rotation, including, but not limited to,~~ rotation of transdermal medication.
- (6) The pharmacy shall receive an exact copy of each physician's order for medications and treatments.
- (7) When medication orders do not state the number of doses or days to administer the medication, the facility shall implement automatic stop orders for medications and treatments shall be established and implemented according to manufacturer's recommendations.
- (8) The facility shall maintain an accountability of controlled substances as defined by the North Carolina Controlled Substances Act, G.S. 90, Article 5.

*Authority G.S. 131E-104.*

## SECTION .2600 - PHARMACEUTICAL SERVICES

**10A NCAC 13D .2604 DRUG PROCUREMENT**

(a) The facility shall not possess a stock of prescription ~~legend~~ drugs for general or common use except as permitted by the North Carolina Board of Pharmacy and as follows:

- (1) for all intravenous and irrigation solutions in single unit quantities exceeding 49 ml. and related equipment for the use and administration of such;
- (2) diagnostic agents;
- (3) vaccines;
- (4) drugs designated for inclusion in an emergency kit approved by the facility's Quality Assurance Committee;
- (5) water for injection; and
- (6) normal saline for injection.

(b) Patient Drugs:

- (1) The contents of all prescriptions shall be kept in the original container bearing the original label as described in Subparagraph (b)(2) of this Rule.
- (2) Except in a 72-hour or less unit dose system, each individual patient's prescription ~~or legend~~ drugs shall be labeled with the following information:
  - (A) the name of the patient for whom the drug is intended;
  - (B) the most recent date of issue;
  - (C) the name of the prescriber;
  - (D) the name and concentration of the drug, quantity dispensed, and prescription serial number;
  - (E) a statement of generic equivalency which shall be indicated if a brand other than the brand prescribed is dispensed;
  - (F) the expiration date, unless dispensed in a single unit or unit dose package;
  - (G) auxiliary statements as required of the drug;
  - (H) the name, address and telephone number of the dispensing pharmacy; and
  - (I) the name of the dispensing pharmacist.

(c) ~~Non-legend~~ ~~Non-prescription~~ drugs shall be kept in the original container as received from the supplier and shall be labeled as described in Subparagraph (b)(2) of this Rule or with at least:

- (1) the name and concentration of the drug, and quantity packaged;
- (2) the name of the manufacturer, lot number and expiration date.

*Authority G.S. 131E-104; 131E-117.*

**SECTION .3000 - SPECIALLY DESIGNATED UNITS**

**10A NCAC 13D .3001 SPECIALIZED REHABILITATIVE AND HABILITATIVE SERVICES**

~~Specialized rehabilitative and habilitative services, such as physical therapy, occupational therapy and speech therapy, are not required as a condition of licensure. Patients requiring such services, however, shall not be admitted or retained in a facility unless the facility is capable of furnishing the needed services. If specialized rehabilitative services are provided:~~

- (1) ~~The facility shall provide or obtain from an outside resource specialized rehabilitative services as required by the patient's comprehensive plan of care.~~
- (2) ~~Specialized rehabilitative services shall be ordered by the physician and provided by a licensed or certified, professional therapist in the area of assignment.~~

*Authority G.S. 131E-104.*

**10A NCAC 13D .3002 QUALITY OF SPECIALIZED REHABILITATION SERVICES**

~~(a) While the person supervising specialized rehabilitative and habilitative services shall be a licensed or certified professional therapist, all other support personnel shall be trained in the area of assignment and directly supervised by the therapist in the area of assignment.~~

~~(b) Services provided through outside resources shall be carried out through, and in accordance with, written agreements.~~

~~(c) Services shall be designed to maintain and improve the patient's ability to function independently, prevent as much as possible the advancement of progressive disabilities, and restore maximum function.~~

~~(d) If nursing staff carry out selected therapy procedures, they shall do so under the supervision of the physical or occupational therapist and only after documented training and approval by the therapist. This is not to prohibit simple restorative measures by the nursing staff.~~

*Authority G.S. 131E-104.*

**10A NCAC 13D .3011 HIV DESIGNATED UNIT POLICIES AND PROCEDURES**

~~(a) In units dedicated to the treatment of patients with Human Immunodeficiency Virus disease, policies and procedures specific to the specialized needs of the patients served shall be developed. At a minimum they shall include staff training and education, and the availability of consultation by a physician with specialized education or knowledge in the management of Human Immunodeficiency Virus disease.~~

~~(b) Policies and procedures for infection control shall be in conformance with 29 CFR 1910 (Occupational Safety and Health Standards) which is incorporated by reference including subsequent amendments. Emphasis shall be placed on compliance with 29 CFR 1910 1030 (Bloodborne Pathogens). Copies of Title 29 Part 1910 may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15202 7954 for thirty eight dollars (\$38.00) or may be purchased with a credit card by telephoning the Government Printing Office at (202) 512 1800.~~

~~Infection control shall also be in compliance with the Center of Disease Control Guidelines as published by the U.S. Department of Health and Human Services, Public Health Service, which is incorporated by reference, including subsequent amendments. Copies may be purchased from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161 for fifteen dollars and ninety five cents (\$15.95).~~

*Authority G.S. 131E-104.*

**10A NCAC 13D .3012 PHYSICIAN SERVICES IN AN HIV DESIGNATED UNIT**

~~In a facility with a Human Immunodeficiency Virus designated unit, the facility shall ensure that attending physicians have documented, prearranged access in person or by telephone to a physician with specialized education or knowledge in the management of Human Immunodeficiency Virus disease.~~

*Authority G.S. 131E-104.*

**10A NCAC 13D .3013 SPECIAL NURSING REQUIREMENTS FOR AN HIV DESIGNATED UNIT**

~~(a) A facility with a Human Immunodeficiency Virus designated unit shall have a registered nurse with specialized education or knowledge in the care of Human Immunodeficiency Virus disease.~~

~~(b) Nursing personnel assigned to the Human Immunodeficiency Virus unit shall be regularly assigned to the unit. Periodic rotations are acceptable.~~

*Authority G.S. 131E-104.*

**10A NCAC 13D .3014 SPECIALIZED STAFF EDUCATION FOR HIV DESIGNATED UNITS**

~~A facility with a Human Immunodeficiency Virus designated unit shall provide an organized, documented program of education specific to the care of patients infected with the Human Immunodeficiency Virus, including at a minimum:~~

- ~~(1) Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome disease processes;~~
- ~~(2) transmission modes, causes, and prevention of Human Immunodeficiency Virus;~~
- ~~(3) treatment of Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome;~~
- ~~(4) psycho socio economic needs of the Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome patients;~~
- ~~(5) universal precautions and infection control; and~~
- ~~(6) policies and procedures specific to the Human Immunodeficiency Virus designated unit.~~

*Authority G.S. 131E-104.*

**10A NCAC 13D .3015 USE OF INVESTIGATIONAL DRUGS FOR HIV DESIGNATED UNITS**

~~(a) The supervision and monitoring for the administration of investigational drugs is the responsibility of the pharmacist and a registered nurse, acting pursuant to the orders of a physician authorized to prescribe or dispense such drugs. Responsibilities shall include, but not be limited to, the following:~~

- ~~(1) insuring the provision of written guidelines for any investigational drug or study; and~~
- ~~(2) training and determination of staff's abilities regarding administration of drugs, policies, procedures and regulations.~~

~~(b) The pharmacist or physician dispensing the investigational drug is to provide the facility with information regarding at least the following:~~

- ~~(1) a copy of the protocol, including drug information;~~
- ~~(2) a copy of the patient's informed consent;~~
- ~~(3) drug storage;~~
- ~~(4) handling;~~
- ~~(5) any specific preparation and administration instructions;~~
- ~~(6) specific details for drug accountability, resupply and return of unused drug; and~~
- ~~(7) a copy of the signed consent to participate in the study.~~

~~(c) Labeling of investigational drugs shall be in accordance with written guidelines of protocol and State and federal requirements regarding such drugs. Prescription labels for investigational drugs are to be distinguishable from other labels by an appropriate legend, "Investigational Drug" or "For Investigational Use Only."~~

*Authority G.S. 131E-104.*

**10A NCAC 13D .3016 ADDITIONAL SOCIAL WORK REQUIREMENTS FOR HIV DESIGNATED UNITS**

~~In addition to the social work services specified in Rule .2802 of this Subchapter, in a facility with a Human Immunodeficiency Virus disease designated unit, the social worker shall provide or arrange for the provision of spiritual, pastoral and grief counseling and bereavement services for patients and staff where appropriate. Support services shall be provided to the patients' families and significant others. Where necessary, coordination with treatment services for substance abuse, legal services and other community resources shall be identified.~~

*Authority G.S. 131E-104.*

**10A NCAC 13D .3021 PHYSICIAN REQUIREMENTS FOR INPATIENT REHABILITATION FACILITIES OR UNITS**

~~(a) In a rehabilitation facility or unit a physician shall participate in the provision and management of rehabilitation services and in the provision of medical services.~~

~~(b) In a rehabilitation facility or unit a rehabilitation physician shall be responsible for a patient's interdisciplinary treatment plan. Each patient's interdisciplinary treatment plan shall be~~

~~developed and implemented under the supervision of a rehabilitation physician.~~

~~(c) The rehabilitation physician shall participate in the preliminary assessment within 48 hours of admission, prepare a plan of care and direct the necessary frequency of contact based on the medical and rehabilitation needs of the patient. The frequency shall be appropriate to justify the need for comprehensive inpatient rehabilitation care.~~

~~(d) An inpatient rehabilitation facility or unit's contract or agreements with a rehabilitation physician shall require that the rehabilitation physician shall participate in individual case conferences or care planning sessions and shall review and sign discharge summaries and records. When patients are to be discharged to another health care facility, the discharging facility shall ensure that the patient has been provided with a discharge plan which incorporates post discharge continuity of care and services. When patients are to be discharged to a residential setting, the facility shall ensure that the patient has been provided with a discharge plan that incorporates the utilization of community resources when available and when included in the patient's plan of care.~~

~~(e) The intensity of physician medical services and the frequency of regular contacts for medical care for the patient shall be determined by the patient's pathophysiologic needs.~~

~~(f) Where the attending physician of a patient in an inpatient rehabilitation facility or unit orders medical consultations for the patient, such consultations shall be provided by qualified physicians within 48 hours of the physician's order. In order to achieve this result, the contracts or agreements between inpatient rehabilitation facilities or units and medical consultants shall require that such consultants render the requested medical consultation within 48 hours.~~

~~(g) An inpatient rehabilitation facility or unit shall have a written procedure for setting the qualifications of the physicians rendering physical rehabilitation services in the facility or unit.~~

*Authority G.S. 131E-104.*

#### **10A NCAC 13D .3022 ADMISSION CRITERIA FOR INPATIENT REHABILITATION FACILITIES OR UNITS**

~~(a) The facility shall have written criteria for admission to the inpatient rehabilitation facility or unit. A description of programs or services for screening the suitability of a given patient for placement shall be available to staff and referral sources.~~

~~(b) For patients found unsuitable for admission to the inpatient rehabilitation facility or unit, there shall be documentation of the reasons.~~

~~(c) Within 48 hours of admission a preliminary assessment shall be completed by members of the interdisciplinary team to ensure the appropriateness of placement and to identify the immediate needs of the patient.~~

~~(d) Patients admitted to an inpatient rehabilitation facility or unit must be able to tolerate a minimum of three hours of rehabilitation therapy, five days a week, including at least two of the following rehabilitation services: physical therapy, occupational therapy or speech therapy.~~

~~(e) Patients admitted to an inpatient rehabilitation facility or unit must be medically stable, have a prognosis indicating a~~

~~progressively improved medical condition and have the potential for increased independence.~~

*Authority G.S. 131E-104;*

#### **10A NCAC 13D .3023 COMPREHENSIVE INPATIENT REHABILITATION EVALUATION**

~~(a) A comprehensive, inpatient rehabilitation evaluation is required for each patient admitted to an inpatient rehabilitation facility or unit. At a minimum this evaluation shall include the reason for referral, a summary of the patient's clinical condition, functional strengths and limitations, and indications for specific services. This evaluation shall be completed within three days.~~

~~(b) Each patient shall be evaluated by the interdisciplinary team to determine the need for any of the following services: medical, dietary, occupational therapy, physical therapy, prosthetics and orthotics, psychological assessment and therapy, therapeutic recreation, rehabilitation medicine, rehabilitation nursing, therapeutic counseling or social work, vocational rehabilitation evaluation and speech language pathology.~~

*Authority G.S. 131E-104.*

#### **10A NCAC 13D .3024 COMPREHENSIVE INPATIENT REHABILITATION INTERDISCIPLINARY TREAT/PLAN**

~~(a) The interdisciplinary treatment team shall develop an individual treatment plan for each patient within seven days after admission. The plan shall include evaluation findings and information about the following:~~

- ~~(1) prior level of function;~~
- ~~(2) current functional limitations;~~
- ~~(3) specific service needs;~~
- ~~(4) treatment, supports and adaptations to be provided;~~
- ~~(5) specified treatment goals;~~
- ~~(6) disciplines responsible for implementation of separate parts of the plan; and~~
- ~~(7) anticipated time frames for the accomplishment of specified long term and short term goals.~~

~~(b) The treatment plan shall be reviewed by the interdisciplinary team at least every other week. All members of the interdisciplinary team, or a representative of their discipline, shall attend each meeting. Documentation of each review shall include progress toward defined goals and identification of any changes in the treatment plan.~~

~~(c) The treatment plan shall include provisions for all of the services identified as needed for the patient in the comprehensive inpatient rehabilitation evaluation completed in accordance with Rule .3023 of this Section.~~

~~(d) Each patient shall have a designated case manager who is responsible for the coordination of the patient's individualized treatment plan. The case manager is responsible for promoting the program's responsiveness to the needs of the patient and shall participate in all team conferences concerning the patient's progress toward the accomplishment of specified goals. Any of the professional staff involved in the patient's care may be the designated case manager for one or more cases, or the director of~~

~~nursing or social worker may accept the coordination responsibility for the patients.~~

*Authority G.S. 131E-104.*

**10A NCAC 13D .3025 DISCHARGE CRITERIA FOR INPATIENT REHABILITATION FACILITIES OR UNITS**

~~(a) Discharge planning shall be an integral part of the patient's treatment plan and shall begin upon admission to the facility. After established goals have been reached, or a determination has been made that care in a less intensive setting would be appropriate, or that further progress is unlikely, the patient shall be discharged to an appropriate setting. Other reasons for discharge may include an inability or unwillingness of patient or family to cooperate with the planned therapeutic program or medical complications that preclude a further intensive rehabilitative effort. The facility shall involve the patient, family, staff members and referral sources in discharge planning.~~  
~~(b) The case manager shall facilitate the discharge or transfer process in coordination with the facility social worker.~~  
~~(c) If a patient is being referred to another facility for further care, appropriate documentation of the patient's current status shall be forwarded with the patient. A formal discharge summary shall be forwarded within 48 hours following discharge and shall include the reasons for referral, the diagnosis, functional limitations, services provided, the results of services, referral action recommendations and activities and procedures used by the patient to maintain and improve functioning.~~

*Authority G.S. 131-104.*

**10A NCAC 13D .3026 COMPREHENSIVE REHABILITATION PERSONNEL ADMINISTRATION**

~~(a) The facility shall have qualified staff members, consultants and contract personnel to provide services to the patients admitted to the inpatient rehabilitation facility or unit.~~  
~~(b) Personnel shall be employed or provided by contractual agreement in sufficient types and numbers to meet the needs of all patients admitted for comprehensive rehabilitation.~~  
~~(c) Written agreement shall be maintained by the facility when services are provided by contract on an ongoing basis.~~

*Authority G.S. 131E-104.*

**10A NCAC 13D .3027 COMPREHENSIVE INPATIENT REHABILITATION PROGRAM STAFFING REQUIREMENTS**

~~(a) The staff of the inpatient rehabilitation facility or unit shall include at a minimum:~~  
~~(1) The inpatient rehabilitation facility or unit shall be supervised by a rehabilitation nurse. The facility shall identify the nursing skills necessary to meet the needs of the rehabilitation patients in the unit and assign staff qualified to meet those needs.~~  
~~(2) The minimum nursing hours per patient in the rehabilitation unit shall be 5.5 nursing hours per patient day. At no time shall direct care~~

~~nursing staff be less than two full time equivalents, one of which shall be a registered nurse.~~

- ~~(3) The inpatient rehabilitation unit shall employ or provide by contractual agreements sufficient therapists to provide a minimum of three hours of specific (physical, occupational or speech) or combined rehabilitation therapy services per patient day.~~
- ~~(4) Physical therapy assistants and occupational therapy assistants shall be supervised on site by physical therapists or occupational therapists.~~
- ~~(5) Rehabilitation aides shall have documented training appropriate to the activities to be performed and the occupational licensure laws of his or her supervisor. The overall responsibility for the ongoing supervision and evaluation of the rehabilitation aide remains with the registered nurse as identified in Subparagraph (a)(1) of this Rule. Supervision by the physical therapist or by the occupational therapist is limited to that time when the therapist is on-site and directing the rehabilitation activities of the aide.~~
- ~~(6) Hours of service by the rehabilitation aide are counted toward the required nursing hours when the aide is working under the supervision of the nurse. Hours of service by the rehabilitation aide are counted toward therapy hours during that time the aide works under the immediate, on-site supervision of the physical therapist or occupational therapist. Hours of service shall not be dually counted for both services. Hours of service by rehabilitation aides in performing nurse-aide duties in areas of the facility other than the rehabilitation unit shall not be counted toward the 5.5 hour minimum nursing requirement described for the rehabilitation unit.~~

~~(b) Additional personnel shall be provided as required to meet the needs of the patient, as defined in the comprehensive inpatient rehabilitation evaluation.~~

*Authority G.S. 131E-104.*

**10A NCAC 13D .3028 STAFF TRAINING FOR INPATIENT REHABILITATION FACILITIES OR UNIT**

~~Prior to the provision of care, all rehabilitation personnel, excluding physicians, assigned to the rehabilitation unit shall be provided training or shall provide documentation of training that includes at a minimum the following:~~

- ~~(1) active and passive range of motion;~~
- ~~(2) assistance with ambulation;~~
- ~~(3) transfers;~~
- ~~(4) maximizing functional independence;~~
- ~~(5) the psycho-social needs of the rehabilitation patient;~~



- ~~(6) the increased safety risks of rehabilitation training including falls and the use of restraints;~~
- ~~(7) proper body mechanics;~~
- ~~(8) nutrition, including dysphagia and restorative eating;~~
- ~~(9) communication with the aphasic and hearing impaired patient;~~
- ~~(10) behavior modification;~~
- ~~(11) bowel and bladder training; and~~
- ~~(12) skin care.~~

*Authority G.S. 131E-104.*

**10A NCAC 13D .3029 EQUIPMENT  
REQS/COMPREHENSIVE INPATIENT  
REHABILITATION PROGRAMS**

- ~~(a) The facility shall provide each discipline with the necessary equipment and treatment methods to achieve the short and long term goals specified in the comprehensive inpatient rehabilitation interdisciplinary treatment plans for patients admitted to these facilities or units.~~
- ~~(b) Each patient's needs for a standard wheelchair or a specially designed wheelchair or additional devices to allow safe and independent mobility within the facility shall be met.~~
- ~~(c) Special physical therapy and occupational therapy equipment for use in fabricating positioning devices for beds and wheelchairs shall be provided, including splints, casts, cushions, wedges and bolsters.~~
- ~~(d) Physical therapy devices shall be provided, including a mat table, parallel bars, sliding boards and special adaptive bathroom equipment.~~

*Authority G.S. 131E-104.*

**10A NCAC 13D .3030 PHYSICAL FACILITY  
REQS/INPATIENT REHABILITATION FACILITIES OR  
UNIT**

- ~~(a) The inpatient rehabilitation facility or unit shall be in a designated area and shall be used for the specific purpose of providing a comprehensive inpatient rehabilitation program.~~
- ~~(b) The floor area of a single bedroom shall be sufficient for the patient or the staff to easily transfer the patient from the bed to a wheelchair and to maneuver a 180 degree turn with a wheelchair on at least one side of the bed.~~
- ~~(c) The floor area of a multi bed bedroom shall be sufficient for the patient or the staff to easily transfer the patient from the bed to a wheelchair and to maneuver a 180 degree turn with a wheelchair between beds.~~
- ~~(d) Each patient room shall meet the following requirements:~~
  - ~~(1) Maximum room capacity of no more than four patients;~~
  - ~~(2) Operable windows;~~
  - ~~(3) A nurse call system designed to meet the special needs of rehabilitation patients;~~
  - ~~(4) In single and two bed rooms with private toilet room, the lavatory may be located in the toilet room;~~

- ~~(5) A wardrobe or closet for each patient which is wheelchair accessible and arranged to allow the patient to access the contents;~~
- ~~(6) A chest of drawers or built in drawer storage with mirror above, which is wheelchair accessible; and~~
- ~~(7) A bedside table for toilet articles and personal belongings.~~

~~(e) Space for emergency equipment such as resuscitation carts shall be provided and shall be under direct control of the nursing staff, in proximity to the nurse's station and out of traffic.~~

~~(f) Patients' bathing facilities shall meet the following specifications:~~

- ~~(1) There shall be at least one shower stall or one bathtub for each 15 beds not individually served. Each tub or shower shall be in an individual room or privacy enclosure which provides space for the private use of the bathing fixture, for drying and dressing and for a wheelchair and an assisting attendant.~~
- ~~(2) Showers in central bathing facilities shall be at least five feet square without curbs and designed to permit use by a wheelchair patient.~~
- ~~(3) At least one five-foot by seven-foot shower shall be provided which can accommodate a stretcher and an assisting attendant.~~

~~(g) Patients' toilet rooms and lavatories shall meet the following specifications:~~

- ~~(1) The size of toilet rooms shall permit a wheelchair, a staff person and appropriate wheel to water closet transfers.~~
- ~~(2) A lavatory in the room shall permit wheelchair access.~~
- ~~(3) Lavatories serving patients shall:~~
  - ~~(A) allow wheelchairs to extend under the lavatory; and~~
  - ~~(B) have water supply spout mounted so that its discharge point is a minimum of five inches above the rim of the fixture.~~
- ~~(4) Lavatories used by patients and by staff shall be equipped with blade-operated supply valves.~~

~~(h) The space provided for physical therapy, occupational therapy and speech therapy by all inpatient rehabilitation facilities or units may be shared but shall, at a minimum, include:~~

- ~~(1) office space for staff;~~
- ~~(2) office space for speech therapy evaluation and treatment;~~
- ~~(3) waiting space;~~
- ~~(4) training bathroom which includes toilet, lavatory and bathtub;~~
- ~~(5) gymnasium or exercise area;~~
- ~~(6) work area such as tables or counters suitable for wheelchair access;~~
- ~~(7) treatment areas with available privacy curtains or screens;~~

- ~~(8) an activities of daily living training kitchen with sink, cooking top (secured when not supervised by staff), refrigerator and counter surface for meal preparation;~~
- ~~(9) storage for clean linens, supplies and equipment;~~
- ~~(10) janitor's closet accessible to the therapy area with floor receptor or service sink and storage space for housekeeping supplies and equipment, with one closet or space serving more than one area of the inpatient rehabilitation facility or unit as needed; and~~
- ~~(11) hand washing facilities.~~
- ~~(i) For social work and psychological services the following shall be provided:~~
  - ~~(1) office space for staff;~~
  - ~~(2) office space for private interviewing and counseling for all family members; and~~
  - ~~(3) work space for testing, evaluation and counseling.~~
- ~~(j) If prosthetics and orthotics services are provided, the following space shall be made available as necessary:~~
  - ~~(1) work space for technician; and~~
  - ~~(2) space for evaluation and fittings (with provisions for privacy).~~
- ~~(k) If vocational therapy services are provided, the following space shall be made available as necessary:~~
  - ~~(1) office space for staff;~~
  - ~~(2) work space for vocational services activities such as prevocational and vocational evaluation;~~
  - ~~(3) training space;~~
  - ~~(4) storage for equipment; and~~
  - ~~(5) counseling and placement space.~~
- ~~(l) Recreational therapy space requirements include the following:~~
  - ~~(1) activities space;~~
  - ~~(2) storage for equipment and supplies;~~
  - ~~(3) office space for staff; and~~
  - ~~(4) access to male and female toilets.~~
- ~~(m) The following space shall be provided for patient dining, recreation and day areas:~~
  - ~~(1) sufficient room for wheelchair movement and wheelchair dining seating;~~
  - ~~(2) if food service is cafeteria type, adequate width for wheelchair maneuvers, queue space within the dining area (and not in a corridor) and a serving counter low enough to view food;~~
  - ~~(3) total space for inpatients, a minimum of 25 square feet per bed;~~
  - ~~(4) for outpatients participating in a day program or partial day program, 20 square feet when dining is a part of the program and 10 square feet when dining is not a part of the program; and~~
  - ~~(5) storage for recreational equipment and supplies, tables and chairs.~~

- ~~(n) The patient dining, recreation and day area spaces shall be provided with windows that have glazing of an area not less than eight percent of the floor area of the space, and at least one-half of the required window area must be operable.~~
- ~~(o) A laundry shall be available and accessible for patients.~~

*Authority G.S. 131E-104.*

#### **10A NCAC 13D .3033 DEEMED STATUS FOR INPATIENT REHABILITATION FACILITIES OR UNITS**

- ~~(a) If an inpatient rehabilitation facility or unit with a comprehensive inpatient rehabilitation program is surveyed and accredited by the Joint Commission for the Accreditation of Health Care Organizations (JCAHO) or the Commission on Accreditation of Rehabilitation Facilities (CARF), and has been approved by the Department in accordance with G.S. 131E, Article 9, the Department deems the facility to be in compliance with Rules .3021 through .3031 of this Section.~~
- ~~(b) Deemed status shall be provided only if the inpatient rehabilitation facility or unit provides copies of survey reports to the Department. The JCAHO report shall show that the facility or unit was surveyed for rehabilitation services. The CARF report shall show that the facility or unit was surveyed for comprehensive rehabilitation services. The facility or unit shall sign an agreement (Memorandum of Understanding) with the Department specifying these terms.~~
- ~~(c) The inpatient rehabilitation facility or unit shall be subject to inspections or complaint investigations by representatives of the Department at any time. If the facility or unit is found not to be in compliance with the rules listed in Paragraph (a) of this Rule, the facility shall submit a plan of correction and be subject to a follow up visit to ensure compliance.~~
- ~~(d) If the inpatient rehabilitation facility or unit loses or does not renew its accreditation, the facility or unit shall notify the Department in writing within 30 days.~~

*Authority G.S. 131E-104.*

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*Notice is hereby given in accordance with G.S. 150B-21.2 that the Medical Care Commission intends to adopt the rules cited as 10A NCAC 13P .1501-.1509 and repeal the rules cited as 10A NCAC 13P .0701-.0702.*

**Link to agency website pursuant to G.S. 150B-19.1(c):**  
<http://www.ncdhhs.gov/dhsr/ruleactions.html>

**Proposed Effective Date:** *January 1, 2013*

#### **Public Hearing:**

**Date:** *September 18, 2012*

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

**Location:** *Room 131 Wright Building, NC Division of Health Service Regulation, Dorothea Dix Campus, 1201 Umstead Drive, Raleigh, NC 27603*

**Reason for Proposed Action:** *The purpose of the proposed adoption and repeal of these rules is for emergency medicine*

and trauma to ensure these rules are kept contemporary and stay with industry standards. This will strengthen the emergency medical regulations keeping the citizens and visitors of North Carolina safe and provided with the best possible health treatment and care.

**Procedure by which a person can object to the agency on a proposed rule:** *An individual may object to the agency on the proposed rule by submitting written comments on the proposed rule. They may also object by attending the public hearing and personally voice their objections during that time.*

**Comments may be submitted to:** *Megan Lamphere, Division of Health Service Regulation, 2708 Mail Service Center, Raleigh, NC 27699-2708, fax (919)733-9379, dhsr.rulescoordinator@dhhs.nc.gov*

**Comment period ends:** *October 1, 2012*

**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 after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule 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 (check all that apply).**

- ☒ State funds affected
- ☐ Environmental permitting of DOT affected
- ☐ Analysis submitted to Board of Transportation
- ☐ Local funds affected
- ☐ Date submitted to OSBM:
- ☐ Substantial economic impact (≥\$500,000)
- ☒ Approved by OSBM
- ☐ No fiscal note required

**CHAPTER 13 – NC MEDICAL CARE COMMISSION**

**SUBCHAPTER 13P – EMERGENCY MEDICAL SERVICES AND TRAUMA RULES**

**SECTION .0700 – ENFORCEMENT**

**10A NCAC 13P .0701 DENIAL, SUSPENSION, AMENDMENT OR REVOCATION**

(a) ~~The Department may deny, suspend, or revoke the permit of an ambulance or EMS nontransporting vehicle if the EMS Provider:~~

- ~~(1) fails to comply with the requirements of Section .0200 of this Subchapter;~~
- ~~(2) obtains or attempts to obtain a permit through fraud or misrepresentation; or~~
- ~~(3) fails to provide emergency medical care within the defined EMS service area in a timely manner.~~
- ~~(b) In lieu of suspension or revocation, the Department may issue a temporary permit for an ambulance or EMS nontransporting vehicle whenever the Department finds that:~~
  - ~~(1) the EMS Provider to which that vehicle is assigned has failed to comply with the provisions of G.S. 131E, Article 7, and the rules adopted under that Article;~~
  - ~~(2) there is a reasonable probability that the EMS Provider can remedy the permit deficiencies within a length of time determined by the department; and~~
  - ~~(3) there is a reasonable probability that the EMS Provider will be willing and able to remain in compliance with the rules regarding vehicle permits for the foreseeable future.~~
- ~~(c) The Department shall give the EMS Provider written notice of the temporary permit. This notice shall be given personally or by certified mail and shall set forth:~~
  - ~~(1) the duration of the temporary permit not to exceed 60 days;~~
  - ~~(2) a copy of the vehicle inspection form;~~
  - ~~(3) the statutes or rules alleged to be violated; and~~
  - ~~(4) notice of the EMS Provider's right to a contested case hearing on the temporary permit.~~
- ~~(d) The temporary permit is effective immediately upon its receipt by the EMS Provider and remains in effect until the earlier of the expiration date of the permit or until the Department:~~
  - ~~(1) restores the vehicle to full permitted status; or~~
  - ~~(2) suspends or revokes the vehicle permit.~~
- ~~(e) The Department may amend, deny, suspend, or revoke the credentials of EMS personnel for any of the following reasons:~~
  - ~~(1) failure to comply with the applicable performance and credentialing requirements as found in this Subchapter;~~
  - ~~(2) making false statements or representations to the OEMS or willfully concealing information in connection with an application for credentials;~~
  - ~~(3) being unable to perform as credentialed EMS personnel with reasonable skill and safety to patients and the public by reason of illness, use of alcohol, drugs, chemicals, or any other type of material or by reason of any physical or mental abnormality;~~
  - ~~(4) unprofessional conduct, including a failure to comply with the rules relating to the proper function of credentialed EMS personnel contained in this Subchapter or the performance of or attempt to perform a procedure that is detrimental to the health and~~

- safety of any person or that is beyond the scope of practice of credentialed EMS personnel or EMS instructors;
- (5) ~~conviction in any court of a crime involving moral turpitude, a conviction of a felony, or conviction of a crime involving the scope of practice of credentialed EMS personnel;~~
  - (6) ~~by false representations obtaining or attempting to obtain money or anything of value from a patient;~~
  - (7) ~~adjudication of mental incompetence;~~
  - (8) ~~lack of competence to practice with a reasonable degree of skill and safety for patients including a failure to perform a prescribed procedure, failure to perform a prescribed procedure competently or performance of a procedure that is not within the scope of practice of credentialed EMS personnel or EMS instructors;~~
  - (9) ~~making false statements or representations, willfully concealing information, or failing to respond within a reasonable period of time and in a reasonable manner to inquiries from the OEMS;~~
  - (10) ~~testing positive for any substance, legal or illegal, that is likely to impair the physical or psychological ability of the credentialed EMS personnel to perform all required or expected functions while on duty;~~
  - (11) ~~representing or allowing others to represent that the credentialed EMS personnel has a credential that the credentialed EMS personnel does not in fact have;~~
  - (12) ~~failure to comply with G.S. 143-518 regarding the use or disclosure of records or data associated with EMS Systems, Specialty Care Transport Programs, or patients;~~
  - (13) ~~refusing to consent to any criminal history check required by G.S. 131E-159;~~
  - (14) ~~abandoning or neglecting a patient who is in need of care, without making reasonable arrangements for the continuation of such care;~~
  - (15) ~~harassing, abusing, or intimidating a patient either physically or verbally;~~
  - (16) ~~falsifying a patient's record or any controlled substance records;~~
  - (17) ~~falsifying any record used in the process of obtaining an initial EMS credential or in the renewal of an EMS credential;~~
  - (18) ~~engaging in any activities of a sexual nature with a patient including kissing, fondling or touching while responsible for the care of that individual;~~
  - (19) ~~any criminal arrests that involve charges which have been determined by the Department to indicate a necessity to seek action in order to further protect the public pending adjudication by a court; or~~
  - (20) ~~altering an EMS credential, using an EMS credential that has been altered or permitting or allowing another person to use his or her EMS credential for the purpose of alteration. Altering includes changing the name, expiration date or any other information appearing on the EMS credential.~~
- (f) The Department may amend any EMS Provider license by reducing it from a full license to a provisional license whenever the Department finds that:
- (1) ~~the licensee has failed to comply with the provisions of G.S. 131E, Article 7, and the rules adopted under that article;~~
  - (2) ~~there is a reasonable probability that the licensee can remedy the licensure deficiencies within a reasonable length of time; and~~
  - (3) ~~there is a reasonable probability that the licensee will be able thereafter to remain in compliance with the licensure rules for the foreseeable future.~~
- (g) The Department shall give the licensee written notice of the amendment of the EMS Provider license. This notice shall be given personally or by certified mail and shall set forth:
- (1) ~~the length of the provisional EMS Provider license;~~
  - (2) ~~the factual allegations;~~
  - (3) ~~the statutes or rules alleged to be violated; and~~
  - (4) ~~notice to the EMS provider's right to a contested case hearing on the amendment of the EMS Provider license.~~
- (h) The provisional EMS Provider license is effective immediately upon its receipt by the licensee and shall be posted in a prominent location at the primary business location of the EMS Provider, accessible to public view, in lieu of the full license. The provisional license remains in effect until the Department:
- (1) ~~restores the licensee to full licensure status; or~~
  - (2) ~~revokes the licensee's license.~~
- (i) The Department may revoke or suspend an EMS Provider license whenever the Department finds that the licensee:
- (1) ~~has failed to comply with the provisions of G.S. 131E, Article 7, and the rules adopted under that article and it is not reasonably probable that the licensee can remedy the licensure deficiencies within a reasonable length of time;~~
  - (2) ~~has failed to comply with the provisions of G.S. 131E, Article 7, and the rules adopted under that article and, although the licensee may be able to remedy the deficiencies within a reasonable period of time, it is not reasonably probable that the licensee will be able to remain in compliance with licensure rules for the foreseeable future;~~
  - (3) ~~has failed to comply with the provision of G.S. 131E, Article 7, and the rules adopted under that article that endanger the health, safety or welfare of the patients cared for or transported by the licensee;~~

- (4) ~~obtained or attempted to obtain an ambulance permit, EMS nontransporting vehicle permit, or EMS Provider license through fraud or misrepresentation; or~~
- (5) ~~is continuing to operate within an EMS System after a Board of County Commissioners has terminated its affiliation with the licensee.~~

(j) ~~The issuance of a provisional EMS Provider license is not a procedural prerequisite to the revocation or suspension of a license pursuant to Paragraph (i) of this Rule.~~

(k) ~~The Department may amend, deny, suspend, or revoke the credential of an EMS educational institution for any of the following reasons:~~

- (1) ~~failure to comply with the requirements of Section .0600 of this Subchapter; or~~
- (2) ~~obtaining or attempting to obtain a credential through fraud or misrepresentation.~~

(l) ~~The Department may amend, deny, suspend, or revoke the approval of an EMS System or designation of a Model EMS System for any of the following reasons:~~

- (1) ~~failure to comply with the requirements of Section .0200 of this Subchapter; or~~
- (2) ~~obtaining or attempting to obtain designation through fraud or misrepresentation.~~

(m) ~~The Department may amend, deny, suspend, or revoke the designation of a Specialty Care Transport Program for any of the following reasons:~~

- (1) ~~failure to comply with the requirements of Section .0300 of this Subchapter; or~~
- (2) ~~obtaining or attempting to obtain designation through fraud or misrepresentation.~~

(n) ~~The OEMS may deny the initial or renewal designation, without first allowing a focused review, of a trauma center for any of the following reasons:~~

- (1) ~~failure to comply with G.S. 131E-162 and the rules adopted under that Statute;~~
- (2) ~~attempting to obtain a trauma center designation through fraud or misrepresentation;~~
- (3) ~~endangerment to the health, safety, or welfare of patients cared for in the hospital; or~~
- (4) ~~repetition of contingencies placed on the trauma center in previous site visits.~~

(o) ~~When a trauma center is required to have a focused review, it must demonstrate compliance with the provisions of G.S.131E-162 and the rules adopted under that Statute within one year or less.~~

(p) ~~The OEMS may revoke a trauma center designation at any time or deny a request for renewal of designation, whenever the OEMS finds that the trauma center has failed to comply with the provisions of G.S. 131E-162 and the rules adopted under that Statute; and~~

- (1) ~~it is not probable that the trauma center can remedy the deficiencies within one year or less;~~
- (2) ~~although the trauma center may be able to remedy the deficiencies within a reasonable period of time, it is not probable that the~~

~~trauma center shall be able to remain in compliance with designation rules for the foreseeable future;~~

- (3) ~~the trauma center fails to meet the requirements of a focused review; or~~

- (4) ~~failure to comply endangers the health, safety, or welfare of patients cared for in the trauma center.~~

(q) ~~The OEMS shall give the trauma center written notice of revocation. This notice shall be given personally or by certified mail and shall set forth:~~

- (1) ~~the factual allegations;~~
- (2) ~~the statutes or rules alleged to be violated; and~~
- (3) ~~notice of the hospital's right to a contested case hearing on the amendment of the designation.~~

(r) ~~Focused review is not a procedural prerequisite to the revocation of a designation pursuant to Paragraph (p) of this Rule.~~

(s) ~~With the OEMS' approval, a trauma center may voluntarily withdraw its designation for a maximum of one year by submitting a written request. This request shall include the reasons for withdrawal and a plan for resolution of the issues. To reactivate the designation, the facility shall provide written documentation of compliance. Voluntary withdrawal shall not affect the original expiration date of the trauma center's designation.~~

(t) ~~If the trauma center fails to resolve the issues which resulted in a voluntary withdrawal within the specified time period for resolution, the OEMS may revoke the trauma center designation.~~

(u) ~~In the event of a revocation or voluntary withdrawal, the OEMS shall provide written notification to all hospitals and emergency medical services providers within the trauma center's defined trauma primary catchment area. The OEMS shall provide written notification to all hospitals and emergency medical services providers within the trauma center's defined trauma primary catchment area if, and when, the voluntary withdrawal reactivates to full designation.~~

*Authority G.S. 131E-155.1(d); 131E-157(c); 131E-159(a),(f); 131E-162; 143-508(d)(10).*

## **10A NCAC 13P .0702 PROCEDURES FOR DENIAL, SUSPENSION, AMENDMENT, OR REVOCATION**

~~Denial, suspension, amendment or revocation of credentials, licenses, permits, approvals, or designations shall follow the law regarding contested cases found in G.S. 150B.~~

*Authority G.S. 143-508(d)(10).*

## **SECTION .1500 - DENIAL, SUSPENSION, AMENDMENT, OR REVOCATION**

### **10A NCAC 13P .1501 ENFORCEMENT DEFINITIONS**

Notwithstanding Section .0100 of this Subchapter, for the purpose of this Section, the following definitions apply to Rules .1502, 1503, 1504, and .1506 for EMS Systems, Licensed EMS Providers, Specialty Care Transport Programs, and EMS Educational Institutions:

- (1) "Contingencies" mean conditions placed on an initial or renewal designation, approval or license that, if unmet, can result in the loss or amendment of the designation, approval, or license.
- (2) "Deficiency" means the failure to meet essential criteria for credentialing, approval, or licensing as specified in Sections .0200, .0300 or .0600 of this Subchapter, that can serve as the basis for a focused review or denial of a designation, approval or license.
- (3) "Essential Criteria" means those items listed in Sections .0200, .0300 or .0600 of this Subchapter that are the minimum requirements for the respective application for initial or renewal designation, approval, or licensing.
- (4) "Focused Review" means an evaluation by the OEMS of a regulated entity's corrective actions to remove contingencies that are a result of deficiencies placed upon it following review of an application for renewal.

*Authority G.S. 131E-155(13a); 143-508(b),(d)(1),(d)(4),(d)(13).*

#### **10A NCAC 13P .1502 LICENSED EMS PROVIDERS**

(a) The Department shall amend any EMS Provider license by reducing it from a full license to a provisional license whenever the Department finds that:

- (1) the licensee failed to comply with the provisions of G.S. 131E, Article 7, and the rules adopted under that article;
- (2) there is a reasonable probability that the licensee can remedy the licensure deficiencies within a reasonable length of time; and
- (3) there is a reasonable probability that the licensee will be able thereafter to remain in compliance with the licensure rules for the foreseeable future.

(b) The Department shall give the licensee written notice of the amendment of the EMS Provider license. This notice shall be given personally or by certified mail and shall set forth:

- (1) the length of the provisional EMS Provider license;
- (2) the factual allegations;
- (3) the statutes or rules alleged to be violated; and
- (4) notice to the EMS provider's right to a contested case hearing on the amendment of the EMS Provider license.

(c) The provisional EMS Provider license is effective immediately upon its receipt by the licensee and shall be posted in a prominent location at the primary business location of the EMS Provider, accessible to public view, in lieu of the full license. The provisional license remains in effect until the Department:

- (1) restores the licensee to full licensure status; or
- (2) revokes the licensee's license.

(d) The Department shall revoke or suspend an EMS Provider license whenever the Department finds that the licensee:

- (1) failed to comply with the provisions of G.S. 131E, Article 7, and the rules adopted under that article and it is not reasonably probable that the licensee can remedy the licensure deficiencies within 12 months or less;
- (2) failed to comply with the provisions of G.S. 131E, Article 7, and the rules adopted under that Article and, although the licensee may be able to remedy the deficiencies, it is not reasonably probable that the licensee will be able to remain in compliance with licensure rules for the foreseeable future;
- (3) failed to comply with the provision of G.S. 131E, Article 7, and the rules adopted under that article that endanger the health, safety or welfare of the patients cared for or transported by the licensee;
- (4) obtained or attempted to obtain an ambulance permit, EMS nontransporting vehicle permit, or EMS Provider license through fraud or misrepresentation;
- (5) repeated deficiencies placed on the EMS Provider License in previous compliance site visits;
- (6) failed to provide emergency medical care within the defined EMS service area in a timely manner as determined by the EMS System;
- (7) altered, destroyed, attempted to destroy, withheld or delayed release of evidence, records, or documents needed for a complaint investigation; or
- (8) continues to operate within an EMS System after a Board of County Commissioners has terminated its affiliation with the licensee.

(e) The issuance of a provisional EMS Provider license is not a procedural prerequisite to the revocation or suspension of a license pursuant to Paragraph (d) of this Rule.

*Authority G.S. 131E-155.1(d); 143-508(d)(10).*

#### **10A NCAC 13P .1503 SPECIALTY CARE TRANSPORT PROGRAMS**

(a) The Department shall deny the initial or renewal approval, without first allowing a focused review, of a SCTP for any of the following reasons:

- (1) failure to comply with the provisions of G.S. 131E, Article 7 and the rules adopted under that Article;
- (2) obtained or attempted to obtain approval through fraud or misrepresentation;
- (3) endangerment to the health, safety, or welfare of patients cared for by the SCTP; or
- (4) repeated deficiencies placed on the program in previous site visits.

(b) When an SCTP is required to have a focused review, it must demonstrate compliance with the provisions of G.S. 131E, Article 7 and the rules adopted under that Article within 12 months or less.

(c) The Department shall revoke an SCTP approval at any time or deny a request for renewal of approval whenever the Department finds that the SCTP failed to comply with the provisions of G.S.131E, Article 7 and the rules adopted under that Article; and

- (1) it is not probable that the SCTP can remedy the deficiencies within 12 months or less;
- (2) although the SCTP may be able to remedy the deficiencies, it is not probable that the SCTP shall be able to remain in compliance with designation rules for the foreseeable future;
- (3) the SCTP fails to meet the requirements of a focused review;
- (4) endangerment to the health, safety, or welfare of patients cared for or transported by the SCTP;
- (5) fails to provide SCTP services within the defined service area in a timely manner as determined by the Department;
- (6) continues to operate within an EMS System after a Board of County Commissioners has terminated its affiliation with the SCTP; or
- (7) alters, destroys or attempts to destroy evidence needed for a complaint investigation.

(d) The Department shall give the SCTP written notice of revocation. This notice shall be given personally or by certified mail and shall set forth:

- (1) the factual allegations;
- (2) the statutes or rules alleged to be violated; and
- (3) notice of the program's right to a contested case hearing on the revocation of the approval.

(e) Focused review is not a procedural prerequisite to the revocation of an approval pursuant to Paragraph (c) of this Rule.

*Authority 143-508(d)(10), (d)(13).*

#### **10A NCAC 13P .1504 TRAUMA CENTERS**

(a) The Department shall deny the initial or renewal designation, without first allowing a focused review, of a trauma center for any of the following reasons:

- (1) failure to comply with G.S. 131E-162 and the rules adopted under that Statute;
- (2) attempted to obtain a trauma center designation through fraud or misrepresentation;
- (3) endangerment to the health, safety, or welfare of patients cared for in the hospital; or
- (4) repeated deficiencies placed on the trauma center in previous site visits.

(b) When a trauma center is required to have a focused review, it must demonstrate compliance with the provisions of G.S.131E-162 and the rules adopted under that Statute within 12 months or less.

(c) The Department shall revoke a trauma center designation at any time or deny a request for renewal of designation, whenever the Department finds that the trauma center has failed to comply with the provisions of G.S. 131E-162 and the rules adopted under that Statute; and

- (1) it is not probable that the trauma center can remedy the deficiencies within 12 months or less;
- (2) although the trauma center may be able to remedy the deficiencies it is not probable that the trauma center shall be able to remain in compliance with designation rules for the foreseeable future;
- (3) the trauma center failed to meet the requirements of a focused review;
- (4) failure to comply endangers the health, safety, or welfare of patients cared for in the trauma center; or
- (5) altered, destroyed or attempted to destroy evidence needed for a complaint investigation.

(d) The Department shall give the trauma center written notice of revocation. This notice shall be given personally or by certified mail and shall set forth:

- (1) the factual allegations;
- (2) the statutes or rules alleged to be violated; and
- (3) notice of the hospital's right to a contested case hearing on the revocation of the designation.

(e) Focused review is not a procedural prerequisite to the revocation of a designation pursuant to Paragraph (c) of this Rule.

(f) A trauma center may voluntarily withdraw its designation for a maximum of one year by submitting a written request to the Department. This request shall include the reasons for withdrawal and a plan for resolution of the issues. To reactivate the designation, the facility shall provide to the Department written documentation of compliance. Voluntary withdrawal does not affect the original expiration date of the trauma center's designation.

(g) If the trauma center fails to resolve the issues which resulted in a voluntary withdrawal within one year, the Department shall revoke the trauma center designation.

(h) In the event of a revocation or voluntary withdrawal, the Department shall provide written notification to all hospitals and emergency medical services providers within the trauma center's defined trauma primary catchment area. The Department shall provide written notification to all hospitals and emergency medical services providers within the trauma center's defined trauma primary catchment area if, and when, the voluntary withdrawal reactivates to full designation.

*Authority G.S. 131E-162; 143-508(d)(10).*

#### **10A NCAC 13P .1505 EMS EDUCATIONAL INSTITUTIONS**

(a) The Department shall deny the initial or renewal credential, without first allowing a focused review, of an EMS Educational Institution for any of the following reasons:

- (1) failure to comply with the provisions of Section .0600 of this Subchapter;
- (2) attempting to obtain a EMS Educational Institution designation through fraud or misrepresentation;

- (3) endangerment to the health, safety, or welfare of patients cared by students of the EMS Educational Institution; or
- (4) repetition of deficiencies placed on the EMS Educational Institution in previous compliance site visits.

(b) When a EMS Educational Institution is required to have a focused review, it must demonstrate compliance with the provisions of Section .0600 of this Subchapter within 12 months or less.

(c) The Department will revoke an EMS Educational Institution credential at any time or deny a request for renewal of credential, whenever the Department finds that the EMS Educational Institution has failed to comply with the provisions of Section .0600 of this Subchapter; and:

- (1) it is not probable that the EMS Educational Institution can remedy the deficiencies within 12 months or less;
- (2) although the EMS Educational Institution may be able to remedy the deficiencies, it is not probable that the EMS Educational Institution shall be able to remain in compliance with credentialing rules for the foreseeable future;
- (3) the EMS Educational Institution failed to meet the requirements of a focused review;
- (4) failure to comply endangered the health, safety, or welfare of patients cared for as part of an EMS educational program; or
- (5) altered, destroyed or attempted to destroy evidence needed for a complaint investigation.

(d) The Department shall give the EMS Educational Institution written notice of revocation. This notice shall be given personally or by certified mail and shall set forth:

- (1) the factual allegations;
- (2) the statutes or rules alleged to be violated; and
- (3) notice of the EMS Educational Institution's right to a contested case hearing on the revocation of the credential.

(e) Focused review is not a procedural prerequisite to the revocation of a credential pursuant to Paragraph (c) of this Rule.

(f) An EMS Educational Institution may voluntarily withdraw its credential for a maximum of one year by submitting a written request. This request shall include the reasons for withdrawal and a plan for resolution of the deficiencies. To reactivate the credential, the institution shall provide to the Department written documentation of compliance. Voluntary withdrawal does not affect the original expiration date of the EMS Educational Institution's credential.

(g) If the institution fails to resolve the issues which resulted in a voluntary withdrawal within one year, the Department shall revoke the EMS Educational Institution credential.

(h) In the event of a revocation or voluntary withdrawal, the Department shall provide written notification to all EMS Systems within the EMS Educational Institution's defined service area. The Department shall provide written notification to all EMS Systems within the EMS Educational Institution's defined service area if, and when, the voluntary withdrawal reactivates to full credential.

*Authority G.S. 143-508(d)(4), (d)(10).*

#### **10A NCAC 13P .1506 EMS VEHICLE PERMITS**

(a) The Department shall deny, suspend, or revoke the permit of an ambulance or EMS nontransporting vehicle if the EMS Provider:

- (1) failed to comply with the provisions of G.S. 131E, Article 7, and the rules adopted under that Article;
- (2) obtained or attempted to obtain a permit through fraud or misrepresentation;
- (3) has continued deficiencies identified as repeated from previous compliance site visits;
- (4) failed to provide emergency medical care within the defined EMS service area in a timely manner as determined by the EMS System;
- (5) continued to operate the ambulance or nontransporting vehicle in a county after written notification by a Board of Commissioners to cease operations in that county;
- (6) altered, destroyed or attempted to destroy evidence needed for a complaint investigation; or
- (7) does not possess a valid EMS Provider License.

(b) In lieu of suspension or revocation, the Department shall issue a temporary permit for an ambulance or EMS nontransporting vehicle whenever the Department finds that:

- (1) the EMS Provider to which that vehicle is assigned has failed to comply with the provisions of G.S. 131E, Article 7, and the rules adopted under that Article;
- (2) there is a reasonable probability that the EMS Provider can remedy the permit deficiencies within a length of time determined by the Department; and
- (3) there is a reasonable probability that the EMS Provider will be willing and able to remain in compliance with the rules regarding vehicle permits for the foreseeable future.

(c) The Department shall give the EMS Provider written notice of the temporary permit. This notice shall be given personally or by certified mail and shall set forth:

- (1) the duration of the temporary permit not to exceed 60 days;
- (2) a copy of the vehicle inspection form;
- (3) the statutes or rules alleged to be violated; and
- (4) notice of the EMS Provider's right to a contested case hearing on the temporary permit.

(d) The temporary permit is effective immediately upon its receipt by the EMS Provider and remains in effect until the earlier of the expiration date of the permit or until the Department:

- (1) restores the vehicle to full permitted status; or
- (2) suspends or revokes the vehicle permit.



Authority G.S. 131E-156(c),(d); 131E-157(c).

**10A NCAC 13P .1507 EMS PERSONNEL CREDENTIALS**

(a) An EMS credential which has been forfeited under G.S.15A-1331A may not be reinstated until the person has successfully complied with the court's requirements, has petitioned the Department for reinstatement, has appeared before the EMS Disciplinary Committee, and has had reinstatement approved.

(b) The Department shall amend, deny, suspend, or revoke the credentials of EMS personnel for any of the following reasons:

- (1) failure to comply with the applicable performance and credentialing requirements as found in this Subchapter;
- (2) making false statements or representations to the Department or willfully concealing information in connection with an application for credentials;
- (3) making false statements or representations, willfully concealing information, or failing to respond within a reasonable period of time and in a reasonable manner to inquiries from the Department during a complaint investigation;
- (4) tampering with or falsifying any record used in the process of obtaining an initial EMS credential or in the renewal of an EMS credential;
- (5) in any manner or using any medium, engaging in the stealing, manipulating, copying, reproducing or reconstructing of any written EMS credentialing examination questions or scenarios;
- (6) cheating or assisting others to cheat while preparing to take or when taking a written EMS credentialing examination;
- (7) altering an EMS credential, using an EMS credential that has been altered or permitting or allowing another person to use his or her EMS credential for the purpose of alteration. Altering includes changing the name, expiration date or any other information appearing on the EMS credential;
- (8) unprofessional conduct, including a failure to comply with the rules relating to the proper function of credentialed EMS personnel contained in this Subchapter or the performance of or attempt to perform a procedure that is detrimental to the health and safety of any person or that is beyond the scope of practice of credentialed EMS personnel or EMS instructors;
- (9) being unable to perform as credentialed EMS personnel with reasonable skill and safety to patients and the public by reason of illness, use of alcohol, drugs, chemicals, or any other type of material or by reason of any physical or mental abnormality;
- (10) conviction in any court of a crime involving moral turpitude, a conviction of a felony, or

conviction of a crime involving the scope of practice of credentialed EMS personnel;

- (11) by false representations obtaining or attempting to obtain money or anything of value from a patient;
- (12) adjudication of mental incompetence;
- (13) lack of competence to practice with a reasonable degree of skill and safety for patients including a failure to perform a prescribed procedure, failure to perform a prescribed procedure competently or performance of a procedure that is not within the scope of practice of credentialed EMS personnel or EMS instructors;
- (14) performing as an EMT-I, EMT-P, or EMD in any EMS System in which the individual is not affiliated and authorized to function;
- (15) testing positive for any substance, legal or illegal, that has impaired the physical or psychological ability of the credentialed EMS personnel to perform all required or expected functions while on duty;
- (16) failure to comply with G.S. 143-518 regarding the use or disclosure of records or data associated with EMS Systems, Specialty Care Transport Programs, or patients;
- (17) refusing to consent to any criminal history check required by G.S. 131E-159;
- (18) abandoning or neglecting a patient who is in need of care, without making reasonable arrangements for the continuation of such care;
- (19) falsifying a patient's record or any controlled substance records;
- (20) harassing, abusing, or intimidating a patient either physically or verbally;
- (21) engaging in any activities of a sexual nature with a patient including kissing, fondling or touching while responsible for the care of that individual;
- (22) any criminal arrests that involve charges which have been determined by the Department to indicate a necessity to seek action in order to further protect the public pending adjudication by a court;
- (23) altering, destroying or attempting to destroy evidence needed for a complaint investigation;
- (24) as a condition to the issuance of an encumbered EMS credential with limited and restricted practices for persons in the chemical addiction or abuse treatment program; or
- (25) representing or allowing others to represent that the credentialed EMS personnel has a credential that the credentialed EMS personnel does not in fact have.

(c) Pursuant to the provisions of S.L. 2011-37, any person listed on the North Carolina Department of Justice Sex Offender and Public Protection Registry shall be denied initial or renewal EMS credentials.

(d) When a person who is credentialed to practice as an EMS professional is also credentialed in another jurisdiction and that other jurisdiction takes disciplinary action against the person, the Department shall summarily impose the same or lesser disciplinary action upon receipt of the other jurisdiction's action. The EMS professional may request a hearing before the EMS Disciplinary Committee. At the hearing the issues shall be limited to:

- (1) whether the person against whom action was taken by the other jurisdiction and the Department are the same person;
- (2) whether the conduct found by the other jurisdiction also violates the rules of the Medical Care Commission; and
- (3) whether the sanction imposed by the other jurisdiction is lawful under North Carolina law.

*Authority G.S. 131E-159(f),(g); 143-508(d)(10); S.L. 2011-37.*

#### **10A NCAC 13P .1508 SUMMARY SUSPENSION**

In accordance with G.S. 150B-3(c) an EMS Provider License, EMS Vehicle Permit, or EMS credential may be summarily suspended if the public health, safety, or welfare requires emergency action. This determination is delegated to the Chief of the OEMS. For EMS credentials, this determination shall be made following review by the EMS Disciplinary Committee pursuant to G.S. 131E-159(f). Such a finding shall be incorporated with the order of the Department and the order is effective on the date specified in the order or on service of the certified copy of the order at the last known address of the affected party, whichever is later, and continues to be effective during the proceedings. Failure to receive the order because of refusal of service or unknown address does not invalidate the order.

*Authority G.S. 131E-159(f); 150B-3(c).*

#### **10A NCAC 13P .1509 PROCEDURES FOR DENIAL, SUSPENSION, AMENDMENT, OR REVOCATION**

The procedures for contested cases in G.S. 150B, Article 3, apply to the denial, suspension, amendment or revocation of credentials, licenses, permits, approvals, or designations.

*Authority G.S. 143-508(d)(10).*

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

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Coastal Resources Commission intends to amend the rule cited as 15A NCAC 07H .0304.*

**Link to agency website pursuant to G.S. 150B-19.1(c):**  
<http://portal.ncdenr.org/web/cm/rules>

**Proposed Effective Date:** January 1, 2013

#### **Public Hearing:**

**Date:** August 28, 2012

**Time:** 5:00 p.m.

**Location:** New Hanover County Government Center, 230 Government Center Drive, Wilmington, NC 28403

**Date:** August 29, 2012

**Time:** 5:00 p.m.

**Location:** Sea Trail Golf Resort and Convention Center, 75A Clubhouse Road, Sunset Beach, NC 28468

**Date:** September 5, 2012

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

**Location:** Ocracoke Volunteer Fire Department, 215 Back Road, Ocracoke, NC 27960

**Date:** September 6, 2012

**Time:** 5:00 p.m.

**Location:** NC Division of Coastal Management, 400 Commerce Avenue, Morehead City, NC 28557

**Date:** September 11, 2012

**Time:** 3:00 p.m.

**Location:** Outer Banks Center for Wildlife Education, 1160 Village Lane, Corolla, NC 27927

**Date:** September 11, 2012

**Time:** 7:00 p.m.

**Location:** Kill Devil Hills Town Hall, 102 Town Hall Drive, Kill Devil Hills, NC 27948

**Date:** September 13, 2012

**Time:** 3:00 p.m.

**Location:** Surf City Town Hall, 241 N. New River Drive, Surf City, NC 28445

**Date:** September 18, 2012

**Time:** 5:00 p.m.

**Location:** N. Topsail Beach City Hall, 2008 Loggerhead Court, N. Topsail Beach, NC 28460

**Reason for Proposed Action:** The Coastal Resources Commission (CRC) seeks to amend its administrative rules governing oceanfront development setbacks. Oceanfront construction setbacks are based on long-term average annual erosion rates (15A NCAC 07H .0304(1)(a)). The current statute contains the oceanfront erosion rates that were made effective in 2004. The proposed rule change would update these rates using new data. The purpose and intent of updating oceanfront erosion rates is to protect life and property from hazards associated with coastal erosion. Comments will be accepted on both the rule language as well as the Fiscal Analysis which can be reviewed at <http://portal.ncdenr.org/web/cm/rules>.

**Procedure by which a person can object to the agency on a proposed rule:** Objections may be filed in writing addressed to the Director, NC Division of Coastal Management, 400 Commerce Avenue, Morehead City, NC 28557.

**Comments may be submitted to:** *Braxton Davis, Director,  
400 Commerce Avenue, Morehead City, NC 28557, phone  
(252)808-2808, fax (252)247-3330*

**Comment period ends:** *October 1, 2012*

**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 after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule 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 (check all that apply).**

- ☐ State funds affected
- ☐ Environmental permitting of DOT affected  
Analysis submitted to Board of Transportation
- ☐ Local funds affected
- ☐ Date submitted to OSBM:
- ☐ Substantial economic impact ( $\geq$ \$500,000)
- ☒ Approved by OSBM
- ☐ No fiscal note required

**CHAPTER 07 - COASTAL MANAGEMENT**

**SUBCHAPTER 07H - STATE GUIDELINES FOR AREAS  
OF ENVIRONMENTAL CONCERN**

**SECTION .0300 - OCEAN HAZARD AREAS**

**15A NCAC 07H .0304 AECS WITHIN OCEAN  
HAZARD AREAS**

The ocean hazard system of AECs contains all of the following areas:

- (1) Ocean Erodible Area. This is the area in which there exists a substantial possibility of excessive erosion and significant shoreline fluctuation. The seaward boundary of this area is the mean low water line. The landward extent of this area is determined as follows:
  - (a) a distance landward from the first line of stable natural vegetation to the recession line that would be established by multiplying the long-term annual erosion rate times 60, provided that, where there has been no long-term erosion or the rate is less than two feet per year, this distance shall be set at 120 feet

landward from the first line of stable natural vegetation. For the purposes of this Rule, the erosion rates are the long-term average based on available historical data. The current long-term average erosion rate data for each segment of the North Carolina coast is depicted on maps entitled "~~Long Term Annual Shoreline Change Rates updated through 1998~~" "2011 Long-Term Average Annual Shoreline Rate Update" and approved by the Coastal Resources Commission on ~~January 29, 2004~~ May 5, 2011 (except as such rates may be varied in individual contested cases, declaratory or interpretive rulings). The maps are available without cost from any local permit officer or the Division of Coastal Management; and

- (b) a distance landward from the recession line established in Sub-Item (1)(a) of this Rule to the recession line that would be generated by a storm having a one percent chance of being equaled or exceeded in any given year.
- (2) The High Hazard Flood Area. This is the area subject to high velocity waters (including hurricane wave wash) in a storm having a one percent chance of being equaled or exceeded in any given year, as identified as zone V1-30 on the flood insurance rate maps of the Federal Insurance Administration, U.S. Department of Housing and Urban Development.
- (3) Inlet Hazard Area. The inlet hazard areas are natural-hazard areas that are especially vulnerable to erosion, flooding and other adverse effects of sand, wind, and water because of their proximity to dynamic ocean inlets. This area shall extend landward from the normal low water line a distance sufficient to encompass that area within which the inlet shall, based on statistical analysis, migrate, and shall consider such factors as previous inlet territory, structurally weak areas near the inlet and external influences such as jetties and channelization. The areas identified as suggested Inlet Hazard Areas included in the report entitled INLET HAZARD AREAS, The Final Report and Recommendations to the Coastal Resources Commission, 1978, as amended in 1981, by Loie J. Priddy and Rick Carraway are incorporated by reference without future changes and are hereby designated as Inlet Hazard Areas except that the Cape Fear Inlet Hazard Area as shown on said map shall not extend northeast of the Baldhead Island marina entrance channel.

These areas shall be extensions of the adjacent ocean erodible areas and the width of the inlet hazard area shall not be less than the width of the adjacent ocean erodible area. This report is available for inspection at the Department of Environment and Natural Resources, Division of Coastal Management, 400 Commerce Avenue, Morehead City, North Carolina. Photo copies are available at no charge.

- (4) Unvegetated Beach Area. Beach areas within the Ocean Hazard Area where no stable natural vegetation is present may be designated as an unvegetated beach area on either a permanent or temporary basis:

(a) An area appropriate for permanent designation as an unvegetated beach area is a dynamic area that is subject to rapid unpredictable landform change from wind and wave action. The areas in this category shall be designated following studies by the Coastal Resources Commission. These areas shall be designated on maps approved by the Commission and available without cost from any local permit officer or the Division of Coastal Management.

(b) An area that is suddenly unvegetated as a result of a hurricane or other major storm event may be designated as an unvegetated beach area for a specific period of time. At the expiration of the time specified by the Commission, the area shall return to its pre-storm designation. Areas appropriate for such designation are those in which vegetation has been lost over such a large land area that extrapolation of the vegetation line under the procedure set out in Rule .0305(a) of this Section is inappropriate.

The Commission designates as temporary unvegetated beach areas those oceanfront areas on Hatteras Island west of the new inlet breach in Dare County in which the vegetation line as shown on Dare County orthophotographs dated 4 February 2002 through 10 February 2002 was destroyed as a result of Hurricane Isabel on September 18, 2003 and the remnants of which were subsequently buried by the construction of an emergency berm. This designation shall continue until such time as stable, natural vegetation has reestablished or until the area is permanently designated as an unvegetated beach area pursuant to Sub-Item 4(a) of this Rule.

*Authority G.S. 113A-107; 113A-113; 113A-124.*

## TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

### CHAPTER 32 – MEDICAL BOARD

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Medical Board intends to amend the rules cited as 21 NCAC 32M .0109.*

**Link to agency website pursuant to G.S. 150B-19.1(c):**  
[www.ncmedboard.org/about\\_the\\_board/rule\\_changes](http://www.ncmedboard.org/about_the_board/rule_changes)

**Proposed Effective Date:** *December 1, 2012*

**Public Hearing:**

**Date:** *October 1, 2012*

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

**Location:** *Medical Board, 1203 Front Street, Raleigh, NC 27609*

**Reason for Proposed Action:** *The impetus for this rule change came from a Task Force convened in June, 2011, which included representatives from organized medicine, medical specialty boards, MDs, DOs, NPs, PAs, and physicians from diverse backgrounds, including urban/ rural practitioners, and family practice /specialty practice physicians. The broad issue was whether, and under what circumstances, should a physician (or mid-level practitioner) treat his/her own family. While opinions differ on that topic, consensus developed that it is inappropriate for a prescriber to write a prescription for himself or his family for controlled substances. The potential for inappropriate prescription, drug abuse or diversion outweigh the convenience of not going to another physician. This topic was the subject of an article in the Forum, the board's quarterly publication which is distributed to about 40,000 licensees. A survey of licensees was also included, to which over 1,000 licensees responded. Again, while there is a range of opinion about physicians treating themselves of their families, there is a widespread agreement that it is not appropriate for anyone to write themselves a prescription for controlled substances. This rule will have negligible fiscal impact. While it may cost something for a physician to go to another doctor for treatment and to receive a prescription, there may be savings from the prevention of drug abuse, investigation and prosecution for inappropriate prescribing.*

**Procedure by which a person can object to the agency on a proposed rule:** *Any person may object to the proposed amendment by attending the public hearing on October 1, 2012 and/or by submitting a written objection by October 1, 2012, to Rules Coordinator, North Carolina Medical Board, 1203 Front St., Raleigh, NC 27609, fax (919) 326-1131, or e-mail [rules@ncmedboard.org](mailto:rules@ncmedboard.org). The North Carolina Medical Board is interested in all comments pertaining to the proposed rule. All persons interested and potentially affected by the proposal are*

*strongly encouraged to read this entire notice and make comments on the proposed rule.*

**Comments may be submitted to:** Wanda Long, NC Medical Board, PO Box 20007, Raleigh, NC 27619, phone (919)326-1100 ext 212, fax (919)326-1131, email rules@ncmedboard.org.

**Comment period ends:** October 1, 2012

**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 after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule 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 (check all that apply).**

- ☐ State funds affected
- ☐ Environmental permitting of DOT affected
- ☐ Analysis submitted to Board of Transportation
- ☐ Local funds affected
- ☐ Date submitted to OSBM:
- ☐ Substantial economic impact (≥\$500,000)
- ☐ Approved by OSBM
- ☒ No fiscal note required

**SUBCHAPTER 32M - APPROVAL OF NURSE PRACTITIONERS**

**21 NCAC 32M .0109 PRESCRIBING AUTHORITY**

(a) The prescribing stipulations contained in this Rule apply to writing prescriptions and ordering the administration of medications.

(b) Prescribing and dispensing stipulations are as follows:

- (1) Drugs and devices that may be prescribed by the nurse practitioner in each practice site shall be included in the collaborative practice agreement as outlined in Rule .0110(b) of this Section.
- (2) Controlled Substances (Schedules II, IIN, III, IIIN, IV, V) defined by the State and Federal Controlled Substances Acts may be procured, prescribed or ordered as established in the collaborative practice agreement, providing all of the following requirements are met:
  - (A) the nurse practitioner has an assigned DEA number which is entered on each prescription for a controlled substance;

- (B) dosage units for schedules II, IIN, III and IIIN are limited to a 30 day supply; and
  - (C) the supervising physician(s) possesses the same schedule(s) of controlled substances as the nurse practitioner's DEA registration.
- (3) The nurse practitioner may prescribe a drug or device not included in the collaborative practice agreement only as follows:
- (A) upon a specific written or verbal order obtained from a primary or back-up supervising physician before the prescription or order is issued by the nurse practitioner; and
  - (B) the written or verbal order as described in Part (b)(3)(A) of this Rule shall be entered into the patient record with a notation that it is issued on the specific order of a primary or back-up supervising physician and signed by the nurse practitioner and the physician.
- (4) Refills may be issued for a period not to exceed one year.
- (5) Each prescription shall be noted on the patient's chart and include the following information:
- (A) medication and dosage;
  - (B) amount prescribed;
  - (C) directions for use;
  - (D) number of refills; and
  - (E) signature of nurse practitioner.
- (6) Prescription Format:
- (A) All prescriptions issued by the nurse practitioner shall contain the supervising physician(s) name, the name of the patient, and the nurse practitioner's name, telephone number, and approval number.
  - (B) The nurse practitioner's assigned DEA number shall be written on the prescription form when a controlled substance is prescribed as defined in Subparagraph (b)(2) of this Rule.
- (7) A nurse practitioner shall not prescribe controlled substances, as defined by the state and federal controlled substances acts, for the nurse practitioner's own use nor that of a nurse practitioner's supervising physician, nor that of a member of the nurse practitioner's immediate family, which shall mean a spouse, parent, child, sibling, parent-in-law, son or daughter-in-law, brother or sister-in-law, step-parent, step-child, step-siblings, or any other person living in the same residence as the licensee, or anyone with whom the nurse practitioner is having a sexual relationship and/or has a significant emotional relationship.

(c) The nurse practitioner may obtain approval to dispense the drugs and devices other than samples included in the collaborative practice agreement for each practice site from the Board of Pharmacy, and dispense in accordance with 21 NCAC 46 .1700, that is hereby incorporated by reference including subsequent amendments of the referenced materials.

*Authority G.S. 90-18(14); 90-18.2; 90-171.23(14).*

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## CHAPTER 32 – MEDICAL BOARD

**Notice** is hereby given in accordance with G.S. 150B-21.2 that the Medical Board intends to adopt the rules cited as 21 NCAC 32S .0221-.0223 and repeal the rule cited as 21 NCAC 32S .0208.

**Link to agency website pursuant to G.S. 150B-19.1(c):**  
[www.ncmedboard.org/about\\_the\\_board/rule\\_changes](http://www.ncmedboard.org/about_the_board/rule_changes)

**Proposed Effective Date:** December 1, 2012

**Public Hearing:**

**Date:** October 1, 2012

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

**Location:** Medical Board, 1203 Front Street, Raleigh, NC 27609

**Reason for Proposed Action:** *The General Assembly enacted SB 743 in 2011 "An Act to Encourage the Provision of Medical Services to Indigent Persons by Providing for a Retired Limited Volunteer License and by Broadening the Applicability of a Limited Volunteer License and by Limiting Liability for Nonprofit Community Health Referral Services". This statute covers both physicians and physician assistants, and requires rule changes in both licensing areas.*

**Procedure by which a person can object to the agency on a proposed rule:** Any person may object to the proposed rules by attending the public hearing on October 1, 2012 and/or by submitting a written objection by October 1, 2012, to Rules Coordinator, North Carolina Medical Board, 1203 Front Street, Raleigh, NC 27609, fax (919)326-1131, or e-mail [rules@ncmedboard.org](mailto:rules@ncmedboard.org). The North Carolina Medical Board is interested in all comments pertaining to the proposed rules. All persons interested and potentially affected by the proposal are strongly encouraged to read this entire notice and make comments on the proposed rules.

**Comments may be submitted to:** Wanda Long, NC Medical Board, PO Box 20007, Raleigh, NC 27619, (919)326-1100 ext 212, fax (919)326-1131, email [rules@ncmedboard.org](mailto:rules@ncmedboard.org)

**Comment period ends:** October 1, 2012

**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 after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule 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 (check all that apply).**

- ☐ State funds affected
- ☐ Environmental permitting of DOT affected
- ☐ Analysis submitted to Board of Transportation
- ☐ Local funds affected
- ☐ Date submitted to OSBM:
- ☐ Substantial economic impact (≥\$500,000)
- ☐ Approved by OSBM
- ☒ No fiscal note required

## SUBCHAPTER 32S - PHYSICIAN ASSISTANT REGULATIONS

### SECTION .0200 – PHYSICIAN ASSISTANT REGISTRATION

#### 21 NCAC 32S .0208 LIMITED VOLUNTEER LICENSE

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

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

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

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

#### 21 NCAC 32S .0221 LIMITED VOLUNTEER LICENSE

(a) A physician assistant who holds a regular license in North Carolina may convert that license to a Limited Volunteer License by notifying the Board in writing.

(b) The Board may issue a Limited Volunteer License to a physician assistant who holds an active license or registration in another state. In order to obtain a Limited Volunteer License, an applicant shall:

- (1) submit a completed application, attesting under oath that the information on the application is true and complete, and authorizing the release to the Board of all information pertaining to the application;
- (2) submit a recent photograph, at least two inches by two inches, affixed to the oath, and attested by a notary public;
- (3) submit documentation of a legal name change, if applicable;
- (4) supply a certified copy of applicant's birth certificate if the applicant was born in the United States or a certified copy of a valid and unexpired US passport. If the applicant does not possess proof of U.S. citizenship, the applicant must provide information about applicant's immigration and work status which the Board will use to verify applicant's ability to work lawfully in the United States;
- (5) submit proof of active licensure from another state or jurisdiction indicating the status of the license and whether or not any action has been taken against it;
- (6) submit two completed fingerprint record cards supplied by the Board;
- (7) submit a signed consent form allowing a search of local, state and national files for any criminal record;
- (8) pay a non-refundable fee to cover the cost of a criminal background check;
- (9) submit a FSMB Board Action Data Bank report;
- (10) submit a NPDB/HIPDB report, dated within 60 days of submission of the application;
- (11) submit documentation of CME obtained in the last three years;
- (12) upon request, supply any additional information the Board deems necessary to evaluate the applicant's competence and character.

(c) All materials must be submitted to the Board from the primary source, when possible.

(d) An applicant may be required to appear in person for an interview with the Board or its agent to evaluate the applicant's competence and character.

(e) An application must be completed within one year of the date of submission.

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

#### **21 NCAC 32S .0222 RETIRED LIMITED VOLUNTEER LICENSE**

(a) The Retired Limited Volunteer License is available to a physician assistant who has been licensed in North Carolina or

another state or jurisdiction, has an inactive license, and wishes to volunteer at civilian indigent clinics.

(b) A physician assistant with an inactive North Carolina license who wishes to return to practice on a volunteer basis must first reactivate or reinstate his or her license, whichever applies, by complying with 21 NCAC 32S .0206 or 21 NCAC 32S .0207. Once reactivated or reinstated, a physician assistant may convert that license to a limited volunteer license without paying an additional fee. A physician assistant who has been inactive for more than two years will be required to complete a reentry program.

(c) In order to obtain a Retired Limited Volunteer License an applicant who has not held a North Carolina license shall:

- (1) submit a completed application, attesting under oath that the information on the application is true and complete, and authorizing the release to the Board of all information pertaining to the application;
- (2) submit a recent photograph, at least two inches by two inches, affixed to the oath, and attested by a notary public;
- (3) submit documentation of a legal name change, if applicable;
- (4) supply a certified copy of applicant's birth certificate if the applicant was born in the United States or a certified copy of a valid and unexpired U.S. passport. If the applicant does not possess proof of U.S. citizenship, the applicant must provide information about applicant's immigration and work status which the Board will use to verify applicant's ability to work lawfully in the United States;
- (5) submit proof of licensure from another state or jurisdiction indicating the status of the license and whether or not any action has been taken against it;
- (6) submit two completed fingerprint record cards supplied by the Board;
- (7) submit a signed consent form allowing a search of local, state and national files for any criminal record;
- (8) pay a non-refundable fee to cover the cost of a criminal background check;
- (9) submit a FSMB Board Action Data Bank report;
- (10) submit a NPDB/HIPDB report, dated within 60 days of submission of the application;
- (11) submit documentation of CME obtained in the last three years; and
- (12) upon request, supply any additional information the Board deems necessary to evaluate the applicant's competence and character.

(c) All materials must be submitted to the Board from the primary source, when possible.

(d) An applicant may be required to appear in person for an interview with the Board or its agent to evaluate the applicant's competence and character.

(e) An application must be completed within one year of the date of submission.

*Authority G.S. 90-8.1; 90-12.1B.*

**21 NCAC 32S .0223 SCOPE OF PRACTICE**

The holder of a Limited Volunteer License or a Retired Limited Volunteer License may perform medical acts, tasks, or functions as a physician assistant under the supervision of a physician only at clinics that specialize in the treatment of indigent patients, and may not receive any compensation for services rendered, wither direct or indirect, monetary, in-kind, or otherwise for the provision of medical services.

*Authority G.S. 90-8.1; 90-12.4B.*

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**CHAPTER 64 - BOARD OF EXAMINERS FOR SPEECH  
AND LANGUAGE PATHOLOGISTS AND  
AUDIOLOGISTS**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Examiners for Speech and Language Pathologists and Audiologists intends to adopt the rule cited as 21 NCAC 64 .0220 and amend the rule cited as 21 NCAC 64 .0903.*

**Link to agency website pursuant to G.S. 150B-19.1(c):**  
[www.ncboeslpa.org](http://www.ncboeslpa.org)

**Proposed Effective Date:** *December 1, 2012*

**Public Hearing:**

**Date:** *September 21, 2012*

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

**Location:** *Renaissance Asheville Hotel at 31 Woodfin Street, Asheville, NC 28801*

**Reason for Proposed Action:**

**21 NCAC 64 .0220** – *To conform North Carolina Audiology practice to federal practice and to provide easy access to same.*

**21 NCAC 64 .0903** – *As a result of hearing challenge to Board's subpoena issuance process.*

**Procedure by which a person can object to the agency on a proposed rule:** *The complete procedure for objecting to the agency on a proposed rule can be found in 21 NCAC 64 .0604 and at the Board's website at [www.ncboeslpa.org](http://www.ncboeslpa.org).*

**Comments may be submitted to:** *Sandra Capps, Administrator, Board of Examiners for Speech and Language Pathologists and Audiologists, PO Box 5545, Greensboro, NC 27435-0545, email [scapps@ncboaelspa.org](mailto:scapps@ncboaelspa.org)*

**Comment period ends:** *October 1, 2012*

**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 after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule 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 (check all that apply).**

- ☐ **State funds affected**
- ☐ **Environmental permitting of DOT affected**
- ☐ **Analysis submitted to Board of Transportation**
- ☐ **Local funds affected**
- ☐ **Date submitted to OSBM:**
- ☐ **Substantial economic impact (≥\$500,000)**
- ☐ **Approved by OSBM**
- ☒ **No fiscal note required**

**SECTION .0200 - INTERPRETATIVE RULES**

**21 NCAC 64 .0220 STANDARDS FOR  
AUDIOLOGISTS WHO DISPENSE HEARING AIDS**

A licensed Audiologist who fits and dispenses hearing aids must:

- (1) Comply with 21 Code of Federal Regulations, Subpart H 801.420 and 801.421, in effect as of March 9, 2012 and does not incorporate subsequent amendments. The incorporated material may be obtained on the Board's website free of charge.
- (2) Disclose all fees to be charged to a patient in conjunction with the evaluation period and purchase of any hearing aid, in writing, prior to the purchase of the hearing aid by the patient.

*Authority G.S. 90-304(a)(3).*

**21 NCAC 64 .0903 STANDARDS FOR  
AUDIOLOGISTS WHO DISPENSE HEARING AIDS**

(a) Subpoenas requiring the attendance of witnesses, or those to produce documents, evidence, or ~~things-records~~ shall be issued by the Board or the ~~designated administrative law judge~~ presiding officer within four business days of the receipt of a request from a party to the case for such ~~subpoena-subpoena~~ subpoena unless there is an objection to the issuance of the subpoena.

(b) Subpoenas shall be served as the officer issuing the subpoena shall direct, as may be appropriate to the circumstances of the case. Subpoenas may be directed to be served by any of the following methods:

- (1) By an employee of the agency.
- (2) By the Sheriff of the county in which the individual or agency subpoenaed resides, when



- the party requesting such subpoena prepays the Sheriff's service fee.
- (3) Subpoenas shall be issued in duplicate, with a "Return of Service" form attached to each copy. The individual serving the subpoena shall fill out the "Return of Service" form for each copy and promptly return one copy of the subpoena, with the attached "Return of Service" form completed, to the Board.
  - (4) Subpoena shall contain: the caption of the case; the name and address of the individual or agency subpoenaed; the date, hour and location of the hearing in which the witness is commanded to appear; a particularized description of the books, papers, records or other objects the witness is directed to bring with him to the hearing, if any; the identity of the party on whose application the subpoena issued; the date of issue; the manuscript signature of the Board or other issuing officer; and a return of service. The return of service form, as filled out, shows the name and capacity of the individual serving the subpoena, the date on which the service was made, the individual or agency on whom service was made, the location and manner in which service was made, and the manuscript signature of the individual making service.
  - (5) The Board or the designated administrative law judge, upon objection by an party or witness in a proceeding, shall have the authority to revoke a subpoena, if the subpoena is adjudged to be unreasonable, oppressive or otherwise unlawful.
  - (6) An objection will include a concise, but complete, statement of reasons why the subpoena should be revoked or modified. These reasons may include lack of relevance of the evidence sought, lack of particularity in the description of the evidence sought, or any other reason sufficient in to hold the subpoena invalid, such as that evidence sought to be subpoenaed is privileged, that appearance or production would be so disruptive as to be unreasonable in light of the significance of the evidence sought, or other undue hardships.
  - (7) Any such objection to a subpoena must be served on the party who requested the subpoena simultaneously with the filing of the objection with the Board.
  - (8) The party who requested the subpoena, in such time as may be granted by the Board or the designated administrative law judge may file a written response to the objection. The written response shall be served by the requesting party on the objecting witness simultaneously with filing the response with the Board.
  - (9) After receipt of the objection and response thereto, if any, the Board or its designated administrative law judge shall issue a notice to the party who requested the subpoena and the party who is challenging it, and may notify all other parties, of an open hearing, to be scheduled as soon as practicable, at which time evidence and testimony may be presented, limited to the narrow questions raised by the objection and response, if any.
  - (10) As soon as the Board or the designated administrative law judge determines whether the subpoena should be revoked or modified, the Board or the administrative law judge shall issue a written decision revoking or modifying or refusing to revoke or modify the subpoena. The decision will be issued to all parties to the proceeding and any objecting witness, and the decision will be made a part of the record of the proceeding.

*Authority G.S. 90-304(a)(3).*

## APPROVED RULES

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

Rules approved by the Rules Review Commission at its meeting on June 20, 2012.

### REGISTER CITATION TO THE NOTICE OF TEXT

#### COMMERCE, DEPARTMENT OF

<u>Procedures and Criteria for Allocation of Qualified Energ...</u>	04	NCAC	01H	.0501*	26:18 NCR
<u>Background and Objectives</u>	04	NCAC	01I	.0101*	26:14 NCR
<u>Background and Objectives</u>	04	NCAC	01J	.0101	26:14 NCR
<u>Definitions</u>	04	NCAC	01J	.0102	26:14 NCR
<u>Designation of Severely Distressed Counties</u>	04	NCAC	01J	.0201	26:14 NCR
<u>Letter of Commitment</u>	04	NCAC	01J	.0301	26:14 NCR
<u>Substantiation of Credit Claimed</u>	04	NCAC	01J	.0401	26:14 NCR
<u>Determination of Eligibility</u>	04	NCAC	01J	.0501	26:14 NCR
<u>Projects not to be Considered for Funding</u>	04	NCAC	01K	.0105*	26:14 NCR
<u>Pre-Application Conference</u>	04	NCAC	01K	.0202	26:14 NCR
<u>Discretionary Public Hearing by the Department</u>	04	NCAC	01K	.0204	26:14 NCR
<u>Reimbursement of Department Expense</u>	04	NCAC	01K	.0207	26:14 NCR
<u>Purpose</u>	04	NCAC	14B	.0109	26:14 NCR
<u>Initial Contact</u>	04	NCAC	14B	.0110	26:14 NCR
<u>Staff Presentation</u>	04	NCAC	14B	.0111	26:14 NCR
<u>Entry Form</u>	04	NCAC	14B	.0112	26:14 NCR
<u>Status Report</u>	04	NCAC	14B	.0113	26:14 NCR
<u>Inspection</u>	04	NCAC	14B	.0114	26:14 NCR
<u>Agency Decision</u>	04	NCAC	14B	.0115	26:14 NCR
<u>Governor's Community of Excellence Plaque</u>	04	NCAC	14B	.0116	26:14 NCR
<u>Maximum Size of Community</u>	04	NCAC	14B	.0211	26:14 NCR
<u>Sponsoring Organization</u>	04	NCAC	14B	.0212	26:14 NCR
<u>Community Profile</u>	04	NCAC	14B	.0213	26:14 NCR
<u>Industrial Sites</u>	04	NCAC	14B	.0214	26:14 NCR
<u>Promotion of Materials</u>	04	NCAC	14B	.0215	26:14 NCR
<u>Existing Industry Committee</u>	04	NCAC	14B	.0216	26:14 NCR
<u>Community Planning Requirement</u>	04	NCAC	14B	.0217	26:14 NCR
<u>Livability Requirement: Cleanup-Fixup</u>	04	NCAC	14B	.0218	26:14 NCR
<u>Recreation</u>	04	NCAC	14B	.0219	26:14 NCR
<u>Development Team Requirement</u>	04	NCAC	14B	.0220	26:14 NCR
<u>Description</u>	04	NCAC	19L	.1301	26:14 NCR
<u>Eligibility Requirements</u>	04	NCAC	19L	.1302	26:14 NCR
<u>Selection Criteria</u>	04	NCAC	19L	.1303	26:14 NCR
<u>Federal Personnel Standards</u>	04	NCAC	20B	.0402	26:14 NCR
<u>State Personnel Standards for Subrecipients</u>	04	NCAC	20B	.0403	26:14 NCR
<u>Purpose</u>	04	NCAC	20B	.0901	26:14 NCR
<u>Grant Applications</u>	04	NCAC	20B	.0902	26:14 NCR

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**APPROVED RULES**

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<u>Coordination with Other Employment and Training Funds</u>	04	NCAC	20B .0904	26:14 NCR
<u>Use of Funds</u>	04	NCAC	20B .0906	26:14 NCR
<u>Cost Limitations/Categories</u>	04	NCAC	20B .0907	26:14 NCR
<u>Performance Standards</u>	04	NCAC	20B .0909	26:14 NCR
<u>Monitoring/Oversight</u>	04	NCAC	20B .0910	26:14 NCR
<u>Fund Availability/Redistribution</u>	04	NCAC	20B .0911	26:14 NCR

**CHILD CARE COMMISSION**

<u>Definitions</u>	10A	NCAC	09 .0102*	26:15 NCR
<u>Other Staffing Requirements</u>	10A	NCAC	09 .0714	26:15 NCR
<u>Scope</u>	10A	NCAC	09 .1501	26:15 NCR
<u>Medical Examination</u>	10A	NCAC	09 .1502	26:15 NCR
<u>Beds, Cots, Mats and Linens</u>	10A	NCAC	09 .1503	26:15 NCR
<u>Attendance Records</u>	10A	NCAC	09 .1504	26:15 NCR
<u>Outdoor Play Area</u>	10A	NCAC	09 .1506	26:15 NCR
<u>Program Requirements</u>	10A	NCAC	09 .2904*	26:05 NCR

**MEDICAL CARE COMMISSION**

<u>Application Requirements</u>	10A	NCAC	13D .2101*	26:15 NCR
<u>Public Access to Department Licensure Records</u>	10A	NCAC	13D .2110	26:15 NCR
<u>Infection Control</u>	10A	NCAC	13D .2209*	26:15 NCR
<u>Nurse Aides</u>	10A	NCAC	13D .2304	26:15 NCR
<u>Adult Care Home Personnel Requirements</u>	10A	NCAC	13D .2308	26:15 NCR
<u>Drug Storage and Disposition</u>	10A	NCAC	13D .2605*	26:15 NCR
<u>Pharmaceutical Records</u>	10A	NCAC	13D .2606	26:15 NCR
<u>Emergency Drugs</u>	10A	NCAC	13D .2607	26:15 NCR
<u>Patient Transportation Between Hospitals</u>	10A	NCAC	13P .0221	26:11 NCR

**MENTAL HEALTH, COMMISSION FOR**

<u>Schedule IV</u>	10A	NCAC	26F .0105*	n/a G.S. 90-88(d)
<u>Schedule V</u>	10A	NCAC	26F .0106*	n/a G.S. 90-88(d)

**PUBLIC HEALTH, COMMISSION FOR**

<u>Control Measures Tuberculosis</u>	10A	NCAC	41A .0205*	26:16 NCR
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**BLIND, COMMISSION FOR THE**

<u>Economic Needs Policies</u>	10A	NCAC	63F .0402*	26:17 NCR
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**SOCIAL SERVICES COMMISSION**

<u>State Public Assistance Equalizing Fund</u>	10A	NCAC	67A .0109	26:17 NCR
<u>Petitions</u>	10A	NCAC	68 .0201	26:17 NCR
<u>Fees</u>	10A	NCAC	68 .0207	26:17 NCR
<u>Definitions</u>	10A	NCAC	71E .0101	26:17 NCR
<u>Availability of the Service</u>	10A	NCAC	71E .0102	26:17 NCR
<u>Definition of the Services</u>	10A	NCAC	71E .0103	26:17 NCR

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**APPROVED RULES**

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<u>Target Population</u>	10A NCAC	71E .0104	26:17 NCR
<u>Resident Evaluation Instrument</u>	10A NCAC	71E .0105	26:17 NCR
<u>Evaluation and Referral</u>	10A NCAC	71E .0106	26:17 NCR
<u>Training and Requirements for Resident Evaluators</u>	10A NCAC	71E .0107	26:17 NCR
<u>Methods of Service Provision</u>	10A NCAC	71E .0108	26:17 NCR
<u>Case Record</u>	10A NCAC	71E .0109	26:17 NCR
<u>Coupon Issuance</u>	10A NCAC	71U .0202	26:17 NCR
<u>Farmer or Day Laborer Income Verification</u>	10A NCAC	71U .0301	26:17 NCR
<u>Transmittal of ATP Cards</u>	10A NCAC	71U .0304	26:17 NCR
<u>Funding</u>	10A NCAC	71V .0101	26:17 NCR
<u>General AFDC Program Procedures</u>	10A NCAC	71W .0102	26:17 NCR
<u>Optional</u>	10A NCAC	71W .0201	26:17 NCR
<u>Acceptance of Application</u>	10A NCAC	71W .0301	26:17 NCR
<u>Age</u>	10A NCAC	71W .0401	26:17 NCR
<u>School Attendance</u>	10A NCAC	71W .0402	26:17 NCR
<u>Deprivation</u>	10A NCAC	71W .0406	26:17 NCR
<u>Need</u>	10A NCAC	71W .0409	26:17 NCR
<u>State Work Requirement</u>	10A NCAC	71W .0411	26:17 NCR
<u>Changes in Situation</u>	10A NCAC	71W .0501	26:17 NCR
<u>Eligibility for Coverage</u>	10A NCAC	71W .0701	26:17 NCR
<u>Emergencies Covered</u>	10A NCAC	71W .0702	26:17 NCR
<u>Emergency Not Covered</u>	10A NCAC	71W .0703	26:17 NCR
<u>Types of Assistance Provided</u>	10A NCAC	71W .0705	26:17 NCR
<u>Methods of Payment</u>	10A NCAC	71W .0706	26:17 NCR
<u>Application and Disposition</u>	10A NCAC	71W .0707	26:17 NCR
<u>Reserve</u>	10A NCAC	71W .0708	26:17 NCR
<u>Income</u>	10A NCAC	71W .0709	26:17 NCR
<u>Reserve and Income Services</u>	10A NCAC	71W .0710	26:17 NCR
<u>Procedures</u>	10A NCAC	71W .0711	26:17 NCR
<u>General Procedures</u>	10A NCAC	71W .0801	26:17 NCR
<u>Coverage and Participation</u>	10A NCAC	71W .0802	26:17 NCR
<u>Eligibility</u>	10A NCAC	71W .0803	26:17 NCR
<u>General Requirements</u>	10A NCAC	71W .0901	26:17 NCR
<u>Methods of Providing Child Care</u>	10A NCAC	71W .0902	26:17 NCR
<u>Sliding Fee Scale</u>	10A NCAC	71W .0903	26:17 NCR
<u>Child Care Rates and Maximum Payment</u>	10A NCAC	71W .0904	26:17 NCR
<u>Implementation Schedule</u>	10A NCAC	71X .0101	26:17 NCR
<u>County Plan</u>	10A NCAC	71X .0102	26:17 NCR
<u>Optional Components</u>	10A NCAC	71X .0103	26:17 NCR
<u>Post-Secondary Education</u>	10A NCAC	71X .0104	26:17 NCR
<u>Participation Rate</u>	10A NCAC	71X .0105	26:17 NCR
<u>Expenditure Rate</u>	10A NCAC	71X .0106	26:17 NCR
<u>Applicants</u>	10A NCAC	71X .0107	26:17 NCR
<u>JOBS Case Management</u>	10A NCAC	71X .0108	26:17 NCR
<u>Participation of Unemployed Parent in Education</u>	10A NCAC	71X .0201	26:17 NCR
<u>Conciliation Procedure</u>	10A NCAC	71X .0202	26:17 NCR

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**APPROVED RULES**

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<u>Assignment of 16 and 17 Year Old Custodial Parents</u>	10A NCAC	71X	.0203	26:17 NCR
<u>Assignment of 18 and 19 Year Old Custodial Parents</u>	10A NCAC	71X	.0204	26:17 NCR
<u>Assignment of Participants 20 Years of Age or Older</u>	10A NCAC	71X	.0205	26:17 NCR
<u>Satisfactory Progress in an Educational Component</u>	10A NCAC	71X	.0206	26:17 NCR
<u>Continuation in Program Components After AFDC Termination</u>	10A NCAC	71X	.0207	26:17 NCR
<u>Provision of Case Management and Supportive Services</u>	10A NCAC	71X	.0208	26:17 NCR
<u>Criteria for Self-Initiated Education or Training</u>	10A NCAC	71X	.0209	26:17 NCR
<u>Services During Gaps in Participation</u>	10A NCAC	71X	.0210	26:17 NCR
<u>JOBS Component Expenses</u>	10A NCAC	71X	.0301	26:17 NCR
<u>Work Experience</u>	10A NCAC	71X	.0302	26:17 NCR
<u>Post-Secondary Education</u>	10A NCAC	71X	.0303	26:17 NCR
<u>Alternative Work Experience</u>	10A NCAC	71X	.0304	26:17 NCR
<u>Supportive Services to be Available in JOBS Counties</u>	10A NCAC	71X	.0401	26:17 NCR
<u>Health Support Services</u>	10A NCAC	71X	.0402	26:17 NCR
<u>In-Home Aide Services</u>	10A NCAC	71X	.0403	26:17 NCR
<u>Transportation Services</u>	10A NCAC	71X	.0404	26:17 NCR
<u>Child Care Transportation</u>	10A NCAC	71X	.0405	26:17 NCR
<u>Personal and Family Counseling</u>	10A NCAC	71X	.0406	26:17 NCR
<u>Individual and Family Adjustment Services</u>	10A NCAC	71X	.0407	26:17 NCR
<u>Participation Expenses</u>	10A NCAC	71X	.0408	26:17 NCR
<u>One-Time Work Related Expenses</u>	10A NCAC	71X	.0409	26:17 NCR
<u>Day Care Services for Adults</u>	10A NCAC	71X	.0410	26:17 NCR
<u>Supportive Services to be Available in Non-JOBS Counties</u>	10A NCAC	71X	.0411	26:17 NCR
<u>Supportive Services Limits</u>	10A NCAC	71X	.0412	26:17 NCR
<u>Definition of Family Member</u>	10A NCAC	71X	.0413	26:17 NCR

**INSURANCE, DEPARTMENT OF**

<u>Facsimile Countersignature Not Valid</u>	11	NCAC	01	.0603	26:18 NCR
<u>Inquiries and Information</u>	11	NCAC	04	.0116	26:18 NCR
<u>Provisions of Contracts</u>	11	NCAC	04	.0313	26:18 NCR
<u>Claims Practices Life Accident and Health Insurance</u>	11	NCAC	04	.0319*	26:18 NCR
<u>Drive-In Claim Service Facilities</u>	11	NCAC	04	.0417	26:18 NCR
<u>Proof of Mailing Automobile Insurance</u>	11	NCAC	04	.0430	26:18 NCR
<u>Refund of Excess Premium on Scheduled Items</u>	11	NCAC	04	.0432	26:18 NCR
<u>Attendance</u>	11	NCAC	06A	.0806	26:18 NCR
<u>Form: Instructions/Requirements/Surplus Lines Company</u>	11	NCAC	10	.0714	26:18 NCR
<u>Occupational Injuries or Diseases</u>	11	NCAC	12	.0325	26:18 NCR
<u>Offset of Increased Social Security: Group Disability</u>	11	NCAC	12	.0545	26:18 NCR
<u>Uniform Claim Forms</u>	11	NCAC	12	.0560	26:18 NCR
<u>Reinsurance Pool</u>	11	NCAC	12	.1306	26:18 NCR
<u>Admission Data Guidelines</u>	11	NCAC	14	.0413	26:18 NCR
<u>Check Sheet and Analysis of Application for Admission</u>	11	NCAC	14	.0414	26:18 NCR
<u>Standard Questions for Applicant Insurance Co.</u>	11	NCAC	14	.0418	26:18 NCR
<u>Marketing Questions for Applicant Life Insurance Co.</u>	11	NCAC	14	.0419	26:18 NCR
<u>Marketing Questions for Applicant Fire/Casualty Insurance...</u>	11	NCAC	14	.0420	26:18 NCR

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**APPROVED RULES**

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<u>Unconditional Guaranty</u>	11	NCAC	14	.0421	26:18 NCR
<u>Corporate Resolution of Guarantor</u>	11	NCAC	14	.0422	26:18 NCR
<u>Eligibility Requirements for Surplus Lines Insurance Co.</u>	11	NCAC	14	.0423	26:18 NCR
<u>Filing Requirements for Surplus Lines Insurance Co.</u>	11	NCAC	14	.0424	26:18 NCR
<u>Bulletin 87-L-7</u>	11	NCAC	14	.0425	26:18 NCR
<u>Bulletin 87-L-6</u>	11	NCAC	14	.0426	26:18 NCR
<u>Application for License: Insurance Company</u>	11	NCAC	14	.0432	26:18 NCR
<u>Application Forms</u>	11	NCAC	14	.0501	26:18 NCR

**PRIVATE PROTECTIVE SERVICES BOARD**

<u>Location</u>	12	NCAC	07D	.0102*	n/a G.S. 150B-21.5(4)
<u>Disciplinary Actions</u>	12	NCAC	07D	.0107*	26:14 NCR

**ENVIRONMENTAL MANAGEMENT COMMISSION**

<u>Neuse River Basin</u>	15A	NCAC	02B	.0315*	26:10 NCR
<u>Prevention of Significant Deterioration Requirements for ...</u>	15A	NCAC	02D	.0544*	26:15 NCR

**WILDLIFE RESOURCES COMMISSION**

<u>Big Game Kill Reports</u>	15A	NCAC	10B	.0113*	26:16 NCR
<u>Permitted Archery Equipment</u>	15A	NCAC	10B	.0116	26:16 NCR
<u>Carteret County</u>	15A	NCAC	10F	.0330	26:16 NCR

**PUBLIC HEALTH, COMMISSION FOR**

<u>Definitions</u>	15A	NCAC	18A	.2601	26:18 NCR
<u>Permits</u>	15A	NCAC	18A	.2602	26:18 NCR
<u>Public Display of Grade Card</u>	15A	NCAC	18A	.2603	26:18 NCR
<u>Inspections and Reinspections</u>	15A	NCAC	18A	.2604	26:18 NCR
<u>Grading</u>	15A	NCAC	18A	.2606	26:18 NCR
<u>Standards and Approval of Plans</u>	15A	NCAC	18A	.2607	26:18 NCR
<u>Barbecue Places</u>	15A	NCAC	18A	.2613	26:18 NCR
<u>Outdoor Living</u>	15A	NCAC	18A	.2614	26:18 NCR
<u>Milk and Milk Products</u>	15A	NCAC	18A	.2615	26:18 NCR
<u>Requirements for Employees</u>	15A	NCAC	18A	.2616	26:18 NCR
<u>Utensils and Equipment</u>	15A	NCAC	18A	.2617	26:18 NCR
<u>Cleaning of Equipment and Utensils</u>	15A	NCAC	18A	.2618	26:18 NCR
<u>Methods of Bactericidal Treatment</u>	15A	NCAC	18A	.2619	26:18 NCR
<u>Storage and Handling of Utensils and Equipment</u>	15A	NCAC	18A	.2620	26:18 NCR
<u>Drinking Water Fountains</u>	15A	NCAC	18A	.2621	26:18 NCR
<u>Storage Handling and Use of Ice</u>	15A	NCAC	18A	.2622	26:18 NCR
<u>Water Supply</u>	15A	NCAC	18A	.2623	26:18 NCR
<u>Toilet Facilities</u>	15A	NCAC	18A	.2624	26:18 NCR
<u>Lavatory Facilities</u>	15A	NCAC	18A	.2625	26:18 NCR
<u>Disposal of Wastes and By-Products</u>	15A	NCAC	18A	.2626	26:18 NCR
<u>Floors</u>	15A	NCAC	18A	.2627	26:18 NCR
<u>Walls and Ceilings</u>	15A	NCAC	18A	.2628	26:18 NCR

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**APPROVED RULES**

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<u>Lighting</u>	15A NCAC	18A .2630	26:18 NCR
<u>Ventilation</u>	15A NCAC	18A .2631	26:18 NCR
<u>Storage Spaces</u>	15A NCAC	18A .2632	26:18 NCR
<u>Premises: Miscellaneous Vermin Control</u>	15A NCAC	18A .2633	26:18 NCR
<u>Requirements for Food Stands</u>	15A NCAC	18A .2634	26:18 NCR
<u>Requirements for Temporary Food Establishments</u>	15A NCAC	18A .2635	26:18 NCR
<u>Employees Cook Tents</u>	15A NCAC	18A .2637	26:18 NCR
<u>General Requirements for Pushcarts and Mobile Food Units</u>	15A NCAC	18A .2638	26:18 NCR
<u>Specific Requirements for Pushcarts</u>	15A NCAC	18A .2639	26:18 NCR
<u>Specific Requirements for Mobile Food Units</u>	15A NCAC	18A .2640	26:18 NCR
<u>Procedure When Infection Suspected</u>	15A NCAC	18A .2641	26:18 NCR
<u>Severability</u>	15A NCAC	18A .2642	26:18 NCR
<u>Informal Review Process and Appeals Procedure</u>	15A NCAC	18A .2643	26:18 NCR
<u>Requirements for Catered Elderly Nutrition Sites</u>	15A NCAC	18A .2644	26:18 NCR
<u>Requirements for Limited Food Service Establishments</u>	15A NCAC	18A .2645	26:18 NCR
<u>General - Adoption by Reference</u>	15A NCAC	18A .2650	26:18 NCR
<u>Definitions</u>	15A NCAC	18A .2651*	26:18 NCR
<u>Management and Personnel</u>	15A NCAC	18A .2652*	26:18 NCR
<u>Equipment, Utensils, and Linens</u>	15A NCAC	18A .2654*	26:18 NCR
<u>Water, Plumbing, and Waste</u>	15A NCAC	18A .2655	26:18 NCR
<u>Physical Facilities</u>	15A NCAC	18A .2656*	26:18 NCR
<u>Poisonous or Toxic Materials</u>	15A NCAC	18A .2657*	26:18 NCR
<u>Compliance and Enforcement</u>	15A NCAC	18A .2658*	26:18 NCR
<u>Permits</u>	15A NCAC	18A .2659*	26:18 NCR
<u>Public Display of Grade Cards</u>	15A NCAC	18A .2660	26:18 NCR
<u>Inspections and Reinspections</u>	15A NCAC	18A .2661*	26:18 NCR
<u>Grading</u>	15A NCAC	18A .2662*	26:18 NCR
<u>Outdoor Dining and Beverage Facilities</u>	15A NCAC	18A .2663*	26:18 NCR
<u>Supplemental Cooking Rooms</u>	15A NCAC	18A .2664	26:18 NCR
<u>Temporary Food Establishment and Temporary Food Establish...</u>	15A NCAC	18A .2665*	26:18 NCR
<u>Temporary Food Establishment Food Handling Requirements</u>	15A NCAC	18A .2666*	26:18 NCR
<u>Temporary Food Establishment Employee Requirements</u>	15A NCAC	18A .2667*	26:18 NCR
<u>Temporary Food Establishment Equipment and Utensil Requir...</u>	15A NCAC	18A .2668*	26:18 NCR
<u>Temporary Food Establishment Physical Requirements</u>	15A NCAC	18A .2669*	26:18 NCR
<u>General Requirements for Pushcarts and Mobile Food Units</u>	15A NCAC	18A .2670*	26:18 NCR
<u>Specific Requirements for Pushcarts</u>	15A NCAC	18A .2671	26:18 NCR
<u>Specific Requirements for Mobile Food Units</u>	15A NCAC	18A .2672*	26:18 NCR
<u>Congregate Nutrition Sites</u>	15A NCAC	18A .2673*	26:18 NCR
<u>Limited Food Establishments</u>	15A NCAC	18A .2674*	26:18 NCR
<u>Procedure When Infection Suspected</u>	15A NCAC	18A .2675*	26:18 NCR
<u>Informal Review Process and Appeals Procedure</u>	15A NCAC	18A .2676*	26:18 NCR

**ATHLETIC TRAINER EXAMINERS**

<u>Suspension of Authority and Escrow of Funds</u>	21	NCAC	03	.0202	26:17 NCR
<u>Armed Services Extension for Credential</u>	21	NCAC	03	.0310	26:17 NCR

**CHIROPRACTIC EXAMINERS, BOARD OF**

<u>Temporary Rules</u>	21	NCAC	10	.0405	26:16 NCR
<u>Notice of Hearing: Answer</u>	21	NCAC	10	.0603	26:16 NCR
<u>Location of Hearing</u>	21	NCAC	10	.0607	26:16 NCR
<u>Intervention</u>	21	NCAC	10	.0608	26:16 NCR
<u>Subpoenas</u>	21	NCAC	10	.0611	26:16 NCR
<u>Decision of Board</u>	21	NCAC	10	.0707	26:16 NCR

**NURSING, BOARD OF**

<u>Definitions</u>	21	NCAC	36	.0120*	26:17 NCR
<u>Issuance of a License by a Compact Party State</u>	21	NCAC	36	.0702*	26:17 NCR
<u>Limitations on Multistate Licensure Privilege</u>	21	NCAC	36	.0703	26:17 NCR

**STATE PERSONNEL COMMISSION**

<u>Settlements/Consent Agreements in Grievances, Contested C...</u>	25	NCAC	01B	.0436*	26:14 NCR
<u>Cross Hiring</u>	25	NCAC	01D	.0107	26:14 NCR
<u>Effective Date</u>	25	NCAC	01D	.0303*	26:14 NCR
<u>Salary Increases</u>	25	NCAC	01D	.0308*	26:14 NCR
<u>Effective Date</u>	25	NCAC	01D	.0403	26:14 NCR
<u>Effective Date</u>	25	NCAC	01D	.0605*	26:14 NCR
<u>Reallocation/Salary Rate</u>	25	NCAC	01D	.0611*	26:14 NCR
<u>Salary Rate</u>	25	NCAC	01D	.0808*	26:14 NCR
<u>Agency Responsibility</u>	25	NCAC	01D	.1205	26:14 NCR
<u>Types of Leave</u>	25	NCAC	01E	.0102	26:14 NCR

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

**WILDLIFE RESOURCES COMMISSION**

<u>Coyote</u>	15A	NCAC	10B	.0219*	26:16 NCR
<u>Feral Swine</u>	15A	NCAC	10B	.0223*	26:16 NCR

**TITLE 04 – DEPARTMENT OF COMMERCE**

**04 NCAC 01H .0501 PROCEDURES AND CRITERIA  
FOR ALLOCATION OF QUALIFIED ENERGY  
CONSERVATION BONDS**

(a) The North Carolina Tax Reform Allocation Committee (the "Committee") shall allocate Qualified Energy Conservation Bond ("QECB") capacity to entities eligible to issue the bonds under 26 U.S.C.S. 54D as follows:

(1) To "large local governments," as the term is used in 26 U.S.C.S. 54D(e)(2) in the amounts and manner as directed by the United States Internal Revenue Service ("IRS") in 26 U.S.C.S. 54D and all relevant implementing notices provided by the IRS (including IRS Notice 2009-29), as modified, amended or supplemented (as listed at <http://www.irs.gov/irb/2009-16irb/ar10.html#d0e3578>). For purposes of



calculating the populations of local governments to determine which constitutes a "large local government," the Committee shall use population estimates as of July 1, 2007, as directed by the IRS (as listed at <http://www.census.gov/popest/data/counties/totals/2009/CO-EST2009-01.html> and <http://www.census.gov/popest/data/cities/totals/2009/SUB-EST2009-4.html>).

- (2) To "Indian tribal governments," as the term is used in 26 U.S.C.S. 54D(h) in the amounts as directed by the IRS in 26 U.S.C.S. 54D and relevant implementing notices provided by the IRS (including IRS Notice 2009-29), as modified, amended or supplemented (as listed at <http://www.irs.gov/irb/2009-16irb/ar10.html#d0e3578>).

(b) Following the allocations described in Paragraph (a) of this Rule, the Committee shall allocate the remaining QECB capacity to other issuers. The allocation shall be made by the Committee upon completed application by an issuer, and after consideration of the following factors:

- (1) The ability of the State to ensure that at least 70 percent of the State's allocation is used for government projects, and no more than 30 percent for projects considered QECB private activity bonds under IRS rules, regulations and guidelines;
- (2) The extent to which the project constitutes an eligible conservation purpose under 26 U.S.C.S. 54D and all implementing notices provided by the IRS (including IRS Notice 2009-29), as may be modified, amended or supplemented;
- (3) The extent to which the project demonstrates the potential to conserve energy;
- (4) The extent to which the project supports the development or implementation of energy conservation technology;
- (5) The extent to which the project uses renewable resources to produce energy;
- (6) The number of citizens benefiting from the project;
- (7) The estimated number of jobs to be produced by the projects (for private activity allocations) and the amount of QECB authority per job produced;
- (8) The readiness of the project to proceed;
- (9) The certainty of the issuer using the allocation within the estimated timelines;
- (10) The amount of other public and private funding leveraged by the QECB allocation;
- (11) The amount of local community support for the project;
- (12) Whether the unit of local government is in competition with another state for project benefits such as jobs and tax base;

- (13) Whether the availability of the allocation is a crucial part of attracting a new company or keeping an existing company in place;
- (14) Whether the requested allocation will benefit a project for which an eligible issuer is already issuing QECBs;
- (15) The ability of the unit of local government or company benefiting from the QECB to obtain financing and close the issue in a timely manner, including demonstration of a commitment from a bank or other financial institution to purchase or underwrite the QECBs;
- (16) The total amount of capacity available to the Committee for allocation in relation to the total number of pending requests for allocation;
- (17) The tier status of the county in which the project is to be located, as defined in G.S. 143B-437.08; and
- (18) The geographic location of the project in light of the location of other projects benefitting from QECB capacity.

(c) If so required by G.S. Chapter 159 or G.S. 160A-20, local governments shall coordinate issuance of QECBs with and through the North Carolina Local Government Commission (the "LGC") in the Office of the North Carolina State Treasurer and shall obtain approval from the LGC for QECB issuance.

(d) Entities allocated QECB capacity by the Committee and entities who issue QECBs shall ensure compliance with all federal and state laws, rules, regulations and requirements applicable to the allocation or issue.

(e) Entities receiving an allocation under Paragraph (a) of this Rule ("large local governments" and "Indian tribal governments") may waive or reallocate to the State of North Carolina all or a portion of their allocation. Upon the State's receipt of any additional QECB capacity through any waiver or reallocation, the Committee shall allocate the capacity to eligible issuers in the manner described in Paragraph (b) of this Rule.

(f) To ensure timely use of any QECB allocation, the Committee shall attach to an allocation of capacity made under Paragraph (b) of this Rule contingencies relating to a time deadline for issuance of the QECBs pursuant to the allocated capacity and contingencies limiting the use of the allocated QECB capacity for public or private activity bonds.

*History Note: Authority G.S. 143-433.6(d); 143-433.8; 143-433.9(a); 150B-21.1B; S.L. 2009-140; S.L. 2009-475; Emergency Adoption Eff. July 15, 2011; Temporary Adoption Eff. September 8, 2011; Eff. July 1, 2012.*

#### **04 NCAC 01I .0101 BACKGROUND AND OBJECTIVES**

(a) BASIC - The purpose of the North Carolina Industrial Development Fund is to assist town, city or county governments with incentive industrial financing in areas of the state that have been designated as eligible tier areas by NC General Statutes. This assistance is intended to help units of government offer to

its new and expanding industry, new or improved infrastructure, or funds for building renovation and equipment in exchange for commitments to create new, full-time jobs in industries currently eligible under NC General Statutes. (The fund is not designed to be used for the acquisition of land and buildings or constructing new buildings.) If the assistance is used for infrastructure, it shall be granted to local governments with no repayment; however, if it is used to purchase equipment or to renovate industrial buildings, then the funds must be repaid. But whether a grant or a loan, the amount of funds to be made available for a project shall be determined by the number of new jobs committed, with a maximum job limit and project limit as currently authorized for the program by NC General Statutes.

(b) **EMERGENCY ECONOMIC DEVELOPMENT ASSISTANCE** - This special assistance from the Industrial Development Fund is available to units of government that have, or shall imminently experience, a loss of 500 or more manufacturing jobs in the county, or a number of manufacturing jobs equal to at least 10% of the manufacturing workforce in the county. Where a unit of government relies on the 500 jobs lost as the threshold for obtaining this special assistance, it must submit evidence that the loss impacts the county's economy, taking into account the county's tier ranking under Rule .0701 of this Subchapter. The funding obtainable under this emergency assistance category shall not necessarily be determined by the number of new jobs to be created, although the project should lead to new jobs or saved jobs or both and help alleviate a jobs dislocation problem. The Secretary shall determine the amount of funds for a project, up to the maximum currently authorized for the program by NC General Statutes. This assistance shall be in the form of a low interest loan to the governmental unit, amortized over five years with repayment beginning at the end of the second year.

(c) **UTILITY ACCOUNT** - Within the IDF structure, the Utility Account provides financing to units of government for jobs creation and investment in the tier area(s), and for benefiting firms currently authorized by NC General Statutes. Funds may be used for construction or improvements to water, sewer, gas, or electrical utility lines and equipment for existing or proposed industrial buildings. There is no specific amount of funding specified for each new job or project, but the impact of the funding shall lead to the creation of new jobs and new investment. As with basic IDF financing, if Utility Account funds are spent for public property, the assistance shall be a grant; for private property, it shall be a loan.

*History Note: Authority G.S. 143B-437.01;  
Temporary Rule Eff. November 16, 1987 for a Period of 180 Days to Expire on May 15, 1988;  
Eff. May 1, 1988;  
Temporary Amendment Eff. January 11, 1999;  
Codifier determined that agency findings did not meet criteria for temporary rule;  
Temporary Amendment Eff. October 6, 1999;  
Amended Eff. July 1, 2012; August 1, 2000.*

**04 NCAC 01J .0101 BACKGROUND AND OBJECTIVES**

**04 NCAC 01J .0102 DEFINITIONS**

*History Note: Authority G.S. 105-130.40(a),(b),(c), and (d); 105-151.17(a),(b),(c), and (d); Chapter 568, 1987 S.L.; Chapter 111 and 753, 1989 S.L.;  
Temporary Rule Eff. November 16, 1987 For a Period of 180 Days to Expire on May 15, 1988;  
Eff. May 1, 1988;  
Amended Eff. December 1, 1989;  
Repealed Eff. July 1, 2012.*

**04 NCAC 01J .0201 DESIGNATION OF SEVERLY DISTRESSED COUNTIES**

*History Note: Authority G.S. 105-130.40(c) and (d); 105-151.17(c) and (d); Chapter 568, 1987 S.L.; Chapter 111, 1989 S.L.;  
Temporary Rule Eff. November 16, 1987 For a Period of 180 Days to Expire on May 15, 1988;  
Eff. May 1, 1988;  
Amended Eff. March 1, 1991; December 1, 1989;  
Repealed Eff. July 1, 2012.*

**04 NCAC 01J .0301 LETTER OF COMMITMENT**

*History Note: Authority G.S. 105-130.40(c) and (d); 105-151.17(c) and (d); Chapter 568, 1987 S.L.;  
Temporary Rule Eff. November 16, 1987 For a Period of 180 Days to Expire on May 15, 1988;  
Eff. May 1, 1988;  
Amended Eff. December 1, 1989;  
Repealed Eff. July 1, 2012.*

**04 NCAC 01J .0401 SUBSTANTIATION OF CREDIT CLAIMED**

*History Note: Authority G.S. 105-130.40(f); 105-151.17(f); Chapter 111, 1989 S.L.;  
Eff. December 1, 1989;  
Repealed Eff. July 1, 2012.*

**04 NCAC 01J .0501 DETERMINATION OF ELIGIBILITY**

*History Note: Authority G.S. 105-130.40(b1); 105-151.17(b1); Chapter 753, 1989 S.L.;  
Eff. March 1, 1991;  
Repealed Eff. July 1, 2012.*

**04 NCAC 01K .0105 PROJECTS NOT TO BE CONSIDERED FOR FUNDING**

(a) Projects that have evidence of prior major financial commitment by the local government applicant or the proposed project shall not be eligible for CDBG assistance. After an operator or beneficiary becomes economically committed to a project, it shall not be eligible for funding and the unit of government shall not be eligible to request any funding

assistance to serve that project with utilities or CDBG loan assistance. "Economic commitment" is not a quantitative measure, but those types of prohibited situations shall include the following:

- (1) when construction contracts have been signed;
- (2) when equipment purchase orders for site specific installations have been issued;
- (3) when true, simple options for the purchase of an existing facility are bound with deposits that are so large that the option constitutes a sales contract; or
- (4) when conditions or contingencies in a contract of sale have all been met.

(b) Proposed projects that are specifically prohibited by current State and HUD rules due to lack of public benefit and potential failure to meet required program objectives shall not be eligible for CDBG assistance when the following occurs:

- (1) provide general, non-specific promotion of a community as a whole;
- (2) assist professional sports teams;
- (3) assist privately-owned recreational facilities that would serve a predominantly higher-income clientele, where such recreational benefit clearly outweighs employment or other benefits to LMI persons;
- (4) acquire land for which no specific purpose has yet been identified; or
- (5) assist a for-profit business while that business or any other business owned by the same person, persons or entity is the subject of unresolved findings of non-compliance relating to present or previous CDBG assistance provided by the applicant.

*History Note:* Authority G.S. 143B-431; 24 C.F.R. 570.489; 42 U.S.C.A. 5301;

*Temporary Adoption Eff.* July 20, 1992 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;

*Eff.* December 1, 1992;

*Amended Eff.* July 1, 2012; April 1, 1999.

**04 NCAC 01K .0202 PRE-APPLICATION  
CONFERENCE**

*History Note:* Authority G.S. 143B-431; 24 C.F.R. 570.489; 24 C.F.R. 570.496;

*Temporary Adoption Eff.* July 20, 1992 for a period of 180 days or until the Permanent rule becomes effective, whichever is sooner;

*Eff.* December 1, 1992;

*Amended Eff.* April 1, 1999;

*Repealed Eff.* July 1, 2012.

**04 NCAC 01K .0204 DISCRETIONARY PUBLIC  
HEARING BY THE DEPARTMENT**

*History Note:* Authority G.S. 143B-431; 42 U.S.C.A. 5301;

*Temporary Adoption Eff.* July 20, 1992 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;

*Eff.* December 29, 1992;

*Amended Eff.* April 1, 1999;

*Repealed Eff.* July 1, 2012.

**04 NCAC 01K .0207 REIMBURSEMENT OF  
DEPARTMENT EXPENSE**

*History Note:* Authority G.S. 143B-431; 24 C.F.R. 570-489;

*Eff.* December 29, 1992;

*Repealed Eff.* July 1, 2012.

**04 NCAC 14B .0109 PURPOSE  
04 NCAC 14B .0110 INITIAL CONTACT  
04 NCAC 14B .0111 STAFF PRESENTATION  
04 NCAC 14B .0112 ENTRY FORM  
04 NCAC 14B .0113 STATUS REPORT  
04 NCAC 14B .0114 INSPECTION  
04 NCAC 14B .0115 AGENCY DECISION  
04 NCAC 14B .0116 GOVERNOR'S COMMUNITY OF  
EXCELLENCE PLAQUE**

*History Note:* Authority G.S. 143B-432; 143B-10(j);

*Eff.* November 26, 1979;

*Amended Eff.* December 10, 1980 (Rule .0111, .0112, .0114, .0116);

*Repealed Eff.* July 1, 2012.

**04 NCAC 14B .0211 MAXIMUM SIZE OF  
COMMUNITY  
04 NCAC 14B .0212 SPONSORING ORGANIZATION  
04 NCAC 14B .0213 COMMUNITY PROFILE  
04 NCAC 14B .0214 INDUSTRIAL SITES  
04 NCAC 14B .0215 PROMOTION MATERIALS  
04 NCAC 14B .0216 EXISTING INDUSTRY  
COMMITTEE  
04 NCAC 14B .0217 COMMUNITY PLANNING  
REQUIREMENT  
04 NCAC 14B .0218 LIVABILITY REQUIREMENT:  
CLEANUP-FIXUP  
04 NCAC 14B .0219 RECREATION  
04 NCAC 14B .0220 DEVELOPMENT TEAM  
REQUIREMENT**

*History Note:* Authority G.S. 143B-432; 143B-10(j);

*Eff.* November 26, 1979;

*Amended Eff.* December 10, 1980 (Rule .0214, .0215, .0216, .0219);

*Repealed Eff.* July 1, 2012.

**04 NCAC 19L .1301 DESCRIPTION  
04 NCAC 19L .1302 ELIGIBILITY REQUIREMENTS  
04 NCAC 19L .1303 SELECTION CRITERIA**

*History Note:* Authority G.S. 143B-10; 143B-431; 24 C.F.R. 570.482; 24 C.F.R. 570.483; 24 C.F.R. 570.489;

*Eff.* March 1, 1986;

*Amended Eff. August 1, 1998; June 1, 1994 (Rule .1302, .1303); June 1, 1993 (Rule .1302, .1303); May 1, 1992 (Rule .1301); September 1, 1990 (Rule .1302); April 1, 1990 (Rule .1302, .1303);*  
*Repealed Eff. July 1, 2012.*

**04 NCAC 20B .0402      FEDERAL PERSONNEL STANDARDS**

**04 NCAC 20B .0403      STATE PERSONNEL STANDARDS FOR SUBRECIPIENTS**

*History Note:    Authority G.S. 115C, Subchapter V (Rule .0403); 126-1 (Rule .0403); 143-16; 143-16.1; 143-341; 143B-430(b); 5 C.F.R. 900, Subpart F (Rule .0402); 20 C.F.R. 629.1 (Rule .0402);*  
*Eff. February 1, 1976;*  
*Transferred from T01: 18 Eff. September 15, 1981;*  
*Amended Eff. October 1, 1984; August 1, 1982;*  
*Repealed Eff. July 1, 2012.*

**04 NCAC 20B .0901      PURPOSE**

**04 NCAC 20B .0902      GRANT APPLICATIONS**

*History Note:    Authority G.S. 143B-438.6;*  
*Filed as a Temporary Adoption Eff. July 25, 1991 for a period of 180 days to expire on January 21, 1992;*  
*Eff. December 1, 1991;*  
*Repealed Eff. July 1, 2012.*

**04 NCAC 20B .0904      COORDINATION WITH OTHER EMPLOYMENT AND TRAINING FUNDS**

*History Note:    Authority G.S. 143B-438.6;*  
*Temporary Adoption Eff. July 25, 1991 for a period of 180 days to expire on January 21, 1992;*  
*Eff. December 1, 1991;*  
*Repealed Eff. July 1, 2012.*

**04 NCAC 20B .0906      USE OF FUNDS**

**04 NCAC 20B .0907      COST LIMITATIONS/CATEGORIES**

*History Note:    Authority G.S. 143B-438.6;*  
*Temporary Adoption Eff. July 25, 1991 for a period of 180 days to expire on January 21, 1992;*  
*ARRC Objection Lodged August 22, 1991 (Rule .0907);*  
*Eff. December 1, 1991;*  
*Repealed Eff. July 1, 2012.*

**04 NCAC 20B .0909      PERFORMANCE STANDARDS**

**04 NCAC 20B .0910      MONITORING/OVERSIGHT**

**04 NCAC 20B .0911      FUND AVAILABILITY/REDISTRIBUTION**

*History Note:    Authority G.S. 143B-438.6;*  
*Temporary Adoption Eff. July 25, 1991 for a period of 180 days to expire on January 21, 1992;*  
*ARRC Objection Lodged August 22, 1991 (Rule .0909, .0911);*  
*Eff. December 1, 1991;*

*Repealed Eff. July 1, 2012.*

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

**10A NCAC 09 .0102      DEFINITIONS**

The terms and phrases used in this Chapter are defined as follows except when the content of the rule requires a different meaning. The definitions prescribed in G.S. 110-86 also apply to these Rules.

- (1) "Agency" as used in Section .2200 of this Chapter, means Division of Child Development, Department of Health and Human Services located at 319 Chapanoke Road, Suite 120, Raleigh, North Carolina 27603.
- (2) Appellant" means the person or persons who request a contested case hearing.
- (3) Basic School-Age Care" training (BSAC training) means the training on the elements of quality afterschool care for school-age children, developed by the North Carolina State University Department of 4-H Youth Development and subsequently revised by the North Carolina School-age Quality Improvement Project. Other training shall be approved if the Division determines that the content of the training offered is substantially equivalent to the BSAC training.
- (4) "Child Care Program" means a single center or home, or a group of centers or homes or both, which are operated by one owner or supervised by a common entity.
- (5) "Child care provider" as defined by G.S. 110-90.2 (a) (2) a. and used in Section .2700 of this Chapter, includes the following employees who have contact with the children in a child care program: facility directors, administrative staff, teachers, teachers' aides, cooks, maintenance personnel, and drivers.
- (6) "Child Development Associate Credential" means the national early childhood credential administered by the Council for Early Childhood Professional Recognition.
- (7) "Developmentally appropriate" means suitable to the chronological age range and developmental characteristics of a specific group of children.
- (8) "Division" means the Division of Child Development within the Department of Health and Human Services.
- (9) "Drop-in care" means a child care arrangement where children attend on an intermittent, unscheduled basis.
- (10) "Early Childhood Environment Rating Scale - Revised Edition" (Harms, Clifford, and Cryer, 2005, published by Teachers College Press,

- New York, NY) is the instrument used to evaluate the quality of care received by a group of children in a child care center, when the majority of children in the group are two and a half years old through five years old, to achieve three or more points for the program standards of a rated license. This instrument is incorporated by reference and includes subsequent editions. Individuals wishing to purchase a copy may call Teachers College Press at 1-800-575-6566. The cost of this scale in May 2010 is nineteen dollars and ninety-five cents (\$19.95). A copy of this instrument is on file at the Division at the address given in Item (1) of this Rule and is available for public inspection during regular business hours.
- (11) "Family Child Care Environment Rating Scale – Revised Edition" (Harms, Cryer and Clifford, 2007, published by Teachers College Press, New York, NY) is the instrument used to evaluate the quality of care received by children in family child care homes to achieve three or more points for the program standards of a rated license. This instrument is incorporated by reference and includes subsequent editions. Individuals wishing to purchase a copy may call Teachers College Press at 1-800-575-6566. The cost of this scale in May 2010 is nineteen dollars and ninety-five cents (\$19.95). A copy of this instrument is on file at the Division at the address given in Item (1) of this Rule and is available for public inspection during regular business hours.
- (12) "First aid kit" is a collection of first aid supplies (such as bandages, tweezers, disposable nonporous gloves, micro shield or face mask, liquid soap, cold pack) for treatment of minor injuries or stabilization of major injuries.
- (13) "Group" means the children assigned to a specific caregiver or caregivers, to meet the staff/child ratios set forth in G.S. 110-91(7) and this Chapter, using space which is identifiable for each group.
- (14) "Health care professional" means:
- (a) a physician licensed in North Carolina;
  - (b) a nurse practitioner approved to practice in North Carolina; or
  - (c) a licensed physician assistant.
- (15) "Household member" means a person who resides in a family home as evidenced by factors including, maintaining clothing and personal effects at the household address, receiving mail at the household address, using identification with the household address, or eating and sleeping at the household address on a regular basis.
- (16) "If weather conditions permit" means:
- (a) temperatures that fall within the guidelines developed by the Iowa Department of Public Health and specified on the Child Care Weather Watch chart. These guidelines shall be used when determining appropriate weather conditions for taking children outside for outdoor learning activities and playtime. This chart may be downloaded free of charge from <http://www.idph.state.ia.us/hcci/common/pdf/weatherwatch.pdf>, and is incorporated by reference and includes subsequent editions and amendments;
  - (b) healthy air quality as forecast by the Department of Environment and Natural Resources' Air Quality Forecasts and Information web page. The Air Quality Color Guide can be found on the Division's web site at <http://xapps.enr.state.nc.us/aq/ForecastCenter> or call 1-888-RU4NCAIR (1-888-784-6224); and
  - (c) no active precipitation. Caregivers may choose to go outdoors when there is active precipitation if children have appropriate clothing such as rain boots and rain coats, or if they are under a covered area.
- (17) "Infant/Toddler Environment Rating Scale - Revised Edition" (Harms, Cryer, and Clifford, 2003, published by Teachers College Press, New York, NY) is the instrument used to evaluate the quality of care received by a group of children in a child care center, when the majority of children in the group are younger than thirty months old, to achieve three or more points for the program standards of a rated license. This instrument is incorporated by reference and includes subsequent editions. Individuals wishing to purchase a copy may call Teachers College Press at 1-800-575-6566. The cost of this scale in May 2010 is nineteen dollars and ninety-five cents (\$19.95). A copy of this instrument is on file at the Division at the address given in Item (1) of this Rule and is available for public inspection during regular business hours.
- (18) "ITS-SIDS Training" means the Infant/Toddler Safe Sleep and SIDS Risk Reduction Training developed by the NC Healthy Start Foundation for the Division of Child Development for

- caregivers of children ages 12 months and younger.
- (19) "Licensee" means the person or entity that is granted permission by the State of North Carolina to operate a child care facility. The owner of a facility is the licensee.
- (20) "North Carolina Early Childhood Credential" means the state early childhood credential that is based on completion of coursework and standards found in the North Carolina Early Childhood Instructor Manual (published by the NC Community College System Office). A copy of the North Carolina Early Childhood Credential requirements is on file at the Division at the address given in Item (1) of this Rule and is available for public inspection or copying at no charge during regular business hours.
- (21) "Owner" means any person with a five percent or greater equity interest in a child care facility, however, stockholders of corporations who own child care facilities are not subject to mandatory criminal history checks pursuant to G.S. 110-90.2 and G.S. 110-91(8) unless they are a child care provider.
- (22) "Parent" means a child's parent, legal guardian, or full-time custodian.
- (23) "Part-time care" means a child care arrangement where children attend on a regular schedule but less than a full-time basis.
- (24) "Passageway" means a hall or corridor.
- (25) "Person" means any individual, trust, estate, partnership, corporation, joint stock company, consortium, or any other group, entity, organization, or association.
- (26) "Preschooler" or "preschool-age child" means any child who does not fit the definition of school-age child in this Rule.
- (27) "School-Age Care Environment Rating Scale" (Harms, Jacobs, and White, 1996, published by Teachers College Press) is the instrument used to evaluate the quality of care received by a group of children in a child care center, when the majority of the children in the group are older than five years, to achieve three or more points for the program standards of a rated license. This instrument is incorporated by reference and includes subsequent editions. Individuals wishing to purchase a copy may call Teachers College Press at 1-800-575-6566. The cost of this scale in May 2010 is nineteen dollars and ninety-five cents (\$19.95). A copy of this instrument is on file at the Division at the address given in Item (1) of this Rule and is available for public inspection during regular business hours.
- (28) "School-age child" means any child who is attending or who has attended, a public or private grade school or kindergarten and meets

age requirements as specified in G.S. 115C-364.

- (29) "Seasonal Program" means a recreational program as set forth in G.S. 110-86(2)(b).
- (30) "Section" means Division of Child Development.
- (31) "Substitute" means any person who temporarily assumes the duties of a staff person for a time period not to exceed two consecutive months.
- (32) "Track-Out Program" means any child care provided to school-age children when they are out of school on a year-round school calendar.
- (33) "Volunteer" means a person who works in a child care facility and is not monetarily compensated by the facility.

*History Note: Authority G.S. 110-85; 110-88; 143B-168.3; Eff. January 1, 1986; Amended Eff. April 1, 1992; October 1, 1991; October 1, 1990; November 1, 1989; Temporary Amendment Eff. January 1, 1996; Amended Eff. July 1, 2012; November 1, 2007; May 1, 2006; May 1, 2004; April 1, 2003; July 1, 2000; April 1, 1999; July 1, 1998; April 1, 1997.*

#### **10A NCAC 09 .0714 OTHER STAFFING REQUIREMENTS**

(a) Each child care center shall have an administrator on site on a regular basis. The administrator shall be responsible for monitoring the program and overseeing administrative duties of the center. This requirement may be met by having one or more persons on site who meet the requirements for an administrator according to the licensed capacity of the center. The following hourly requirements are based on an administrator's normal working schedule and may include times when the administrator may be off site due to administrative duties, illness, or vacation.

- (1) Each center with a licensed capacity of less than 30 children shall have an administrator on site for at least 20 hours per week.
- (2) Each center with a licensed capacity of 30 to 79 children shall have an administrator on site for at least 25 hours per week.
- (3) Each center with a licensed capacity of 80 to 199 children shall have an administrator on site for at least 30 hours per week.
- (4) Each center with a licensed capacity of 200 or more children shall have an administrator on site for at least 40 hours per week.

(b) At least one person who meets the requirements for an administrator or lead teacher as set forth in this Section shall be on site during the center's operating hours except that a person who is at least 18 years old with at least a high school diploma or its equivalent and who has a minimum of one year's experience working with children in a child care center may be on duty at the beginning or end of the operating day provided that:

- (1) No more than 10 children are present.

- (2) The staff person has worked in that center for at least three months.
- (3) The staff person knows and can apply the center's operating policies and emergency procedures.

(c) At least one person who meets the requirements for a lead teacher shall be responsible for each group of children as defined in Rule .0102 of this Chapter except as provided in Paragraph (b) of this Rule. This requirement may be met by having one or more persons who meet the requirements for a lead teacher responsible for the same group of children. Each lead teacher shall be responsible for only one group of children at a time. Each group of children shall have a lead teacher in attendance for at least two-thirds of the total daily hours of operation, based on a normal working schedule and may include times when the lead teacher may not be in attendance due to circumstances such as illness or vacation.

(d) A teacher is a person who is responsible to the lead teacher and assists with planning and implementing the daily program.

(e) No aide or aides shall have responsibility for a group of children except as provided in Paragraph (b) of this Rule.

(f) Children shall be adequately supervised at all times. Adequate supervision shall mean that:

- (1) Staff must be positioned in the indoor and outdoor environment to maximize their ability to hear or see the children at all times and render immediate assistance;
- (2) Staff must interact with the children while moving about the indoor or outdoor area;
- (3) Staff must know where each child is located and be aware of children's activities at all times;
- (4) Staff must provide supervision appropriate to the individual age, needs and capabilities of each child; and
- (5) All of the conditions in this Paragraph shall apply except when emergencies necessitate that direct supervision is impossible for brief periods of time. Documentation of emergencies shall be maintained and available for review by Division representatives upon request.

(g) Nothing contained in this Rule shall be construed to preclude a "qualified person with a disability," as defined by G.S. 168A-3(9), or a "qualified individual with a disability," as defined by the Americans With Disabilities Act at 42 U.S.C. 12111(8), from working in a licensed child care facility.

(h) For groups of children aged two years or older, the staff/child ratio during nap time is considered in compliance if at least one person is either in each room or is visually supervising all the children and if the total number of required staff are on the premises and within calling distance of the rooms occupied by children.

(i) When a child is sleeping, bedding or other objects shall not be placed in a manner that covers the child's face.

*History Note: Authority G.S. 110-85(1); 110-91(7),(8); 143B-168.3; Eff. July 1, 1988;*

*Amended Eff. July 1, 2012; May 1, 2004; July 1, 1998; January 1, 1996; October 1, 1991; November 1, 1989.*

<b>10A NCAC 09 .1501</b>	<b>SCOPE</b>
<b>10A NCAC 09 .1502</b>	<b>MEDICAL EXAMINATION</b>
<b>10A NCAC 09 .1503</b>	<b>BEDS, COTS, MATS AND LINENS</b>
<b>10A NCAC 09 .1504</b>	<b>ATTENDANCE RECORDS</b>

*History Note: Authority G.S. 110-91; 143B-168.3; Eff. January 1, 1986; Amended Eff. November 1, 1989; Repealed Eff. July 1, 2012.*

**10A NCAC 09 .1506 OUTDOOR PLAY AREA**

*History Note: Authority G.S. 110-91; 143B-168.3; Eff. January 1, 1986; Amended Eff. November 1, 1989; Repealed Eff. July 1, 2012.*

**10A NCAC 09 .2904 PROGRAM REQUIREMENTS**

(a) Children shall participate in daily activities outlined in a plan of care such as an Individualized Family Service Plan (IFSP), Individualized Education Program (IEP), Person Centered Plan (PCP), or for children who are typically developing, an activity plan developed by the center. Activities shall allow children to participate in whole group, as part of a group, or independently.

(b) In addition to the restrictions specified in 10A NCAC 09 .0713 regarding ages and grouping of children, preschool children aged three and older shall not be grouped with school aged children except for special events or activities such as birthday, holiday, or cultural celebrations and special presentations such as puppet or magic shows, a special story teller, or a discussion of safety practices by a fireman or nurse. Children aged birth to five years may be cared for in groups with older children for the first and last operating hour of the day provided the staff/child ratio for the youngest child in the group is maintained.

(c) In addition to operational policies required by 10A NCAC 09 .2805(a), Developmental Day Center policies shall also include a description of the ways that children with special needs have opportunities for inclusion with children who are typically developing.

*History Note: Authority G.S. 110-85; 110-88(14); Eff. July 1, 2010; Amended Eff. July 1, 2012.*

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**10A NCAC 13D .2101 APPLICATION REQUIREMENTS**

(a) A legal entity shall submit an application for licensure for a new facility to the Nursing Home Licensure and Certification Section of the Division of Health Service Regulation at least 30 days prior to a license being issued or patients admitted.

(b) The application shall contain the following:

- (1) legal identity of applicant (licensee) and mailing address;
- (2) name or names under which the facility is presented to the public;
- (3) location and mailing address of facility;
- (4) ownership disclosure;
- (5) bed complement;
- (6) magnitude and scope of services offered;
- (7) name and current license number of the administrator;
- (8) name and current license number of the director of nursing; and
- (9) name and current license number of the medical director.

*History Note:* Authority G.S. 131E-104; 131E-102;  
*Eff. January 1, 1996;*  
*Amended Eff. July 1, 2012.*

**10A NCAC 13D .2110 PUBLIC ACCESS TO  
 DEPARTMENT LICENSURE RECORDS**

*History Note:* Authority G.S. 8-53; 108A-80; 131E-104;  
 131E-124(c); 132-1.1;  
*Eff. January 1, 1996;*  
*Repealed Eff. July 1, 2012.*

**10A NCAC 13D .2209 INFECTION CONTROL**

- (a) A facility shall establish and maintain an infection control program for the purpose of providing a safe, clean and comfortable environment and preventing the transmission of diseases and infection.
- (b) Under the infection control program, the facility shall decide what procedures, such as isolation techniques, are needed for individual patients, investigate episodes of infection and attempt to control and prevent infections in the facility.
- (c) The facility shall maintain records of infections and of the corrective actions taken.
- (d) The facility shall ensure communicable disease testing as required by 10A NCAC 41A, "Communicable Disease Control" which is incorporated by reference, including subsequent amendments. Copies of these Rules may be obtained at no charge by contacting the N.C. Department of Health and Human Services, Division of Public Health, Tuberculosis Control Branch, 1902 Mail Service Center, Raleigh, North Carolina 27699-1902. Screening shall be done upon admission of all patients being admitted from settings other than hospitals, nursing facilities or combination facilities. Staff shall be screened within seven days of the hire date. The facility shall ensure tuberculosis screening annually thereafter for patients and staff.
- (e) All cases of reportable disease as defined by 10A NCAC 41A "Communicable Disease Control" and outbreaks consisting of two or more linked cases of disease transmission shall be reported to the local health department.
- (f) The facility shall use isolation precautions for any patient deemed appropriate by its infection control program and as recommended by the following Centers for Disease Control guidelines, Management of Multidrug-Resistant Organisms In

- Healthcare Settings, 2006,  
<http://www.cdc.gov/ncidod/dhqp/pdf/ar/MDROGuideline2006.pdf> and 2007 Guideline for Isolation Precautions: Preventing Transmission of Infectious Agents in Healthcare Settings, <http://www.cdc.gov/hicpac/2007ip/2007isolationprecautions.html>.
- (g) The facility shall prohibit any employee with a communicable disease or infected skin lesion from direct contact with patients or their food, if direct contact is the mode of transmission of the disease.
  - (h) The facility shall require all staff to use hand washing technique as indicated in the Centers for Disease Control, "Guideline for Hand Hygiene in Health-Care Settings, Recommendations of the Healthcare Infection Control Practices Advisory Committee and the HICPAC/SHEA/APIC/IDSA Hand Hygiene Task Force". This information can be accessed at <http://www.cdc.gov/mmwr/preview/mmwrhtml/rr5116a1.htm>.
  - (i) All linen shall be handled, store, processed and transported so as to prevent the spread of infection.

*History Note:* Authority G.S. 131E-104; 131E-113;  
*Eff. January 1, 1996;*  
*Amended Eff. July 1, 2012.*

**10A NCAC 13D .2304 NURSE AIDES**

- (a) A facility shall employ or contract individuals as nurse aides in compliance with N.C. General Statute 131E, Article 15 and facilities certified for Medicare or Medicaid participation shall also comply with 42 CFR Part 483 which is incorporated by reference, including subsequent amendments. The Code of Federal Regulations may be accessed at [http://www.access.gpo.gov/nara/cfr/waisidx\\_08/42cfr483\\_08](http://www.access.gpo.gov/nara/cfr/waisidx_08/42cfr483_08).
- (b) A facility shall provide to the Department, upon request, verification of in-service training and of past or present employment of any nurse aide employed by the facility.

*History Note:* Authority G.S. 131E-104; 131E-255;  
 143B-165; 42 U.S.C. 1395; 42 U.S.C. 1396;  
*Eff. January 1, 1996;*  
*Amended Eff. July 1, 2012.*

**10A NCAC 13D .2308 ADULT CARE HOME  
 PERSONNEL REQUIREMENTS**

- (a) The administrator of a combination home shall designate a person to be in charge of the adult care home residents at all times. The nurse-in-charge of the nursing facility may also serve as supervisor-in-charge of the domiciliary beds.
- (b) If adult care home beds are located in a separate building or a separate level of the same building, there shall be a person on duty in the adult care home portion of the facility at all times.

*History Note:* Authority G.S. 131E-104;  
*RRC Objection due to lack of statutory authority Eff. July 13, 1995;*  
*Eff. January 1, 1996;*  
*Amended Eff. July 1, 2012.*



**10A NCAC 13D .2605 DRUG STORAGE AND DISPOSITION**

(a) A facility shall ensure that drug storage areas are clean, secure, well lighted and well ventilated; that room temperature is maintained between 59 degrees F. and 86 degrees F.; and that the following conditions are met:

- (1) All drugs shall be maintained under locked security except when under the direct physical supervision of a nurse or pharmacist.
- (2) Drugs requiring refrigeration shall be stored in a refrigerator containing a thermometer and capable of maintaining a temperature range of 2 degrees C. to 8 degrees C. (36 degrees F. to 46 degrees F.) Drug containers must be placed in another container separate from non-drug items when stored in a refrigerator.
- (3) Drugs intended for topical use, except for ophthalmic, otic and transdermal medications, shall be stored in an area separate from the drugs intended for oral and injectable use.
- (4) Drugs that are outdated, discontinued or deteriorated shall be removed from the facility within five days.

(b) Upon discontinuation of a drug or upon discharge of a patient, the remainder of the drug supply shall be disposed of according to the facility's policy. If it is reasonably expected that the patient will return to the facility and that the drug therapy will be resumed, the remaining drug supply may be held for not more than 30 calendar days after the date of discharge or discontinuation.

(c) The disposition of drugs shall be in accordance with written policies and procedures established by the Quality Assurance Committee.

(d) Destruction of controlled substances shall be in compliance with Disposal of Unused Controlled Substances From Nursing Home as described in 10A NCAC 26E .0406, which is hereby incorporated by reference including subsequent amendments. These Rules can be accessed online at <http://reports.oah.state.nc.us/ncac.asp>.

*History Note: Authority G.S. 131E-104; 131E-117;  
RRC objection due to lack of statutory authority Eff. July 13, 1995;  
Eff. January 1, 1996;  
Amended Eff. July 1, 2012.*

**10A NCAC 13D .2606 PHARMACEUTICAL RECORDS**

(a) A facility shall ensure that accurate records of the receipt, use and disposition of drugs are maintained and readily available.

(b) A facility shall ensure accountability of controlled substances as defined by the Disposal of Unused Controlled Substances From Nursing Home as described in 10A NCAC 26E .0406, which is hereby incorporated by reference including subsequent amendments. These Rules can be accessed online at <http://reports.oah.state.nc.us/ncac.asp>.

*History Note: Authority G.S. 131E-104; 131E-117;*

*RRC objection due to lack of statutory authority Eff. July 13, 1995;*

*Eff. January 1, 1996;*

*Amended Eff. July 1, 2012.*

**10A NCAC 13D .2607 EMERGENCY DRUGS**

(a) A facility shall maintain a supply of emergency drugs in compliance with 10A NCAC 26E .0408 which is hereby incorporated by reference including subsequent amendments. This Rule can be accessed online at <http://reports.oah.state.nc.us/ncac.asp>.

(b) Emergency drugs shall be stored in a portable container sealed with an easily breakable closure which cannot be resealed or reused and shall be readily accessible for use.

(c) Emergency drug kits shall be stored in a locked storage cabinet or room out of sight of patients and the general public. If stored in a locked area the kits shall be accessible to all licensed nursing personnel.

(d) All emergency drugs and quantity to be maintained shall be approved by the Quality Assurance Committee as defined in 10A NCAC 13D .2212.

(e) If emergency drug items require refrigerated storage, they shall be stored in a separate sealed container within the medication refrigerator. The container shall be labeled to indicate the emergency status of the enclosed drug and sealed as indicated in Paragraph (b) of this Rule.

(f) An accurate inventory of emergency drugs and supplies shall be maintained with each emergency drug kit.

(g) A facility shall examine the refrigerated and non-refrigerated emergency drug supply at least every 90 days and make any necessary changes at that time.

(h) The facility shall have written policies and procedures which are enforced to ensure that in the event the sealed emergency drug container is opened and contents utilized, steps are taken to replace the items used.

(i) The availability of a controlled substance in an emergency kit shall be in compliance with the North Carolina Controlled Substances Act and Regulations (10A NCAC 26E) which is hereby incorporated by reference including subsequent amendments. These Rules can be accessed online at <http://reports.oah.state.nc.us/ncac.asp>.

*History Note: Authority G.S. 131E-104; 131E-117;  
RRC objection due to lack of statutory authority Eff. July 13, 1995;  
Eff. January 1, 1996;  
Amended Eff. July 1, 2012.*

**10A NCAC 13P .0221 PATIENT TRANSPORTATION BETWEEN HOSPITALS**

(a) For the purpose of this Rule, hospital means those facilities as defined in Rule .0102(30) of this Subchapter.

(b) Every ground ambulance when transporting a patient between hospitals shall be occupied by all of the following:

- (1) one person who holds a credential issued by the OEMS as a Medical Responder or higher who is responsible for the operation of the vehicle and rendering assistance to the patient caregiver when needed; and

- (2) at least one of the following who is responsible for the medical aspects of the mission:
- (A) Emergency Medical Technician;
  - (B) EMT-Intermediate;
  - (C) EMT-Paramedic;
  - (D) nurse practitioner;
  - (E) physician;
  - (F) physician assistant;
  - (G) registered nurse; or
  - (H) respiratory therapist.

(c) Information must be provided to the OEMS by the licensed EMS provider:

- (1) describing the intended staffing pursuant to Rule .0204(a)(3) of this Subchapter; and
- (2) showing authorization pursuant to Rule .0204(a)(4) of this Subchapter by the county in which the EMS provider license is issued to use the staffing in Paragraph (b) of this Rule.

(d) Ambulances used for patient transports between hospitals must contain all medical equipment, supplies, and medications approved by the medical director, based on the treatment protocols.

*History Note:* Authority G.S. 131E-155.1; 131E-158(b); 143-508(d)(1),(d)(8); Eff. July 1, 2012.

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#### 10A NCAC 26F .0105 SCHEDULE IV

(a) Schedule IV shall consist of the drugs and other substances by whatever official name, common or usual name, chemical name or brand name designated and listed in either G.S. 90-92 or this Rule. Each drug or substance has been assigned the Drug Enforcement Administration (DEA) controlled substances code number set forth in the Code of Federal Regulations, Title 21, Section 1308.14.

(b) As specified in G.S. 90-88, the Commission for MH/DD/SAS adds the following substances within Schedule IV for Depressants:

- (1) Dichloralphenazone - DEA controlled substances code number 2467;
- (2) Zopiclone - DEA controlled substances code number 2784;
- (3) Fosporopol - DEA controlled substances code number 2138; and
- (4) Carisoprodol - DEA controlled substances code number 8192.

*History Note:* Authority G.S. 90-88; 90-92; 143B-147; Eff. June 30, 1978;  
Amended Eff. July 1, 1993; January 1, 1989; December 1, 1987; August 1, 1987;  
Temporary Amendment Eff. May 28, 1998;  
Temporary Amendment Expired March 12, 1999;  
Amended Eff. August 1, 2000;  
Temporary Amendment Eff. January 1, 2002; February 15, 2001;

*Amended Eff. July 1, 2012; July 1, 2011; November 1, 2005; April 1, 2003; August 1, 2002.*

#### 10A NCAC 26F .0106 SCHEDULE V

(a) Schedule V shall consist of the drugs and other substances by whatever official name, common or usual name, chemical name or brand name designated and listed in either G.S. 90-93 or this Rule. Each drug or substance is set forth below with its corresponding Drug Enforcement Administration (DEA) controlled substances code number set forth in the Code of Federal Regulations, Title 21, Section 1308.15.

(b) Narcotic drugs containing non-narcotic active medicinal ingredients. Any compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below, which shall include one or more non-narcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by narcotic drugs alone:

- (1) not more than 200 milligrams of codeine per 100 milliliters or per 100 grams,
- (2) not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams,
- (3) not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams,
- (4) not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit,
- (5) not more than 100 milligrams of opium per 100 milliliters or per 100 grams,
- (6) not more than 0.5 milligrams of difenoxin and not less than 25 micrograms atropine sulfate per dosage unit.

(c) Stimulants. Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers and salts of isomers: Pyrovalerone - DEA controlled substances code number 1485.

(d) Depressants. Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts:

- (1) Lacosamide – DEA controlled substances code number 2746; and
- (2) Ezogabine – DEA controlled substances code number 2779.

*History Note:* Authority G.S. 90-88; 90-93; 143B-147; Eff. June 30, 1978;  
Amended Eff. July 1, 2012; February 1, 2010; April 1, 1992; August 1, 1988; December 1, 1987; April 1, 1983.

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**10A NCAC 41A .0205 CONTROL MEASURES – TUBERCULOSIS**

(a) The local health director shall investigate all cases of tuberculosis disease and their contacts in accordance with recommendations and guidelines published by the Centers for Disease Control and Prevention which are hereby incorporated by reference including subsequent amendments and editions. The recommendations and guidelines are the required control measures for tuberculosis, except as otherwise provided in this Rule. A copy of the recommendations and guidelines is available by contacting the Division of Public Health, 1931 Mail Service Center, Raleigh, North Carolina 27699-1931 or by accessing the Centers for Disease Control and Prevention website at <http://www.cdc.gov/tb>.

(b) The following persons shall have a tuberculin skin test (TST) or Interferon Gamma Release Assay (IGRA) administered in accordance with recommendations and guidelines published by the Centers for Disease Control and Prevention:

- (1) Household and other high priority contacts of active cases of pulmonary and laryngeal tuberculosis. For purposes of this Rule, a high priority contact is defined in accordance with Centers for Disease Control and Prevention guidelines. If the contact's initial skin or IGRA test is negative, and the case is confirmed by culture, a repeat skin or IGRA test shall be performed 8 to 10 weeks after the exposure has ended;
- (2) Persons reasonably suspected of having tuberculosis disease;
- (3) Inmates in the custody of the Department of Public Safety, Division of Adult Correction upon incarceration, and annually thereafter;
- (4) Persons with HIV infection or AIDS.

(c) The following persons shall be tested using a two-step skin test method or a single IGRA test, administered in accordance with recommendations and guidelines published by the Centers for Disease Control and Prevention:

- (1) Staff with direct inmate contact in the Department of Public Safety, Division of Adult Correction upon employment;
- (2) Staff of licensed nursing homes or adult care homes upon employment;
- (3) Residents upon admission to licensed nursing homes or adult care homes. If the individual is being admitted directly from another hospital, licensed nursing home or adult care home in North Carolina and there is documentation of a two-step skin test or a single IGRA test, the individual does not need to be retested;
- (4) Staff in adult day care centers providing care for persons with HIV infection or AIDS upon employment.

(d) Except as provided in the last sentence of Subparagraph (c)(3) of this Rule, persons listed in Paragraph (c) of this rule shall be required only to have a single TST or IGRA in the following situations:

- (1) If the person has ever had a two-step skin test; or

- (2) If the person has had a single skin test within the last twelve months.

(e) Persons with a positive tuberculin skin test or IGRA shall be evaluated by an interview to screen for symptoms and a chest x-ray if they do not have a documented chest x-ray that was performed on the date of the positive test or later.

(f) Treatment and follow-up for tuberculosis infection or disease shall be in accordance with the recommendations and guidelines from the Centers for Disease Control and Prevention.

(g) Persons with active tuberculosis disease shall complete a standard multi-drug regimen, and shall be managed using Directly Observed Therapy (DOT), which is the actual observation of medication ingestion by a health care worker (HCW).

If a standard multi-drug regimen cannot be used, the attending physician shall consult with the state Tuberculosis Medical Director or designee on the treatment plan.

(h) Persons with suspected or known active pulmonary or laryngeal tuberculosis who have sputum smears positive for acid fast bacilli shall be considered infectious and shall be managed using airborne precautions including respiratory isolation or isolation in their home with no new persons exposed. These individuals are considered noninfectious and use of airborne precautions, precautions including respiratory isolation or isolation in their home may be discontinued when:

- (1) Sputum specimen results meet Centers for Disease Control and Prevention criteria for discontinuation of respiratory isolation;
- (2) They have two consecutive sputum smears collected at least eight hours apart which are negative;
- (3) It has been at least seven days since the last positive sputum smear; and
- (4) They have been compliant on tuberculosis medications to which the organism is susceptible and there is evidence of clinical response to tuberculosis treatment.

(i) Persons with suspected or known active pulmonary or laryngeal tuberculosis who are initially sputum smear negative require respiratory isolation until they have been started on tuberculosis treatment to which the organism is susceptible and there is evidence of clinical response to treatment.

*History Note: Authority G.S. 130A-135; 130A-144;*

*Eff. March 1, 1992;*

*Amended Eff. April 1, 2006; April 1, 2003; August 1, 1998; October 1, 1994;*

*Temporary Amendment Eff. August 1, 2011;*

*Amended Eff. July 1, 2012.*

**10A NCAC 63F .0402 ECONOMIC NEEDS POLICIES**

(a) The Division of Services for the Blind shall establish economic need for each eligible consumer either simultaneously with or prior to the provision of those services for which the Division requires a needs test. The financial need of a consumer shall be determined by the financial needs test specified in Rule .0403 of this Section. If the consumer has been determined eligible for Social Security benefits under Title II or XVI of the Social Security Act, the Division of Services for the Blind shall

not apply a financial needs tests or require the financial participation of the consumer. A financial needs test shall be applied for all consumers determined eligible to receive services through the Independent Living Rehabilitation Program regardless of SSA Title II or Title XVI eligibility.

(b) The Division of Services for the Blind shall furnish the following services not conditioned on economic need:

- (1) an assessment for determining eligibility and priority for services except those non-assessed services that are provided during an exploration of the applicant's abilities, capabilities, and capacity to perform in work situations through the use of trial work experiences or an extended evaluation and an assessment by personnel skilled in rehabilitation technology;
- (2) assessment for determining rehabilitation needs by a qualified vocational rehabilitation counselor;
- (3) vocational rehabilitation counseling and guidance, including information and support services to assist an applicant or consumer in exercising informed choice;
- (4) tuition and supplies for Community Rehabilitation Program training;
- (5) tuition and fees for:
  - (A) community college/college parallel and vocational programs up to the catalog rate; and
  - (B) post-secondary education up to the maximum rate charged for the North Carolina public university system.

The Division shall require eligible consumers applying for training programs listed in Parts (b)(5)(A) and (B) of this Rule to first apply for all available grants and financial aid. The Division may grant an exception to the rate for tuition and required fees for post-secondary education specified in Part (b)(5)(B) of this Rule when necessary to accommodate the special training needs of severely disabled individuals who must be enrolled in special programs designed for severely physically disabled students;

- (6) interpreter services including sign language and oral interpreter services for applicants or consumers who are deaf or hard of hearing and tactile interpreting services for applicants or consumers who are deaf-blind;
- (7) reader services, rehabilitation teaching services, and orientation and mobility services;
- (8) job-related services, including job search, job placement employment assistance and job retention services;
- (9) DSB Rehabilitation Center or fundamental independent living rehabilitation adjustment services including transportation and training supplies contingent on a consumer's participation in the program;
- (10) diagnostic transportation;
- (11) on-the-job training;

- (12) training and associated maintenance and transportation costs for Business Enterprises Program trainees;
- (13) upward mobility training and associated maintenance and transportation costs for Business Enterprises Program trainees;
- (14) equipment and initial stocks and supplies for state-owned (Randolph-Sheppard) vending stands;
- (15) Supported Employment Services;
- (16) personal assistance services provided while a consumer with a disability is receiving vocational rehabilitation services;
- (17) referral and other services designed to assist applicants or consumers with disabilities in securing needed services from other agencies through agreements developed under Section 101(a)(11) of the Act (P.L. 102-569), if such services are not available under this Act and to advise those individuals about client assistance programs established under the Act;
- (18) transition services for students with disabilities that facilitate the achievement of the employment outcome identified in the student's individualized plan for employment except for those services based on economic need; and
- (19) technical assistance and other consultation services to consumers who are pursuing self-employment or telecommuting or establishing a business operation as an employment outcome.

(c) The following services shall be provided by the Division of Services for the Blind and conditioned on economic need:

- (1) physical and mental restoration services (medical services other than diagnostic);
- (2) maintenance for additional costs incurred while participating in rehabilitation;
- (3) transportation in connection with the rendering of any vocational rehabilitation service except where necessary in connection with determination of eligibility or nature and scope of services;
- (4) services to members of a disabled consumer's family necessary to the adjustment or rehabilitation of the consumer with a disability;
- (5) post-employment services necessary to assist consumers with visual disabilities to maintain, regain or advance in employment except for those services not conditioned on economic need listed in Paragraph (b) of this Rule;
- (6) fees necessary to obtain occupational licenses;
- (7) tools, equipment, and initial stocks and supplies for items listed in Subparagraphs (1) through (7) of this Paragraph;
- (8) expenditures for short periods not to exceed 30 days of medical care for acute conditions arising during the course of vocational

rehabilitation, which if not cared for, will constitute a hazard to the achievement of the vocational rehabilitation objective; and

(9) other goods and services not prohibited by the Act (P.L. 102-569), which can reasonably be expected to benefit an individual with a disability in terms of his employability or independent living skill development.

(d) Notwithstanding Paragraph (c) of this Rule, the following services are not subject to economic need for individuals being served through the Vocational Rehabilitation Program:

- (1) books and other training materials required for post secondary training; and
- (2) rehabilitation technology including telecommunications, sensory aids, and other technological aids and devices for consumers who have an Individualized Plan for Employment (IPE); who are working toward an employment goal that requires specified technology to attain, regain, or maintain employment and who have the capability to use the equipment.

(e) The Division of Services for the Blind shall publish the standard as determined by the Legislature for measuring the financial need of consumers with respect to normal living requirements and for determining their financial ability to meet the cost of necessary rehabilitation services, and for determining the amount of agency supplementation required to procure the necessary services.

*History Note:* Authority G.S. 111-28; 34 C.F.R. 361.48; 34 C.F.R. 361.5; 34 C.F.R. 361.52; 34 C.F.R. 361.54; P.L. 102-569, Section 103; S.L. 2009-475;  
*Eff. February 1, 1976;*  
*Amended Eff. August 1, 1976;*  
*Readopted Eff. November 16, 1977;*  
*Amended Eff. January 1, 1996; June 1, 1993; October 1, 1990;*  
*April 1, 1990;*  
*Temporary Amendment Eff. August 1, 2001;*  
*Amended Eff. August 1, 2002;*  
*Emergency Amendment Eff. September 23, 2009;*  
*Temporary Amendment Eff. November 16, 2009 to expire on June 30, 2012(See G.S. 150B-21.1B).*

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#### **10A NCAC 67A .0109 STATE PUBLIC ASSISTANCE EQUALIZING FUND**

*History Note:* Authority G.S. 108A-92; 143B-153;  
*Eff. March 16, 1976;*  
*Readopted Eff. October 31, 1977;*  
*Amended Eff. July 1, 1991; March 1, 1990; July 1, 1980;*  
*February 15, 1979;*  
*Repealed Eff. July 1, 2012.*

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#### **10A NCAC 68 .0201 PETITIONS**

*History Note:* Authority G.S. 143B-10; 150B-16;  
*Eff. July 1, 1977;*  
*Readopted Eff. October 31, 1977;*  
*Amended Eff. March 1, 1990;*  
*Repealed Eff. July 1, 2012.*

#### **10A NCAC 68 .0207 FEES**

*History Note:* Authority G.S. 143B-10; 150B-11;  
*Eff. July 1, 1977;*  
*Readopted Eff. October 31, 1977;*  
*Repealed Eff. July 1, 2012.*

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#### **10A NCAC 71E .0101 DEFINITIONS**

#### **10A NCAC 71E .0102 AVAILABILITY OF THE SERVICE**

#### **10A NCAC 71E .0103 DEFINITION OF THE SERVICES**

#### **10A NCAC 71E .0104 TARGET POPULATION**

#### **10A NCAC 71E .0105 RESIDENT EVALUATION INSTRUMENT**

#### **10A NCAC 71E .0106 EVALUATION AND REFERRAL**

#### **10A NCAC 71E .0107 TRAINING REQUIREMENTS FOR RESIDENT EVALUATORS**

#### **10A NCAC 71E .0108 METHODS OF SERVICE PROVISION**

#### **10A NCAC 71E .0109 CASE RECORD**

*History Note:* Authority G.S. 143B-153; S.L. 1999-237;  
*Temporary Adoption Eff. January 1, 2000;*  
*Eff. April 1, 2001;*  
*Repealed Eff. July 1, 2012.*

#### **10A NCAC 71U .0202 COUPON ISSUANCE**

*History Note:* Authority G.S. 108A-51; 143B-153; P.L. 104-193; 7 C.F.R. 274.2; 7 C.F.R. 274.3; U.S.C. 2011-2027;  
*Eff. March 1, 1979;*  
*Amended Eff. February 1, 1986;*  
*Temporary Amendment Eff. January 1, 1998;*  
*Amended Eff. April 1, 1999;*  
*Repealed Eff. July 1, 2012.*

#### **10A NCAC 71U .0301 FARMER OR DAY LABORER INCOME VERIFICATION**

*History Note:* Authority G.S. 143B-138(b)(5); 7 U.S.C. 2011 to 2026;  
*Eff. February 1, 1976;*  
*Readopted Eff. October 31, 1977;*  
*Repealed Eff. July 1, 2012.*

**10A NCAC 71U .0304 TRANSMITTAL OF ATP CARDS**

*History Note:* Authority G.S. 143B-138, -153; 7 U.S.C. 2011 to 2026;  
*Eff. February 18, 1977;*  
*Readopted Eff. October 31, 1977;*  
*Repealed Eff. July 1, 2012.*

**10A NCAC 71V .0101 FUNDING**

*History Note:* Authority G.S. 143B-153;  
*Eff. November 19, 1980;*  
*Repealed Eff. July 1, 2012.*

**10A NCAC 71W .0102 GENERAL AFDC PROGRAM PROCEDURES**

*History Note:* Authority G.S. 143B-153;  
*Eff. February 1, 1984;*  
*Recodified from 10 NCAC 49A .0003 Eff. January 1, 1997;*  
*Repealed Eff. July 1, 2012.*

**10A NCAC 71W .0201 OPTIONAL**

*History Note:* Authority G.S. 108A-25; 143B-153; 45 C.F.R.

**10A NCAC 71W .0301 ACCEPTANCE OF APPLICATION**

*History Note:* Authority G.S. 108A-43; 143B-153; 45 C.F.R. 206.10;  
*Eff. February 1, 1984;*  
*Amended Eff. February 1, 1986;*  
*Repealed Eff. July 1, 2012.*

**10A NCAC 71W .0401 AGE****10A NCAC 71W .0402 SCHOOL ATTENDANCE**

*History Note:* Authority G.S. 143B-153; 45 C.F.R. 233.39;  
*Eff. February 1, 1984;*  
*Amended Eff. June 1, 1990; August 1, 1988; February 1, 1986;*  
*Repealed Eff. July 1, 2012.*

**10A NCAC 71W .0406 DEPRIVATION**

*History Note:* Authority G.S. 108A-25; 143B-153; 45 C.F.R. 233.90;  
*Eff. February 1, 1984;*  
*Amended Eff. May 1, 1994; June 1, 1990; January 1, 1989;*  
*August 1, 1988;*  
*Repealed Eff. July 1, 2012.*

**10A NCAC 71W .0409 NEED**

*History Note:* Authority G.S. 108A-25; 108A-33; 143B-153;  
 45 C.F.R. 233; c. 738, 1987 Session Laws;  
*Eff. February 1, 1984;*  
*Amended Eff. February 1, 1986;*

*Filed as a Temporary Amendment Eff. January 1, 1988 For a Period of 180 Days to Expire on June 28, 1988;*  
*Amended Eff. June 1, 1990; May 1, 1988;*  
*Repealed Eff. July 1, 2012.*

**10A NCAC 71W .0411 STATE WORK REQUIREMENT**

*History Note:* Authority G.S. 108A-29; 143B-153; 45 C.F.R. 233.10; 45 C.F.R. 233.20; 45 C.F.R. 250.30; 45 C.F.R. 250.34;  
*Eff. February 1, 1984;*  
*Amended Eff. October 1, 1990; July 1, 1990; May 1, 1988;*  
*February 1, 1986;*  
*Repealed Eff. July 1, 2012.*

**10A NCAC 71W .0501 CHANGES IN SITUATION**

*History Note:* Authority G.S. 143B-153; 45 C.F.R. 206.10;  
*Eff. February 1, 1984;*  
*Amended Eff. June 1, 1990; February 1, 1986;*  
*Temporary Amendment Eff. July 1, 1996;*  
*Amended Eff. April 1, 1997;*  
*Repealed Eff. July 1, 2012.*

**10A NCAC 71W .0701 ELIGIBILITY FOR COVERAGE****10A NCAC 71W .0702 EMERGENCIES COVERED****10A NCAC 71W .0703 EMERGENCY NOT COVERED**

*History Note:* Authority G.S. 108A-39.1; 143B-153; 45 C.F.R. 233.120;  
*Filed as a Temporary Rule Eff. November 1, 1986 for a period of 62 days to expire on January 1, 1987;*  
*Eff. January 1, 1987;*  
*Amended Eff. October 1, 1990; June 1, 1990; August 1, 1988;*  
*Filed as a Temporary Amendment Eff. November 7, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;*  
*Filed as a Temporary Amendment Eff. January 1, 1995 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;*  
*Amended Eff. March 1, 1995;*  
*Repealed Eff. July 1, 2012.*

**10A NCAC 71W .0705 TYPES OF ASSISTANCE PROVIDED****10A NCAC 71W .0706 METHODS OF PAYMENT****10A NCAC 71W .0707 APPLICATION AND DISPOSITION****10A NCAC 71W .0708 RESERVE****10A NCAC 71W .0709 INCOME****10A NCAC 71W .0710 RESERVE AND INCOME FOR SERVICES****10A NCAC 71W .0711 PROCEDURES**

*History Note:* Authority G.S. 108A-39.1; 143B-153; 45 C.F.R. 233.120;  
*Filed as a Temporary Rule Eff. November 1, 1986 for a period of 62 days to expire on January 1, 1987;*  
*Eff. January 1, 1987;*  
*Amended Eff. October 1, 1990; June 1, 1990; August 1, 1988;*

*Filed as a Temporary Amendment Eff. November 7, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;*

*Filed as a Temporary Amendment Eff. January 1, 1995 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;*

*Amended Eff. March 1, 1995;*

*Repealed Eff. July 1, 2012.*

**10A NCAC 71W .0801 GENERAL PROCEDURES**  
**10A NCAC 71W .0802 COVERAGE AND PARTICIPATION**  
**10A NCAC 71W .0803 ELIGIBILITY VERIFICATIONS**

*History Note: Authority G.S. 108A-28; 143B-153; Chapter 738, 1987 Session Laws;*

*Eff. January 1, 1988;*

*Amended Eff. August 1, 1988;*

*Repealed Eff. July 1, 2012.*

**10A NCAC 71W .0901 GENERAL REQUIREMENTS**  
**10A NCAC 71W .0902 METHODS OF PROVIDING CHILD CARE**  
**10A NCAC 71W .0903 SLIDING FEE SCALE**  
**10A NCAC 71W .0904 CHILD CARE RATES AND MAXIMUM PAYMENT**

*History Note: Authority G.S. 108A-25; 143B-153; 45 C.F.R. Part 256;*

*Filed as a Temporary Rule Eff. April 1, 1990 for a Period of 153 Days to Expire on August 31, 1990;*

*Temporary Rule Expired Eff. September 1, 1990;*

*Eff. October 1, 1990;*

*Repealed Eff. July 1, 2012.*

**10A NCAC 71X .0101 IMPLEMENTATION SCHEDULE**  
**10A NCAC 71X .0102 COUNTY PLAN**  
**10A NCAC 71X .0103 OPTIONAL COMPONENTS**  
**10A NCAC 71X .0104 POST-SECONDARY EDUCATION**  
**10A NCAC 71X .0105 PARTICIPATION RATE**  
**10A NCAC 71X .0106 EXPENDITURE RATE**  
**10A NCAC 71X .0107 APPLICANTS**  
**10A NCAC 71X .0108 JOBS CASE MANAGEMENT**

*History Note: Authority G.S. 108A-29; 143B-153; 42 U.S.C. 682(a)(2); 45 C.F.R. 250.11;*

*Eff. June 1, 1990;*

*Amended Eff. June 1, 1991;*

*Repealed Eff. July 1, 2012.*

**10A NCAC 71X .0201 PARTICIPATION OF UNEMPLOYED PARENT IN EDUCATION**  
**10A NCAC 71X .0202 CONCILIATION PROCEDURE**  
**10A NCAC 71X .0203 ASSIGNMENT OF 16 AND 17 YEAR OLD CUSTODIAL PARENTS**  
**10A NCAC 71X .0204 ASSIGNMENT OF 18 AND 19 YEAR OLD CUSTODIAL PARENTS**

**10A NCAC 71X .0205 ASSIGNMENT OF PARTICIPANTS 20 YEARS OF AGE OR OLDER**  
**10A NCAC 71X .0206 SATISFACTORY PROGRESS IN AN EDUCATIONAL COMPONENT**  
**10A NCAC 71X .0207 CONTINUATION IN PROGRAM COMPONENTS AFTER AFDC TERMINATION**  
**10A NCAC 71X .0208 PROVISION OF CASE MANAGEMENT AND SUPPORTIVE SERVICES**  
**10A NCAC 71X .0209 CRITERIA FOR SELF-INITIATED EDUCATION OR TRAINING**  
**10A NCAC 71X .0210 SERVICES DURING GAPS IN PARTICIPATION**

*History Note: Authority G.S. 143B-153; 42 U.S.C. 682(a)(2); Eff. October 1, 1990;*

*Repealed Eff. July 1, 2012.*

**10A NCAC 71X .0301 JOBS COMPONENT EXPENSES**  
**10A NCAC 71X .0302 WORK EXPERIENCE**  
**10A NCAC 71X .0303 POST-SECONDARY EDUCATION**  
**10A NCAC 71X .0304 ALTERNATIVE WORK EXPERIENCE**

*History Note: Authority G.S. 143B-153; 42 U.S.C. 682(a)(2); Eff. October 1, 1990;*

*Repealed Eff. July 1, 2012.*

**10A NCAC 71X .0401 SUPPORTIVE SERVICES TO BE AVAILABLE IN JOBS COUNTIES**  
**10A NCAC 71X .0402 HEALTH SUPPORT SERVICES**  
**10A NCAC 71X .0403 IN-HOME AIDE SERVICES**  
**10A NCAC 71X .0404 TRANSPORTATION SERVICES**  
**10A NCAC 71X .0405 CHILD CARE TRANSPORTATION**  
**10A NCAC 71X .0406 PERSONAL AND FAMILY COUNSELING**  
**10A NCAC 71X .0407 INDIVIDUAL AND FAMILY ADJUSTMENT SERVICES**  
**10A NCAC 71X .0408 PARTICIPATION EXPENSES**  
**10A NCAC 71X .0409 ONE-TIME WORK RELATED EXPENSES**  
**10A NCAC 71X .0410 DAY CARE SERVICES FOR ADULTS**  
**10A NCAC 71X .0411 SUPPORTIVE SERVICES TO BE AVAILABLE IN NON-JOBS COUNTIES**  
**10A NCAC 71X .0412 SUPPORTIVE SERVICES LIMITS**  
**10A NCAC 71X .0413 DEFINITION OF FAMILY MEMBER**

*History Note: Authority G.S. 143B-153; 42 U.S.C. 602(g); 42 U.S.C. 682(a)(2);*

*Eff. October 1, 1990;*

*Amended Eff. May 1, 1992;*

*Repealed Eff. July 1, 2012.*

**TITLE 11 – DEPARTMENT OF INSURANCE**

**11 NCAC 01 .0603      FACSIMILE  
COUNTERSIGNATURE NOT VALID**

*History Note:*    *Authority* G.S. 58-2-40; 58-33-30(i); 58-33-60;

*Eff.* February 1, 1976;

*Readopted Eff.* May 12, 1978;

*Amended Eff.* July 1, 1992; August 1, 1988;

*Repealed Eff.* July 1, 2012.

**11 NCAC 04 .0116      INQUIRIES AND  
INFORMATION**

The Division maintains facilities and personnel to receive inquiries and complaints by telephone, letter or personal visit. The telephone numbers for the Division are toll-free 1-800-662-7777 or 1-800-546-5664 and 1-919-807-6750. The mailing address of the Division is: North Carolina Department of Insurance, 1201 Mail Service Center, Raleigh, North Carolina 27699-1201; (Attention: Consumer Services Division). The street address of the Division is: Room 3040, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina.

*History Note:*    *Authority* G.S. 58-2-25; 58-2-40;

*Eff.* December 15, 1979;

*Amended Eff.* July 1, 2012; April 1, 1989; July 1, 1986.

**11 NCAC 04 .0313      PROVISIONS OF CONTRACTS**

In order to prevent unfair discrimination among insureds, the following phrases and provisions commonly found in life, accident, health and disability contracts, if not expressly defined in such contracts, shall be construed by the Department in the following manner:

- (1) Regular Care and Attendance of a Physician. As used in life, accident and health and disability policies, "regular care and attendance of a physician" shall not be construed to require insureds to see or be under the care of a physician on a regular basis if it can be shown that the insured has reached his maximum point of recovery yet is still disabled under the terms of the insurance contract. This requirement shall not, however, restrict the right of the insurer at its own expense, to periodically examine or cause to have examined the insured according to the terms of the contract of insurance.
- (2) Premature Baby. A premature baby shall not be considered a well baby. The protection afforded newborn infants under G.S. 58-51-30 shall be provided to premature babies.
- (3) Medical Necessity. "Medical necessity" shall be construed as including treatment which restores not only the insured's physical but also his mental well-being. As used in this Section, "restoration of mental well-being" does not require coverage of psychiatric disorders when such disorders are excluded under the express terms of the contract.

- (4) Sound Health. The question, "Are you in sound health?" shall be considered ambiguous, and therefore answers to that question on an insurance application shall not be used as the basis for rescission of a policy or denial of a claim.

*History Note:*    *Authority* G.S. 58-2-40; 58-3-150; 58-51-1; 58-63-15; 58-63-65; 58-65-1; 58-65-40; 58-65-95; 58-67-65; 58-67-150;

*Eff.* December 15, 1979;

*Amended Eff.* July 1, 2012; April 8, 2002; April 1, 1989.

**11 NCAC 04 .0319      CLAIMS PRACTICES: LIFE:  
ACCIDENT AND HEALTH INSURANCE**

The Commissioner shall consider as prima facie violative of G.S. 58-63-15(11) the failure by an insurer to adhere to the following procedures concerning settlement of life, accident, health and disability claims when such failure is so frequent as to indicate a general business practice:

- (1) Examining Physician's Opinion. When the patient's health is in question, an insurer shall give greater weight to the opinion of a physician who has examined the patient than to the opinion of a physician who has not examined the patient and whose opinion is based solely on a review of the examining physician's notes or reports. As used in this Section, "examination of the patient" shall include the interpretation by a specialist of the results of diagnostic tests performed on the patient by others.
- (2) Settlement Offers. Initial offers of settlement or compromise made by an insurer or its representative shall remain open for a period of time of not less than 30 calendar days.
- (3) Multiple Health Impairments. When an insured is confined to the hospital with multiple health impairments some of which may be excluded from coverage, the insurer or its representative shall make pro rata payments where treatment for excluded conditions can be separated.
- (4) Assignment of Benefits. If an accident, health or disability contract does not prohibit assignment of benefits and a proper assignment (including notice to the insurer prior to the payment of the claim) is made, the insurer shall honor the assignment even though it may have erroneously paid the insured. Submission of a completed claims form G33H and its successor(s) indicating that an assignment is on file shall be treated as though it were submission of the actual assignment.
- (5) Claim Status Reports. Health insurance claims subject to 58-3-225 shall be processed in accordance with the provisions of the statute. Otherwise, if benefits claimed under an accident, health, or disability contract have not



been paid within 45 days after receipt of the initial claim by the insurer, the insurer shall at that time mail a claim status report to the insured.

*Amended Eff. January 1, 2007; February 1, 1995; June 1, 1992;*  
*Repealed Eff. July 1, 2012.*

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*History Note: Authority G.S. 58-2-40; 58-3-225; 58-63-15; 58-63-65; 58-65-1; 58-65-40; 58-65-125; 58-67-65; 58-67-150;*  
*Eff. December 15, 1979;*  
*Amended Eff. July 1, 2012; April 8, 2002; April 1, 1989.*

#### **11 NCAC 04 .0417 DRIVE-IN CLAIM SERVICE FACILITIES**

No insurer shall require any claimant to use a drive-in claim service operated by the insurer. The claimant's voluntary utilization of a drive-in claim service or preferred repair shop shall not prejudice the right of either party to obtain independent appraisals and negotiate settlement on the basis of such appraisals.

*History Note: Authority G.S. 58-2-40; 58-63-65;*  
*Eff. December 15, 1979;*  
*Amended Eff. July 1, 2012.*

#### **11 NCAC 04 .0430 PROOF OF MAILING; AUTOMOBILE INSURANCE**

As used in G.S. 58-36-85, "proof of mailing" means a certificate issued by and bearing the date stamp of the United States Postal Service or an official United States Postal Service tracking number or similar proof of mailing.

*History Note: Authority G.S. 58-2-40; 58-36-85;*  
*Eff. February 1, 1993;*  
*Amended Eff. July 1, 2012; February 1, 1996.*

#### **11 NCAC 04 .0432 REFUND OF EXCESS PREMIUM ON SCHEDULED ITEMS**

If an insured has any scheduled item covered by a homeowner's or personal inland marine insurance policy, and that item is replaced for less than the scheduled amount of coverage, the insurer shall refund the insured the difference in premium charged between the scheduled amount of coverage and the actual amount of the loss paid by the insurer, if the refund per policy term is greater than five dollars (\$5.00). Any refund shall be computed from the date of issuance of the policy or five years, whichever is less.

*History Note: Authority G.S. 58-2-40; 58-43-10; 58-63-65;*  
*Eff. April 1, 1995;*  
*Amended Eff. July 1, 2012.*

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#### **11 NCAC 06A .0806 ATTENDANCE**

*History Note: Authority G.S. 58-2-40; 58-33-130;*  
*Temporary Adoption Eff. June 22, 1990, for a period of 180 days to expire on December 19, 1990;*  
*ARRC Objection Lodged July 19, 1990;*  
*Eff. December 1, 1990;*

#### **11 NCAC 10 .0714 FORM: INSTRUCTIONS/REQUIREMENTS/SURPLUS LINES COMPANY**

*History Note: Authority G.S. 58-2-40; 58-21-65;*  
*Eff. February 1, 1976;*  
*Readopted Eff. July 11, 1978;*  
*Amended Eff. July 1, 1986;*  
*Repeal Eff. July 1, 2012.*

#### **11 NCAC 12 .0325 OCCUPATIONAL INJURIES OR DISEASES**

*History Note: Authority G.S. 58-2-40; 58-3-150; 58-51-1; 58-51-85; 58-51-95;*  
*Eff. February 1, 1992;*  
*Amended Eff. October 1, 1994;*  
*Repealed Eff. July 1, 2012.*

#### **11 NCAC 12 .0545 OFFSET OF INCREASED SOCIAL SECURITY: GROUP DISABILITY**

*History Note: Authority G.S. 58-2-40; 58-51-1; 58-65-1; 58-65-40;*  
*Eff. September 26, 1978;*  
*Repealed Eff. July 1, 2012.*

#### **11 NCAC 12 .0560 UNIFORM CLAIM FORMS**

*History Note: Authority G.S. 58-2-40; 58-3-171;*  
*Filed as a Temporary Adoption Eff. January 1, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;*  
*Eff. April 1, 1994;*  
*Repealed Eff. July 1, 2012.*

#### **11 NCAC 12 .1306 REINSURANCE POOL**

*History Note: Authority G.S. 58-2-40(1); 58-50-130(b)(4); 58-50-150(a); 58-50-150(f)(5); 58-50-150(g);*  
*Filed as a Temporary Adoption Eff. December 21, 1992 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;*  
*Eff. April 1, 1993;*  
*Filed as a Temporary Amendment Eff. October 11, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;*  
*Amended Eff. February 1, 1994;*  
*Repealed Eff. July 1, 2012.*

**11 NCAC 14 .0413      ADMISSION DATA**

**GUIDELINES**

**11 NCAC 14 .0414      CHECK SHEET AND ANALYSIS  
OF APPLICATION FOR ADMISSION**

*History Note:*    Authority G.S. 58-6-5; 58-7-45; 58-7-75; 58-7-80; 58-16-5;

*Eff. January 22, 1980;*

*Amended Eff. April 1, 1990;*

*Repealed Eff. July 1, 2012.*

**11 NCAC 14 .0418      STANDARD QUESTIONS FOR  
APPLICANT INSURANCE CO.**

**11 NCAC 14 .0419      MARKETING QUESTIONS FOR  
APPLICANT LIFE INSURANCE CO.**

**11 NCAC 14 .0420      MARKETING QUESTIONS FOR  
APPLICANT FIRE/CASUALTY INSURANCE CO.**

**11 NCAC 14 .0421      UNCONDITIONAL GUARANTY**

**11 NCAC 14 .0422      CORPORATE RESOLUTION OF  
GUARANTOR**

**11 NCAC 14 .0423      ELIGIBILITY REQUIREMENTS  
FOR SURPLUS LINES INSURANCE CO.**

**11 NCAC 14 .0424      FILING REQUIREMENTS FOR  
SURPLUS LINES INSURANCE CO.**

**11 NCAC 14 .0425      BULLETIN 87-L-7**

**11 NCAC 14 .0426      BULLETIN 87-L-6**

*History Note:*    Authority G.S. 58-2-40; 58-16-5; 58-21-20; 58-22-45(a); 58-40-30; 58-41-50;

*Eff. April 1, 1990;*

*Repealed Eff. July 1, 2012.*

**11 NCAC 14 .0432      APPLICATION FOR LICENSE:  
INSURANCE COMPANY**

*History Note:*    Authority G.S. 58-2-40; 58-7-40; 58-16-5;

*Eff. February 1, 1996;*

*Repealed Eff. July 1, 2012.*

**11 NCAC 14 .0501      APPLICATION FORMS**

*History Note:*    Authority G.S. 58-2-40; 58-16-5;

*Eff. April 1, 1990;*

*Amended Eff. July 1, 2004;*

*Repealed Eff. July 1, 2012.*

**12 NCAC 07D .0102      LOCATION**

The administrative offices of the Private Protective Services Board are located at 4901 Glenwood Avenue, Suite 200, Raleigh, North Carolina 27612, telephone (919) 788-5320.

*History Note:*    Authority G.S. 74C-4; 74C-5;

*Eff. June 1, 1984;*

*Amended Eff. July 1, 2012; March 1, 2001; December 1, 1993;*

*December 1, 1987.*

**12 NCAC 07D .0107      DISCIPLINARY ACTIONS**

(a) The Board may deny a license, trainee permit, registration or firearms trainer certificate for any violation of G.S. Chapter 74C or 12 NCAC 07D. The Board may suspend or revoke a license, trainee permit, registration or firearms trainer certificate for any violation of G.S. Chapter 74C or 12 NCAC 07D, provided that the violation occurred within three years of the initiation of the Board investigation of such violation.

(b) The Board may issue a written reprimand to a holder of a license, trainee permit, registration identification card or firearms trainee certificate when the Board determines:

- (1) the holder has violated any of the provision of 12 NCAC 07D or G.S. Chapter 74C that were applicable to the holder;
- (2) the violation did not result in the physical injury of or property loss to any person; and
- (3) the holder expresses an intention to correct or already has corrected the improper activity.

*History Note:*    Authority G.S. 74C-5; 74C-8;

*Eff. June 1, 1984;*

*Amended Eff. July 1, 2012.*

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

**15A NCAC 02B .0315      NEUSE RIVER BASIN**

(a) Effective February 1, 1976, the adopted classifications assigned to the waters within the Neuse River Basin are set forth in the Neuse River Basin Schedule of Classification and Water Quality Standards, which may be inspected at the following places:

- (1) the Internet at <http://portal.ncdenr.org/web/wq/ps/csu/rules>; and
- (2) the North Carolina Department of Environment and Natural Resources:
  - (A) Raleigh Regional Office  
3800 Barrett Drive  
Raleigh, North Carolina;
  - (B) Washington Regional Office  
943 Washington Square Mall  
Washington, North Carolina;
  - (C) Wilmington Regional Office  
127 Cardinal Drive  
Wilmington, North Carolina;
  - (D) Division of Water Quality  
Central Office  
512 North Salisbury Street  
Raleigh, North Carolina.

(b) The Neuse River Basin Schedule of Classification and Water Quality Standards was amended effective:

- (1) March 1, 1977 see Paragraph (c) of this Rule;
- (2) December 13, 1979 see Paragraph (d) of this Rule;
- (3) September 14, 1980 see Paragraph (e) of this Rule;

- (4) August 9, 1981 see Paragraph (f) of this Rule;
  - (5) January 1, 1982 see Paragraph (g) of this Rule;
  - (6) April 1, 1982 see Paragraph (h) of this Rule;
  - (7) December 1, 1983 see Paragraph (i) of this Rule;
  - (8) January 1, 1985 see Paragraph (j) of this Rule;
  - (9) August 1, 1985 see Paragraph (k) of this Rule;
  - (10) February 1, 1986 see Paragraph (l) of this Rule;
  - (11) May 1, 1988 see Paragraph (m) of this Rule;
  - (12) July 1, 1988 see Paragraph (n) of this Rule;
  - (13) October 1, 1988 see Paragraph (o) of this Rule;
  - (14) January 1, 1990 see Paragraph (p) of this Rule;
  - (15) August 1, 1990;
  - (16) December 1, 1990 see Paragraph (q) of this Rule;
  - (17) July 1, 1991 see Paragraph (r) of this Rule;
  - (18) August 3, 1992;
  - (19) April 1, 1994 see Paragraph (t) of this Rule;
  - (20) July 1, 1996 see Paragraph (u) of this Rule;
  - (21) September 1, 1996 see Paragraph (v) of this Rule;
  - (22) April 1, 1997 see Paragraph (w) of this Rule;
  - (23) August 1, 1998 see Paragraph (x) of this Rule;
  - (24) August 1, 2002 see Paragraph (y) of this Rule;
  - (25) July 1, 2004 see Paragraph (z) of this Rule;
  - (26) November 1, 2007 see Paragraph (aa) of this Rule;
  - (27) January 15, 2011 see Paragraph (bb) of this Rule; and
  - (28) July 1, 2012 see Paragraph (cc) of this Rule.
- (c) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin was amended effective March 1, 1977 with the a total of 179 streams in the Neuse River Basin reclassified from Class D to Class C.
- (d) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin has been amended effective December 13, 1979 as follows: Little River [Index No. 27-57-(21.5)] from source to the dam at Wake Forest Reservoir has been reclassified from Class A-II to Class A-II and B.
- (e) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin has been amended effective September 14, 1980 as follows: The Eno River from Durham County State Road 1003 to U.S Highway 501 [Index No. 27-2-(16)] was reclassified from Class C and B to Class A-II and B.
- (f) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin was amended effective August 9, 1981 to remove the swamp water designation from all waters designated SA in the Neuse River Basin.
- (g) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin has been amended effective January 1, 1982 as follows: The Trent River from the mouth of Brice Creek to the Neuse River [Index No. 27-101-(39)] was reclassified from Class SC Sw to Class SB Sw.
- (h) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin has been amended effective April 1, 1982 as follows:
- (1) Longview Branch from source to Crabtree Creek [Index No. 27-33-(21)] was reclassified from Class C1 to Class C.
  - (2) Watson Branch from source to Walnut Creek [Index No. 27-34-(8)] was reclassified from Class C1 to Class C.
- (i) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin was amended effective December 1, 1983 to add the Nutrient Sensitive Waters classification to the entire river basin above Falls dam.
- (j) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin has been amended effective January 1, 1985 as follows: Nobel Canal from source to Swift Creek [Index No. 27-97-(2)] was reclassified from Class C1 to Class C.
- (k) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin has been amended effective August 1, 1985 as follows:
- (1) Southeast Prong Beaverdam Creek from source to Beaverdam Creek [Index No. 27-33-15(2)] was reclassified from Class C1 to Class C.
  - (2) Pigeon House branch from source to Crabtree Creek [Index No. 27-33-(18)] was reclassified from Class C1 to Class C.
  - (3) Rocky Branch from source to Pullen Road [Index No. 27-34-6-(1)] was reclassified from Class C1 to Class C.
  - (4) Chavis Branch from source to Watson Branch [Index No. 27-37-8-1] was reclassified from Class C1 to Class C.
- (l) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin has been amended effective February 1, 1986 to reclassify all Class A-I and Class A-II streams in the Neuse River Basin to WS-I and WS-III.
- (m) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin was amended effective May 1, 1988 to add the Nutrient Sensitive Waters classification to the waters of the Neuse River Basin below the Falls Lake dam.
- (n) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin has been amended effective July 1, 1988 as follows:
- (1) Smith Creek [Index No. 27-23-(1)] from source to the dam at Wake Forest Reservoir has been reclassified from Class WS-III to WS-I.
  - (2) Little River [Index No. 27-57-(1)] from source to the N.C. Hwy. 97 Bridge near Zebulon including all tributaries has been reclassified from Class WS-III to WS-I.
  - (3) An unnamed tributary to Buffalo Creek just upstream of Robertson's Pond in Wake County from source to Buffalo Creek including Leo's Pond has been reclassified from Class C to B.
- (o) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin has been amended effective October 1, 1988 as follows:
- (1) Walnut Creek (Lake Johnson, Lake Raleigh) [Index No. 27-34-(1)]. Lake Johnson and

Lake Raleigh have been reclassified from Class WS-III to Class WS-III B.

- (2) Haw Creek (Camp Charles Lake) (Index No. 27-86-3-7) from the backwaters of Camp Charles Lake to dam at Camp Charles Lake has been reclassified from Class C to Class B.

(p) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin has been amended effective January 1, 1990 as follows:

- (1) Neuse-Southeast Pamlico Sound ORW Area which includes all waters within a line beginning at the southwest tip of Ocracoke Island, and extending north west along the Tar-Pamlico River Basin and Neuse River Basin boundary line to Lat. 35 degrees 06' 30", thence in a southwest direction to Ship Point and all tributaries, were reclassified from Class SA NSW to Class SA NSW ORW.
- (2) Core Sound (Index No. 27-149) from northeastern limit of White Oak River Basin (a line from Hall Point to Drum Inlet) to Pamlico Sound and all tributaries, except Thorofare, John Day Ditch were reclassified from Class SA NSW to Class SA NSW ORW.

(q) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin was amended effective December 1, 1990 with the reclassification of the following waters as described in (1) through (3) of this Paragraph.

- (1) Northwest Creek from its source to the Neuse River (Index No. 27-105) from Class SC Sw NSW to Class SB Sw NSW;
- (2) Upper Broad Creek [Index No. 27-106-(7)] from Pamlico County SR 1103 at Lees Landing to the Neuse River from Class SC Sw NSW to Class SB Sw NSW; and
- (3) Goose Creek [Index No. 27-107-(11)] from Wood Landing to the Neuse River from Class SC Sw NSW to Class SB Sw NSW.

(r) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin was amended effective July 1, 1991 with the reclassification of the Bay River [Index No. 27-150-(1)] within a line running from Flea Point to the Hammock, east to a line running from Bell Point to Darby Point, including Harper Creek, Tempe Gut, Moore Creek and Newton Creek, and excluding that portion of the Bay River landward of a line running from Poorhouse Point to Darby Point from Classes SC Sw NSW and SC Sw NSW HQW to Class SA NSW.

(s) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin 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.

(t) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin was amended effective April 1, 1994 as follows:

- (1) Lake Crabtree [Index No. 27-33-(1)] was reclassified from Class C NSW to Class B NSW.
- (2) The Eno River from Orange County State Road 1561 to Durham County State Road 1003 [Index No. 27-10-(16)] was reclassified from Class WS-IV NSW to Class WS-IV B NSW.
- (3) Silver Lake (Index No. 27-43-5) was reclassified from Class WS-III NSW to Class WS-III B NSW.

(u) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin was amended effective July 1, 1996 with the reclassification of Austin Creek [Index Nos. 27-23-3-(1) and 27-23-3-(2)] from its source to Smith Creek from classes WS-III NSW and WS-III NSW CA to class C NSW.

(v) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin was amended effective September 1, 1996 with the reclassification of an unnamed tributary to Hannah Creek (Tuckers Lake) [Index No. 27-52-6-0.5] from Class C NSW to Class B NSW.

(w) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin was amended effective April 1, 1997 with the reclassification of the Neuse River (including tributaries) from mouth of Marks Creek to a point 1.3 miles downstream of Johnston County State Road 1908 to class WS-IV NSW and from a point 1.3 miles downstream of Johnston County State Road 1908 to the Johnston County Water Supply intake (located 1.8 miles downstream of Johnston County State Road 1908) to class WS-IV CA NSW [Index Nos. 27-(36) and 27-(38.5)].

(x) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin was amended effective August 1, 1998 with the revision of the Critical Area and Protected Area boundaries surrounding the Falls Lake water supply reservoir. The revisions to these boundaries are the result of the Corps of Engineers raising the lake's normal pool elevation. The result of these revisions is the Critical and Protected Area boundaries (classifications) may extend further upstream than the current designations. The Critical Area for a WS-IV reservoir is defined as 0.5 miles and draining to the normal pool elevation. The Protected Area for a WS-IV reservoir is defined as 5 miles and draining to the normal pool elevation. The normal pool elevation of the Falls Lake reservoir has changed from 250.1 feet mean sea level (msl) to 251.5 feet msl.

(y) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin was amended effective August 1, 2002 with the reclassification of the Neuse River [portions of Index No. 27-(56)], including portions of its tributaries, from a point 0.7 mile downstream of the mouth of Coxes Creek to a point 0.6 mile upstream of Lenoir County proposed water supply intake from Class C NSW to Class WS-IV NSW and from a point 0.6 mile upstream of Lenoir County

proposed water supply intake to Lenoir proposed water supply intake from Class C NSW to Class WS-IV CA NSW.

(z) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin was amended effective July 1, 2004 with the reclassification of the Neuse River (including tributaries in Wake County) [Index Nos. 27-(20.7), 27-21, 27-21-1] from the dam at Falls Lake to a point 0.5 mile upstream of the Town of Wake Forest Water Supply Intake (former water supply intake for Burlington Mills Wake Finishing Plant) from Class C NSW to Class WS-IV NSW and from a point 0.5 mile upstream of the Town of Wake Forest proposed water supply intake to Town of Wake Forest proposed water supply intake [Index No. 27-(20.1)] from Class C NSW to Class WS-IV NSW CA. Fantasy Lake [Index No. 27 -57-3-1-1], a former rock quarry within a WS-II NSW water supply watershed, was reclassified from Class WS-II NSW to Class WS-II NSW CA.

(aa) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin was amended effective November 1, 2007 with the reclassification of the entire watershed of Deep Creek (Index No. 27-3-4) from source to Flat River from Class WS-III NSW to Class WS-III ORW NSW.

(bb) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin is amended effective January 15, 2011 with the reclassification of all Class C NSW waters and all Class B NSW waters upstream of the dam at Falls Reservoir from Class C NSW and Class B NSW to Class WS-V NSW and Class WS-V & B NSW, respectively. All waters within the Falls Watershed are within a designated Critical Water Supply Watershed and are subject to a special management strategy specified in Rules 15A NCAC 02B .0275 through .0283.

(cc) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin is amended effective July 1, 2012 as follows:

- (1) Johnston County owned quarry near Little River [Index No. 27-57-(20.2)] from Class C NSW to Class WS-IV NSW CA. The Division of Water Quality maintains a Geographic Information Systems data layer of this quarry;
- (2) a portion of the Neuse River [Index Number 27-(41.7)] from a point approximately 1.4 miles downstream of Gar Gut to a point approximately 1.7 miles upstream of Bawdy Creek from Class WS-V NSW to Class WS-IV NSW; and
- (3) a portion of the Neuse River [Index No. 27-(49.5)] from a point approximately 0.5 mile upstream of S.R. 1201 (Johnston County intake) to S.R. 1201 (Johnston County intake) from Class WS-IV NSW to Class WS-IV NSW CA.

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

*Eff. February 1, 1976;*

*Amended Eff. November 1, 2007; July 1, 2004 (see SL 2001-361); August 1, 2002; August 1, 1998; April 1, 1997; September*

*1, 1996; July 1, 1996; April 1, 1994; August 3, 1992; July 1, 1991;*

*Amended Eff. January 15, 2011 (this permanent rule replaces the temporary rule approved by the RRC on December 16, 2010);*

*Amended Eff. July 1, 2012.*

#### **15A NCAC 02D .0544 PREVENTION OF SIGNIFICANT DETERIORATION REQUIREMENTS FOR GREENHOUSE GASES**

(a) The purpose of this Rule is to implement a program for the prevention of significant deterioration of air quality for greenhouse gases as required by 40 CFR 51.166. For purposes of greenhouse gases, the provisions of this Rule shall apply rather than the provisions of Rule .0530 of this Section. For all other regulated new source review (NSR) pollutants, the provisions of Rule .0530 of this Section apply.

(b) For the purposes of this Rule, the definitions contained in 40 CFR 51.166(b) and 40 CFR 51.301 shall apply except the definition of "baseline actual emissions." "Baseline actual emissions" means the rate of emissions, in tons per year, of a regulated NSR pollutant, as determined in accordance with Subparagraphs (1) through (3) of this Paragraph:

- (1) For an existing emissions unit, baseline actual emissions means the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 5-year period immediately preceding the date that a complete permit application is received by the Division for a permit required under this Rule. The Director shall allow a different time period, not to exceed 10 years immediately preceding the date that a complete permit application is received by the Division, if the owner or operator demonstrates that it is more representative of normal source operation. For the purpose of determining baseline actual emissions, the following shall apply:
  - (A) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions;
  - (B) The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the consecutive 24-month period;
  - (C) For an existing emission unit (other than an electric utility steam generating unit), the average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary

source must currently comply. However, if the State has taken credit in an attainment demonstration or maintenance plan consistent with the requirements of 40 CFR 51.165(a)(3)(ii)(G) for an emission limitation that is part of a maximum achievable control technology standard that the Administrator proposed or promulgated under part 63 of the Code of Federal Regulations, the baseline actual emissions shall be adjusted to account for such emission reductions;

(D) For an electric utility steam generating unit, the average rate shall be adjusted downward to reflect any emissions reductions under G.S. 143-215.107D and for which cost recovery is sought pursuant to G.S. 62-133.6;

(E) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period shall be used to determine the baseline actual emissions for all the emissions units being changed. A different consecutive 24-month period for each regulated NSR pollutant can be used for each regulated NSR pollutant; and

(F) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by Parts (B) and (C) of this Subparagraph;

(2) For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero; and thereafter, for all other purposes, shall equal the unit's potential to emit; and

(3) For a plantwide applicability limit (PAL) for a stationary source, the baseline actual emissions shall be calculated for existing emissions units in accordance with the procedures contained in Subparagraph (1) of this Paragraph and for a new emissions unit in accordance with the procedures contained in Subparagraph (2) of this Paragraph.

(c) In the definition of "net emissions increase," the reasonable period specified in 40 CFR 51.166(b)(3)(ii) shall be seven years.

(d) The limitation specified in 40 CFR 51.166(b)(15)(ii) shall not apply.

(e) Major stationary sources and major modifications shall comply with the requirements contained in 40 CFR 51.166(i)

and (a)(7) and by extension in 40 CFR 51.166(j) through (o) and (w). The transition provisions allowed by 40 CFR 52.21 (i)(11)(i) and (ii) and (m)(1)(vii) and (viii) are hereby adopted under this Rule. The minimum requirements described in the portions of 40 CFR 51.166 referenced in this Paragraph are hereby adopted as the requirements to be used under this Rule, except as otherwise provided in this Rule. Wherever the language of the portions of 40 CFR 51.166 referenced in this Paragraph speaks of the "plan," the requirements described therein shall apply to the source to which they pertain, except as otherwise provided in this Rule. Whenever the portions of 40 CFR 51.166 referenced in this Paragraph provide that the State plan may exempt or not apply certain requirements in certain circumstances, those exemptions and provisions of nonapplicability are also hereby adopted under this Rule. However, this provision shall not be interpreted so as to limit information that may be requested from the owner or operator by the Director as specified in 40 CFR 51.166(n)(2).

(f) 40 CFR 51.166(w)(10)(iv)(a) is changed to read: "If the emissions level calculated in accordance with Paragraph (w)(6) of this Section is equal to or greater than 80 percent of the PAL [plant wide applicability limit] level, the Director shall renew the PAL at the same level." 40 CFR 51.166(w)(10)(iv)(b) is not incorporated by reference.

(g) 15A NCAC 02Q .0102 and .0302 are not applicable to any source to which this Rule applies. The owner or operator of the sources to which this Rule applies shall apply for and receive a permit as required in 15A NCAC 02Q .0300 or .0500.

(h) When a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification to emit a pollutant, such as a restriction on hours of operation, then the provisions of this Rule shall apply to the source or modification as though construction had not yet begun on the source or modification.

(i) The provisions of 40 CFR 52.21(r)(2) regarding the period of validity of approval to construct are incorporated by reference except that the term "Administrator" is replaced with "Director".

(j) Permits may be issued based on innovative control technology as set forth in 40 CFR 51.166(s)(1) if the requirements of 40 CFR 51.166(s)(2) have been met, subject to the condition of 40 CFR 51.166(s)(3), and with the allowance set forth in 40 CFR 51.166(s)(4).

(k) A permit application subject to this Rule shall be processed in accordance with the procedures and requirements of 40 CFR 51.166(q). Within 30 days of receipt of the application, applicants shall be notified if the application is complete as to initial information submitted. Commencement of construction before full prevention of significant deterioration approval is obtained constitutes a violation of this Rule.

(l) Approval of an application with regard to the requirements of this Rule shall not relieve the owner or operator of the responsibility to comply fully with applicable provisions of other rules of this Subchapter or Subchapter 02Q of this Title and any other requirements under local, state, or federal law.

(m) If the owner or operator of a source is using projected actual emissions to avoid applicability of prevention of significant deterioration requirements, the owner or operator shall notify the

Director of the modification before beginning actual construction. The notification shall include:

- (1) a description of the project;
- (2) identification of sources whose emissions could be affected by the project;
- (3) the calculated projected actual emissions and an explanation of how the projected actual emissions were calculated, including identification of emissions excluded by 40 CFR 51.166(b)(40)(ii)(c);
- (4) the calculated baseline actual emissions and an explanation of how the baseline actual emissions were calculated; and
- (5) any netting calculations if applicable.

If upon reviewing the notification, the Director finds that the project will cause a prevention of significant deterioration evaluation, then the Director shall notify the owner or operator of his findings. The owner or operator shall not make the modification until the owner or operator has received a permit issued pursuant to this Rule. If a permit revision is not required pursuant to this Rule, the owner or operator shall maintain records of annual emissions in tons per year, on a calendar year basis related to the modifications for 10 years following resumption of regular operations after the change if the project involves increasing the emissions unit's design capacity or its potential to emit the regulated NSR pollutant; otherwise these records shall be maintained for five years following resumption of regular operations after the change. The owner or operator shall submit a report to the Director within 60 days after the end of each year during which these records must be generated. The report shall contain the items listed in 40 CFR 51.166(r)(6)(v)(a) through (c). The owner or operator shall make the information documented and maintained under this Paragraph available to the Director or the general public pursuant to the requirements in 40 CFR 70.4(b)(3)(viii).

(n) The references to the Code of Federal Regulations (CFR) in this Rule are incorporated by reference unless a specific reference states otherwise. The version of the CFR incorporated in this Rule is that as of July 20, 2011 at <http://www.gpo.gov/fdsys/pkg/FR-2011-07-20/pdf/2011-17256.pdf> and does not include any subsequent amendments or editions to the referenced material. This Rule is applicable in accordance with 40 CFR 51.166(b)(48) and (b)(49)(iv) and (v).

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(3); 143-215.107(a)(5); 143-215.107(a)(7); 143-215.108(b); 150B-21.6;*

*Eff. January 28, 2011 pursuant to E.O. 81, Beverly E. Perdue; Pursuant to G.S. 150B-21.3(c), a bill was not ratified by the General Assembly to disapprove this rule;*

*Temporary Amendment Eff. December 23, 2011;*

*Amended Eff. July 1, 2012.*

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#### **15A NCAC 10B .0113 BIG GAME KILL REPORTS**

(a) Upon killing a bear, deer or wild turkey and before moving the animal from the site of kill, the successful hunter shall validate the Big Game Harvest Report Card furnished with the

big game hunting license by cutting or punching out the validation box that correctly identifies the big game animal harvested. In lieu of the Big Game Harvest Report Card, antlerless deer may be recorded as outlined above on the Bonus Antlerless Deer Harvest Report Card acquired from the Wildlife Resources Commission or a Wildlife Service Agent.

(b) Before any harvested bear, deer or wild turkey is skinned, dressed, or dismembered for consumption and within 24 hours of the kill, the animal must be registered with a Wildlife Cooperator Agent or registered through the Electronic Big Game Reporting System. Deer harvested during the urban deer season specified in 15A NCAC 10B .0203(e) shall be registered through the Electronic Big Game Reporting System and shall not be registered with a Wildlife Cooperator Agent. The hunter may field dress the animal at the site of kill or before registering it by bleeding and removing the digestive, respiratory, and circulatory organs. However, the hunter may not further process the carcass in a manner that obscures its species identity, age, or sex before registering the animal. When the kill occurs in a remote area which prevents the animal from being transported as an entire carcass, the animal may be skinned and quartered before being registered. When a hunter harvests a big game animal in a remote area and plans to remain in the remote area for longer than a day, the 24-hour time limit to register the kill is extended until the hunter leaves the area. Upon leaving the remote area, the hunter shall register the kill within 24 hours.

(c) When a hunter registers a kill with a Wildlife Cooperator Agent, the Wildlife Cooperator Agent shall issue an authorization number that includes the date of kill to the big game hunter. The hunter shall record the authorization number given by the Wildlife Cooperator Agent or obtained through the Electronic Big Game Reporting System in the space provided immediately adjacent to the validation box that has been cut or punched out on the Big Game Harvest Report Card or the Bonus Antlerless Deer Harvest Report Card. The record entered on the Big game Harvest Report Card or the Bonus Antlerless Deer Harvest Report Card shall thereafter constitute authorization for the continued possession of the carcass. Possession of a harvested bear, deer or wild turkey without the validated Big Game Harvest Report Card or Bonus Antlerless Deer Harvest Report Card where applicable, including the authorization number obtained from a Wildlife Cooperator Agent or through the Electronic Big Game Reporting System is unlawful.

(d) Persons who kill a big game animal and leave it unattended shall identify the carcass with their name, their hunting license number, and the date of kill. Once an unattended animal is registered the animal need only be identified with the authorization number received by registering the kill. It is unlawful for a person to possess a Big Game Harvest Report Card or Bonus Antlerless Deer Harvest Report Card on which the species validation box has been cut or punched out, but on which the authorization number received by registering the kill has not been recorded, unless the animal is in the person's possession or is identified as described in this Paragraph and not more than 24 hours have passed since the harvest.

(e) Persons who are by law exempt from the big game hunting license shall obtain a Big Game Harvest Report Card or Bonus Antlerless Deer Harvest Report Card for License Exempt Hunters from a Wildlife Service Agent. Upon harvesting a bear,

deer or wild turkey, the exempt person shall validate the Big Game Harvest Report Card or Bonus Antlerless Deer Harvest Report Card and register the kill as provided by this Rule.

(f) Persons who use special tags issued pursuant to G.S. 113-291.2(e) to validate the harvest of a deer shall follow the tagging and reporting requirements set forth by statute and are not obligated to take any action under this Rule.

*History Note:* Authority G.S. 113-134; 113-270.3; 113-276.1;

*Eff. February 1, 1976;*

*Amended Eff. July 1, 1998; July 1, 1997; July 1, 1995; July 1, 1994; July 1, 1993; July 1, 1989;*

*Temporary Amendment Eff. July 1, 1999;*

*Amended Eff. August 1, 2012; August 1, 2010; June 1, 2009; May 1, 2007; May 1, 2004; July 1, 2000.*

**15A NCAC 10B .0116 PERMITTED ARCHERY EQUIPMENT**

(a) Only longbows and recurved bows having a minimum pull of 40 pounds, compound bows having a minimum pull of 35 pounds and crossbows shall be used for taking game.

(b) Only arrows with a fixed minimum broadhead width of seven-eighths of an inch or a mechanically opening broadhead with a width of at least seven-eighths of an inch in the open position shall be used for taking bear, deer or wild turkey. Blunt-type arrow heads may be used in taking small animals and birds including rabbits, squirrels, quail, grouse and pheasants. Poisonous, drugged, barbed, or explosive arrowheads shall not be used for taking any game.

(c) Crossbows shall have a minimum pull rated at least 150 pounds. Heads on bolts used with crossbows shall conform to those described for arrows in Paragraph (b) of this Rule.

*History Note:* Authority G.S. 113-134; 113-291.1(a);

*Eff. September 1, 1980;*

*Amended Eff. August 1, 2012; July 10, 2010; May 1, 2007; August 1, 2002; July 1, 2000; July 1, 1998; July 1, 1996; August 1, 1990.*

**15A NCAC 10B .0219 COYOTE**

(a) This Rule applies to hunting coyotes. There is no closed season for taking coyotes. Coyotes may be taken on private lands anytime during the day or night. Coyotes may be taken on public lands without a permit from the hours of one-half hour before sunrise until one-half hour after sunset, and from one-half hour after sunset to one-half hour before sunrise by permit only.

(b) There are no bag limit restrictions on coyotes.

(c) Manner of Take. Hunters may use electronic calls and artificial lights.

*History Note:* Authority G.S. 113-134; 113-264; 113-291.1; 113-291.2;

*Eff. July 1, 1993;*

*Amended Eff. January 1, 2012;*

*Amended Eff. Pending Legislative Review.*

**15A NCAC 10B .0223 FERAL SWINE**

(a) This Rule applies to hunting feral swine. There is no closed season for taking feral swine. Feral swine may be taken on private lands anytime during the day or night. Feral swine may be taken on public lands without a permit from the hours of one-half hour before sunrise until one-half hour after sunset, and from one-half hour after sunset to one-half hour before sunrise by permit only.

(b) There are no bag limit restrictions on feral swine.

(c) Manner of take. Hunters may use artificial lights.

*History Note:* Authority G.S. 113-129; 113-134; 113-264; 113-291; 113-291.1; 113-291.2;

*Temporary Adoption Eff. October 1, 2011;*

*Eff. February 1, 2012;*

*Amended Eff. Pending Legislative Review.*

**15A NCAC 10F .0330 CARTERET COUNTY**

(a) Regulated Areas. This Rule applies to the following waters in Carteret County:

- (1) the waters of Money Island Slough beginning at the east end of Money Island near the Anchorage Marina Basin and ending at the west end of Money Island where Brooks Avenue deadends at the slough;
- (2) the waters of Taylor Creek located within the territorial limits of the Town of Beaufort;
- (3) the waters of Pelletier Creek beginning at the entrance to Pelletier Creek at the Intracoastal Waterway and ending at U.S. Highway 70;
- (4) the waters of Bogue Sound Harbor Channel in Morehead City between Sugar Loaf Island and the seawall on the south side of Evans, Shepard and Shackelford Streets and bounded on the east by the State Ports Authority and on the west by the eastern right-of-way margin of South 13th Street extended;
- (5) the waters of Gallant's Channel from the US 70 crossing over the Grayden Paul bridge to Taylor's Creek;
- (6) the waters of Cedar Island Bay and Harbor from N.C. Highway 12 to Cedar Island Bay Channel Light 8;
- (7) the waters of the small cove on the west side of Radio Island south of Old Causeway Road;
- (8) the waters of the Newport River beginning at the north side of the Beaufort Drawbridge and ending at marker #6;
- (9) the waters of Spooners Creek within the territorial limits of the Town of Morehead City as delineated by appropriate markers;
- (10) the waters of Taylor's Creek from the eastern end of the current no wake zone eastward to Channel Marker #1A;
- (11) the waters of the Newport River at Bogue Sound including all waters surrounding the Port of Morehead City to Brandt Island as delineated by appropriate markers;



- (12) the waters of Morgans Creek as delineated by appropriate markers;
- (13) the waters of Cannonsgate Marina and the Cannonsgate Marina Channel, beginning at its intersection with Bogue Sound at 34.70163 N, 76.98157 W as delineated by appropriate markers; and
- (14) the waters of the Newport River within 200 yards of the Newport River Beach Access Boat Ramp, beginning at the shore north of the U.S. 70 bridge at a point at 34.72141 N, 76.68707 W, west to a point at 34.72128 N, 76.68893 W, north to a point at 34.72376 N, 76.68911 N, then east to the shore at 34.72371 N, 76.68631 W.

(b) Speed Limit. It is unlawful to operate a motorboat or vessel at a speed greater than no-wake speed while on the waters of the regulated areas designated in Paragraph (a) of this Rule.

(c) Placement and Maintenance of Markers. The Board of Commissioners of Carteret County, with respect to the regulated areas designated in Subparagraphs (1), (3), (5), (6), (7), (8), (10), (12) and (13) of Paragraph (a) of this Rule, and the Board of Commissioners of the Town of Beaufort, with respect to the regulated area designated in Subparagraph (2) of Paragraph (a) of this Rule, and the Board of Commissioners of Morehead City, with respect to Subparagraph (4), (9), and (14) of Paragraph (a) of this Rule, and the North Carolina State Ports Authority, with respect to the regulated area designated in Subparagraph (11) of Paragraph (a) of this Rule are designated as suitable agencies 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.

*History Note:* Authority G.S. 75A-3; 75A-15;

*Eff.* March 4, 1979;

*Amended Eff.* October 1, 1997; May 1, 1995; June 1, 1994; February 1, 1994; July 1, 1993;

*Temporary Amendment Eff.* February 1, 1998;

*Amended Eff.* July 1, 1998;

*Temporary Amendment Eff.* March 1, 1999; November 1, 1998;

*Amended Eff.* July 1, 2012; September 1, 2010; July 1, 2000.

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**15A NCAC 18A .2601 DEFINITIONS**

**15A NCAC 18A .2602 PERMITS**

**15A NCAC 18A .2603 PUBLIC DISPLAY OF GRADE CARD**

**15A NCAC 18A .2604 INSPECTIONS AND REINSPECTIONS**

*History Note:* Authority G.S. 130A-248;

*Eff.* May 5, 1980;

*Amended Eff.* January 1, 1996; July 1, 1994; January 4, 1994; July 1, 1993; May 1, 1991; July 1, 1984; February 1, 1990; March 1, 1988; July 1, 1986;

*Temporary Amendment Eff.* April 8, 1996;

*Amended Eff.* July 1, 2008; August 1, 2007; April 1, 2005; October 1, 2004; January 1, 2002; August 1, 1998; April 1, 1997;

*Repealed Eff.* September 1, 2012.

**15A NCAC 18A .2606 GRADING**

**15A NCAC 18A .2607 STANDARDS AND APPROVAL OF PLANS**

*History Note:* Authority G.S. 130A-248;

*Eff.* May 5, 1980;

*Amended Eff.* January 1, 1996; July 1, 1994; January 4, 1994; July 1, 1993; July 1, 1992; May 1, 1991; March 1, 1988; July 1, 1984;

*Temporary Amendment Eff.* April 8, 1996;

*Amended Eff.* July 1, 2008; August 1, 2007; January 1, 2006; April 1, 2005; October 1, 2004; August 1, 2004; January 1, 2002; August 1, 1998; April 1, 1997;

*Repealed Eff.* September 1, 2012.

**15A NCAC 18A .2613 BARBECUE PLACES**

**15A NCAC 18A .2614 OUTDOOR DINING**

**15A NCAC 18A .2615 MILK AND MILK PRODUCTS**

**15A NCAC 18A .2616 REQUIREMENTS FOR EMPLOYEES**

**15A NCAC 18A .2617 UTENSILS AND EQUIPMENT**

**15A NCAC 18A .2618 CLEANING OF EQUIPMENT AND UTENSILS**

**15A NCAC 18A .2619 METHODS OF BACTERICIDAL TREATMENT**

**15A NCAC 18A .2620 STORAGE AND HANDLING OF UTENSILS AND EQUIPMENT**

**15A NCAC 18A .2621 DRINKING WATER FOUNTAINS**

**15A NCAC 18A .2622 STORAGE: HANDLING: AND USE OF ICE**

**15A NCAC 18A .2623 WATER SUPPLY**

**15A NCAC 18A .2624 TOILET FACILITIES**

**15A NCAC 18A .2625 LAVATORY FACILITIES**

**15A NCAC 18A .2626 DISPOSAL OF WASTES AND BY-PRODUCTS**

**15A NCAC 18A .2627 FLOORS**

**15A NCAC 18A .2628 WALLS AND CEILINGS**

*History Note:* Authority G.S. 130A-248;

*Eff.* May 5, 1980;

*Amended Eff.* January 1, 1996; July 1, 1994; January 4, 1994; July 1, 1993; July 1, 1992; April 1, 1992; July 1, 1991; May 1, 1991; December 1, 1991; July 1, 1986; October 1, 1985; July 1, 1984;

*Temporary Amendment Eff.* April 8, 1996;

*Amended Eff.* September 1, 2010; November 1, 2007; August 1, 2007; April 1, 2005; October 1, 2004; February 1, 2004; January 1, 2002; September 1, 1999; August 1, 1998; April 1, 1997;

*Repealed Eff.* September 1, 2012.

**15A NCAC 18A .2630 LIGHTING**  
**15A NCAC 18A .2631 VENTILATION**  
**15A NCAC 18A .2632 STORAGE SPACES**  
**15A NCAC 18A .2633 PREMISES: MISCELLANEOUS:**  
**VERMIN CONTROL**  
**15A NCAC 18A .2634 REQUIREMENTS FOR FOOD**  
**STANDS**  
**15A NCAC 18A .2635 REQUIREMENTS FOR**  
**TEMPORARY FOOD ESTABLISHMENTS**

*History Note:* Authority G.S. 130A-248;  
*Eff. May 5, 1980;*  
*Amended Eff. September 1, 2010; October 1, 2004; January 1, 1996; August 1, 1998; April 1, 1992; May 1, 1991; February 1, 1987; July 1, 1986; October 1, 1985; July 1, 1984;*  
*Repealed Eff. September 1, 2012.*

**15A NCAC 18A .2637 EMPLOYEES' COOK TENTS**  
**15A NCAC 18A .2638 GENERAL REQUIREMENTS**  
**FOR PUSHCARTS AND MOBILE FOOD UNITS**  
**15A NCAC 18A .2639 SPECIFIC REQUIREMENTS**  
**FOR PUSHCARTS**  
**15A NCAC 18A .2640 SPECIFIC REQUIREMENTS**  
**FOR MOBILE FOOD UNITS**  
**15A NCAC 18A .2641 PROCEDURE WHEN**  
**INFECTION SUSPECTED**  
**15A NCAC 18A .2642 SEVERABILITY**  
**15A NCAC 18A .2643 INFORMAL REVIEW PROCESS**  
**AND APPEALS PROCEDURE**

*History Note:* Authority G.S. 130A-248;  
*Eff. May 5, 1980;*  
*Amended Eff. November 1, 2007; August 1, 1998; January 4, 1994; September 1, 1991; May 1, 1991; April 1, 1985;*  
*September 22, 1980;*  
*Repealed Eff. September 1, 2012.*

**15A NCAC 18A .2644 REQUIREMENTS FOR**  
**CATERED ELDERLY NUTRITION SITES**

*History Note:* Authority G.S. 130A-248;  
*Eff. March 1, 1989;*  
*Amended Eff. July 1, 1993;*  
*Repealed Eff. September 1, 2012.*

**15A NCAC 18A .2645 REQUIREMENTS FOR LIMITED**  
**FOOD SERVICE ESTABLISHMENTS**

*History Note:* Authority G.S. 130A-248;  
*Eff. July 1, 1994;*  
*Repealed Eff. September 1, 2012.*

**15A NCAC 18A .2650 GENERAL – ADOPTION BY**  
**REFERENCE**

The 2009 Food Code, not including subsequent amendments and editions, established by the U.S. Department of Health and Human Services, Food and Drug Administration (hereinafter referred to as the "Food Code") is incorporated by reference. The Food Code may be accessed from the internet at

[www.fda.gov/Food/FoodSafety/RetailFoodProtection/FoodCode/default.htm](http://www.fda.gov/Food/FoodSafety/RetailFoodProtection/FoodCode/default.htm), or a copy can be obtained by contacting the U.S. Department of Commerce, National Technical Information Service, at (703) 605-6040, and is also available for inspection at the Division of Public Health, N.C. Department of Health and Human Services.

*History Note:* Authority G.S. 130A-248; S.L. 2011-394, Section 15(a);  
*Eff. September 1, 2012.*

**15A NCAC 18A .2651 DEFINITIONS**

The provisions of this Rule make amendments, additions, and deletions to the Food Code incorporated by reference in Rule .2650 of this Section. In Chapter 1, the following apply:

- (1) In Paragraph 1-201.10(B), add: "'Commissary' means a food establishment that services a mobile food unit or a pushcart."
- (2) In Paragraph 1-201.10(B), add: "'Congregate nutrition sites' means food establishments where food preparation is limited to same day service, reheating of potentially hazardous food (time/temperature control for safety food), and operated under the rules of the Division of Aging and Adult Services, N.C. Department of Health and Human Services."
- (3) In Paragraph 1-201.10(B), add: "'Department' means the N.C. Department of Health and Human Services."
- (4) In Paragraph 1-201.10(B), amend "Food establishment (2)(b)" to read: "An operation that is conducted in a mobile, stationary, temporary, or permanent facility or location and where consumption is on or off the premises."
- (5) In Paragraph 1-201.10(B), amend "Food establishment (3)" to read: "'Food establishment' does not include entities exempted as described in G.S. 130A-250 or establishments that only serve such items as dip ice cream, popcorn, candied apples, or cotton candy."
- (6) In Paragraph 1-201.10(B), add: "'Food stand' means a food establishment that prepares or serves food and that does not provide seating facilities for customers to use while eating or drinking."
- (7) In Paragraph 1-201.10(B), add: "'Good repair' means equipment and utensils shall be maintained in a state of repair and condition that meets the requirements specified under Parts 4-1 and 4-2 of the Food Code as amended by Rule .2654."
- (8) In Paragraph 1-201.10(B), amend "Imminent health hazard" to: "'Imminent hazard' means an imminent hazard as defined in G.S. 130A-2(3)."

- (9) In Paragraph 1-201.10(B), add: "'Limited food establishment' means a food establishment as defined in G.S. 130A-247(7)."
- (10) In Paragraph 1-201.10(B), add: "'Local health director' means a local health director as defined in G.S. 130A-2(6)."
- (11) In Paragraph 1-201.10(B), amend "Meat" to read: "'Meat' means the flesh of animals used as food including the dressed flesh of cattle, swine, sheep, or goat, other edible animals, and as defined in G.S. 106-549.15(14), except fish, poultry, and wild game animals as specified under Subparagraphs 3-201.17(A)(3) and (4)."
- (12) In Paragraph 1-201.10(B), add: "'Mobile food unit' means a food establishment or pushcart designed to be readily moved and vend food."
- (13) In Paragraph 1-201.10(B), amend "Person" to: "'Person' means person as defined in G.S. 130A-2(7)."
- (14) In Paragraph 1-201.10(B), amend "Poultry (1)" to read: "Any domesticated bird (chickens, turkeys, ducks, geese, guineas, ratites, or squabs), whether live or dead, as defined in 9 CFR 381.1 Poultry Products Inspection Regulations Definitions, Poultry, and G.S. 106-549.51(26); and"
- (15) In Paragraph 1-201.10(B), add: "'Pushcart' means a mobile piece of equipment or vehicle used to vend food."
- (16) In Paragraph 1-201.10(B), add: "'Registered Environmental Health Specialist' means a Registered Environmental Health Specialist as defined in G.S. 90A-51(2b) and 90A-51(4) and authorized agent of the Department."
- (17) In Paragraph 1-201.10(B), add: "'Regulatory Authority' means the Department or authorized agent of the Department."
- (18) In Paragraph 1-201.10(B), add: "'Restaurant' means a food establishment that prepares or serves food and provides seating."
- (19) In Paragraph 1-201.10(B), add: "'Supplemental cooking room' means a separate attached or detached structure in that food is cooked on grills, pits, or fireplaces and no other processing occurs."
- (20) In Paragraph 1-201.10(B), amend "Temporary food establishment" to: "'Temporary food establishment' means a food establishment that operates for a period of time not to exceed 21 days in one location, affiliated with and endorsed by a transitory fair, carnival, circus, festival, or public exhibition. Food establishments that operate in the same event location for more than 21 days per calendar year are not eligible for a temporary food establishment permit. Domestic yard sales and businesses such as auctions, flea markets, or farmers' markets are not eligible for a temporary food establishment permit."
- (21) In Paragraph 1-201.10(B), add: "'Temporary food establishment commissary' means a food establishment affiliated with a temporary food establishment that prepares food in advance or off-site. The temporary food establishment commissary permit shall be valid for no more than 21 consecutive days and shall be permitted no more than 7 days prior to commencement of the event. Food establishments that operate in the same location for more than 21 days per calendar year are not eligible for a temporary food establishment commissary permit. Food shall not be sold from the temporary food establishment commissary. The temporary food establishment commissary shall comply with all temporary food establishment requirements."
- (22) In Paragraph 1-201.10(B), add: "'Transitional Permit' means a permit issued by the regulatory authority upon the transfer of ownership or lease of an existing food establishment to allow the correction of construction and equipment problems that do not represent an immediate threat to public health. The transitional permit shall expire 180 days after the date of issuance."
- (23) In Paragraph 1-201.10(B), delete "Vending machine."
- (24) In Paragraph 1-201.10(B), delete "Vending machine location."

*History Note: Authority G.S. 130A-248; S.L. 2011-394, Section 15(a); Eff. September 1, 2012.*

**15A NCAC 18A .2652 MANAGEMENT AND PERSONNEL**

The provisions of this Rule make amendments, additions, and deletions to the Food Code incorporated by reference in Rule .2650 of this Section. In Chapter 2, the following apply:

- (1) In Paragraph 2-101.11(B), amend to read: "In a food establishment with two or more separately permitted departments that are the legal responsibility of the same permit holder and that are located on the same premises, the permit holder may designate a single person in charge who is present on the premises during all hours of operation, and who is responsible for each separately permitted food establishment on the premises."
- (2) In Section 2-102.11, amend the last sentence in the first paragraph to: "The person in charge shall demonstrate this knowledge by being a certified food protection manager who has shown proficiency of required information through passing a test that is part of an

accredited program. The person in charge is not required to be a certified food protection manager when the food establishment is not operating and food is not being prepared, packaged, or served for immediate consumption."

- (3) In Section 2-102.11, delete (A), (B), and (C).
- (4) In Subpart 2-102, add Section 2-102.12, Certified Food Protection Manager, to read:

**"2-102.12 Certified Food Protection Manager.**

(A) At least one employee who has supervisory and management responsibility and the authority to direct and control food preparation and service shall be a certified food protection manager who has shown proficiency of required information through passing a test that is part of an American National Standards Institute (ANSI)-accredited program.

(B) This section does not apply to congregate nutrition sites and Risk Category I food establishments as defined in 10A NCAC 46 .0213."

(C) The requirements of this section are effective on January 1, 2014.

- (5) In Section 2-102.20, replace "Paragraph 2-102.11(B)" with "Section 2-102.11."

*History Note: Authority G.S. 130A-248; S.L. 2011-394, Section 15(a); Eff. September 1, 2012.*

**15A NCAC 18A .2654 EQUIPMENT, UTENSILS, AND LINENS**

The provisions of this Rule make amendments, additions, and deletions to the Food Code incorporated by reference in Rule .2650 of this Section. In Chapter 4, the following apply:

- (1) Delete Sections 4-204.14, 4-204.19, 4-204.111, 4-204.121, and 4-204.123.
- (2) In Section 4-205.10, amend to read: "Except for toasters, mixers, microwave ovens, water heaters, and hoods, food equipment shall be used in accordance with the manufacturer's intended use and certified or classified for sanitation by an American National Standards Institute (ANSI)-accredited certification program. If the equipment is not certified or classified for sanitation, the equipment shall meet Parts 4-1 and 4-2 of the Food Code as amended by this Rule. Nonabsorbent wooden shelves that are in good repair may be used in dry storage areas."
- (3) In Section 4-301.14, amend to read: "Ventilation hood systems and devices shall prevent grease or condensation from collecting on equipment, walls, and ceilings."

*History Note: Authority G.S. 130A-248; S.L. 2011-394, Section 15(a); Eff. September 1, 2012.*

**15A NCAC 18A .2655 WATER, PLUMBING, AND WASTE**

The provisions of this Rule make amendments, additions, and deletions to the Food Code incorporated by reference in Rule .2650 of this Section. In Chapter 5, the following applies: Delete Paragraph 5-203.11(C) and Section 5-501.14.

*History Note: Authority G.S. 130A-248; S.L. 2011-394, Section 15(a); Eff. September 1, 2012.*

**15A NCAC 18A .2656 PHYSICAL FACILITIES**

The provisions of this Rule make amendments, additions, and deletions to the Food Code incorporated by reference in Rule .2650 of this Section. In Chapter 6, the following apply:

- (1) Delete Section 6-202.17.
- (2) Delete Section 6-202.18.
- (3) In Paragraph 6-501.115(B), amend to read:  
"Live animals are allowed in the following situations if the owner or operator does not permit animals to physically contact food, serving dishes, utensils, tableware, linens, unwrapped single-service and single-use articles or other food service items that may result in contamination of food or food-contact surfaces and does not permit animals to physically contact employees engaged in the preparation or handling of food:  
  - (1) Fish or crustacea in aquariums or display tanks;
  - (2) Patrol dogs accompanying police or security officers in offices and dining, sales, and storage areas; and sentry dogs in outside fenced areas;
  - (3) Service animals accompanying persons with disabilities in areas that are not used for food preparation;
  - (4) Dogs (*Canis lupus familiaris*) and cats (*Felis catus*) in outdoor dining areas; provided that dogs and cats are physically restrained, and do not pass through any indoor areas of the food establishment. Except for service animals described in Subparagraph (3) of this Paragraph, nothing in this Rule prohibits a food establishment from

- prohibiting dogs and cats in outdoor dining areas; and
- (5) In areas that are not used for food preparation, storage, sales, display, or dining, in which there are caged animals or animals that are similarly confined, such as in a variety store that sells pets or a tourist park that displays animals."

*History Note: Authority G.S. 130A-248; S.L. 2011-394, Section 15(a); Eff. September 1, 2012.*

**15A NCAC 18A .2657 POISONOUS OR TOXIC MATERIALS**

The provisions of this Rule make amendments, additions, and deletions to the Food Code incorporated by reference in Rule .2650 of this Section. In Chapter 7, the following apply:

- (1) In Section 7-101.11, add at the end: "Only those pesticides that have been registered with the EPA and with the N.C. Department of Agriculture and Consumer Services shall be used. If the manufacturer's label is missing from a pesticide container, the container shall be identified with the manufacturer's product brand name, percentage of each active ingredient, and EPA registration number."
- (2) In Section 7-203.11, add at the end: "Sanitizing solutions shall not be stored in or dispensed from containers previously containing other poisonous or toxic materials."

*History Note: Authority G.S. 130A-248; S.L. 2011-394, Section 15(a); Eff. September 1, 2012.*

**15A NCAC 18A .2658 COMPLIANCE AND ENFORCEMENT**

The provisions of this Rule make amendments, additions, and deletions to the Food Code incorporated by reference in Rule .2650 of this Section. In Chapter 8, the following apply:

- (1) In Section 8-103.10, add the following to the end: "Variance requests shall be submitted to a committee including a food scientist and representatives from industry and state and local public health agencies appointed by the Department."
- (2) In Section 8-201.11, add the following to the beginning: "Plans drawn to scale for franchised or chain food establishments shall be submitted for review and approval to the Environmental Health Services Branch, N.C. Division of Public Health. Plans drawn to scale for independent food establishments shall be submitted for review and approval to the local health department."

- (3) In Paragraph 8-201.12(A), amend to read: "Intended menu and plan review application;"
- (4) In Paragraph 8-302.14(G), amend to read: "A statement signed by the applicant that attests to the accuracy of the information provided in the application."
- (5) In Paragraph 8-302.14(G), delete (1) and (2).
- (6) In Section 8-303.20, delete "Permit Renewal" from the heading.
- (7) In Section 8-303.20, amend to read: "As applicable, the regulatory authority may issue a permit in accordance with 15A NCAC 18A .2659, to a new owner of an existing food establishment after an application is submitted, reviewed, and approved, and an inspection shows that the establishment is in compliance with this Code. If the establishment is not in compliance with the Code, a transitional permit may be issued in accordance with G.S. 130A-248 (b) and (c) and Rule .2659(b)."
- (8) Delete Section 8-304.10.
- (9) Delete Paragraph 8-304.11(A).
- (10) Delete Section 8-304.20.
- (11) In Section 8-401.10, delete (A) and replace with: "The regulatory authority shall inspect a food establishment in accordance with 10A NCAC 46 .0213."
- (12) In Section 8-401.10, delete (B) and (C).
- (13) Delete Section 8-401.20.
- (14) Delete Section 8-402.10.
- (15) In Subparagraph 8-402.20(A)(1), amend to read: "The permit holder shall allow access to the regulatory authority as specified under Section 8-402.11 of the Code and G.S. 130A-17 and 130A-249."
- (16) In Subparagraph 8-402.20(A)(3), amend to read: "If access is denied, an administrative warrant may be obtained according to G.S. 15-27.2."
- (17) In Section 8-402.40, amend heading to read: "Administrative Warrant to Gain Access."
- (18) In Section 8-402.40, amend to read: "If denied access to a food establishment for an authorized purpose and after complying with Section 8-402.20 of the Food Code as amended by Rule .2658, the regulatory authority may issue, or apply for the issuance of, an administrative warrant to gain access as provided by G.S. 15-27.2."
- (19) In Section 8-403.20, delete the reference to Section 8-406.11.
- (20) Delete Section 8-406.11.
- (21) Delete Subpart 8-501.

*History Note: Authority G.S. 130A-248; S.L. 2011-394, Section 15(a); Eff. September 1, 2012.*

**15A NCAC 18A .2659 PERMITS**

(a) No permit for a food establishment shall be issued to a person until an evaluation by the regulatory authority shows that the establishment complies with this Section. However, the regulatory authority shall allow a period of 210 days after the date of issuance to comply with the certified food protection manager requirements in Sections 2-102.11 and 2-102.12 of the Food Code as amended by Rule .2652 of this Section.

(b) Upon transfer of ownership of an existing food establishment, the regulatory authority shall complete an evaluation. If the establishment satisfies all the requirements of the rules, a permit shall be issued. If the establishment does not satisfy all the requirements of the rules, a permit shall not be issued. A transitional permit shall be issued if the regulatory authority determines that the noncompliant items are construction or equipment problems that do not represent a threat to public health or no certified food protection manager is on the premises. The transitional permit shall expire 180 days after the date of issuance unless suspended or revoked before that date and shall not be renewed. Upon expiration of the transitional permit, the permit holder shall have corrected the noncompliant items and obtained a permit or the food establishment shall not continue to operate.

(c) The regulatory authority shall impose conditions on the issuance of a permit or transitional permit if necessary to ensure that a food establishment remains in compliance with this Section. Conditions may be specified for one or more of the following areas:

- (1) The number of seats or consumers served.
- (2) The categories of food served.
- (3) Time schedules in completing minor construction items.
- (4) Modification or maintenance of water supplies.
- (5) Use of facilities for more than one purpose.
- (6) Continuation of contractual arrangements upon which basis the permit was issued.
- (7) Submission and approval of plans for renovation.
- (8) Any other areas necessary for a food establishment to remain in compliance with this Section.

(d) If a permit or transitional permit has been suspended, the suspension shall be lifted if the regulatory authority has evaluated the food establishment and found that the violations causing the suspension have been corrected. If a permit or transitional permit has been revoked, a new permit shall be issued only after the regulatory authority has evaluated the food establishment and found it to comply with all applicable rules. The evaluations shall be conducted within 15 days after the request is made by the permit holder.

*History Note: Authority G.S. 130A-248; S.L. 2011-394, Section 15(a); Eff. September 1, 2012.*

**15A NCAC 18A .2660 PUBLIC DISPLAY OF GRADE CARDS**

(a) Upon initial inspection of a food establishment or if a renovation or other change in the establishment makes the grade card inconspicuous, the regulatory authority shall designate the location for posting the grade card. The grade card shall be located in a conspicuous place where it may be readily observed by the public upon entering the food establishment. If the person in charge of the food establishment objects to the location designated by the regulatory authority then the person in charge may suggest an alternative location which meets the criteria of this Rule.

(b) When an inspection of a food establishment is made, the regulatory authority shall remove the existing grade card, issue a new grade card, and post the new grade card in the same location where the grade card was previously posted as long as that location remains conspicuous. The person in charge of the food establishment shall keep the grade card posted at the designated location at all times. The grade card may be posted in another location which meets the criteria of this Rule if agreed upon by the person in charge and the regulatory authority.

(c) On a mobile food unit and pushcart, the grade card shall be located where it is visible to the public when purchasing food. The grade card shall be maintained on the mobile food unit and pushcart and may be removed during transport to operating locations and the person in charge shall repost the grade card in the original location prior to commencing operation.

*History Note: Authority G.S. 130A-248; S.L. 2011-394, Section 15(a); Eff. September 1, 2012.*

**15A NCAC 18A .2661 INSPECTIONS AND REINSPECTIONS**

(a) Upon entry into a food establishment, the regulatory authority shall provide identification and the purpose in visiting that establishment. The regulatory authority shall inquire as to the identity of the person in charge and invite the person in charge to accompany the regulatory authority during the inspection. If no employee is identified as the person in charge, the regulatory authority shall invite an employee to accompany the regulatory authority on the inspection. Following the inspection, the regulatory authority shall offer to review the results of the inspection with the person in charge or employee, as applicable.

(b) The grading of food establishments shall be conducted using an inspection form furnished by the regulatory authority. The form shall provide for the following information:

- (1) The name and mailing address of the food establishment;
- (2) The name of the permit holder;
- (3) The permit status and score given;
- (4) Standards of construction and operation as listed in .2651 through .2676 of this Section;
- (5) An explanation for all points deducted;
- (6) The signature of the regulatory authority; and
- (7) The date.

(c) The grading of food establishments shall be based on the standards of operation and construction as set forth in Rules .2650 through .2676 of this Section.

(d) The Food Establishment Inspection form shall be used to document points assessed for violation of the rules of this Section as follows:

- (1) Violation of Chapter 2 of the Food Code as amended by Rule .2652 of this Section related to person in charge present, certification by accredited program or performs duties shall equal no more than 2 points.
- (2) Violation of Chapter 2 of the Food Code as amended by Rule .2652 of this Section related to management awareness, policy present, and allergy awareness shall equal no more than 3 points.
- (3) Violation of Chapter 2 of the Food Code as amended by Rule .2652 of this Section related to proper use of reporting, restriction, and exclusion shall equal no more than 3 points.
- (4) Violation of Chapters 2 and 3 of the Food Code as amended by Rules .2652 and .2653 of this Section related to proper eating, tasting, drinking, or tobacco use shall equal no more than 2 points.
- (5) Violation of Chapter 2 of the Food Code as amended by Rule .2652 of this Section related to no discharge from eyes, nose, and mouth shall equal no more than 1 point.
- (6) Violation of Chapter 2 of the Food Code as amended by Rule .2652 of this Section related to hands clean and properly washed shall equal no more than 4 points.
- (7) Violation of Chapter 3 of the Food Code as amended by Rule .2653 of this Section related to no bare hand contact with ready-to-eat food or approved alternate method properly followed shall equal no more than 3 points.
- (8) Violation of Chapters 5 and 6 of the Food Code as amended by Rules .2655 and .2656 of this Section related to handwashing facilities supplied and accessible shall equal no more than 2 points.
- (9) Violation of Chapters 3 and 5 of the Food Code as amended by Rules .2653 and .2655 of this Section related to food obtained from an approved source shall equal no more than 2 points.
- (10) Violation of Chapter 3 of the Food Code as amended by Rule .2653 of this Section related to food received at proper temperature shall equal no more than 2 points.
- (11) Violation of Chapter 3 of the Food Code as amended by Rule .2653 of this Section related to food in good condition, safe, and unadulterated shall equal no more than 2 points.
- (12) Violation of Chapter 3 of the Food Code as amended by Rule .2653 of this Section related

to required records available, shellstock tags, and parasite destruction shall equal no more than 2 points.

- (13) Violation of Chapter 3 of the Food Code as amended by Rule .2653 of this Section related to food separated and protected shall equal no more than 3 points.
- (14) Violation of Chapter 4 of the Food Code as amended by Rule .2654 of this Section related to food-contact surfaces cleaned and sanitized shall equal no more than 3 points.
- (15) Violation of Chapter 3 of the Food Code as amended by Rule .2653 of this Section related to disposition of returned, previously served, reconditioned, and unsafe food shall equal no more than 2 points.
- (16) Violation of Chapter 3 of the Food Code as amended by Rule .2653 of this Section related to cooking time and temperatures shall equal no more than 3 points.
- (17) Violation of Chapter 3 of the Food Code as amended by Rule .2653 of this Section related to reheating for hot holding shall equal no more than 3 points.
- (18) Violation of Chapter 3 of the Food Code as amended by Rule .2653 of this Section related to cooling time and temperatures shall equal no more than 3 points.
- (19) Violation of Chapter 3 of the Food Code as amended by Rule .2653 of this Section related to hot holding temperatures shall equal no more than 3 points.
- (20) Violation of Chapter 3 of the Food Code as amended by Rule .2653 of this Section related to cold holding temperatures shall equal no more than 3 points.
- (21) Violation of Chapter 3 of the Food Code as amended by Rule .2653 of this Section related to date marking and disposition shall equal no more than 3 points.
- (22) Violation of Chapter 3 of the Food Code as amended by Rule .2653 of this Section related to time as a public health control procedures and records shall equal no more than 2 points.
- (23) Violation of Chapter 3 of the Food Code as amended by Rule .2653 of this Section related to consumer advisory provided for raw or undercooked foods shall equal no more than 1 point.
- (24) Violation of Chapter 3 of the Food Code as amended by Rule .2653 of this Section related to pasteurized foods used and prohibited foods not offered shall equal no more than 3 points.
- (25) Violation of Chapter 3 of the Food Code as amended by Rule .2653 of this Section related to food additives approved and properly used shall equal no more than 1 point.
- (26) Violation of Chapter 7 of the Food Code as amended by Rule .2657 of this Section related

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|      | to toxic substances properly identified, stored, and used shall equal no more than 2 points.  |      | used and stored shall equal no more than 1 point.   |
| (27) | Violation of Chapters 3, 4 and 8 of the Food Code as amended by Rules .2653, .2654, and .2658 of this Section related to compliance with variance, specialized process, and HACCP plan shall equal no more than 2 points. | (40) | Violation of Chapters 3 and 7 of the Food Code as amended by Rules .2653 and .2657 of this Section related to washing fruits and vegetables shall equal no more than 1 point.   |
| (28) | Violation of Chapter 3 of the Food Code as amended by Rule .2653 of this Section related to pasteurized eggs used where required shall equal no more than 1 point.  | (41) | Violation of Chapter 3 of the Food Code as amended by Rule .2653 of this Section related to in-use utensils properly stored shall equal no more than 1 point.   |
| (29) | Violation of Chapters 3 and 5 of the Food Code as amended by Rules .2653 and .2655 of this Section related to water from an approved source shall equal no more than 2 points.  | (42) | Violation of Chapter 4 of the Food Code as amended by Rule .2654 of this Section related to utensils, equipment, and linens properly stored, dried and handled shall equal no more than 1 point.  |
| (30) | Violation of Chapter 8 of the Food Code as amended by Rule .2658 of this Section related to variance obtained for specialized processing methods shall equal no more than 1 point.  | (43) | Violation of Chapter 4 of the Food Code as amended by Rule .2654 of this Section related to single-use and single-service articles properly stored and used shall equal no more than 1 point.   |
| (31) | Violation of Chapters 3 and 4 of the Food Code as amended by Rules .2653 and .2654 of this Section related to proper cooling methods used or adequate equipment for temperature control shall equal no more than 1 point. | (44) | Violation of Chapter 3 of the Food Code as amended by Rule .2653 of this Section related to gloves used properly shall equal no more than 1 point.  |
| (32) | Violation of Chapter 3 of the Food Code as amended by Rule .2653 of this Section related to plant food properly cooked for hot holding shall equal no more than 1 point.  | (45) | Violation of Chapters 3 and 4 of the Food Code as amended by Rules .2653 and .2654 of this Section related to equipment, food and non-food contact surfaces approved, cleanable, properly designed, constructed and used shall equal no more than 2 points. |
| (33) | Violation of Chapter 3 of the Food Code as amended by Rule .2653 of this Section related to approved thawing methods used shall equal no more than 1 point.   | (46) | Violation of Chapter 4 of the Food Code as amended by Rule .2654 of this Section related to warewashing facilities installed, maintained, used, and test strips shall equal no more than 1 point.   |
| (34) | Violation of Chapter 4 of the Food Code as amended by Rule .2654 of this Section related to thermometers provided and accurate shall equal no more than 1 point.  | (47) | Violation of Chapter 4 of the Food Code as amended by Rule .2654 of this Section related to non-food contact surfaces clean shall equal no more than 1 point.   |
| (35) | Violation of Chapter 3 of the Food Code as amended by Rule .2653 of this Section related to food properly labeled or original container shall equal no more than 2 points.  | (48) | Violation of Chapter 5 of the Food Code as amended by Rule .2655 of this Section related to hot and cold water available and adequate pressure shall equal no more than 2 points.   |
| (36) | Violation of Chapters 2 and 6 of the Food Code as amended by Rules .2652 and .2656 of this Section related to insects and rodents not present or no unauthorized animals or persons shall equal no more than 2 points.    | (49) | Violation of Chapter 5 of the Food Code as amended by Rule .2655 of this Section related to plumbing installed and proper backflow devices shall equal no more than 2 points.   |
| (37) | Violation of Chapters 3 and 6 of the Food Code as amended by Rules .2653 and .2656 of this Section related to contamination prevented during food preparation, storage, and display shall equal no more than 2 points.    | (50) | Violation of Chapter 5 of the Food Code as amended by Rule .2655 of this Section related to sewage and wastewater properly disposed shall equal no more than 2 points.  |
| (38) | Violation of Chapter 2 of the Food Code as amended by Rule .2652 of this Section related to personal cleanliness shall equal no more than 1 point.  | (51) | Violation of Chapters 5 and 6 of the Food Code as amended by Rules .2655 and .2656 of this Section related to toilet facilities properly constructed, supplied, and cleaned shall equal no more than 1 point.   |
| (39) | Violation of Chapters 3 and 4 of the Food Code as amended by Rules .2653 and .2654 of this Section related to wiping cloths properly  | (52) | Violation of Chapters 5 and 6 of the Food Code as amended by Rules .2655 and .2656 of this Section related to garbage and refuse  |



properly disposed and facilities maintained shall equal no more than 1 point.

- (53) Violation of Chapters 4 and 6 of the Food Code as amended by Rules .2654 and .2656 of this Section related to physical facilities installed, maintained, and clean shall equal no more than 1 point.

- (54) Violation of Chapters 4 and 6 of the Food Code as amended by Rules .2654 and .2656 of this Section related to meets ventilation and lighting requirements and designated areas used shall equal no more than 1 point.

(e) In filling out the inspection form, points may be deducted only once for a single occurrence or condition existing within or outside of the food establishment. Deductions shall be based on actual violations of the rules of this Section observed during the inspection. The regulatory authority shall take zero, one-half, or a full deduction of points depending upon the severity or the recurring nature of the core item violations. Priority items or priority foundation items may be corrected during the inspection and no more than one-half of the total point value shall be deducted when the violation meets the following criteria:

- (1) The priority item or priority foundation item violation was not documented on the previous inspection; and
- (2) Correction of the item is documented on the inspection form.

(f) At the time of inspection, if a priority item or priority foundation item violation is observed and not corrected, the regulatory authority shall take one-half or a full deduction of points depending upon the severity or the recurring nature of the violation. The regulatory authority shall specify a time frame of no more than 10 calendar days to correct the priority items or priority foundation items.

(g) In determining whether items or areas of a food establishment are clean for purposes of enforcing the rules set forth in this Section and grading a food establishment, the regulatory authority shall consider, among other things:

- (1) The age of the accumulated material;
- (2) The relative percentage of items which are clean and not clean;
- (3) The cleaning practices of the food establishment; and
- (4) The health risk posed by the circumstances.

(h) Upon request of the permit holder or his or her representative a reinspection shall be made. In the case of a food establishment that requests an inspection for the purpose of raising the alphabetical grade, and that holds an unrevoked permit, the regulatory authority shall make an unannounced inspection within 15 days from the date of the request.

(i) In the case of food establishments that have been closed for failure to comply with the rules of this Section, a reinspection to consider the issuance or reissuance of a permit shall be made at the earliest convenience of the regulatory authority.

*History Note: Authority G.S. 130A-248; S.L. 2011-394, Section 15(a); Eff. September 1, 2012.*

## **15A NCAC 18A .2662 GRADING**

(a) The grading of food establishments is based on a system of scoring. A food establishment that earns a score of at least:

- (1) 90 percent shall receive a grade A;
- (2) 80 percent and less than 90 percent shall receive a grade B;
- (3) 70 percent and less than 80 percent shall receive a grade C.

Permits shall be immediately revoked in accordance with G.S. 130A-23(d) for food establishments receiving a score of less than 70 percent.

(b) The posted grade card shall be black on a white background. All graphics, letters, and numbers for the grade card shall be approved as meeting the standards in this Paragraph by the State. The alphabetical and numerical rating shall be 1.5 inches in height. No other public displays representing sanitation level of the establishment may be posted by the regulatory authority, except for sanitation awards issued by the local health department. Sanitation awards shall be in a different color and size from the grade card and must be labeled as an award.

*History Note: Authority G.S. 130A-248; S.L. 2011-394, Section 15(a); Eff. September 1, 2012.*

## **15A NCAC 18A .2663 OUTDOOR DINING AND BEVERAGE FACILITIES**

(a) A food establishment may provide outdoor dining and beverage service.

(b) Beverages may be prepared outdoors if all equipment and utensils are provided with overhead protection.

(c) Portable cooking, food, and beverage serving facilities shall be allowed for food service provided to a club, organization, or private individual as a planned event and from which the public is excluded. All open food and utensils shall be provided with overhead protection or otherwise equipped with individual covers such as domes, chafing lids, or cookers with hinged lids.

(d) Food and beverage equipment and supplies shall be located in enclosed areas and protected from environmental contamination when not in operation.

*History Note: Authority G.S. 130A-248; S.L. 2011-394, Section 15(a); Eff. September 1, 2012.*

## **15A NCAC 18A .2664 SUPPLEMENTAL COOKING ROOMS**

The following construction standards apply to food establishments cooking on grills, pits, or fireplaces in supplemental cooking rooms:

- (1) Grills, pits, and fireplaces shall be kept clean, maintained in good repair, and located in an enclosed room as specified in Sections 6-202.15 and 6-202.16 of the Food Code as amended by Rule .2656 of this Section and shall comply with Parts 4-1 and 4-2 of the Food Code as amended by Rule .2654 of this Section.

- (2) Walls and ceilings shall be kept clean and in good repair.
- (3) Floors shall be constructed of easily cleanable concrete or equal and graded to drain.
- (4) Water under pressure shall be provided for floor cleaning.
- (5) Ventilation systems and devices shall prevent grease or condensation from collecting on walls and ceilings.
- (6) A handwashing sink shall be provided as specified in Section 5-202.12 of the Food Code as amended by Rule .2655 of this Section.
- (7) Lighting shall comply with Sections 6-202.11 and 6-303.11 of the Food Code as amended by Rule .2656 of this Section.
- (8) All food shall be processed in an area meeting the requirements for operation and construction as set forth in Rules .2650 through .2657 of this Section.

*History Note: Authority G.S. 130A-248; S.L. 2011-394, Section 15(a); Eff. September 1, 2012.*

**15A NCAC 18A .2665 TEMPORARY FOOD ESTABLISHMENT AND TEMPORARY FOOD ESTABLISHMENT COMMISSARY PERMIT REQUIREMENTS**

(a) A permit shall be issued by the regulatory authority to each temporary food establishment and temporary food establishment commissary that complies with Rules .2665 through .2669 of this Section. Temporary food establishments and temporary food establishment commissaries are not eligible for transitional permits. A single permit shall be issued for a temporary food establishment that does not operate consecutive days as long as the total number of days does not exceed 21. The permit shall be posted in a conspicuous place designated by the regulatory authority. The permit shall include:

- (1) Name and location of the temporary food establishment and temporary food establishment commissary;
- (2) Permit holder;
- (3) Name and location of the event;
- (4) Dates of operation; and
- (5) Any other conditions necessary to remain in compliance with this Section.

(b) No food preparation shall occur prior to a permit being issued by the regulatory authority.

(c) When affiliated with a temporary food establishment for an event where the food will be served, a temporary food establishment commissary permit for prior food preparation may be issued for advance or off-site preparation. A temporary food establishment commissary may commence operation no more than 7 days prior to the event and operate for the length of the event up to a time period not to exceed 21 consecutive days.

(d) Temporary food establishments and temporary food establishment commissaries shall make application to the regulatory authority no fewer than 15 calendar days prior to

commencing operation. This 15-day requirement does not prohibit the submission of applications for substitute vendors provided that these applications are submitted no fewer than 3 business days prior to the event. Applications shall be submitted to the regulatory authority and shall include the following:

- (1) Name, mailing address, and telephone number of the permit holder of the temporary food establishment or temporary food establishment commissary;
- (2) Name and location of the event at which the temporary food establishment operated immediately prior to the current event for which applying, if applicable;
- (3) Name, mailing address, and telephone number of the event organizer;
- (4) Event name, location, dates, and hours of operation;
- (5) Proposed menu, food handling procedures, including anticipated food volume and sources;
- (6) Food equipment list;
- (7) Proposed water supply;
- (8) Provisions for sewage and other waste disposal; and
- (9) Any information necessary to ensure compliance.

(e) The regulatory authority shall require documentation to verify any provision of Rules .2665 through .2669 of this Section.

(f) The regulatory authority may condition the permit to ensure compliance with Rules .2665 through .2669 of this Section.

*History Note: Authority G.S. 130A-248; S.L. 2011-394, Section 15(a); Eff. September 1, 2012.*

**15A NCAC 18A .2666 TEMPORARY FOOD ESTABLISHMENT FOOD HANDLING REQUIREMENTS**

(a) All sources of food in temporary food establishments shall comply with Chapter 3 of the Food Code as amended by Rule .2653 of this Section.

(b) Raw meat, poultry, and fish in temporary food establishments shall be purchased in ready-to-cook portions, except that cutting and skewering shall be allowed where evaluation by the regulatory authority determines sufficient preparation areas and food equipment are provided.

(c) Salads containing ingredients that are cooked and cooled shall not be prepared in the temporary food establishment or temporary food establishment commissary, but may be served.

(d) Shellstock and shucked shellfish in temporary food establishments shall comply with Chapter 3 of the Food Code as amended by Rule .2653 of this Section.

(e) All food in temporary food establishments shall be protected in accordance with Chapter 3 of the Food Code as amended by Rule .2653 of this Section and the following also apply:

- (1) The regulatory authority may approve food preparation and storage for a temporary food establishment at a permitted temporary food

- establishment commissary or other permitted food establishment;
- (2) Temporary food establishment or temporary food establishment commissary operations shall not be conducted in any room or area used for purposes not related to the temporary food establishment or other permitted food establishment;
  - (3) Food shall be secured in a manner to prevent tampering and contamination at all times;
  - (4) Ready-to-eat food shall not be stored in direct contact with ice; non-mechanical coolers must be provided with a drainage port;
  - (5) All food shall be stored above the ground or floor and arranged to prevent contamination of foods;
  - (6) Potentially hazardous food (time/temperature control for safety food) that has been heated at the temporary food establishment or temporary food establishment commissary shall not be sold or held for use on subsequent days. Approval shall be granted to allow cooling and reheating of potentially hazardous food (time/temperature control for safety food) if the food can be handled in accordance with the rules of this Section; and
  - (7) The regulatory authority shall further limit the food to be prepared or served, based on methods of preparation and the adequacy of facilities, equipment, utensils, and available utilities.

(f) Food prepared at a previous event or potentially hazardous food (time/temperature control for safety food) removed from original packaging shall not be served at a subsequent event in a temporary food establishment.

*History Note: Authority G.S. 130A-248; S.L. 2011-394, Section 15(a); Eff. September 1, 2012.*

#### **15A NCAC 18A .2667 TEMPORARY FOOD ESTABLISHMENT EMPLOYEE REQUIREMENTS**

- (a) Food employees in temporary food establishments shall wear effective hair restraints, clean outer clothing, and maintain good hygienic practices as specified in Part 2-4 of the Food Code as amended by Rule .2652 of this Section.
- (b) Employees in temporary food establishments shall wash their hands in a handwashing facility before starting work, after each visit to the toilet, and as often as necessary to remove soil and contamination.
- (c) Employees in temporary food establishments shall not use tobacco in any form or consume food in food preparation, storage or serving areas, utensil washing, or utensil storage areas.
- (d) Employees in temporary food establishments may consume beverages in the food establishment only if covered and consumed in a manner to prevent contamination of food and food-contact surfaces.

(e) Employees in temporary food establishments shall comply with the requirements in Subpart 2-201 of the Food Code as amended by Rule .2652 of this Section.

*History Note: Authority G.S. 130A-248; S.L. 2011-394, Section 15(a); Eff. September 1, 2012.*

#### **15A NCAC 18A .2668 TEMPORARY FOOD ESTABLISHMENT EQUIPMENT AND UTENSIL REQUIREMENTS**

(a) Equipment and utensils in temporary food establishments shall be kept clean and maintained in good repair. Those surfaces that come into contact with food, drink, or utensils shall comply with Parts 4-1 and 4-2 of the Food Code as amended by Rule .2654 of this Section.

(b) Equipment and utensils in temporary food establishments shall be cleaned, sanitized, stored, and handled in accordance with Parts 4-6 and 4-7 of the Food Code as amended by Rule .2654 of this Section.

(c) When multi-use utensils other than eating and drinking utensils are used in temporary food establishments, three basins of sufficient size to submerge, wash, rinse, and sanitize utensils shall be provided. Other equivalent products and procedures may be used in accordance with Part 4-7 of the Food Code as amended by Rule .2654 of this Section. At least one drainboard, table, or counter space shall be provided for air-drying.

(d) When multi-use eating and drinking utensils are used in temporary food establishments, a three-compartment sink of sufficient size to submerge, wash, rinse, and sanitize utensils must be provided. Drainboards shall be provided as specified in Section 4-301.13 of the Food Code as amended by Rule .2654 of this Section.

(e) Wash, rinse, and sanitizing solutions shall be maintained in temporary food establishments as specified in Sections 4-501.18 and 4-501.19 of the Food Code as amended by Rule .2654 of this Section.

(f) A food preparation sink must be provided for washing produce in temporary food establishments.

(g) Food shields or other effective barriers in temporary food establishments shall be installed in a manner to protect food and food contact surfaces from contamination.

*History Note: Authority G.S. 130A-248; S.L. 2011-394, Section 15(a); Eff. September 1, 2012.*

#### **15A NCAC 18A .2669 TEMPORARY FOOD ESTABLISHMENT PHYSICAL REQUIREMENTS**

(a) A temporary food establishment shall be located in an area kept in a clean and sanitary condition. The arrangement of temporary food establishments shall restrict public access to all areas of the food establishment except dining areas.

(b) For outdoor cooking, overhead protection shall be provided such that all food, utensils, and equipment are protected. When bulk foods such as roasts, shoulders, and briskets are cooked, cooking equipment with attached lids, such as smokers, roasters, and other cooking devices, provide sufficient cover for the food being cooked. Food in individual servings such as hot dogs,

hamburgers, and meat kabobs shall have additional overhead cover.

(c) Effective measures such as fans, screens, walls, or a combination thereof, shall be provided to keep dust, insects, rodents, animals, and other sources of potential contamination out of the food establishment and shall comply with Paragraph 6-501.115(B) of the Food Code as amended by Rule .2656 of this Section regarding live animals.

(d) Indoor/outdoor carpeting, matting, tarps, or similar nonabsorbent material is required as ground covering in the absence of asphalt, concrete, grass, or other surfaces that control dust or mud.

(e) The temporary food establishment and temporary food establishment commissary shall be equipped with a handwashing facility used only for employee handwashing. This facility shall consist of at least a two gallon container with an unassisted free flowing faucet such as a stopcock or turn spout, soap, single-use towels, and a wastewater receptacle. Warm water shall be used for handwashing.

(f) Water under pressure shall be provided as follows:

- (1) The water supply used shall be in accordance with 15A NCAC 18A .1700, 15A NCAC 18C, or 02 NCAC 09C .0703;
- (2) All potable water holding tanks, containers, and hoses used to transport or store water at the temporary food establishment shall be drained, washed, rinsed, and sanitized;
- (3) Containers and hoses used to store, haul, or convey potable water shall be approved for potable water use, shall not be used for any other purpose, and shall be protected from contamination. Potable water hoses and containers shall be labeled; and
- (4) Warm water shall be available and used for cleaning.

(g) Wastewater shall be disposed in accordance with 15A NCAC 18A .1900 or 15A NCAC 02H .0200. Portable wastewater containers may be used when the volume of potable water can be determined by the dimensions of sinks, basins, and interim storage containers and the portable wastewater containers are sized to contain the wastewater volume generated. Wastewater containers and hoses shall be labeled and not used for any other purpose. Wastewater containers shall not be emptied into waterways, storm drains, or on the ground.

(h) Employees must have access to toilet facilities that are kept clean and in good repair.

(i) Garbage and refuse shall be collected and stored in garbage containers with properly fitted lids. Nothing in this Rule shall prohibit uncovered garbage containers in the food establishment during periods of operation. Garbage and refuse shall be removed as needed and disposed in a manner to prevent vermin breeding and harborage. The premises shall be kept clean.

(j) Lighting shall comply with Section 6-202.11 of the Food Code as amended by Rule .2656 of this Section. Lighting is required for nighttime operations.

(k) Temporary food establishments and temporary food establishment commissaries shall remain connected to necessary utilities at all times food is prepared, served, or stored in the food establishment.

(l) Toxic materials shall be labeled, used, and stored to prevent the contamination of food, equipment, utensils, linens, and single-service articles and meet the provisions of Sections 7-101.11 and 7-203.11 of the Food Code as amended by Rule .2657 of this Section.

*History Note: Authority G.S. 130A-248; S.L. 2011-394, Section 15(a); Eff. September 1, 2012.*

#### **15A NCAC 18A .2670 GENERAL REQUIREMENTS FOR PUSHCARTS AND MOBILE FOOD UNITS**

(a) A permit shall be issued by the regulatory authority that inspects the commissary from which a pushcart or mobile food unit is to operate, if the regulatory authority determines that the pushcart or mobile food unit complies with the rules of this Section. The permit shall be maintained on the pushcart or mobile food unit and made available to the regulatory authority upon request.

(b) The regulatory authority that issues the permit shall be provided by the permit holder a list of counties and locations where each pushcart or mobile food unit will operate.

(c) Prior to initiating food service operations in a particular county, the pushcart or mobile food unit permit holder shall provide the regulatory authority in each county in which food service operations are proposed a list of locations where they will operate. Such lists must be kept current.

(d) Pushcarts or mobile food units shall operate in conjunction with a permitted commissary and shall report at least daily to the commissary for supplies, cleaning, and servicing. Facilities, in compliance with this Section, shall be provided at the commissary for storage of all supplies. The pushcart shall also be stored in an area that protects it from dirt, debris, vermin, and other contamination. Water faucets used to supply water for pushcarts or mobile food units shall be protected to prevent contact with chemicals, splash, and other sources of contamination. Solid waste storage and liquid waste disposal facilities must also be provided on the commissary premises.

(e) All food shall be obtained from sources that comply with Chapter 3 of the Food Code as amended by Rule .2653 of this Section.

(f) All potentially hazardous food (time/temperature control for safety food) shall be maintained at temperatures as required in Chapter 3 of the Food Code as amended by Rule .2653 of this Section. A metal stem-type thermometer accurate to 1°C (2°F) shall be available to check food temperatures.

(g) Single service articles shall be used for serving customers. Single-service articles shall be purchased in sanitary containers, shall be stored therein in a clean, dry place until used, and shall be handled in a manner to prevent contamination.

(h) All garbage and other solid waste shall be stored and disposed in an approved manner.

(i) Employees shall wear effective hair restraints, clean outer clothing, and maintain good hygienic practices as specified in Part 2-4 of the Food Code as amended by Rule .2652 of this Section.

(j) Employees shall comply with the requirements in Subpart 2-201 of the Food Code as amended by Rule .2652 of this Section.

(k) Equipment and utensils shall meet the requirements in Parts 4-1 and 4-2 of the Food Code as amended by Rule .2654 of this Section.

(l) The pushcart or mobile food unit shall be kept clean and free of flies, roaches, rodents, and other vermin.

*History Note: Authority G.S. 130A-248; S.L. 2011-394, Section 15(a); Eff. September 1, 2012.*

#### **15A NCAC 18A .2671 SPECIFIC REQUIREMENTS FOR PUSHCARTS**

(a) Only hot dogs shall be prepared, handled, or served from a pushcart; however, food which has been prepared, pre-portioned, and individually pre-wrapped at a food establishment or commissary may be served from a pushcart.

(b) Food and utensils on the pushcart exposed to the public or to dust or insects shall be protected by glass, or otherwise, on the front, top, and ends, and exposed only as much as may be necessary to permit the handling and serving of food.

(c) Toilet facilities, handwashing sinks, and running water are not required. Single-service towels are required.

(d) All pre-wrapped potentially hazardous food (time/temperature control for safety food) shall be maintained at temperatures as required in Chapter 3 of the Food Code as amended by Rule .2653 of this Section or as labeled on the food item. Each pre-wrapped food item shall contain the name of the food establishment at which it was prepared, the name of the food item, and the time and date of expiration. The wrapper shall enclose the food at all times but sealing is not required.

(e) Pre-portioned, individually pre-wrapped food that remains after the specified time period has elapsed shall not be sold for human consumption.

(f) Pushcarts shall not be provided with seating facilities.

(g) Pushcarts shall not be used for consumer self-service.

*History Note: Authority G.S. 130A-248; S.L. 2011-394, Section 15(a); Eff. September 1, 2012.*

#### **15A NCAC 18A .2672 SPECIFIC REQUIREMENTS FOR MOBILE FOOD UNITS**

(a) A mobile food unit shall be constructed and arranged so that food, drink, utensils, and equipment will not be exposed to insects, dust, and other contamination. Protection against flies and other insects shall be provided by screening or by effective use of fans. Where food or griddles are exposed to the public or to dust or insects, they shall be protected by glass, or otherwise, on the front, top, and ends, and exposed only as much as may be necessary to permit the handling and serving of food.

(b) A mobile food unit shall have a potable water system under pressure. The system shall furnish hot and cold water for all food preparation, utensil cleaning, and handwashing. The water inlet shall be located so that it will not be contaminated by waste discharge, road dust, oil, or grease and it shall be kept capped unless being filled.

(c) Water heating facilities shall be provided.

(d) A handwashing sink with hot and cold water, combination supply faucet, soap, and single-service towels shall be provided.

(e) At least a one-compartment sink shall be provided. The sink shall be of sufficient size to submerge, wash, rinse, and sanitize utensils and shall have splashback protection. Drainboards shall be provided as specified in Section 4-301.13 of the Food Code as amended by Rule .2654 of this Section to accommodate the drying of washed utensils. However, in cases where no food is prepared on the mobile food unit and all utensils are effectively cleaned at the commissary, the equipment sink is not required.

(f) Sewage disposal must be provided either by means of an approved sewage disposal system or approved sewage storage tanks. Sewage storage tanks must be maintained in a manner so as not to create a health hazard or nuisance and to prevent contamination of food or water supply. Toilets are not required on the unit. Liquid waste that results from the operation of a mobile food unit shall be disposed in an approved sewage disposal system or stored in a permanently installed sewage storage tank that is of at least 15 percent larger capacity than the water supply tank. Liquid waste shall not be discharged from the sewage storage tank when the mobile food unit is in motion. All connections on the vehicle for servicing mobile food unit waste disposal facilities shall be of a different size or type than those used for supplying potable water to the mobile food unit. The waste connection shall be located lower than the water inlet connection to preclude contamination of the potable water system.

(g) A servicing area shall be established at a commissary for the mobile food unit. Potable water servicing equipment shall be installed, stored, and handled to protect the water and equipment from contamination. The mobile food unit's sewage storage tank shall be flushed and drained during servicing operation. All sewage shall be discharged to an approved sewage disposal system in accordance with 15A NCAC 18A .1900 or 15A NCAC 02H .0200.

*History Note: Authority G.S. 130A-248; S.L. 2011-394, Section 15(a); Eff. September 1, 2012.*

#### **15A NCAC 18A .2673 CONGREGATE NUTRITION SITES**

Congregate nutrition sites shall comply with all requirements in Rules .2650 through .2662 of this Section with the following exceptions:

- (1) Food preparation in a congregate nutrition site shall be limited to reheating food prepared in a food establishment or in a food processing plant or preparation of food that does not require cooking.
- (2) Potentially hazardous food (time/temperature control for safety food) that has been heated or reheated at the congregate nutrition site and remains at the end of the day shall not be served or placed in refrigeration to be used another day.
- (3) Only single-service articles shall be used.
- (4) Equipment in the congregate nutrition site that is not certified or classified for sanitation by an ANSI-accredited certification program that is in good repair and operating properly may be

- used. At least a two-compartment sink shall be provided. The sink shall be of sufficient size to submerge, wash, rinse, and sanitize utensils. At least one drainboard, table, or counter space shall be provided for air-drying.
- (5) Garbage can liners are required for all garbage receptacles unless the site has receptacle cleaning facilities as specified in Section 5-501.18 of the Food Code as amended by Rule .2655 of this Section.
  - (6) Water used for mop or receptacle cleaning shall not be disposed in the utensil sink. Wastewater from mopping, receptacle cleaning, and other cleaning operations shall be disposed in a service sink or another approved manner in accordance with 15A NCAC 18A .1900 or 15A NCAC 02H .0200.

*History Note:* Authority G.S. 130A-248; S.L. 2011-394, Section 15(a);  
Eff. September 1, 2012.

#### **15A NCAC 18A .2674 LIMITED FOOD ESTABLISHMENTS**

Limited food establishments shall comply with all the requirements in Rules .2650 through .2662 of this Section, except that the following provisions apply in lieu of Rules .2654(2) and .2659(a) and (b), Section 5-204.11(b) of the Food Code as amended by Rule .2655 of this Section, and Sections 8-201.11 and 8-201.12 of the Food Code as amended by Rule .2658 of this Section:

- (1) The permit for a limited food establishment shall be posted in a conspicuous place where it can be readily seen by the public at all times. Permits for limited food establishments shall expire on December 31 of each year. A new permit from the regulatory authority shall be obtained before the limited food establishment shall be allowed to operate each year. Transitional permits shall not be issued.
- (2) The permit application shall be submitted to the local health department at least 30 days prior to construction or commencing operation. The permit application shall include a proposal for review and approval that includes a menu, plans, and specifications for the proposed limited food establishment, and location and dates of operation.
- (3) Limited food establishments shall not prepare any potentially hazardous food (time/temperature control for safety food) prior to the day of sale.
- (4) Potentially hazardous food (time/temperature control for safety food) that has been heated at the limited food establishment and remains at the end of the day shall not be served or placed in refrigeration to be used another day.
- (5) All meats, poultry, and fish shall be purchased in a pre-portioned and ready-to-cook form.

- (6) Equipment in the limited food establishment that is not certified or classified for sanitation by an ANSI-accredited certificate program that is in good repair and operating properly may be used. At least a two-compartment sink shall be provided. The sink shall be of sufficient size to submerge, wash, rinse, and sanitize utensils and shall have splashback protection. At least one drainboard, table, or counter space shall be provided for air-drying.
- (7) Only single-service articles shall be used.
- (8) Limited food establishments may prepare food in accordance with Rule .2669(b) of this Section.
- (9) Floors, walls, and ceilings of limited food establishments shall meet the requirements of this Section, except those limited food establishments preparing food in accordance with Rule .2669(b) of this Section. Limited food establishments shall use dustless methods of floor cleaning and all, except emergency floor cleaning, shall be done during those periods when the least amount of food and drink is exposed, such as after closing, or between meals.
- (10) All areas in which food is handled, prepared, or in which utensils are washed, shall be provided with artificial lighting that complies with Section 6-202.11 of the Food Code as amended by Rule .2656 of this Section.
- (11) A handwashing sink shall be provided in food service areas for use by employees only.
- (12) Toilet facilities shall be provided for use by employees. Public toilet facilities provided on the grounds of the facility where the associated amateur athletic event is taking place are acceptable. Toilet facilities for the public are not required.

*History Note:* Authority G.S. 130A-248; S.L. 2011-394, Section 15(a);  
Eff. September 1, 2012.

#### **15A NCAC 18A .2675 PROCEDURE WHEN INFECTION SUSPECTED**

When the regulatory authority has reason to suspect the possibility of exposure to, or transmission of, infection within a food establishment from any person or from any food or drink, the local health director shall act in accordance with the Communicable Disease Laws and Rules (G.S. 130A-134 through 148, and 10A NCAC 41A.)

*History Note:* Authority G.S. 130A-248; S.L. 2011-394, Section 15(a);  
Eff. September 1, 2012.

**15A NCAC 18A .2676 INFORMAL REVIEW PROCESS AND APPEALS PROCEDURE**

(a) If a permit holder disagrees with a decision of the local health department on the interpretation, application, or enforcement of the rules of this Section the permit holder may:

- (1) Request an informal review pursuant to Paragraphs (d) and (e) of this Rule; or
- (2) Initiate a contested case in accordance with G.S. 150B.

(b) The permit holder is not required to complete the alternative dispute resolution prior to initiating a contested case in accordance with G.S. 150B.

(c) When a petition for a contested case is filed, the informal review process shall terminate.

(d) If the permit holder requests an informal review, the request shall be in writing and shall be postmarked or hand-delivered to the local health department within seven days of notice of the decision giving rise to the review. The request shall state the issues in dispute. If the inspection giving rise to the informal review was conducted by the Environmental Health Supervisor in the county or area where the food establishment is located, or when the county or area has only one registered environmental health specialist assigned to inspect food establishments, the Environmental Health Regional Specialist assigned to that county or area shall conduct the local informal review. As soon as possible, but at least within 30 days of receipt of the request, the person conducting the review shall contact the permit holder, provide that permit holder an opportunity to be heard on the issues in dispute and issue a written decision addressing the issues raised in the appeal. Copies of the decision shall be mailed to the permit holder and to the State Health Director. That decision shall be binding for the purposes of future inspections of the establishment in question unless modified pursuant to Paragraph (e) of this Rule or by the State Health Director.

(e) Following receipt of the written decision of the Environmental Health Supervisor or his or her representative issued pursuant to Paragraph (d) of this Rule, the permit holder who initiated the informal review may appeal the resulting decision to an Informal Review Officer designated by the Department to be responsible for final decisions on appeals from throughout the state. Notice of such appeal shall be in writing, shall include a copy of the Environmental Health Supervisor's or his or her representative's decision, and shall be postmarked or hand-delivered to the local health department and to the Department within seven days of receipt of the written decision issued pursuant to Paragraph (a) of this Rule. Within 35 days of receipt of this appeal, the designated Informal Review Officer shall hold a conference in Wake County. At least 10 days prior to the conference, the Informal Review Officer shall provide notice of the time and place of this conference to the permit holder and the Environmental Health Supervisor for the county or area where the issue arose. Within 10 days following the date of the conference, the Informal Review Officer shall issue a written decision addressing the issues raised in the appeal and that decision shall be binding for purposes of future inspections of the establishment in question unless modified pursuant to Paragraph (g) of this Rule or by the State Health Director.

(f) If the decision on appeal at the local or state level results in a change in the score resulting from an inspection of an establishment, the regulatory authority shall post a new grade card reflecting that new score.

(g) Appeals of the decision of the designated Informal Review Officer shall be in accordance with G.S. 150B.

(h) Nothing in this Rule shall impact the right of a permit holder to a reinspection pursuant to Rule .2661 of this Section.

*History Note: Authority G.S. 130A-248; S.L. 2011-394, Section 15(a);*

*Eff. September 1, 2012.*

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

**CHAPTER 03 - NORTH CAROLINA BOARD OF ATHLETIC TRAINER EXAMINERS**

**21 NCAC 03 .0202 SUSPENSION OF AUTHORITY AND ESCROW OF FUNDS**

The Board shall file the annual reports set forth in G.S. 93B-2 no later than October 31 of each year. In the event the Board fails to file the reports as required by G.S. 93B-2 and the Board's authority to expend any funds is suspended until such time as the Board files the required reports, the Board shall deposit any fees or funds received during the period of suspension into an escrow account established by the Board solely for this purpose.

*History Note: Authority G.S. 90-525; 93B-2;*

*Eff. July 1, 2012.*

**21 NCAC 03 .0310 ARMED SERVICES EXTENSION FOR CREDENTIAL**

Upon receipt of a written request by or on behalf of a licensed athletic trainer who is currently in good standing with the Board, is serving in the armed forces of the United States, and to whom G.S. 105-249 authorizes an extension of time to file a tax return, the Board shall postpone renewal fees, renewal application deadlines, continuing education requirements and any other requirements or conditions related to the maintenance of the credential issued by the Board or to the renewal thereof for the same period of time as the extended period of time to file a tax return that is granted pursuant to G.S. 93B-15.

*History Note: Authority G.S. 90-525; 93B-15;*

*Eff. July 1, 2012.*

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**CHAPTER 10 - BOARD OF CHIROPRACTIC EXAMINERS**

**21 NCAC 10 .0405 TEMPORARY RULES**

*History Note: Authority G.S. 150B-13;*

*Eff. February 1, 1976;*  
*Readopted Eff. January 27, 1978;*  
*Amended Eff. December 1, 1988;*  
*Repealed Eff. July 1, 2012.*

**21 NCAC 10 .0603 NOTICE OF HEARING:  
ANSWER**

*History Note: Authority G.S. 150B-38;*  
*Eff. February 1, 1976;*  
*Readopted Eff. January 27, 1978;*  
*Legislative Objection Lodged Eff. January 31, 1983;*  
*Curative Amended Eff. February 28, 1983;*  
*Amended Eff. December 1, 1988; January 1, 1983;*  
*Repealed Eff. July 1, 2012.*

**21 NCAC 10 .0607 LOCATION OF HEARING  
21 NCAC 10 .0608 INTERVENTION**

*History Note: Authority G.S. 90-142; 150B-38;*  
*Eff. February 1, 1976;*  
*Readopted Eff. January 27, 1978;*  
*Amended Eff. January 1, 1989;*  
*Repealed Eff. July 1, 2012.*

**21 NCAC 10 .0611 SUBPOENAS**

*History Note: Authority G.S. 90-142; 150B-39;*  
*Eff. January 1, 1989;*  
*Repealed Eff. July 1, 2012.*

**21 NCAC 10 .0707 DECISION OF BOARD**

*History Note: Authority G.S. 150B-42;*  
*Eff. February 1, 1976;*  
*Readopted Eff. January 27, 1978;*  
*Amended Eff. December 1, 1988;*  
*Repealed Eff. July 1, 2012.*

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**CHAPTER 36 - BOARD OF NURSING**

**21 NCAC 36 .0120 DEFINITIONS**

The following definitions apply throughout this chapter unless the context indicates otherwise:

- (1) "Academic term" means one semester of a school year.
- (2) "Accountability/Responsibility" means being answerable for action or inaction of self, and of others in the context of delegation or assignment.
- (3) "Accredited institution" means an institution accredited by a United States Department of Education approved institutional accrediting body.
- (4) "Active Practice" means activities that are performed, either for compensation or without compensation, consistent with the scope of

practice for each level of licensee as defined in G.S. 90-171.20(4), (7) and (8).

- (5) "Advanced Practice Registered Nurse (APRN)" means a nurse practitioner, nurse anesthetist, nurse-midwife or clinical nurse specialist.
- (6) "Assigning" means designating responsibility for implementation of a specific activity or set of activities to a person licensed and competent to perform such activities.
- (7) "Clinical experience" means application of nursing knowledge in demonstrating clinical judgment.
- (8) "Clinical judgment" means the application of the nursing student's knowledge, skills, abilities and experience in making decisions about client care.
- (9) "Competent" means having the knowledge, skills and ability to safely perform an activity or role.
- (10) "Continuing Competence" means the on-going acquisition and application of knowledge and the decision-making, psychomotor, and interpersonal skills expected of the licensed nurse resulting in nursing care that contributes to the health and welfare of clients served.
- (11) "Contact Hour" means 60 minutes of an organized learning experience.
- (12) "Continuing Education Activity" means a planned, organized learning experience that is related to the practice of nursing or contributes to the competency of the nurse as defined in 21 NCAC 36 .0223 Subparagraph (a)(2).
- (13) "Controlling institution" means the degree-granting organization or hospital under which the nursing education program is operating.
- (14) "Curriculum" means an organized system of teaching and learning activities directed toward the achievement of specified learning objectives/outcomes.
- (15) "Delegation" means transferring to a competent individual the authority to perform a selected nursing activity in a selected situation. The nurse retains accountability for the delegation.
- (16) "Dimensions of Practice" means those aspects of nursing practice that include professional responsibility, knowledge-based practice, legal/ethical practice and collaborating with others, consistent with G.S. 90-171.20(4), (7) and (8).
- (17) "Distance education" means the teaching and learning strategies used to meet the learning needs of students, when the students and faculty are separate from each other.
- (18) "Faculty directed clinical practice" means the responsibility of nursing program faculty in overseeing student clinical learning including the utilization of preceptors.



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| <p>(19) "Focused client care experience" means a clinical experience that simulates an entry-level work experience. The intent is to assist the student to transition to an entry-level practice. There is no specific setting requirement. Supervision may be by faculty and preceptor dyad or direct faculty supervision.</p> <p>(20) "Interdisciplinary faculty" means faculty from professions other than nursing.</p> <p>(21) "Interdisciplinary team" means all individuals involved in providing a client's care who cooperate, collaborate, communicate and integrate care to ensure that care is continuous and reliable.</p> <p>(22) "Level of Licensure" means practice of nursing by either a Licensed Practice Nurse or a Registered Nurse as defined in G.S. 90-171.20(7) and (8).</p> <p>(23) "Level of student" means the point in the program to which the student has progressed.</p> <p>(24) "Maximum enrollment" means the total number of pre-licensure students that can be enrolled in the nursing program at any one time. The number reflects the capacity of the nursing program based on demonstrated resources sufficient to implement the curriculum.</p> <p>(25) "Methods of Instruction" means the planned process through which teacher and student interact with selected environment and content so that the response of the student gives evidence that learning has taken place. It is based upon stated course objectives and outcomes for learning experiences in classroom, laboratory and clinical settings.</p> <p>(26) "National Credentialing Body" means a credentialing body that offers certification or re-certification in the licensed nurse's or Advanced Practice Registered Nurse's specialty area of practice.</p> <p>(27) "NCLEX-PN™" means the National Council Licensure Examinations for Practical Nurses.</p> <p>(28) "NCLEX-RN™" means the National Council Licensure Examinations for Registered Nurses.</p> <p>(29) "Nursing Accreditation body" means a national nursing accrediting body, recognized by the United States Department of Education.</p> <p>(30) "Nursing program faculty" means individuals employed full or part time by academic institution responsible for developing, implementing, evaluation and updating nursing curricula.</p> <p>(31) "Nursing project" means a project or research study of a topic related to nursing practice that includes a problem statement, objectives, methodology and summary of findings.</p> | <p>(32) "Participating in" means to have a part in or contribute to the elements of the nursing process.</p> <p>(33) "Pattern of noncompliance" means episodes of recurring non-compliance with one or more Rules in Section .0300.</p> <p>(34) "Preceptor" means a registered nurse at or above the level of licensure that an assigned student is seeking, who may serve as a teacher, mentor, role model and supervisor for a faculty directed clinical experience.</p> <p>(35) "Prescribing Authority" means the legal permission granted by the Board of Nursing and Medical Board for the nurse practitioner and nurse midwife to procure and prescribe legend and controlled pharmacological agents and devices to a client in compliance with Board of Nursing rules and other applicable federal and state law and regulations.</p> <p>(36) "Program Closure" means to cease operation of a nursing program.</p> <p>(37) "Program Type" means a course of study that prepares an individual to function as an entry-level practitioner of nursing. The three program types are:</p> <p style="margin-left: 20px;">(a) BSN - Curriculum components for Bachelor of Science in Nursing provides for the attainment of knowledge and skill sets in the current practice in nursing, nursing theory, nursing research, community and public health, health care policy, health care delivery and finance, communications, therapeutic interventions and current trends in health care. For this program type, the client is the individual, family, group, and community.</p> <p style="margin-left: 20px;">(b) Associate Degree in Nursing (ADN)/Diploma in Registered Nursing - Curriculum components for the ADN/Diploma in Registered Nursing provides for the attainment of knowledge and skill sets in the current practice in nursing, community concepts, health care delivery, communications, therapeutic interventions and current trends in health care. For this program type, client is the individual, group of individuals, and family.</p> <p style="margin-left: 20px;">(c) Practical Nurse Diploma - Curriculum prepares for functioning in a dependent role in providing direct nursing care under the direction of a registered nurse or other health care provider as defined by the Nursing Practice Act. Curriculum components provide for the</p> |
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- attainment of knowledge and skill sets in the current practice of practical nursing, communications, therapeutic interventions, including pharmacology, growth and development and current trends in health care. For this program type client is the individual, or group of individuals.
- (38) "Review" means collecting and analyzing information to assess compliance with Section .0300 of this Chapter. Information may be collected by multiple methods including review of written reports and materials, on-site observations and review of documents or in person or telephone interview(s) and conference(s).
- (39) "Rescind Approval" means a Board action that removes the approval status previously granted.
- (40) "Self Assessment" means the process whereby the individual reviews her or his own nursing practice and identifies the knowledge and skills possessed, as well as those skills to be strengthened.
- (41) "Specialty" means a broad, population-based focus of study encompassing the common health-related problems of that group of patients and the likely co-morbidities, interventions and responses to those problems.
- (42) "Supervision" means the provision of guidance or direction, evaluation and follow-up by the licensed nurse for accomplishment of an assigned or delegated nursing activity or set of activities.
- (43) "Survey" means an on-site visit for the purpose of gathering data in relation to reviewing nursing programs compliance with Section .0300 of this Chapter.
- (c) Federal income tax return declaring the primary state of residence;
- (d) Military Form No. 2058 – state of legal residence certificate; or
- (e) W2 from US Government or any bureau, division or agency thereof indicating the declared state of residence.
- (2) A nurse changing primary state of residence, from one party state to another party state, may continue to practice under the former home state license and multistate licensure privilege during the processing of the nurse's licensure application in the new home state for a period not to exceed 30 days.
- (3) The licensure application in the new home state of a nurse under pending investigation by the former home state shall be held in abeyance. The 30-day period in Item (2) of this Rule shall be stayed until resolution of the pending investigation.
- (4) The former home state license shall no longer be valid upon the issuance of a new home state license.
- (5) If a decision denying licensure is made by the new home state, the new home state shall notify the former home state within 10 business days and the former home state may take action in accordance with that state's laws and rules.
- (6) As of July 1, 2005, no individual shall be issued a multistate licensure privilege unless the applicant provides evidence of successful completion of the licensing examination developed by the National Council of State Boards of Nursing, Inc.
- (7) A nurse on a visa from another country applying for licensure in a party state may declare either the country of origin or the party state as the primary state of residence. If the foreign country is declared the primary state of residence, a single state license will be issued by the party state.
- (8) A license issued by a party state is valid for practice in all other party states unless clearly designated as valid only in the state which issued the license.

*History Note: Authority G.S. 90-171.23; 90-171.38;  
Eff. April 1, 2003;  
Amended Eff. July 1, 2012; November 1, 2008; May 1, 2006;  
December 1, 2005; August 1, 2005.*

## **21 NCAC 36 .0702 ISSUANCE OF A LICENSE BY A COMPACT PARTY STATE**

For the purpose of the Compact:

- (1) A nurse applying for a license in a home state shall produce evidence of the nurse's primary state of residence. Such evidence shall include a declaration signed by the licensee attesting to the licensee's primary state of residence. Further evidence that may be requested includes, but is not limited to:
- (a) Driver's license with a home address;
- (b) Voter registration card displaying a home address;

*History Note: Authority G.S. 90-171.82(6); 90-171.83(a)(b); 90-171.85(b); 90-171.87(4);  
Eff. July 1, 2000;  
Amended Eff. July 1, 2012; July 1, 2005.*

## **21 NCAC 36 .0703 LIMITATIONS ON MULTISTATE LICENSURE PRIVILEGE**

- (a) Home state Boards shall include in all licensure disciplinary orders or agreements that limit practice or require monitoring the requirement that the licensee subject to said order or agreement will agree to limit the licensee's practice to the home state during

the pendency of the disciplinary order or agreement. This requirement may, in the alternative, allow the nurse to practice in other party states with prior written authorization from both the home state and such other party state Boards.

(b) An individual who had a license which was surrendered, revoked, suspended, or an application denied for cause in a prior state of primary residence, may be issued a single state license in a new primary state of residence until such time as the individual would be eligible for an unrestricted license by the prior state(s) or adverse action. Once eligible for licensure in the prior state(s); a multistate license may be issued.

*History Note:* Authority G.S. 90-171.37; 90-171.85(f); 90-171.87(4);  
*Eff.* July 1, 2000;  
*Amended Eff.* July 1, 2012.

## **TITLE 25 – OFFICE OF STATE PERSONNEL**

### **25 NCAC 01B .0436 SETTLEMENTS/CONSENT AGREEMENTS IN GRIEVANCES, CONTESTED CASES**

(a) Any settlement or consent agreement in a grievance or contested case that requires the entering of data into human resources and payroll information system used by agencies with employees subject to the State Personnel Act, must be approved by the Office of State Personnel for compliance with all rules in Title 25 of the North Carolina Administrative Code before the agency enters the data. Data is required to be entered into the human resources and payroll information system by an agency when it determines that an action must be taken that affects classification, salary, leave, demotion, reassignment, transfer, or for any other personnel action, except where the only personal action taken as a result of the settlement is the substitution of a resignation for a dismissal. Approval by the Office of State Personnel shall be indicated by the signature of the State Personnel Director or his designee in an appropriate place on the settlement or consent agreement. This provision shall not be construed to require Office of State Personnel approval of a settlement in which the only portion requiring approval is the awarding of attorney's fees to the employee's attorney by the State Personnel Commission. This provision shall also not be construed to require approval of any settlement the terms of which allow an employee to substitute a resignation for a dismissal and to withdraw a grievance or a contested case action.

(b) The provisions of 25 NCAC 01A .0104 (EXCEPTIONS AND VARIANCES) must be complied with when any provision of a settlement or consent agreement in a grievance or contested case requires an exception to or variance from the rules in this Chapter. This compliance shall be in addition to the requirements of this Rule. Any settlement or consent agreement that contains a provision that requires an exception to or variance from existing personnel policy must be reviewed and approved by the State Personnel Commission prior to the processing of any personnel action forms by the Office of State Personnel.

(c) Requests to enter data into the State's human resources and payroll system that are required by the provisions of any

settlement or consent agreement that has not been approved by the Office of State Personnel or the State Personnel Commission as required by this Rule, shall not be processed by the human resources and payroll information system used by agencies with employees subject to Chapter 126, and shall be returned to the agency without action.

*History Note:* Authority G.S. 126-4;  
*Eff.* January 1, 1990;  
*Amended Eff.* July 1, 2012; March 1, 1991.

### **25 NCAC 01D .0107 CROSS HIRING**

*History Note:* Authority G.S. 126-4;  
*Eff.* February 1, 1976;  
*Repealed Eff.* July 1, 2012.

### **25 NCAC 01D .0303 EFFECTIVE DATE OF PROMOTIONS FOR GRADED POSITIONS**

(a) For employees in graded positions, a promotional increase shall be given on the effective date of a promotion, unless a salary limitation is published in advance, by the agency in the vacancy announcement.

(b) If the desired amount of increase is not given on the effective date of the promotion, an additional increase(s), up to the full allowable amount, may be given at a later date(s). If an additional increase is awarded later, that increase shall not be awarded retroactively, but only awarded on a current, or prospective basis. If a subsequent promotion, reallocation up or down, demotion or reassignment occurs, this cancels the authorization to grant additional increases as a result of the previous promotion. If increases are to be given at later dates, a notation must be entered in the comments section on the personnel action promotion entry made by the agency in the human resources information system stating the reason the increase is being delayed and showing the dollar amount of the total allowable increase, the amount currently being given, and the balance that may be given later. The salary entry submitted later must state "Delayed Promotional Increase" in the description of action block, which will denote that this is a delayed increase.

(c) If no additional increase is to be given at a later date, no notation is needed in the comments section of the personnel action at the time of the promotion.

(d) Temporary promotions may be made effective on the date that an employee is placed in an "acting" capacity.

*History Note:* Authority G.S. 126-4;  
*Eff.* February 1, 1976;  
*Amended Eff.* July 1, 2012; March 1, 1992; July 1, 1990;  
*January 1, 1990; December 1, 1983.*

### **25 NCAC 01D .0308 SALARY INCREASES FOR PROMOTIONS FOR GRADED POSITIONS**

The purpose of a promotional pay increase for employees in graded positions is to reward the employee for the assumption of duties more responsible and more difficult than those in the current graded position. Subject to the availability of funds,

salary increases, not to exceed the maximum of the range, shall be given by an agency in accordance with the following:

(1) Permanent Promotion:

- (a) Salaries at the minimum rate or within the range shall be increased to the new minimum rate of the grade to which promoted or by five percent, whichever is larger.
- (b) If the employee is promoted to a position within the same class series or occupational group, the salary may be established in accordance with the following based on qualifications, nature and magnitude of the change in job, availability of funds and equity consideration:
  - (i) the salary may be increased by up to five percent for each grade provided by the promotion, or
  - (ii) the salary may be established in accordance with the rules at 25 NCAC 01D .0200, New Appointments.
- (c) If the employee is promoted to a position in a different occupational area, the salary may be established in accordance with the rules at 25 NCAC 01D .0200, New Appointments. The nature and magnitude of the change in jobs, the need to maintain equity of salaries within the work unit, and other management needs must be given consideration when making salary decisions. Agency management is responsible for assuring that inequities are not created. When establishing salaries in accordance with 25 NCAC 01D .0200, the comments section of the personnel action promotion entry made by the agency in the human resources information must include the justification for the salary decision. If an employee has been reduced to a lower salary grade through demotion, reassignment, reallocation or salary range revision, but without a corresponding reduction in salary, and the employee is later promoted to a position with a higher grade, the number of grades in the original reduction shall be considered to have been compensated and shall not be considered in the salary setting procedure in this Rule. If the reduction in grade occurred as much

as 12 months previously, the agency may give consideration to granting a salary increase within the provisions of this Rule. Factors to be considered are the nature of the change in jobs and the need to maintain equity of salaries within the work unit.

- (d) Only with the prior approval of the State Personnel Director in documented cases that involve circumstances such as severe labor market conditions, unusual change in the scope of work, extraordinary qualifications, or resolution of serious equity problems shall salary increases above that allowed by the provisions in this Rule be given. The salary justification must be included in the comments section of the personnel action promotion entry made by the agency in the human resources information system.
- (e) If the employee is to receive a performance salary increase on the same date as the promotion, the increase shall be given before the promotional increase.
- (f) If an employee is promoted from a class for which there is no special entry rate into a class which has a special entry rate, the employee's salary may be increased by the amount of the promotional increase plus the percent difference between the minimum and the special entry rate authorization, subject to available funds and equity considerations.
- (g) Exceptions:
  - (i) A promotional increase is not required if a specific salary rate or limitation is published in advance of a promotional offer because of internal salary equity or budget considerations in the receiving work unit or agency. If this occurs, a salary increase above the salary rate posted may not be paid. If conditions change that eliminate the equity problem or if additional funds become available that can be used for this purpose, agency management may consider an additional increase in accordance with the provisions outlined under Rule .0303 of this Section.

- (ii) If the employee's salary is above the maximum as a result of a reallocation down, no increase shall be given, but the salary may remain above the maximum.

(2) Temporary Promotion:

- (a) Temporary promotions may be made when an employee is placed in an "acting" capacity for a period of time. When an employee is placed in an "acting" capacity, at the discretion of management and consideration of qualifications, nature and magnitude of the change in job, availability of funds and equity consideration, one of the following may occur:
  - (i) The employee may be placed in the higher level position (if vacant) with an understanding that he will return to the former position and salary when the position is filled; or
  - (ii) A salary adjustment may be given in the present position with the understanding that the salary will be decreased when the "acting" capacity terminates. The comments section of the personnel action acting promotion entry made by agencies in the human resources information system must include the position number and classification for which the employee is serving in as "acting" and the expected duration of "acting" capacity.
- (b) The provisions for salary increases for permanent promotions apply in either case, except that the provision for a mandatory increase are not applicable.
- (c) The length of time that an employee is in an acting capacity shall be limited, and the amount of promotional salary increase determined by the degree of assumption of the higher level duties.

**25 NCAC 01D .0403 EFFECTIVE DATE**

*History Note: Authority G.S. 126-4;  
Eff. February 1, 1976;  
Amended Eff. March 1, 1994;  
Repealed Eff. July 1, 2012.*

**25 NCAC 01D .0605 EFFECTIVE DATE OF REALLOCATIONS FOR GRADED POSITIONS**

- (a) An agency's request to reallocate a graded position shall be submitted to the Office of State Personnel 30 days prior to the proposed effective date to allow adequate time for study and processing of the requests.
- (b) Salary increases to the minimum rate shall be given on the effective date of the reallocation. If funds are not available, the increase shall be given from the first available funds and made retroactive to the effective date of the reallocation, so long as a notation is entered in the comments section on the personnel action reallocation entry made by the agency in the human resources information system at the time the reallocation occurs. Employees who are denied increases to the minimum because of poor performance shall receive the increase on a current basis, that is, non-retroactively, but prospectively only if and at such time as the employee's performance issue is resolved and a notation shall be entered in the comments section on the personnel action entry made by the agency in the human resources information system at the time of the reallocation indicating that a review of performance will take place on or before a specific date in the future.
- (c) An agency may choose to recommend that the employee reallocated upwards receive a salary increase within the range and, if recommended, the salary increase shall be given on the effective date of the reallocation. If the desired amount of increase is not given on the effective date because funds are not available, equity considerations or performance, the increase(s), up to the full allowable amount, may be given at a later date(s) on a current basis, that is, non-retroactively, but prospectively only, so long as the required notation is entered on the comments section of the personnel action at the time of the reallocation. If a subsequent promotion, reallocation up or down, demotion or reassignment occurs, this cancels the authorization to grant additional increases as a result of the previous reallocation.
- (d) If increases are to be given at later dates, a notation must be entered in the comments section of the personnel action reallocation entry made by the agency in the human resources information system stating the reason the increase is being delayed and showing the dollar amount of the allowable increase, the amount given, and the balance that may be given later if funding becomes available and equity and performance supports awarding the increase. If no increase is to be given at a later date, no notation is needed in the comments section of the personnel action at the time of the reallocation.

*History Note: Authority G.S. 126-4;  
Eff. January 1, 1990;  
Amended Eff. July 1, 2012; March 1, 1992; September 1, 1991;  
July 1, 1990.*

*History Note: Authority G.S. 126-4;  
Eff. February 1, 1976;  
Amended Eff. July 1, 2012; July 1, 1990; January 1, 1990.*

## 25 NCAC 01D .0611 REALLOCATION/SALARY RATE FOR GRADED POSITIONS

(a) When an employee in a graded position is assigned to a higher grade as a result of reallocation, subject to the availability of funds and satisfactory employee performance, salary increases, not to exceed the maximum of the range, may be given in accordance with the following:

- (1) Salaries at the minimum rate shall be increased to the minimum rate of the new range, and may be increased further in accordance with Subparagraph (2) of this Rule.
- (2) If it is determined that a salary increase is justified, with the exception of Paragraph (b) of this Rule, the salary may be established as follows:
  - (A) in accordance with the rules for New Appointments (See 25 NCAC 01D .0200), or
  - (B) up to five percent for each grade provided by the reallocation, if reallocated to a position within the same classification series or occupational group.

The amount of increase shall be determined consistent with the employee's related training and experience and the nature and magnitude of the change in jobs, and take into consideration prior performance increases, work unit equity, and any other salary related considerations. When establishing salaries in accordance with the New Appointment Rules (See 25 NCAC 01D .0200), the comments section of the personnel action reallocation entry made by the agency in the human resources information system must include the justification for the salary decision.

(b) If an employee has been reduced to a lower salary grade through demotion, reassignment, reallocation or salary range revision, but without a corresponding reduction in salary, and within 12 months of the reduction the employee is reallocated:

- (1) The employee shall not be entitled to a reallocation increase unless the reallocation is to a grade higher than the grade held prior to the reduction.
- (2) If reallocated to a higher grade, the number of grades in the original reduction shall be considered to have been compensated and shall not be considered in setting the salary pursuant to Part (a)(2)(B) of this Rule.

**(Example:** If an employee is demoted with no change in salary and reallocated back to the same level, the salary shall remain unchanged and treated as if the demotion had not occurred; or if reallocated back to a level higher than before the demotion, the difference in the grade before the demotion and the new higher grade will be the basis for determining the reallocation increase.) Agency management is responsible for assuring that inequities are not created.

(c) An agency shall only give salary increases greater than five percent for each grade increase resulting from the reallocation with the prior approval of the State Personnel Director in circumstances where the reallocated position is critical and documented labor market conditions exist that support the

necessity of the increase. The comments section of the personnel action reallocation entry made by the agency in the human resources information system must contain a description of the criticality of the position and the labor market conditions.

(d) If the employee is to receive a performance salary increase on the same day as the reallocation, the performance increase shall be given before a reallocation increase is considered.

(e) When an employee's position is assigned to a lower grade, one of the following options shall be implemented:

- (1) When reduction in level of the position results from management's removal of duties and responsibilities from the employee because of change in demonstrated motivation, capability, acceptance of responsibility, or lack of performance, the effect is the same as a demotion and the salary must be reduced at least to the maximum as required by Rule 25 NCAC 01D .0406.
- (2) When reduction in level of the position results from position redesign because of management decisions on program changes, reorganization, or other management needs not associated with the employee's demonstrated motivation, capability, acceptance of responsibility or lack of performance, the salary of the employee may remain above the new maximum as long as the employee remains in the same classification or is promoted to a higher level position. No further increases, other than legislative increases, may be granted as long as the salary remains above the maximum.
- (3) When reduction in level of the position results from a change in the labor market or some other reason not related to change in the duties and responsibilities of the position, though the position must be reallocated to the approved classification and grade, management may elect to maintain the employee's current classification and grade by working the employee against the lower level position, so long as the employee continues to occupy the same position or is in the same classification.

Once the position is vacated, it shall be filled at the lower level.

(f) Management shall avoid creation of salary inequities among employees. Each case must be evaluated to determine which of the salary administration alternatives is most appropriate, based on the circumstances as documented to the Office of State Personnel, on appropriate forms, by the employing agency.

(g) When an employee's position is assigned to the same grade level, the employee's salary shall remain unchanged.

*History Note:* Authority G.S. 126-4;

*Eff.* January 1, 1991;

*Amended Eff.* July 1, 2012; March 1, 1994; April 1, 1992; September 1, 1991.

**25 NCAC 01D .0808      SALARY RATE UPON INITIAL  
CLASSIFICATION INTO THE GRADED  
CLASSIFICATION/PAY SYSTEM**

(a) If an employee in a graded position is given probationary status and the salary is below the minimum rate for the range assigned, the salary shall be adjusted to the new minimum rate. If an employee is given a permanent or time-limited permanent appointment and the salary is below the minimum rate, the salary shall be adjusted to the minimum rate of the range assigned.

(b) If the employee's salary falls within the range assigned to the position, the salary shall remain unchanged.

*History Note:      Authority G.S. 126-4;  
Eff. January 1, 1990;  
Amended Eff. July 1, 2012; August 1, 1995.*

**25 NCAC 01D .1205      AGENCY RESPONSIBILITY**

*History Note:      Authority G.S. 126-4;  
Eff. February 1, 1976;  
Amended Eff. May 1, 1989;  
Repealed Eff. July 1, 2012.*

**25 NCAC 01E .0102      TYPES OF LEAVE**

*History Note:      Authority G.S. 126-4; 126-8;  
Eff. February 1, 1976;  
Amended Eff. October 1, 2004, January 1, 1983;  
Repealed Eff. July 1, 2012.*

*This Section contains information for the meeting of the Rules Review Commission on Thursday July 19, 2012 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 919-431-3000. 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**

Addison Bell  
Margaret Currin  
Pete Osborne  
Bob Rippy  
Faylene Whitaker

**Appointed by House**

Ralph A. Walker  
Anna Baird-Choi  
Jeanette Doran  
Garth K. Dunklin  
Stephanie Simpson

**COMMISSION COUNSEL**

Joe Deluca (919)431-3081  
Bobby Bryan (919)431-3079

**RULES REVIEW COMMISSION MEETING DATES**

August 16, 2012                      September 20, 2012  
October 18, 2012                      November 15, 2012

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**AGENDA****RULES REVIEW COMMISSION**

***Thursday, August 16, 2012 10:00 A.M.***

***1711 New Hope Church Rd., Raleigh, NC 27609***

- 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. Child Care Commission – 10A NCAC 09 .0901, .0902, .1702, .1706, .1718 (DeLuca)
  - B. Criminal Justice Education and Training Standards Commission – 12 NCAC 09E .0102 (DeLuca)
- VI. Review of Log of Filings (Permanent Rules) for rules filed between June 21, 2012 and July 20, 2012
- V. Review of Log of Filings (Temporary Rules) for any rule filed within 15 business days of the RRC Meeting
- VI. Commission Business
  - Next meeting: September 20, 2012

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**Commission Review**

***Log of Permanent Rule Filings***

***June 21, 2012 through July 20, 2012***

**CHILD CARE COMMISSION**

The rules in Chapter 9 are child care rules and include definitions (.0100); general provisions related to licensing (.0200); procedures for obtaining a license (.0300); issuance of provisional and temporary licenses (.0400); age and developmentally appropriate environments for centers (.0500); safety requirements for child care centers (.0600); health



and other standards for center staff (.0700); health standards for children (.0800); nutrition standards (.0900); transportation standards (.1000); building code requirements for child care centers (.1300); space requirements (.1400); temporary care requirements (.1500); requirements for voluntary enhanced program standards (.1600); family child care home requirements (.1700); discipline (.1800); special procedures concerning abuse/neglect in child care (.1900); rulemaking and contested case procedures (.2000); religious-sponsored child care center requirements (.2100); administrative actions and civil penalties (.2200); forms (.2300); child care for mildly ill children (.2400); care for school-age children (.2500); child care for children who are medically fragile (.2600); criminal records checks (.2700); voluntary rated licenses (.2800); and developmental day services (.2900).

<u>Definitions</u>	10A	NCAC	09	.0102
Amend/*				
<u>Application for a Voluntary Rated License</u>	10A	NCAC	09	.2802
Amend/*				
<u>Quality Points Options</u>	10A	NCAC	09	.2829
Amend/*				

## **BLIND, COMMISSION FOR THE**

The rules in Chapter 63 concern the services for the blind.

The rules in Subchapter 63F concern vocational rehabilitation including services (.0100); construction of rehabilitation facility (.0200); standards for facilities (.0300); economic need (.0400); applicants (.0500); and hearing procedure (.0600).

<u>Economic Needs Schedule</u>	10A	NCAC	63F	.0403
Amend/*				

## **COSMETIC ART EXAMINERS, BOARD OF**

The rules in Subchapter 14A are the Board of Cosmetic Art Examiners departmental rules including organizational rules (.0100); and license renewal waiver for armed forces (.0400).

<u>Fees</u>	21	NCAC	14A	.0404
Adopt/*				

The rules in Subchapter 14F govern all aspects of licensing a beauty salon.

<u>Application for Salon License</u>	21	NCAC	14F	.0101
Repeal/*				
<u>Separation of Beauty Salon</u>	21	NCAC	14F	.0104
Repeal/*				
<u>Newly Established Residential Salons</u>	21	NCAC	14F	.0105
Repeal/*				
<u>Dimensions of Beauty Salon</u>	21	NCAC	14F	.0107
Repeal/*				
<u>Inspection of Cosmetic Art Shops</u>	21	NCAC	14F	.0108
Repeal/*				
<u>Signs</u>	21	NCAC	14F	.0109
Repeal/*				
<u>Failure to Permit Inspection</u>	21	NCAC	14F	.0113
Repeal/*				

The rules in Subchapter 14H are sanitation rules for both operators and facilities including shop licensing and physical dimension (.0200); cosmetic art shop and equipment (.0300); sanitation procedures and practices (.0400); and enforcement, maintenance of licensure (.0500).

<u>Sanitary Ratings and Posting of Ratings</u> Repeal/*	21	NCAC	14H	.0105
<u>Water Supply</u> Repeal/*	21	NCAC	14H	.0107
<u>Floor Coverings</u> Repeal/*	21	NCAC	14H	.0108
<u>Ventilation and Light</u> Repeal/*	21	NCAC	14H	.0109
<u>Bathroom Facilities</u> Repeal/*	21	NCAC	14H	.0110
<u>Cleanliness of Operators</u> Repeal/*	21	NCAC	14H	.0111
<u>Cleanliness of Clinic Area</u> Repeal/*	21	NCAC	14H	.0112
<u>Cleanliness of Scissors, Shears, Razors and Other Equipment</u> Repeal/*	21	NCAC	14H	.0113
<u>Care of Creams: Lotions: and Cosmetics</u> Repeal/*	21	NCAC	14H	.0114
<u>First Aid</u> Repeal/*	21	NCAC	14H	.0115
<u>Animals</u> Repeal/*	21	NCAC	14H	.0117
<u>Systems of Grading Beauty Establishments</u> Repeal/*	21	NCAC	14H	.0118
<u>Whirlpool, Footspa and Facial Steamer Sanitation</u> Repeal/*	21	NCAC	14H	.0120
<u>Prohibited Practices</u> Repeal/*	21	NCAC	14H	.0121

The rules in Subchapter 14P are civil penalty rules.

<u>Revocation of Licenses and Other Disciplinary Measures</u> Amend/*	21	NCAC	14P	.0108
<u>Establishment of Cosmetic Art Schools</u> Amend/*	21	NCAC	14P	.0111
<u>Sanitary Ratings and Posting of Ratings - Applicable to E...</u> Amend/*	21	NCAC	14P	.0112
<u>Operations of Schools of Cosmetic Art</u> Amend/*	21	NCAC	14P	.0113
<u>Cosmetology Curriculum</u> Amend/*	21	NCAC	14P	.0114

The rules in Subchapter 14R are continuing education rules.

<u>Continuing Education Requirements</u> Amend/**	21	NCAC	14R	.0101
<u>Application Criteria and Continuing Education Course Appr...</u> Repeal/*	21	NCAC	14R	.0102
<u>Criteria for Continuing Education Courses</u> Repeal/*	21	NCAC	14R	.0103
<u>License Renewal Procedures</u> Repeal/*	21	NCAC	14R	.0104

The rules in Subchapter 14T concern cosmetic art schools including school applications (.0100); physical requirements of cosmetic art schools (.0200); school equipment and supplies (.0300); student equipment (.0400); record keeping (.0500); curriculum (.0600); school licensure, operations, closing and relocating schools (.0700); school inspections (.0800); and disciplinary actions (.0900).

<u>Apprentice Cosmetology Curriculum</u>	21	NCAC	14T	.0603
Amend/*				
<u>School Performance Requirements</u>	21	NCAC	14T	.0705
Amend/*				

## **MEDICAL BOARD**

The rules in Subchapter 32M regulate the licensing and practice of nurse practitioners (.0100).

<u>Definitions</u>	21	NCAC	32M	.0101
Amend/*				
<u>Nurse Practitioner Registration</u>	21	NCAC	32M	.0103
Amend/*				
<u>Process for Approval to Practice</u>	21	NCAC	32M	.0104
Amend/*				
<u>Inactive Status</u>	21	NCAC	32M	.0108
Amend/*				

## **NURSING, BOARD OF**

The rules in Chapter 36 include rules relating to general provisions (.0100); licensure (.0200); approval of nursing programs (.0300); unlicensed personnel and nurses aides (.0400); professional corporations (.0500); articles of organization (.0600); nurse licensure compact (.0700); and approval and practice parameters for nurse practitioners (.0800).

<u>Definitions</u>	21	NCAC	36	.0801
Amend/*				
<u>Nurse Practitioner Registration</u>	21	NCAC	36	.0803
Amend/*				
<u>Process for Approval to Practice</u>	21	NCAC	36	.0804
Amend/*				
<u>Inactive Status</u>	21	NCAC	36	.0808
Amend/*				

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**CONTESTED CASE DECISIONS**

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*This Section contains the full text of some of the more significant Administrative Law Judge decisions along with an index to all recent contested cases decisions which are filed under North Carolina's Administrative Procedure Act. Copies of the decisions listed in the index and not published are available upon request for a minimal charge by contacting the Office of Administrative Hearings, (919) 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  
Selina Brooks  
Melissa Owens Lassiter  
Don Overby

Randall May  
A. B. Elkins II  
Joe Webster

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<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>DATE</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
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Playground LLC, T/A Playground v. ABC Commission	11 ABC 14031	05/16/12	27:01 NCR 64
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Warren W Gold, Gold Care Inc. d/b/a Hill Forest Rest Home v. DHHS, Division of Health Service Regulation, Adult Care Licensure and Certification Section	10 DHR 05801	05/18/12	
Gold Care Inc. Licensee Hill Forest Rest Home Warren W. Gold v. DHHS, Adult Care Licensure Section	10 DHR 05861	05/18/12	
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Harnett Health System, Inc., v. DHHS, Division of Health Service Regulation, CON Section and Rex Hospital, Inc., Holly Springs Hospital II, LLC, and WakeMed	11 DHR 12795	04/12/12	
WakeMed v. DHHS, Division of Health Service Regulation, CON Section and Holly Springs Hospital II, LLC, Rex Hospital, Inc., and Harnett Health System, Inc	11 DHR 12796	04/12/12	
Cynthia Tuck Champion v. DHHS, Division of Health Service Regulation	11 DHR 14283	06/15/12	
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AriLand Healthcare Service, LLC, NCMHL #018-092, Shawn Kuhl Director of Operations v. DHHS, Emery E. Milliken, General Counsel	12 DHR 01165	05/25/12
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