

NORTH CAROLINA REGISTER

VOLUME 32 • ISSUE 13 • Pages 1250 – 1332

January 2, 2018

I. EXECUTIVE ORDERS	
Executive Order No. 29	1250 – 1251
II. IN ADDITION	
Narrow Therapeutic Index Drugs.....	1252
Elections, Board of - Written Advisory Opinion.....	1253 – 1256
Environmental Management Commission – Public Notice	1257
III. PROPOSED RULES	
Health and Human Services, Department of	
Medical Assistance, Division of.....	1258 – 1268
Public Safety, Department of	
Alarm Systems Licensing Board.....	1268 – 1269
Environmental Quality, Department of	
Environmental Management Commission	1269 – 1313
State Treasurer, Department of	
Teachers' and State Employees' Retirement System Board of Trustees	1313 – 1314
Local Governmental Employees' Retirement System Board of Trustees	1314 – 1315
IV. APPROVED RULES.....	1316 – 1323
Insurance, Department of	
Code Officials Qualification Board Department	
Public Safety, Department of	
Alarm Systems Licensing Board	
Occupational Licensing Boards and Commissions	
Midwifery Joint Committee	
Refrigeration Examiners, Board of	
V. RULES REVIEW COMMISSION	1324 – 1329
VI. CONTESTED CASE DECISIONS	
Index to ALJ Decisions	1330 – 1332

PUBLISHED BY

*The Office of Administrative Hearings
Rules Division
6714 Mail Service Center
Raleigh, NC 27699-6714
Telephone (919) 431-3000
Fax (919) 431-3104*

*Julian Mann III, Director
Molly Masich, Codifier of Rules
Dana McGhee, Publications Coordinator
Lindsay Woy, Editorial Assistant*

Contact List for Rulemaking Questions or Concerns

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

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

Office of Administrative Hearings

Rules Division

1711 New Hope Church Road

Raleigh, North Carolina 27609

(919) 431-3000

(919) 431-3104 FAX

contact: Molly Masich, Codifier of Rules

molly.masich@oah.nc.gov

(919) 431-3071

Dana McGhee, Publications Coordinator

dana.mcgee@oah.nc.gov

(919) 431-3075

Lindsay Woy, Editorial Assistant

lindsay.woy@oah.nc.gov

(919) 431-3078

Rule Review and Legal Issues

Rules Review Commission

1711 New Hope Church Road

Raleigh, North Carolina 27609

(919) 431-3000

(919) 431-3104 FAX

contact: Abigail Hammond, Commission Counsel

abigail.hammond@oah.nc.gov

(919) 431-3076

Amber Cronk May, Commission Counsel

amber.may@oah.nc.gov

(919) 431-3074

Amanda Reeder, Commission Counsel

amanda.reeder@oah.nc.gov

(919) 431-3079

Jason Thomas, Commission Counsel

jason.thomas@oah.nc.gov

(919) 431-3081

Alexander Burgos, Paralegal

alexander.burgos@oah.nc.gov

(919) 431-3080

Julie Brincefield, Administrative Assistant

julie.brincefield@oah.nc.gov

(919) 431-3073

Fiscal Notes & Economic Analysis and Governor's Review

Office of State Budget and Management

116 West Jones Street

Raleigh, North Carolina 27603-8005

(919) 807-4700

(919) 733-0640 FAX

Contact: Anca Grozav, Economic Analyst

osbmruleanalysis@osbm.nc.gov

(919) 807-4740

Carrie Hollis, Economic Analyst

osbmruleanalysis@osbm.nc.gov

(919) 807-4757

NC Association of County Commissioners

215 North Dawson Street

Raleigh, North Carolina 27603

(919) 715-2893

contact: Amy Bason

amy.bason@ncacc.org

NC League of Municipalities

(919) 715-4000

150 Fayetteville Street, Suite 300

Raleigh, North Carolina 27601

contact: Sarah Collins

scollins@nclm.org

Legislative Process Concerning Rule-making

545 Legislative Office Building

300 North Salisbury Street

Raleigh, North Carolina 27611

(919) 733-2578

(919) 715-5460 FAX

Karen Cochrane-Brown, Director/Legislative Analysis Division

karen.cochrane-brown@ncleg.net

Jeff Hudson, Staff Attorney

Jeffrey.hudson@ncleg.net

NORTH CAROLINA REGISTER
Publication Schedule for January 2018 – December 2018

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	RRC Meeting Date	Earliest Eff. Date of Permanent Rule	Delayed Eff. Date of Permanent Rule 31st legislative day of the session beginning:	270 th day from publication in the Register
32:13	01/02/18	12/06/17	01/17/18	03/05/18	03/20/18	04/19/18	05/01/18	05/2018	09/29/18
32:14	01/16/18	12/19/17	01/31/18	03/19/18	03/20/18	04/19/18	05/01/18	05/2018	10/13/18
32:15	02/01/18	01/10/18	02/16/18	04/02/18	04/20/18	05/17/18	06/01/18	01/2019	10/29/18
32:16	02/15/18	01/25/18	03/02/18	04/16/18	04/20/18	05/17/18	06/01/18	01/2019	11/12/18
32:17	03/01/18	02/08/18	03/16/18	04/30/18	05/21/18	06/21/18	07/01/18	01/2019	11/26/18
32:18	03/15/18	02/22/18	03/30/18	05/14/18	05/21/18	06/21/18	07/01/18	01/2019	12/10/18
32:19	04/02/18	03/09/18	04/17/18	06/01/18	06/20/18	07/19/18	08/01/18	01/2019	12/28/18
32:20	04/16/18	03/23/18	05/01/18	06/15/18	06/20/18	07/19/18	08/01/18	01/2019	01/11/19
32:21	05/01/18	04/10/18	05/16/18	07/02/18	07/20/18	08/16/18	09/01/18	01/2019	01/26/19
32:22	05/15/18	04/24/18	05/30/18	07/16/18	07/20/18	08/16/18	09/01/18	01/2019	02/09/19
32:23	06/01/18	05/10/18	06/16/18	07/31/18	08/20/18	09/20/18	10/01/18	01/2019	02/26/19
32:24	06/15/18	05/24/18	06/30/18	08/14/18	08/20/18	09/20/18	10/01/18	01/2019	03/12/19
33:01	07/02/18	06/11/18	07/17/18	08/31/18	09/20/18	10/18/18	11/01/18	01/2019	03/29/19
33:02	07/16/18	06/22/18	07/31/18	09/14/18	09/20/18	10/18/18	11/01/18	01/2019	04/12/19
33:03	08/01/18	07/11/18	08/16/18	10/01/18	10/22/18	11/15/18	12/01/18	01/2019	04/28/19
33:04	08/15/18	07/25/18	08/30/18	10/15/18	10/22/18	11/15/18	12/01/18	01/2019	05/12/19
33:05	09/04/18	08/13/18	09/19/18	11/05/18	11/20/18	12/20/18	01/01/19	01/2019	06/01/19
33:06	09/17/18	08/24/18	10/02/18	11/16/18	11/20/18	12/20/18	01/01/19	01/2019	06/14/19
33:07	10/01/18	09/10/18	10/16/18	11/30/18	12/20/18	01/17/19	02/01/19	05/2020	06/28/19
33:08	10/15/18	09/24/18	10/30/18	12/14/18	12/20/18	01/17/19	02/01/19	05/2020	07/12/19
33:09	11/01/18	10/11/18	11/16/18	12/31/18	01/22/19	02/21/19	03/01/19	05/2020	07/29/19
33:10	11/15/18	10/24/18	11/30/18	01/14/19	01/22/19	02/21/19	03/01/19	05/2020	08/12/19
33:11	12/03/18	11/07/18	12/18/18	02/01/19	02/20/19	03/21/19	04/01/19	05/2020	08/30/19
33:12	12/17/18	11/26/18	01/01/19	02/15/19	02/20/19	03/21/19	04/01/19	05/2020	09/13/19

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) text of proposed rules;
- (3) text of permanent rules approved by the Rules Review Commission;
- (4) emergency rules
- (5) Executive Orders of the Governor;
- (6) 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; and
- (7) 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.



State of North Carolina

ROY COOPER

GOVERNOR

November 22, 2017

EXECUTIVE ORDER NO. 29

**DISASTER DECLARATION FOR THE COUNTIES OF ASHE, AVERY, CALDWELL,
WATAUGA, AND WILKES**

WHEREAS, the North Carolina Emergency Management Act authorizes the issuance of a disaster declaration for an emergency area as defined in N.C. Gen. Stat. § 166A-19.3(7) and the categorization of a disaster as a Type I, Type II or Type III disaster as defined in N.C. Gen. Stat. § 166A-19.21(b); and

WHEREAS, on October 23, 2017, Watauga County, North Carolina and the contiguous counties of Ashe, Avery, Caldwell, and Wilkes suffered severe damages as result of flooding and heavy winds; and

WHEREAS, as a result of the severe weather, Watauga County proclaimed a local state of emergency on October 23, 2017; and

WHEREAS, due to the severe weather impacts, a joint preliminary damage assessment was completed by local, state, and federal emergency management officials on November 2, 2017; and

WHEREAS, I have determined that a Type I disaster, as defined in N.C. Gen. Stat. §166A-19.21(b)(1), exists in the State of North Carolina, specifically in Watauga County and the contiguous counties of Ashe, Avery, Caldwell, and Wilkes; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.21(b)(1), the criteria for a Type I disaster are met if: (1) the Secretary of the Department of Public Safety has provided a preliminary damage assessment to the Governor and the General Assembly; (2) a local state of emergency has been declared pursuant to N.C. Gen. Stat. § 166A-19.22; (3) the preliminary damage assessment has met or exceeded the criteria established for the Small Business Disaster Loan Program pursuant to 13 C.F.R. § 123; and (4) a major disaster declaration by the President of the United States pursuant to the Stafford Act has not been declared; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.41(b), if a disaster is declared, the Governor may make state funds available for emergency assistance in the form of individual assistance and public assistance for recovery from those disasters for which federal assistance under the Stafford Act is either not available or does not adequately meet the needs of the citizens of the State in the emergency area.

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. Pursuant to N.C. Gen. Stat. § 166A-19.21(b)(1), a Type I disaster is hereby declared for Watauga County and the contiguous counties of Ashe, Avery, Caldwell, and Wilkes.

Section 2. I authorize state emergency assistance funds in the form of grants to individuals and families located within the emergency area that meet the terms and conditions under N.C. Gen. Stat. § 166A-19.41(b)(1).

Section 3. I hereby order that this declaration be: (a) distributed to the news media and other organizations calculated to bring its contents to the attention of the general public; (b) promptly filed with the Secretary of the Department of Public Safety, the Secretary of State, and the clerks of superior court in the counties to which it applies; and (c) distributed to others as necessary to ensure proper implementation of this declaration.


Section 4. This Type I disaster declaration shall expire sixty (60) days after issuance unless renewed by the Governor or the General Assembly. Such renewals may be made in increments of thirty (30) days each, not to exceed a total of 120 days from the date of first issuance.

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 22nd day of November in the year of our Lord two thousand and seventeen.



Roy Cooper
Governor

ATTEST:



Elaine F. Marshall
Secretary of State



NARROW THERAPEUTIC INDEX DRUGS DESIGNATED BY THE NORTH
CAROLINA SECRETARY OF HUMAN RESOURCES

Pursuant to N.C.G.S. §90-85.27(4a), this is a revised publication from the North Carolina
Board of Pharmacy of narrow therapeutic index drugs designated by the North Carolina
Secretary of Human Resources upon the advice of the State Health Director, North Carolina
Board of Pharmacy, and North Carolina Medical Board.

Carbamazepine: all oral dosage forms

Cyclosporine: all oral dosage forms

Digoxin: all oral dosage forms

Ethosuximide

Levothyroxine sodium tablets

Lithium (including all salts): all oral dosage forms

Phenytoin (including all salts): all oral dosage forms

Procaïnamide

Theophylline (including all salts): all oral dosage forms

Warfarin sodium tablets

Tacrolimus: all oral dosage forms



NORTH CAROLINA

State Board of Elections & Ethics Enforcement

Mailing Address:
P.O. Box 27255
Raleigh, NC 27611-7255

Phone: (866) 522-4723
Fax: (919) 715-0135

November 27, 2017

VIA ELECTRONIC DELIVERY

B. David Horne, Esq.
Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan
P.O. Box 2611
Raleigh, NC 27602-2611

RE: Request for Advisory Opinion under G.S. § 163-278.23 Regarding Political Committee Affiliated with the N.C. Association of Certified Public Accountants

Dear Mr. Horne:

You have contacted the State Board of Elections and Ethics Enforcement Office ("State Board Office") to request an advisory opinion pursuant to the G.S. § 163-278.23 on compliance by a political committee ("the Committee") of the North Carolina Association of Certified Public Accountants ("the Association") with the requirements of Article 22A of Chapter 163 of North Carolina General Statutes. Specifically, you seek guidance and approval of a plan that would allow individuals to make contributions to the Association through a payroll-deduction program operated by each individual CPA firm.

The Association is a North Carolina trade association organized under section 501(c)(6) of the U.S. Internal Revenue Code with an affiliated political committee established under Article 22A of Chapter 163. Pursuant to G.S. § 163-278.19(b), employees and officers of a professional association may contribute to a separate, segregated fund to be utilized for political purposes, but such contributions must be voluntary and may not be sourced from dues or fees required as a condition of membership in the Association.

The Association proposes that individual CPA firms collect personal funds from employees via payroll deduction and remit funds in a lump sum to the Committee. The Committee would collect from each individual firm and maintain required information from individual contributors including name, mailing address, principal occupation and the amount and date of contribution.

The State Board has allowed payroll-deduction programs to be utilized by political committees established pursuant to G.S. § 163-278.19(b) provided that certain processes are followed.¹ The

¹ See State Board of Elections Advisory Opinion, Re: North Carolina Association of Realtors (NCAR) and its Affiliated Political Committee, May 8, 2003.

430 N. Salisbury Street • Raleigh, NC 27603

recordkeeping and reporting requirements associated with such contributions may be significant. All members must sign a written authorization specifying their intention to contribute by payroll deduction, including the amount and schedule of the deduction, along with a statement that the deduction is being made voluntarily and not a condition of membership or employment. These written authorizations must be maintained by the individual CPA firm and the Committee treasurer. Any changes to the payroll-deduction arrangement should be reflected in a written authorization and provided to the Committee's treasurer.

Funds collected by the individual CPA firms must remain segregated from other firm funds as required by G.S. § 163-278.19(b). Each CPA firm must therefore establish a "transmittal account" that only contains payroll deductions for transfer to the Association's Committee. Each CPA firm shall disclose the account information for the transmittal accounts to Committee's treasurer, who shall provide this information to the State Board to be maintained with other confidential bank account information of the Committee.

It is the responsibility of the Committee's treasurer to ensure compliance with disclosure and compliance requirements as provided by North Carolina law. As a result, the treasurer shall obtain individual contributor information for every payroll deduction. This information must be provided before contributions are deposited into the Committee's account. Because it is unlawful for businesses to reimburse employees for contributions made to political committee, it is recommended that the Committee's treasurer obtain a statement from each participating CPA firm acknowledging that no business funds may be contributed to the political committee and that employees may not be reimbursed for payroll-deduction contributions.

Provided you comply with all above requirements, including that each CPA firm segregate employee contributions in a separate transmittal account, it is my opinion that the payroll-deduction plan will not be deemed a prohibited contribution under G.S. § 163-278.19. This opinion is based upon the facts as stated in your letter dated September 28, 2017. Should those facts change, you should evaluate whether this opinion is still applicable and binding. This opinion will be filed with the Codifier of Rules to be published unedited in the North Carolina Register and the North Carolina Administrative Code.

Sincerely,



Kim Westbrook Strach
Executive Director
State Board of Elections and Ethics Enforcement

cc: Molly Masich, Codifier of Rules

Enclosure: Request for Advisory Opinion

SMITH, ANDERSON, BLOUNT,
DORSETT, MITCHELL & JERNIGAN, L.L.P.

LAWYERS

B. Davis Horne, Jr.

OFFICES
Wells Fargo Capitol Center
150 Fayetteville Street, Suite 2300
Raleigh, North Carolina 27601

E-Mail: dhorne@smithlaw.com

September 28, 2017

MAILING ADDRESS
P.O. Box 2611
Raleigh, North Carolina
27602-2611

TELEPHONE: (919) 821-6680
FACSIMILE: (919) 821-6800

Mr. Josh Lawson, JD/LLM
General Counsel, North Carolina State Board of Elections & Ethics Enforcement
Dobbs Building
430 North Salisbury Street
Raleigh, North Carolina 27603-5918

Re: North Carolina Association of Certified Public Accountants

Dear Mr. Lawson:

We are pleased to represent the North Carolina Association of Certified Public Accountants (the "Association"), a North Carolina trade association organized under section 501(c)(6) of the United States Internal Revenue Code. The Association has an affiliated North Carolina political committee (the "Committee") established pursuant to Chapter 163 of the North Carolina General Statutes. This letter is to request a written opinion pursuant to N.C. Gen. Stat. § 163-278.23 regarding the Committee's compliance with the requirements of Article 22A of Chapter 163 of the North Carolina General Statutes.

As a political committee affiliated with a professional association, the Committee is governed by N.C. Gen. Stat. § 163-19. This statute allows the Committee to accept contributions from individuals so long as those contributions are given voluntarily and not as "dues, fees, or other moneys required as a condition of membership." N.C. Gen. Stat. § 163-19(b). The Association has members who would prefer to contribute to the Committee through a payroll-deduction program similar to other programs operated by other organizations.

In an effort to be responsive to its members, the Committee would like to facilitate their participation in the election process by establishing a plan that would allow individuals to voluntarily elect to have contributions deducted from their paychecks. Individual CPA firms would collect personal funds from their employees or partners through these deductions and remit the collected funds to the Committee in a single sum. At the same time, the Committee would collect from each participating firm and report to the Board the information required by North Carolina law for each individual contribution, including the name, mailing address, and principal occupation of the individual contributor, as well as the amount and date of the contribution. See N.C. Gen. Stat. § 163-278.11(a)(1). The Committee would likewise maintain the same information in its records.

SMITH, ANDERSON, BLOUNT, DORSETT, MITCHELL & JERNIGAN, L.L.P.

Mr. Josh Lawson

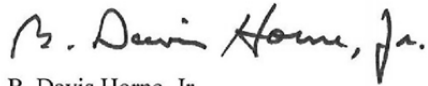
Re: Re: North Carolina Association of Certified Public Accountants

September 28, 2017

Page 2

We are seeking the State Board of Election and Ethics Enforcement's review and approval of this arrangement pursuant to its authority under N.C. Gen. Stat. § 163-14(b) to "prescribe guidelines as to the reporting and verification of any method of contribution payment allowed under" Article 22A, consistent with all applicable state laws and regulations, and pursuant to any instructions you might offer. I look forward to your reply at your earliest convenience. Please let me know if you have any questions or need any clarification of the Association's request.

Very truly yours,



B. Davis Horne, Jr.

#6292622_3.docx

Public Notice
North Carolina Environmental Management Commission
Division of Water Resources/Water Quality Permitting Section
1617 Mail Service Center
Raleigh, NC 27699-1617
Notice of Intent to Reissue an NPDES General Wastewater Permit

The North Carolina Environmental Management Commission proposes to reissue the following NPDES wastewater general permit:

NPDES General Permit No. NCG530000 for the discharge of treated wastewater resulting from seafood packing and rinsing operations, as well as from fish farms and hatcheries defined as concentrated aquatic animal production (CAAP) facilities with production levels above specified minimums.

Written comments regarding the proposed general permit will be accepted until 30 days after the publish date of this notice. The Director of the NC Division of Water Resources (DWR) may hold a public hearing should there be a significant degree of public interest. Please mail comments and/or information requests to DWR at the above address. Interested persons may visit the DWR at 512 N. Salisbury Street, Raleigh, NC to review information on file. Additional information on this notice may be found on our website:

<http://deq.nc.gov/about/divisions/water-resources/water-resources-permits/wastewater-branch/npdes-wastewater/public-notices>

For questions or comments about NPDES General Permit NCG530000 for the discharge of treated wastewater resulting from seafood packing and rinsing operations, as well as from fish farms and hatcheries defined as concentrated aquatic animal production (CAAP) facilities with production levels above specified minimums, please contact Brianna Young at phone # (919) 807-6333 or via e-mail: brianna.young@ncdenr.gov.

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 and G.S. 150B-21.3A(c)(2)g. that the Department of Health and Human Services, Division of Medical Assistance intends to amend the rules cited as 10A NCAC 22H .0201, .0301; 22L .0101, .0201; 22N .0101, repeal the rules cited as 10A NCAC 22F .0401; 22N .0201, .0301, readopt with substantive changes the rules cited as 10A NCAC 21A .0303; 21B .0204, .0311; 21D .0101-.0103, .0201, .0301, .0302, .0401, .0402, .0501-.0503; 22B .0103, .0105; 22C .0101-.0103; 22D .0101; 22F .0107, .0202, .0402, .0602, .0605; 22G .0108, .0208, .0502, .0509; 22H .0101-.0105, .0202, .0204, .0205, .0304, .0305; 22I .0104; 22K .0102; 22L .0103, .0104; 22N .0202, .0302, .0303; 22O .0112, and readopt without substantive changes the rules cited as 10A NCAC 21A .0301, .0302; 22B .0101, .0102, .0104; 22F .0104-.0106, .0201, .0203, .0301, .0302, .0601, .0603, .0604, .0606, .0704, .0706; 22G .0109, .0504; 22H .0203, .0302, .0303; 22I .0102; 22J .0102, .0103-.0106; 22K .0101, .0103; 22L .0102, .0203; 22N .0102, and .0203.

Pursuant to G.S. 150B-21.2(c)(1), the text of the rule(s) proposed for readoption without substantive changes are not required to be published. The text of the rule(s) are available on the OAH website: <http://reports.oah.state.nc.us/ncac.asp>.

Pursuant to G.S. 150B-21.17, the Codifier has determined it impractical to publish the text of rules proposed for repeal unless the agency requests otherwise. The text of the rules are available on the OAH website at <http://reports.oah.state.nc.us/ncac.asp>.

Link to agency website pursuant to G.S. 150B-19.1(c): <https://dma.ncdhhs.gov/get-involved/rules-actions>

Proposed Effective Date: May 1, 2018

Public Hearing:

Date: January 24, 2018

Time: 1:00 p.m.-3:00 p.m.

Location: Brown Building, Room 104, 801 Biggs Drive, Raleigh, NC 27603

Reason for Proposed Action: Pursuant to G.S. 150B-21.3A, Periodic review and expiration of existing rules, each agency shall conduct a review of its existing rules at least once every 10 years. As a result of this periodic review process, the North Carolina Department of Health and Human Services, Division of Medical Assistance is readopting, repealing, or amending 90 rules in 10A NCAC Chapters 21 and 22, Subchapters 21A, 21B, 21D, 22B, 22C, 22D 22F, 22G, 22H, 22I, 22J, 22K, 22L, 22N, and 22O to ensure these rules reflect current law and processes.

Comments may be submitted to: Virginia Niehaus, DMA Rulemaking Coordinator, NC DHHS, Division of Medical Assistance, 2501 Mail Service Center, Raleigh, NC 27699-2501; email MedicaidRulesComments@dhhs.nc.gov

Comment period ends: March 5, 2018

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 10A NCAC 22H .0205 and .0305
- ☐ Substantial economic impact (≥\$1,000,000)
- ☒ Approved by OSBM 10A NCAC 22H .0205 and .0305
- ☒ No fiscal note required by G.S. 150B-21.4 10A NCAC 22F .0401; 22H .0201, .0301; 22L .0101, .0201; 22N .0101, .0201, .0301
- ☒ No fiscal note required by G.S. 150B-21.3A(d)(2) 10A NCAC 21A .0301-.0303; 21B .0204, .0311; 21D .0101-.0103, .0201, .0301, .0302, .0401, .0402, .0501-.0503; 22B .0101-.0105; 22C .0101-.0103; 22D .0101; 22F .0104-.0107, .0201-.0203, .0301, .0302, .0402, .0601-.0606, .0704, .0706; 22G .0108, .0109, .0208, .0502, .0504, .0509; 22H .0101-.0105, .0202-.0204, .0302-.0304; 22I .0102, .0104; 22J .0102-.0106; 22K .0101-.0103; 22L .0102-.0104, .0203; 22N .0102, .0202, .0203, .0302, .0303; 22O .0112

CHAPTER 21 - MEDICAL ASSISTANCE ADMINISTRATION

SUBCHAPTER 21A - GENERAL PROGRAM ADMINISTRATION

SECTION .0300 - APPEALS

10A NCAC 21A .0301 NOTICE (READoption WITHOUT SUBSTANTIVE CHANGES)

10A NCAC 21A .0302 GOOD CAUSE FOR DELAYED HEARINGS (READoption WITHOUT SUBSTANTIVE CHANGES)

10A NCAC 21A .0303 APPEAL DECISION

(a) The hearing officer shall make a tentative decision ~~that which~~ shall be served upon the county department and the appellant by mail. Decisions ~~reversing proposing to reverse~~ the county department's action shall be sent by certified mail to the county ~~department. department while decisions~~ Decisions affirming the county department's actions ~~shall will~~ be sent by certified mail to the appellant.

(b) The county and the appellant may present oral and written argument, for and against the ~~decision decision~~ by contacting the Chief Hearing Officer. ~~Written argument may be submitted to or contact made with the Chief Hearing officer to request a hearing for oral argument.~~

(c) If a written argument or a request for oral argument is ~~not received by~~ the Chief Hearing Officer ~~is not contacted~~ within 10 calendar days of the date the notice of the tentative decision is signed, the tentative decision shall become final.

(d) If a request for a time extension to submit an argument is received by the Chief Hearing officer within 10 calendar days of the date the notice of the tentative decision is signed, an extension may be granted for good cause or in the interests of justice.

~~(e)(d)~~ If the party that requested oral argument fails to appear ~~at the hearing~~ for the scheduled oral argument, the tentative decision ~~shall become becomes~~ final.

~~(f)(e)~~ If oral ~~or and~~ written arguments are ~~presented~~, presented within the timeframes established in Paragraphs (c) and (d) of this Rule, then all such arguments shall be considered and a final decision shall be rendered.

~~(g)(f)~~ The final decision shall be served upon ~~mailed to~~ the appellant ~~and any~~ the county department by certified mail.

~~(h)(g)~~ A decision upholding the appellant shall be put into effect within two weeks after the county department's receipt of the final ~~decision decision~~ by certified mail.

~~(i)(h)~~ As provided for in 42 C.F.R. 431.245 431.245, and G.S. 108A-79(k), the decision shall contain the appellant's right to ~~request a State agency hearing and seek judicial review. review to the extent that either is available to him.~~

Authority G.S. 108A-54; 108A-54.1B; 108A-79; 42 C.F.R. 431.244; 42 C.F.R. 431.245; 42 C.F.R. 431.246.

SUBCHAPTER 21B – ELIGIBILITY DETERMINATION

SECTION .0200 - APPLICATION PROCESS

10A NCAC 21B .0204 EFFECTIVE DATE OF ASSISTANCE

(a) The first month of Medicaid coverage shall be:

- (1) the ~~The~~ month of application, or for SSI recipients, the month of application for SSI; ~~or~~
- (2) as ~~As~~ much as three months prior to the month of application when the client received medical

services covered by the program and was eligible during the month or months of medical need; or

- (3) if ~~If~~ the client applies prior to meeting a non-financial requirement, no earlier than the calendar month in which all non-financial requirements are met.

(b) Assistance shall be authorized beginning on the first day of the month except when:

- (1) the ~~The~~ client's income exceeds the income level and he or she must spenddown the excess income for medical care. The assistance shall be authorized on the day his or her incurred medical care costs equal the amount of the excess income; or income.

- (2) ~~For groups identified in Rule .0311, Sub item (3)(a) of this Subchapter, the client shall be authorized on the day the reserves are reduced, or incurred medical care costs equal the amount of the excess income, whichever occurs later. otherwise stated in the Medicaid State Plan.~~

(c) Medicaid coverage shall end on the last day of the last month of eligibility except for those individuals eligible for emergency conditions only as described in 10A NCAC 23E .0102. The last month of eligibility shall be the month in which notice of termination expires. be:

- (1) ~~The month in which timely notice of termination expires; or~~
- (2) ~~The month in which adequate notice of termination expires.~~

Authority G.S. 108A-54; 108A-54.1B; 42 C.F.R. 435.915.

SECTION .0300 - CONDITIONS FOR ELIGIBILITY

10A NCAC 21B .0311 TRANSFER OF RESOURCES

Authority G.S. 108A-54; 108A-58; P.L. 100-360; P.L. 100-485; 42 U.S.C. 1396p(c); 42 C.F.R. 435.121; 42 C.F.R. 435.840; 42 C.F.R. 435.841; 42 C.F.R. 435.845; S.L. 2002-126.

SUBCHAPTER 21D - ESTATE RECOVERY

SECTION .0100 - RECIPIENTS SUBJECT TO ESTATE RECOVERY

10A NCAC 21D .0101 NOTICE OF ESTATE RECOVERY

10A NCAC 21D .0102 PERMANENTLY INSTITUTIONALIZED

10A NCAC 21D .0103 AGE 55 AND OVER

Authority G.S. 108A-70.5; 42 U.S.C. 1396p.

SECTION .0200 - RECONSIDERATION REVIEW

10A NCAC 21D .0201 RECONSIDERATION REVIEW

Authority G.S. 108A-70.5; 42 U.S.C. 1396p.

SECTION .0300 - MEDICAID PAYMENTS SUBJECT TO RECOVERY

10A NCAC 21D .0301 PERMANENTLY INSTITUTIONALIZED
10A NCAC 21D .0302 AGE 55 AND OVER

Authority G.S. 108A-70.5; 42 U.S.C. 1396p.

SECTION .0400 - FILING AND COLLECTION OF CLAIMS AGAINST ESTATE

10A NCAC 21D .0401 FILING CLAIM AGAINST ESTATE
10A NCAC 21D .0402 COLLECTION OF CLAIMS

Authority G.S. 108A-70.5; 42 U.S.C. 1396p.

SECTION .0500 - WAIVER OF RECOVERY

10A NCAC 21D .0501 RECOVERY NOT COST EFFECTIVE
10A NCAC 21D .0502 UNDUE HARDSHIP
10A NCAC 21D .0503 DETERMINATION OF UNDUE HARDSHIP

Authority G.S. 108A-70.5; 42 U.S.C. 1396p.

CHAPTER 22 - MEDICAL ASSISTANCE ELIGIBILITY

SUBCHAPTER 22B – PROVIDER ISSUES

SECTION .0100 - GENERAL

10A NCAC 22B .0101 INSTITUTIONAL HEALTH SERVICES (READOPTION WITHOUT SUBSTANTIVE CHANGES)

10A NCAC 22B .0102 COORDINATION WITH TITLE XVIII (READOPTION WITHOUT SUBSTANTIVE CHANGES)

10A NCAC 22B .0103 INSTITUTIONAL STANDARDS
 Institutions ~~shall must~~ meet standards prescribed for participation in Titles ~~XVIII XVIII~~, XIX, and XXI of the Social Security Act, which is adopted and incorporated by reference with subsequent changes or amendments and available free of charge at <http://uscode.house.gov/>, and XIX. These standards are specified by North Carolina state licensing law and by federal statutes and regulations, and are kept on file in the Department of Health and Human Services, Division of Health Services Regulation state ~~agency~~ and available on request.

Authority G.S. 108A-25(b); 108A-54; 131-E; 42 C.F.R. 440.10; 42 C.F.R. Part 442; 42 C.F.R. 457.990. 442, Subparts (D)(E).

10A NCAC 22B .0104 TIME LIMITATION (READOPTION WITHOUT SUBSTANTIVE CHANGES)

10A NCAC 22B .0105 OVERUTILIZER IDENTIFICATION

Authority G.S. 108A-25(b).

SUBCHAPTER 22C – AMOUNT: DURATION: AND SCOPE OF ASSISTANCE

10A NCAC 22C .0101 COST SHARING
10A NCAC 22C .0102 MEDICALLY NEEDY
10A NCAC 22C .0103 CATEGORICALLY NEEDY

Authority G.S. 108A-25(b); S.L. 1985, c. 479, s. 86; 34 C.F.R. 447.50; 42 C.F.R. 440.220; 42 C.F.R. 440.240; 42 C.F.R. 440.210.

SUBCHAPTER 22D – RECIPIENT ISSUES

10A NCAC 22D .0101 CO-PAYMENT

Authority G.S. 108A-25(b); S.L. 1985, c. 479, s. 86; 42 C.F.R. 440.230(d).

SUBCHAPTER 22F - PROGRAM INTEGRITY

SECTION .0100 - GENERAL

10A NCAC 22F .0104 PREVENTION (READOPTION WITHOUT SUBSTANTIVE CHANGES)

10A NCAC 22F .0105 DETECTION (READOPTION WITHOUT SUBSTANTIVE CHANGES)

10A NCAC 22F .0106 CONFIDENTIALITY (READOPTION WITHOUT SUBSTANTIVE CHANGES)

10A NCAC 22F .0107 RECORD RETENTION

All Title XIX and Title XXI providers shall keep and maintain all Medicaid and NC Health Choice financial, medical, or other records necessary to ~~fully~~ disclose the nature and extent of services furnished to Medicaid and NC Health Choice recipients and claimed for reimbursement. These records shall be retained for a period of not less than five ~~full~~ years from the date of service, unless a longer retention period is required by applicable federal or state law, ~~regulations, regulations~~ or data retention agreements. Upon notification of an audit or upon receipt of a request for records, all records related to the audit or records request shall be retained until notification that the investigation has been concluded or five full years from the initial notification, whichever is longer.

Authority G.S. 108A-25(b); 108A-54; 108A-63; 108A-64; 42 C.F.R. Part 455; 42 C.F.R. 455.12– 23; 42 C.F.R. 431.107.

SECTION .0200 - PROVIDER FRAUD AND PHYSICAL ABUSE OF RECIPIENTS

10A NCAC 22F .0201 DEFINITION OF PROVIDER FRAUD (READOPTION WITHOUT SUBSTANTIVE CHANGES)

10A NCAC 22F .0202 INVESTIGATION

~~(a) The Division will publish methods and procedures for the control of provider fraud, abuse, error, and overutilization.~~

~~(a)(b) There shall be a preliminary investigation of all complaints received or fraud, waste, abuse, overutilization, error, or practices not conforming to regulations or policy aberrant practices detected, until it is determined:~~

- ~~(1) whether there are sufficient findings to warrant a full investigation;~~
- ~~(2) whether there is sufficient evidence to warrant referring the case for civil and and/or criminal fraud action; or~~
- ~~(3) whether there is insufficient evidence to support the allegation(s) and the case may be closed.~~

~~(b)(e) There shall be a full investigation if the preliminary findings support the conclusion of possible fraud until:~~

- ~~(1) the case is referred to the appropriate law enforcement agency;~~
- ~~(2) the case is found to be one of program abuse subject to administrative action;~~
- ~~(3) the case is closed for insufficient evidence of fraud or abuse; or~~
- ~~(4) the provider is found not to have abused or defrauded the program.~~

Authority G.S. 108A-25(b); 108A-63; 42 U.S.C. 1396(b) et seq.; 42 C.F.R. Part 455, Subpart A. 455.

10A NCAC 22F .0203 REFERRAL TO LAW ENFORCEMENT AGENCY (READOPTION WITHOUT SUBSTANTIVE CHANGES)

SECTION .0300 - PROVIDER ABUSE

10A NCAC 22F .0301 DEFINITION OF PROVIDER ABUSE (READOPTION WITHOUT SUBSTANTIVE CHANGES)

10A NCAC 22F .0302 INVESTIGATION (READOPTION WITHOUT SUBSTANTIVE CHANGES)

SECTION .0400 – AGENCY RECONSIDERATION REVIEW

10A NCAC 22F .0401 PURPOSE

Authority G.S. 108A-25(b); 42 C.F.R. 456.

10A NCAC 22F .0402 RECONSIDERATION REVIEW FOR PROGRAM ABUSE

~~(a) The Division shall notify the provider in writing by certified mail of the tentative decision made pursuant to Rule .0302 of this subchapter and the opportunity for a reconsideration of the tentative decision. Upon notification of a tentative decision the~~

~~provider will be offered, in writing, by certified mail, the opportunity for a reconsideration of the tentative decision and the reasons therefor.~~

~~(b) The provider shall will be instructed to submit to the Division in writing a his request for a Reconsideration Review within 30 business fifteen working days from the date of receipt of the notice. Failure to request a Reconsideration Review in the specified time shall result in the implementation of the tentative decision as the Department's Division's final decision.~~

~~(c) If requested, the The Notice of Reconsideration Review shall be sent to the provider scheduled within 30 business twenty calendar days from receipt of the request. The provider shall will be notified in writing to appear at a specified day, time, time and place. The provider may be accompanied by legal counsel if the provider he so desires.~~

~~(d) The provider shall provide a written statement to the Hearing Unit prior to the Reconsideration Review identifying any claims that the provider wishes to dispute and setting forth the provider's specific reasons for disputing the determination on those claims.~~

~~(e)(d) The purpose of the Reconsideration Review includes:~~

- ~~(1) clarification Clarification, formulation, and simplification of issues;~~
- ~~(2) exchange Exchange and full disclosure of information and materials;~~
- ~~(3) review Review of the investigative findings;~~
- ~~(4) resolution Resolution of matters in controversy;~~
- ~~(5) consideration Consideration of mitigating and extenuating circumstances;~~
- ~~(6) reconsideration Reconsideration of the administrative measures to be imposed; and~~
- ~~(7) reconsideration Reconsideration of the restitution of overpayments.~~

~~(f)(e) The Reconsideration Review decision shall will be sent to the provider, provider in writing by certified mail, mail within 30 business five working days following the date the review record is closed. The review record is closed when all arguments and documents for review have been received by the Hearing Unit, of review. It will state the schedule for implementing the administrative measures and/or recoupment plan, if applicable, and it will The decision shall state that if the Reconsideration Review decision is not acceptable to the provider, the provider he may request a contested case hearing in accordance with G.S. 150B, Article 3 and 26 NCAC 03 .0103, the provisions found at 10A NCAC 01. Pursuant to G.S. 150B-23(f), the provider shall have 60 days from receipt of the Reconsideration Review decision to request a contested case hearing in the Office of Administrative Hearings, hearing. Unless the request is received within the time provided, the Reconsideration Review decision shall become the Division's final decision and no further appeal shall be permitted. decision. In processing the contested case request, the Director of the Division of Medical Assistance shall serve as the secretary's designee and shall be responsible for making the final agency decision.~~

Authority G.S. 108A-25(b); 108A-54; 150B, Article 3; S.L. 2011-375, s. 2; 450B-22; 42 C.F.R. Part 455.512. 455.

SECTION .0600 – ADMINISTRATIVE SANCTIONS AND RECOUPMENT

10A NCAC 22F .0601 RECOUPMENT (READOPTION WITHOUT SUBSTANTIVE CHANGES)

10A NCAC 22F .0602 ADMINISTRATIVE SANCTIONS AND REMEDIAL MEASURES

(a) The following types of sanctions or remedial measures may be ~~imposed~~ imposed, singly or in combination, by the Division Medicaid Agency in instances of program abuse by providers, ~~providers; which do not have to be imposed in any particular order:~~

- (1) warning ~~Warning~~ letters for those instances of abuse that can be ~~satisfactorily~~ settled by issuing a warning to cease the specific abuse. The letter shall ~~will~~ state that any further violations shall ~~will~~ result in administrative or legal action initiated by the Division; Medicaid Agency.
- (2) suspension ~~Suspension~~ of a provider from further participation in the Medicaid Program for a specified period of time, provided that the appropriate findings have been made by the Division and provided that this action shall does not deprive recipients of access to reasonable service of adequate quality as set out in 42 C.F.R. 440.230, 440.260, and 455.23, which are adopted and incorporated by reference with subsequent changes or amendments and available free of charge at https://www.ecfr.gov/; quality.
- (3) termination ~~Termination~~ of a provider from further participation in the Medicaid Program, provided that the appropriate findings have been made by the Division and provided that this action shall does not deprive recipients of access to reasonable services of adequate quality as set out in 42 C.F.R. 440.230, 440.260, and 455.23, which are adopted and incorporated by reference with subsequent changes or amendments and available free of charge at https://www.ecfr.gov/; quality.
- (4) probation ~~Probation~~ whereby a provider's participation is ~~closely~~ monitored for a specified period of time not to exceed one year. At the termination of the probation period the Division Medicaid Agency shall will conduct a follow-up review of the provider's Medicaid practice to ensure compliance with all applicable laws, regulations, and conditions of participation in Medicaid. ~~the Medicaid rules. Notwithstanding his probation, a probationary provider's participation, like that of all providers, is terminable at will.~~
- (5) Remedial Measures to include:
 - (A) placing the provider on prepayment review in accordance with G.S. 108C-7; "flag" status whereby his claims are remanded for manual review; or

~~(6)(B)~~ establishing a monitoring program not to exceed one year whereby the provider shall ~~must~~ comply with pre-established conditions of participation to allow review and evaluation of the provider's Medicaid claims, his Medicaid practice, i.e., quality of care.

(b) The following factors are illustrative of those to be considered in determining the kind and extent of administrative sanctions to be imposed:

- (1) seriousness of the offense;
- (2) extent of violations found;
- (3) history ~~of or~~ prior violations;
- (4) prior imposition of sanctions;
- (5) period length of time provider practiced violations;
- (6) provider willingness to obey program rules;
- (7) recommendations by the investigative staff or Peer Review Committees; and
- (8) effect on health care delivery in the area.

When a provider has been administratively sanctioned, the Division shall notify the licensing board or other certifying group governing the sanctioned provider, appropriate professional society, board of licensure, State Attorney General's Office, federal and state agencies, and appropriate county departments of social services of the findings made and the sanctions imposed.

Authority G.S. 108A-25(b); 108C-7; 42 C.F.R. 440.230; 42 C.F.R. 440.260; 42 C.F.R. Part 431; 42 C.F.R. Part 455; 42 C.F.R. 455.23.

10A NCAC 22F .0603 PROVIDER LOCK-OUT (READOPTION WITHOUT SUBSTANTIVE CHANGES)

10A NCAC 22F .0604 WITHHOLDING OF MEDICAID PAYMENTS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

10A NCAC 22F .0605 TERMINATION

Authority G.S. 108A-25(b); 42 C.F.R. Part 431; 42 C.F.R. Part 455.

10A NCAC 22F .0606 TECHNIQUE FOR PROJECTING MEDICAID OVERPAYMENTS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

SECTION .0700 – RECIPIENT FRAUD AND ABUSE

10A NCAC 22F .0704 RECIPIENT MANAGEMENT LOCK-IN SYSTEM (READOPTION WITHOUT SUBSTANTIVE CHANGES)

10A NCAC 22F .0706 RECOUPMENT OF OVERPAYMENTS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

SUBCHAPTER 22G – REIMBURSEMENT PLANS

SECTION .0100 – REIMBURSEMENT FOR NURSING FACILITY SERVICES

10A NCAC 22G .0108 REIMBURSEMENT METHODS FOR STATE-OPERATED FACILITIES

~~(a) A NC Division of Health Service Regulation certified State operated nursing facility shall be reimbursed for the reasonable costs that are necessary to efficiently meet the needs of its patients and to comply with federal and state laws and regulations. The costs shall be determined in accordance with Rules .0103 and .0104 of this Section, except that annual cost reports shall be required for the fiscal year beginning on July 1 and ending on the following June 30 and must be submitted to the Division of Medical Assistance within 150 days after their fiscal year end. Payments shall be suspended if reports are not filed. The Division of Medical Assistance shall extend the deadline for filing the report if the Division determines good cause. "Good cause" is an action uncontrollable by the provider. The Medicare principles for the reimbursement of skilled nursing facilities shall be utilized for the cost principles that are not specifically addressed in this Section.~~

~~(b) A per diem rate based on the providers estimated annual cost divided by patient days shall be used to make interim payments. A desk audit and a tentative settlement shall be performed on each annual cost report to determine the amount of Medicaid reasonable cost and the amount of interim payments received by the provider.~~

~~(c) The Division's reimbursement methodology is set forth in the Medicaid State Plan. Any payments in excess of costs shall be refunded to the Division. Any costs in excess of payments shall be paid to the provider. An annual field audit shall be performed by a qualified independent auditor to determine the final settlement amounts.~~

Authority G.S. 108A-25(b); 108A-54; 108A-55; S.L. 1985, c. 479, s. 86; 42 C.F.R. 447, Subpart C.

10A NCAC 22G .0109 PROVIDER ASSESSMENT (READOPTION WITHOUT SUBSTANTIVE CHANGES)

SECTION .0200 – HOSPITAL INPATIENT REIMBURSEMENT PLAN

10A NCAC 22G .0208 ADMINISTRATIVE RECONSIDERATION REVIEWS

Authority G.S. 108A-25(b); 108A-54; 108A-55; 42 C.F.R. 447, Subpart C.

SECTION .0500 – REIMBURSEMENT FOR SERVICES

10A NCAC 22G .0502 MENTAL HEALTH CLINIC SERVICES

Authority G.S. 108A-25(b); S.L. 1985, c. 479, s. 86.

10A NCAC 22G .0504 HEALTH MAINTENANCE ORGANIZATIONS AND PREPAID HEALTH PLANS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

10A NCAC 22G .0509 REIMBURSEMENT PRINCIPLES, HEARING AIDS/ACCESSORIES/BATTERIES

Authority G.S. 108A-25(b); 108A-54.

SUBCHAPTER 22H - APPEALS PROCEDURES

SECTION .0100 - BENEFICIARY APPEALS RECIPIENT/APPLICANT APPEAL REVIEW PROCEDURES FOR DENIAL, TERMINATION, SUSPENSION, OR REDUCTION OF A MEDICAID SERVICE OR AN AUTHORIZATION FOR A MEDICAID SERVICE PRIOR APPROVAL REQUESTS FOR MEDICAID COVERED MEDICAL SERVICES OR FOR OTHER MEDICAID COVERED MEDICAL SERVICES

10A NCAC 22H .0101 APPEALS BY MEDICAID BENEFICIARIES PURPOSE AND SCOPE

Appeals by Medicaid beneficiaries of determinations by the Division to deny, terminate, suspend, or reduce a Medicaid service or an authorization for a Medicaid service are governed by G.S. 108A-70.9A and 108A-70.9B.

~~(a) The purpose of the rules in this Section is to specify the policies and procedures to provide for recipient/applicant or his/her representative requests for an informal appeal of decisions changing a Medicaid recipient/applicant's level of care, denial, termination, suspension, or reduction of prior approval requests for Medicaid covered medical services or for other Medicaid covered medical services. These policies and procedures do not apply to provider requests for Reconsideration Review of DMA provider post payment review decisions set out in 10A NCAC 22F.~~

~~(b) The rules in this Section apply to decisions made by the Division of Medical Assistance "(DMA)", a Medical Review Independent Professional Review Team "(MR/IPR)", a Prior Approval Unit "(PAU)", other Agencies, or other entities acting as agents of this State agency.~~

~~(c) The decision making body as set out in Paragraph (b) of this Rule shall, within two working days, notify the recipient/applicant in writing of the decision and the following:~~

- ~~(1) the effective date of the decision denying, terminating, reducing, or suspending a service;~~
- ~~(2) the reasons for the agency decision;~~
- ~~(3) the specific regulations that support, or the change in Federal or State law that requires the decision;~~
- ~~(4) the date Medicaid payment will cease, if applicable; at least 11 days after the date of the notification letter;~~
- ~~(5) the opportunity for informal and formal appeal of this decision and procedures for requesting such an appeal; and~~
- ~~(6) the fact that, if appealed, payment for the currently certified level of care or approved~~

~~service will continue for an eligible Medicaid recipient pending appeal.~~

Editor's Note: Thomas R. West, Administrative Law Judge with the Office of Administrative Hearings, declared Rule 10 NCAC 261 .0101(codified as 10A NCAC 22H .0101 effective July 1, 2003) void as applied in *Linda Allred, Petitioner v. North Carolina Department of Human Resources, Division of Medical Assistance, Respondent* (90 DHR 0940).

Authority G.S. 108A-25(b); 108A-70.9A; 108A-70.9B; 42 C.F.R. 431; 42 C.F.R. 456.

10A NCAC 22H .0102 REQUESTS FOR FORMAL AND INFORMAL APPEALS

10A NCAC 22H .0103 TIME LIMITS ON REQUESTS FOR RECIPIENT/APPLICANT INFORMAL APPEALS

Authority G.S. 108A-25(b); 42 C.F.R. 431; 42 C.F.R. 456.

10A NCAC 22H .0104 PAYMENT PENDING APPEALS

(a) ~~If no informal appeal is requested, payment shall continue for the existing level of care or approved service(s) rendered until the required change (action) date stated in the notification or until the recipient moves from that level of care or discontinues approved service(s), whichever comes first.~~

(b) ~~If an informal appeal is requested in accordance with Rule .0103 of this Section, Medicaid payment for that level of care or approved service(s) shall continue until the informal appeal process is completed.~~

(c) ~~If a formal appeal is requested in accordance with Rule .0102(b) of this Section, Medicaid payment for that level of care or approved service(s) shall continue until the formal appeal process is completed.~~

(d) ~~If a final decision rendered in accordance with G.S. 108A-70.9B(g) upholds the adverse determination, as defined in G.S. 108A-70.9A(a), the Division If the formal appeal decision upholds the original decision by DMA, MR/IPR, PAU, other State Agency or entity, DMA may institute recovery procedures against the beneficiary applicant or recipient to recoup the cost of any services furnished resulting from the formal appeal process.~~

Authority G.S. 108A-25(b); 108A-70.9A; 108A-70.9B; 42 C.F.R. 431.230(b), 431.

10A NCAC 22H .0105 DISMISSAL OF APPEAL

Authority G.S. 108A-25(b); 42 C.F.R. Part 431.

SECTION .0200 - HEARINGS: TRANSFER AND DISCHARGES FROM NURSING FACILITIES

10A NCAC 22H .0201 DEFINITIONS

The following definitions shall apply throughout this Section:
Subchapter:

- (1) "Division" means the North Carolina Division of Medical Assistance, ~~Assistance of the~~ Department of Health and Human Services.

- (2) "Hearing Officer" means the person designated by the Chief Hearing Officer of the Division's Hearing Unit to preside over hearings between a resident and a nursing facility provider regarding transfers and discharges.

- (3) "Hearing Unit" means the Chief Hearing Officer and his or her staff in the Division of Medical Assistance, Department of Health and Human Services.

- (4) "Notice of Transfer ~~or and~~ Discharge form" means the form developed by the Division containing the elements described at 42 C.F.R. 483.15(c)(5), which is adopted and incorporated by reference with subsequent changes or amendments and available free of charge at <https://www.ecfr.gov/>. ~~Division.~~

- (5) "Request for Hearing" means a written request clear expression, in writing by the resident, resident or family member, member or legal representative of the resident ~~resident~~, that the resident wants to appeal the facility's decision to transfer or discharge.

- (6) The "Request "Nursing Home Hearing Request for Hearing form"" means the form developed by the Division containing: ~~Division.~~

- (a) the resident's name;
- (b) the facility's name;
- (c) the date of the Notice of Transfer or Discharge form;
- (d) the date of the scheduled transfer or discharge;
- (e) the requestor's preference for a telephone hearing or in-person hearing in Raleigh, North Carolina;
- (f) the requestor's name, address, telephone number, and signature; and
- (g) the telephone number, fax number, mailing address, and email address of the Division's Hearing Unit.

Authority G.S. 108A-25(b); 42 USCS 1396r(e)(3), (f)(3); 42 C.F.R. Part 483, 42 C.F.R. 483.5; 42 C.F.R. 483.12; 42 C.F.R. 483.202; 42 C.F.R. 483.206.

10A NCAC 22H .0202 TRANSFER AND DISCHARGE REQUIREMENTS

(a) To transfer or discharge a resident, a facility shall comply with all of the requirements of 42 C.F.R. 483.15, which is adopted and incorporated by reference with subsequent changes or amendments and available free of charge at <https://www.ecfr.gov/>.

(b)(a) In addition to the requirements in Paragraph (a) of this Rule, a A resident and, if contact information is available, known, a family member or legal representative of the resident, shall be notified in writing of a facility's decision to transfer or discharge the resident. The Notice of Transfer or Discharge form shall be used by a facility when giving notice of a transfer or discharge.

~~(c)(b)~~ Failure to complete the Notice of Transfer or Discharge form shall result in the notice of the transfer or discharge being invalid, ineffective.

~~(d)(e)~~ The resident shall be handed the Notice of Transfer or Discharge form on the same day that it is dated.

~~(e)(d)~~ A copy of the notice of Transfer or Discharge form shall be mailed to the family member or legal representative, if contact information is available, representative on the same day that it is dated.

~~(f)(e)~~ The facility shall provide a Nursing Home Hearing Request for Hearing Form to the resident and to the family member or legal representative, if contact information is available, representative simultaneously with at the same time as providing the Notice of Transfer or Discharge form.

Authority G.S. 108A-25(b); 150B-21.6; 42 USCS 1396r(e)(3), (f)(3); 42 C.F.R. 483, 42 C.F.R. 483.5; 42 C.F.R. 483.12; 42 C.F.R. 483.202; 42 C.F.R. 483.206.

10A NCAC 22H .0203 INITIATING A HEARING (READOPTIOIN WITHOUT SUBSTANTIVE CHANGES)

10A NCAC 22H .0204 HEARING PROCEDURES

(a) Upon timely receipt of a request for a hearing, as set out in Rule .0203 of this Section, the Hearing Unit shall ~~promptly~~ notify the parties ~~facility~~ of the request.

(b) The parties shall be notified by certified mail of the date, time, ~~time~~ and place of the hearing. Hearings shall be conducted by telephone, unless an in-person hearing is requested. If the hearing is to be conducted in person, it shall be held in Raleigh, North Carolina.

(c) ~~At least five working days prior to the hearing, the~~ The facility ~~administrator~~ shall make available to the resident all documents and records to be used at the hearing, to be received at least five business days prior to the hearing, hearing. The facility administrator shall forward identical information to the Hearing Unit, to be received at least five business ~~working~~ days prior to the hearing.

(d) The hearing officer may grant continuances for good cause, ~~continuances.~~

(e) The hearing officer may dismiss a request for hearing if the resident or family member or legal representative of the resident fails to appear at a scheduled hearing.

(f) The hearing officer shall ~~may~~ proceed to conduct a scheduled hearing if a facility representative fails to appear at a scheduled hearing.

(g) The Rules of Civil Procedures as contained in G.S. 1A-1 and the General Rules of Practice for the Superior and District Courts as authorized by G.S. 7A-34 and found in the Rules Volume of the North Carolina General Statutes shall not apply in any hearings held by a Division Hearing Officer, Officer unless another specific statute or rule provides otherwise. Division hearings are not contested case hearings within the meaning of G.S. 150B and shall not be governed by the provisions of that Chapter unless otherwise stated in these Rules. Parties may be represented by counsel or other representative at the hearing.

Authority G.S. 108A-25(b); 42 USCS 1396r(e)(3), (f)(3); 42 C.F.R. Part 483, Subpart E, 483.12.

10A NCAC 22H .0205 HEARING OFFICER'S FINAL DECISION

(a) The Hearing Officer's final decision shall uphold or reverse the facility's decision. Copies of the final decision shall be mailed via certified mail to the parties.

(b) A party may appeal the Hearing Officer's final decision by filing a petition for judicial review in Wake County Superior Court or in the superior court of the county where the petitioner resides within 30 days of the date of the decision letter. Service is made by the placing of the decision in an official depository of the United States Postal Service and addressed to the person or entity at the last address provided. The Department as the decision maker in the appeal to the Hearing Unit shall not be a party of record.

Authority G.S. 108A-25(b); 42 USCS 1396r(e)(3), (f)(3); 42 C.F.R. Part 483, Subpart E, 483.12.

SECTION .0300 - PASRR ~~PASARR~~ HEARINGS

10A NCAC 22H .0301 DEFINITIONS

The following definitions shall apply throughout this Section:

~~(1)(a)~~ "Division" means the North Carolina Division of Medical Assistance, Assistance of the Department of Health and Human Services.

~~(2)(b)~~ "Hearing Officer" means the person designated by the Chief Hearing Officer of the Division's Hearing Unit to preside over hearings regarding Preadmission Screening and ~~Annual~~ Resident Review (~~PASRR~~)(~~PASARR~~) determinations.

~~(3)(e)~~ "Hearing Unit" means the Chief Hearing Officer and his or her staff in the Division of Medical Assistance, Department of Health and Human Services.

~~(4)(d)~~ "Preadmission Screening and ~~Annual~~ Resident Review (~~PASRR~~)(~~PASARR~~) Notice of Determination" means the form developed by the Division, containing the elements described at 42 C.F.R. 483.130(k), which is adopted and incorporated by reference with subsequent changes or amendments and available free of charge at https://www.ecfr.gov/. Division.

~~(5)(e)~~ "Request for Hearing" means a written request on a Hearing Request Form clear expression, in writing, by the evaluated individual or family member or legal representative of the evaluated individual, that the evaluated individual wants to appeal the (~~PASRR~~) ~~PASARR~~ determination.

~~(6)(f)~~ The "Hearing Request Form" "~~Request for Hearing~~" form means the form developed by the Division containing: ~~Division.~~

(a) the individual's name;

(b) the facility name, if the individual is residing in a facility;

(c) the requestor's preference for a telephone hearing or in-person hearing in Raleigh, North Carolina; and

- (d) the requestor's name, address, telephone number, and signature.
- (7)(g) The "North Carolina ~~PASRR~~ PASARR II Screening form" means both the North Carolina ~~PASRR-MI Psychiatric Screening form~~ and the North Carolina ~~Dual Psychiatric and Intellectual Developmental Disabilities/Related Conditions PASRR II Screening Data form~~ developed by the Division, containing the elements described at 42 C.F.R. 483.128(i)-(j), which is adopted and incorporated by reference with subsequent changes or amendments and available free of charge at <https://www.ecfr.gov/>. ~~Psychiatric/Mental Retardation/Dual Psychiatric and MR/RC Evaluation" forms means the forms developed by the Division.~~

Authority G.S. 108A-25(b); 42 U.S.C.S. 1395i-3(e)(3), (f)(3); 1396r(e)(3), (e)(7)(F), (f)(3); 42 C.F.R. 483.5; 42 C.F.R. Part 483, Subparts C and E; 42 C.F.R. 483.128; 42 C.F.R. 483.130. 42 C.F.R. 483.12; 42 C.F.R. 483.200; 42 C.F.R. 483.204; 42 C.F.R. 483.206.

10A NCAC 22H .0302 PASARR REQUIREMENTS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

10A NCAC 22H .0303 INITIATING A HEARING (READOPTION WITHOUT SUBSTANTIVE CHANGES)

10A NCAC 22H .0304 HEARING PROCEDURES

- (a) Upon ~~timely~~ receipt of a Hearing Request Form, ~~request for a hearing~~, the Hearing Unit shall notify the Division of MH/DD/SAS of the request.
- (b) The parties shall be notified by certified mail of the date, time, ~~time~~ and place of the hearing. Hearings shall be conducted by telephone, unless an in-person hearing is requested. If the hearing is to be conducted in person, it shall be held in Raleigh, North Carolina.
- (c) The Division of MH/DD/SAS shall mail all documents and records to be used at the hearing to the person requesting the hearing by certified mail and forward identical information to the Hearing Unit, to be received by both the requestor and the Hearing Unit at least five business working days prior to the hearing.
- (d) The hearing officer may grant continuances for good cause. ~~continuances.~~
- (e) The hearing officer may dismiss a request for a hearing if the evaluated individual or legal representative fails to appear at a scheduled hearing.
- (f) The hearing officer shall ~~may~~ proceed to conduct a scheduled hearing if the Division of MH/DD/SAS fails to appear at a scheduled hearing.
- (g) The Rules of Civil Procedure as contained in G.S. 1A-1 and the General Rules of Practice for the Superior and District Courts as authorized by G.S. 7A-34 and found in the Rules Volume of the North Carolina General Statutes shall not apply in any hearings held by the Division Hearing Officer. ~~Officer unless another specific statute or other rule provides otherwise.~~ Division hearings are not contested case hearings within the meaning of

G.S. 150B and shall not be governed by the provisions of that chapter unless otherwise stated in these Rules. The hearing officer may use the North Carolina Rules of Evidence for guidance in conducting hearings. Parties may be represented by counsel or other representative at the hearing.

Authority G.S. 108A-25(b); 42 U.S.C.S. 1395i-3(e)(3), ~~(e)(7)(F)~~, (f)(3); 42 U.S.C.S. 1396r(e)(3), ~~(e)(7)(F)~~, (f)(3); 42 C.F.R. 431.200; 42 C.F.R. Part 483, Subpart E. 42 C.F.R. 483.200; 42 C.F.R. 483.204; 42 C.F.R. 483.206.

10A NCAC 22H .0305 HEARING OFFICER'S FINAL DECISION

- (a) The Hearing Officer's final decision shall uphold or reverse the Division of MH/DD/SAS' decision. Copies of the final decision shall be mailed via certified mail to the parties.
- (b) A party may appeal the Hearing Officer's final decision by filing a petition for judicial review in Wake County Superior Court or in the superior court of the county where the petitioner resides within 30 days of the date of the decision letter. Service is made by the placing of the decision in an official depository of the United States Postal Service and addressed to the person or entity at the last address provided. The Department as the decision maker in the appeal to the Hearing Unit shall not be a party of record.

Authority G.S. 108A-25(b); 42 U.S.C.S. 1395i-3(e)(3), ~~(e)(7)(F)~~, (f)(3); 42 U.S.C.S. 1396r(e)(3), ~~(e)(7)(F)~~, (f)(3); 42 C.F.R. 431.200; 42 C.F.R. Part 483, Subpart E. 42 C.F.R. 483.200; 42 C.F.R. 483.204; 42 C.F.R. 483.206.

SUBCHAPTER 22I - TITLE XIX REIMBURSEMENT AND ADMINISTRATIVE REVIEW PROCESS

SECTION .0100 - AUDIT REVIEW PROCESS

10A NCAC 22I .0102 EXIT CONFERENCE (READOPTION WITHOUT SUBSTANTIVE CHANGES)

10A NCAC 22I .0104 RECONSIDERATION REVIEW

Authority G.S. 108A-25(b).

SUBCHAPTER 22J - TITLE XIX APPEALS PROCEDURES

10A NCAC 22J .0102 PETITION FOR RECONSIDERATION REVIEW (READOPTION WITHOUT SUBSTANTIVE CHANGES)

10A NCAC 22J .0103 RECONSIDERATION REVIEW PROCESS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

10A NCAC 22J .0104 PETITION FOR A CONTESTED CASE HEARING (READOPTION WITHOUT SUBSTANTIVE CHANGES)

**10A NCAC 22J .0105 PAYMENT STATUS
(READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**10A NCAC 22J .0106 PROVIDER BILLING OF
PATIENTS WHO ARE MEDICAID RECIPIENTS
(READOPTION WITHOUT SUBSTANTIVE CHANGES)**

SUBCHAPTER 22K - QUALIFIED PROVIDERS

**10A NCAC 22K .0101 DEFINITION (READOPTION
WITHOUT SUBSTANTIVE CHANGES)**

10A NCAC 22K .0102 AGREEMENT

(a) The provider ~~must~~ shall agree to participate in training offered by the Division of Medical Assistance (DMA) or its agents and to make presumptive eligibility determinations pursuant to 42 C.F.R. 435.1103, which is adopted and incorporated by reference with subsequent changes or amendments and available free of charge at <https://www.ecfr.gov/>, and the Medicaid State Plan, ~~based on the procedures and guidelines issued by the DMA.~~

(b) The Division DMA ~~may~~ shall terminate the provider's Medicaid Participation agreement and authority to make presumptive determinations if the provider fails to make required referrals within five business days or fails to follow procedures set forth in Section MA3245 of the Department of Health and Human Service's Family and Children's Medical Manual, which is adopted and incorporated by reference with subsequent changes or amendments and available free of charge at <https://www2.ncdhhs.gov/info/olm/manuals/dma/fcm/man/ma3245-01.htm>, procedures and guidelines resulting in eligibility denials for a majority of the provider's referrals.

(c) Termination of the agreement ~~will~~ shall occur 30 calendar days following notification when termination is initiated by the Division, DMA.

Authority G.S. 108A-25(b); 42 U.S.C. 1396r-1; 42 C.F.R. 435.1103. 1987 Session Laws, c. 738; P.L. 99-509.

**10A NCAC 22K .0103 PRESUMPTIVE
DETERMINATIONS (READOPTION WITHOUT
SUBSTANTIVE CHANGES)**

**SUBCHAPTER 22L - MANAGED CARE AND
PREPAID PLANS**

SECTION .0100 - MANAGED CARE

10A NCAC 22L .0101 PROGRAM DEFINITION

Carolina ACCESS The Division's primary care case management contractor ~~will~~ shall contract with primary care physicians in participating counties to deliver and coordinate the health care of certain categories of Medicaid ~~recipients~~, beneficiaries listed in 10A NCAC 22L .0104.

Authority G.S. 108A-25(b).

**10A NCAC 22L .0102 COORDINATION FEE
(READOPTION WITHOUT SUBSTANTIVE CHANGES)**

10A NCAC 22L .0103 ACCESS TO CARE

~~Carolina ACCESS~~ The Division's primary care case management enrollees ~~are~~ shall be eligible to receive ~~all~~ health care services that ~~all~~ Medicaid ~~recipients~~ beneficiaries are eligible for. ~~They~~ Beneficiaries receive ~~their~~ services through their primary care physician who either provides or coordinates ~~their~~ health care. ~~The Division of Medical Assistance has the authority to deny payment for covered services that are not authorized by the primary care physician.~~

Authority G.S. 108A-25(b).

10A NCAC 22L .0104 ENROLLMENT

All Medicaid ~~beneficiaries~~ recipients in participating counties who are eligible for ~~Carolina ACCESS~~ primary care case management shall enroll, ~~enroll in Carolina ACCESS.~~ Eligible Medicaid beneficiaries recipients eligible for Carolina ACCESS include AFDC, AFDC-related, MIC, Aged, Blind and Disabled categories, unless exempt due to institutional placement. Institutional placement includes nursing home, mental institutions, institutions and domiciliary care. The following beneficiaries have the option to enroll in primary care case management: Medicaid for Pregnant Women, benefit diversion beneficiaries, beneficiaries with end stage renal disease, and Native Americans/Alaska Natives. Medicaid recipients who are Medicaid Pregnant Women, foster children or who are also on Medicare, have the option to enroll in Carolina ACCESS.

Authority G.S. 108A-25(b).

SECTION .0200 - PREPAID PLANS

10A NCAC 22L .0201 PROGRAM DEFINITION

The Division of Medical Assistance (DMA) may contract with Federally qualified Health Maintenance Organizations (HMOs) and State licensed and certified HMOs to provide and coordinate medical services for Medicaid eligibles. Prior to ~~the Division DMA~~ awarding a contract to an HMO, the HMO ~~shall~~ must ~~submit an application in which it demonstrates~~ demonstrate its ability to meet all ~~contract specifications~~, qualifications set forth in the Medicaid Provider Administrative Participation Agreement.

Authority G.S. 108A-25(b).

**10A NCAC 22L .0203 ACCESS TO CARE
(READOPTION WITHOUT SUBSTANTIVE CHANGES)**

SUBCHAPTER 22N – PROVIDER ENROLLMENT

SECTION .0100 – GENERAL

10A NCAC 22N .0101 DEFINITIONS

(a) For the purpose of this Subchapter, a "provider" is defined as in G.S. 108C-2(10), any individual, facility or entity that applies to furnish services to authorized Medicaid recipients and bill Medicaid directly for reimbursement. The term "provider" also includes suppliers of medical equipment and supplies.

(b) For the purpose of this Subchapter, an "owner" is defined as in G.S. 108C-2(9).

Authority G.S. 108A-54; 108C-2(9),(10); 143B-139.1; 42 C.F.R. 400.203; 42 C.F.R. 455.101.

**10A NCAC 22N .0102 SIGNED AGREEMENTS
(READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**SECTION .0200 - ENTITIES LICENSED UNDER NCGS
122C OR NCGS 131D**

10A NCAC 22N .0201 DEFINITIONS

Authority G.S. 108A-54; 143B-139.1.

10A NCAC 22N .0202 DISCLOSURE OF OWNERSHIP
Providers who undergo a change in ownership as defined in G.S. 108C-10 licensed under North Carolina G.S. 122C or G.S. 131D shall comply with the following disclosure conditions:

- (1) ~~when~~ ~~When~~ applying to participate in the North Carolina Medicaid program, the provider shall supply the legal name and social security number of each individual who is an owner; ~~owner.~~
- (2) ~~an~~ ~~An~~ enrolled provider shall notify the Division of Medical Assistance in writing of a change in the legal name of any owner. The notification ~~must~~ shall be received within 30 calendar days of the effective date of any change; within 30 business days following the change.
- (3) ~~an~~ ~~An~~ enrolled provider shall notify the Division of Medical Assistance in writing if a new owner joins the provider. The notification shall include the new owner's legal name and social security number. The notification ~~must~~ shall be received within 30 calendar days of the effective date of any change; no later than 30 business days following the change. and
- (4) ~~an~~ ~~An~~ enrolled provider shall notify the Division of Medical Assistance in writing if an owner withdraws his ownership interest in the provider. The notification shall include the name of the departing owner and ~~must~~ shall be received within 30 calendar days of the effective date of any no later than 30 business days following the change.

Authority G.S. 108A-54; 108C-10; 143B-139.1; 42 C.F.R. 455.104; 42 C.F.R. 455.106.

**10A NCAC 22N .0203 ENROLLMENT RESTRICTIONS
(READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**SECTION .0300 – ENTITIES PROVIDING SPECIFIED
HABILITATIVE AND REHABILITATIVE SERVICES**

10A NCAC 22N .0301 DEFINITIONS

Authority G.S. 108A-54; 143B-139.1.

**10A NCAC 22N .0302 DISCLOSURE OF OWNERSHIP
10A NCAC 22N .0303 ENROLLMENT RESTRICTIONS**

Authority G.S. 108A-54; 143B-139.1.

**SUBCHAPTER 22O - MEDICAL ASSISTANCE
PROVIDED**

SECTION .0100 - GENERAL

**10A NCAC 22O .0112 PSYCHIATRIC ADMISSION
CRITERIA/MEDICAID BENEFICIARIES UNDER AGE
21**

Authority G.S. 108A-25(b); 108A-54; 42 C.F.R. 441, Subpart D; 42 C.F.R. 441.151.

TITLE 14B – DEPARTMENT OF PUBLIC SAFETY

Notice is hereby given in accordance with G.S. 150B-21.2 that the Alarm Systems Licensing Board intends to amend the rule cited as 14B NCAC 17 .0103.

Link to agency website pursuant to G.S. 150B-19.1(c):
<https://www.ncdps.gov/DPS-Services/Permits-Licenses/Alarm-System-Licensing-Board>

Proposed Effective Date: May 1, 2018

Public Hearing:

Date: January 30, 2018

Time: 2:00 p.m.

Location: Alarm Systems Licensing Board Office, 3101 Industrial Drive, Suite 104, Raleigh, NC 27609

Reason for Proposed Action: Update definition of "employee" to include individuals engaged in soliciting customers for a licensee.

Comments may be submitted to: Phil Stephenson, 3101 Industrial Drive, Suite 104, Raleigh, NC 27609; phone (919) 788-5320; fax (919) 788-5365; email phillip.stephenson@ncdps.gov

Comment period ends: March 5, 2018

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
- ☐ Substantial economic impact (≥\$1,000,000)
- ☐ Approved by OSBM
- ☒ No fiscal note required by G.S. 150B-21.4

CHAPTER 17 - ALARM SYSTEMS LICENSING BOARD

SECTION .0100 - ORGANIZATION AND GENERAL PROVISIONS

14B NCAC 17 .0103 DEFINITIONS

In addition to the definitions under G.S. Chapter 74D, the following definitions shall apply throughout this Chapter:

- (1) "Applicant" means any person, firm, or corporation applying to the Board for a license or registration.
- (2) "Board" means the Alarm Systems Licensing Board established by G.S. Chapter 74D.
- (3) "Branch Manager or Operator" means the licensee endowed with the responsibility and liability for a branch office.
- (4) "Branch Office" means a separate but dependent part of a central organization. The establishment of a telephone number or mailing address in the company name constitutes prima facie evidence of a branch office.
- (5) "Chairman" means the Chairman of the Alarm Systems Licensing Board.
- (6) "Installs" means placing an alarm device in a residential or commercial location and includes demonstrating the utilization of an alarm system device for a specific location and function within the protected premises and, with such knowledge of the alarm system operation, delivering that device to the owner or operator of the protected premises.
- (7) "Licensee" means any person licensed pursuant to G.S. Chapter 74D.
- (8) "Responds" means receiving a monitored alarm signal that indicates the existence of an unauthorized intrusion or taking from the premises of a customer, and being required by contract to take action upon receipt of that alarm signal.
- (9) "Services" means inspecting, testing, repairing or replacing an alarm system device within protected premises.

- (10) "Monitors" means receiving a signal from protected premises or contracting with a person, firm or corporation to provide accessible equipment and personnel to receive a signal from an alarm device in a residential or commercial location and take certain action in response.
- (11) "Qualifying Agent" means any person who meets the requirements of G.S. 74D 2(c), provided that no licensee may act as qualifying agent for more than one alarm systems business without prior authorization of the Board.
- (12) "Knowledge of Specific Applications" means obtaining specific information about the premises which is protected or is to be protected, such knowledge gained during an on site visit. Conducting a survey shall be prima facie evidence that knowledge of specific application has been gained.
- (13) "Employee" means a person who has an agreement with a licensee to perform alarm systems business activities under the direct supervision and control of the licensee, for whose services any charges are determined imposed and collected by the licensee, and for whose alarm systems business activities the licensee is legally ~~liable~~, liable, or a person who solicits customers at a residential or commercial location whose services are compensated by payment of a referral fee or commission by a licensee.
- (14) "Agency Head" means the Chairman of the Alarm Systems Licensing Board.

Authority G.S. 74D 2; 74D 5.

TITLE 15A – DEPARTMENT OF ENVIRONMENTAL QUALITY

Notice is hereby given in accordance with G.S. 150B-21.2 and G.S. 150B-21.3A(c)(2)g. that the Environmental Management Commission intends to readopt with substantive changes the rules cited as 15A NCAC 02D .1104, .1106, .1110, .1111, .1201-.1203, .1205-.1207, .1211, .1212; 02Q .0702-.0704, .0706, .0708, .0709, .0711 .0713 and readopt without substantive changes the rule cited as 15A NCAC 02D .1101-.1103, .1105, .1107-.1109, .1112, .1208; 02Q .0701, .0707, .0710, and .0712.

Pursuant to G.S. 150B-21.2(c)(1), the text of the rule(s) proposed for readoption without substantive changes are not required to be published. The text of the rules are available on the OAH website: <http://reports.oah.state.nc.us/ncac.asp>.

Link to agency website pursuant to G.S. 150B-19.1(c):
<http://deq.nc.gov/about/divisions/air-quality/air-quality-rules/rules-hearing-process>

Proposed Effective Date: July 1, 2018

Public Hearing:

Date: February 6, 2018

Time: 6:00 pm

Location: DEQ Green Square Office Building, 1st Floor Training Room (#1210), 217 West Jones Street, Raleigh NC 27603

Date: February 8, 2018

Time: 6:00 pm

Location: Kannapolis Train Station, Train Station Multi-Purpose Room, 201 South Main Street, Kannapolis, NC 28081

Reason for Proposed Action: To receive comments on the proposed readoption of air quality rules in several sections in 15A NCAC 02D and 02Q to meet the requirements of G.S.150B-21.3A, Periodic Review and Expiration of Existing Rules.

15A NCAC 02D .1100 - Control of Toxic Air Pollutants

The rules in 15A NCAC 02D .1100 set out the standards for the control of toxic air pollutants to protect human health. Rules 02D .1101 and .1108 are proposed for readoption without change. Rules 02D .1102, .1103, .1105, .1107, .1109 and .1112 are proposed for readoption without substantive changes, and Rules .1104, .1106, .1110 and .1111 are proposed for readoption with substantive changes to update format of references, to remove obsolete language and to remove the acceptable ambient levels (AALs) for six toxic air pollutants based on recommendations from the Science Advisory Board.

15A NCAC 02D .1200 – Control of Emissions from Incinerators

The rules in 15A NCAC 02D .1200 lay out general provisions designed to meet federal and state requirements to control emissions from incinerators and combustors. Rules 02D .1203, .1205, .1207, .1211 and .1212 are proposed for readoption as a repeal to reflect the fact that the Division of Air Quality has not identified any existing sources subject to these rules. If a source subject of any these rules starts operations as a new or modified source, it will be subject to 15A NCAC 02D .0524, New Source Performance Standards. Two rules, 02D .1204, Sewage Sludge Incineration Units and 02D .1210, Commercial and Industrial Solid Waste Incineration Units, are being amended and readopted under separate rulemakings in accordance with EPA requirements. Rule 02D .1208 is proposed for readoption without substantive changes and Rules 02D .1201, .1202 and .1206 are proposed for readoption with substantive changes to update applicability statements, definitions, and the format of references, clarify exemptions, remove obsolete language, and make other language clarifications.

15A NCAC 02Q .0700 - Toxic Air Pollutant Procedures

The rules in 15A NCAC 02Q .0700 contain the toxic air pollutant permitting procedures. Rules 02Q .0701, .0707, .0710 and .0712 are proposed for readoption without substantive changes. Rules 02Q .0702, .0703, .0704, .0706, .0708, .0709 and .0711 are proposed for readoption with substantive changes. The proposed

rule changes include updating the format of references, replacing a reference to language in 15A NCAC 02Q .0102 that was removed in a previous rulemaking, removing the exemption for perchloroethylene dry cleaning because it is exempted by another exemption, updating the definition for combustion source and removing other unnecessary definitions, removing the requirement that combustion sources after July 10, 2010 are not exempt, clarifying that the Division of Air Quality is responsible for determining the potential impact of any toxic emissions from sources exempt by 15A NCAC 02Q .0702(a)(27), clarifying when modifications require a permit to be submitted, removing the Toxics Permitting Emission Rates (TPERs) for six toxic air pollutants based on recommendations from the Science Advisory Board, and removing obsolete or redundant language. Rule 02Q .0713 is proposed for readoption as a repeal as the rule is deemed unnecessary.

Pursuant to G.S. 150B-21.2(c)(1), the text of the rule(s) proposed for readoption without substantive changes are not required to be published. The text of the rules is available on the DAQ website: <http://deq.nc.gov/about/divisions/air-quality/air-quality-rules/rules-hearing-process>.

Comments may be submitted to: Joelle Burleson, 217 West Jones St., 1641 Mail Service Center, Raleigh, NC 27699-1641; phone (919) 707-8720; fax (919) 707-8720; email daq.publiccomments@ncdenr.gov (Please type "2/6/18 and 2/8/18 Hearings" in the subject line)

Comment period ends: March 5, 2018

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
- ☐ Substantial economic impact (≥\$1,000,000)
- ☐ Approved by OSBM
- ☒ No fiscal note required by G.S. 150B-21.4
- ☒ No fiscal note required by G.S. 150B-21.3A(d)(2)

CHAPTER 02 - ENVIRONMENTAL MANAGEMENT

**SUBCHAPTER 02D - AIR POLLUTION CONTROL
REQUIREMENTS**

**SECTION .1100 - CONTROL OF TOXIC AIR
POLLUTANTS**

**15A NCAC 02D .1101 PURPOSE (READOPTIO
WITHOUT SUBSTANTIVE CHANGES)**

**15A NCAC 02D .1102 APPLICABILITY
(READOPTIO WITHOUT SUBSTANTIVE CHANGES)**

**15A NCAC 02D .1103 DEFINITION (READOPTIO
WITHOUT SUBSTANTIVE CHANGES)**

**15A NCAC 02D .1104 TOXIC AIR POLLUTANT
GUIDELINES**

A facility shall not emit any of the following toxic air pollutants in such quantities that may cause or contribute beyond the facility's premises (adjacent property boundary) to any significant ambient air concentration that may adversely affect human ~~health~~ health with such exceptions as may be allowed pursuant to 15A NCAC 02Q .0700. In determining these significant ambient air concentrations, the Division shall be guided by the following list of acceptable ambient levels in milligrams per cubic meter at 77° F (25° C) and 29.92 inches (760 mm) of mercury pressure (except for asbestos):

Acceptable Ambient Levels (AAL) in Milligrams per Cubic Meter (mg/m ³) Except Where Noted				
Pollutant (CAS Number)	Annual (Carcinogens)	24-hour (Chronic Toxicants)	1-hour (Acute Systemic Toxicants)	1-hour (Acute Irritants)
acetaldehyde (75-07-0)				27
acetic acid (64-19-7)				3.7
acrolein (107-02-8)				0.08
acrylonitrile (107-13-1)		0.03	1	
ammonia (7664-41-7)				2.7
aniline (62-53-3)			1	
arsenic and inorganic arsenic compounds	2.1 x 10 ⁻⁶			
asbestos (1332-21-4)	2.8 x 10 ⁻⁶ fibers/ml			
aziridine (151-56-4)		0.006		
benzene (71-43-2)	1.2 x 10 ⁻⁴			
benzidine and salts (92-87-5)	1.5 x 10 ⁻⁸			
benzo(a)pyrene (50-32-8)	3.3 x 10 ⁻⁵			
benzyl chloride (100-44-7)			0.5	
beryllium (7440-41-7)	4.1 x 10 ⁻⁶			
beryllium chloride (7787-47-5)	4.1 x 10 ⁻⁶			
beryllium fluoride (7787-49-7)	4.1 x 10 ⁻⁶			
beryllium nitrate (13597-99-4)	4.1 x 10 ⁻⁶			
bioavailable chromate pigments, as chromium (VI) equivalent	8.3 x 10 ⁻⁸			
bis-chloromethyl ether (542-88-1)	3.7 x 10 ⁻⁷			
bromine (7726-95-6)				0.2
1,3-butadiene (106-99-0)	4.4 x 10 ⁻⁴			
cadmium (7440-43-9)	5.5 x 10 ⁻⁶			
cadmium acetate (543-90-8)	5.5 x 10 ⁻⁶			
cadmium bromide (7789-42-6)	5.5 x 10 ⁻⁶			
carbon disulfide (75-15-0)		0.186		
carbon tetrachloride (56-23-5)	6.7 x 10 ⁻³			
chlorine (7782-50-5)		0.0375		0.9
chlorobenzene (108-90-7)		2.2		
chloroform (67-66-3)	4.3 x 10 ⁻³			
chloroprene (126-99-8)		0.44	3.5	
cresol (1319-77-3)			2.2	

PROPOSED RULES

Acceptable Ambient Levels (AAL) in Milligrams per Cubic Meter (mg/m ³) Except Where Noted				
Pollutant (CAS Number)	Annual (Carcinogens)	24-hour (Chronic Toxicants)	1-hour (Acute Systemic Toxicants)	1-hour (Acute Irritants)
p-dichlorobenzene (106-46-7)				66
dichlorodifluoromethane (75-71-8)		248		
dichlorofluoromethane (75-43-4)		0.5		
di(2-ethylhexyl)phthalate (117-81-7)		0.03		
dimethyl sulfate (77-78-1)		0.003		
1,4-dioxane (123-91-1)		0.56		
epichlorohydrin (106-89-8)	8.3 x 10 ⁻²			
ethyl acetate (141-78-6)			140	
ethylenediamine (107-15-3)		0.3	2.5	
ethylene dibromide (106-93-4)	4.0 x 10 ⁻⁴			
ethylene dichloride (107-06-2)	3.8 x 10 ⁻³			
ethylene glycol monoethyl ether (110-80-5)		0.12	1.9	
ethylene oxide (75-21-8)	2.7 x 10 ⁻⁵			
ethyl mercaptan (75-08-1)			0.1	
fluorides		0.016	0.25	
formaldehyde (50-00-0)				0.15
hexachlorocyclopentadiene (77-47-4)		0.0006	0.01	
hexachlorodibenzo-p-dioxin (57653- 85-7)	7.6 x 10 ⁻⁸			
n-hexane (110-54-3)		1.1		
hexane isomers except n-hexane				360
hydrazine (302-01-2)		0.0006		
hydrogen chloride (7647-01-0)				0.7
hydrogen cyanide (74-90-8)		0.14	1.1	
hydrogen fluoride (7664-39-3)		0.03		0.25
hydrogen sulfide (7783-06-4)		0.12		
maleic anhydride (108-31-6)		0.012	0.1	
manganese and compounds		0.031		
manganese cyclopentadienyl tricarbonyl (12079-65-1)		0.0006		
manganese tetroxide (1317-35-7)		0.0062		
mercury, alkyl		0.00006		
mercury, aryl and inorganic compounds		0.0006		
mercury, vapor (7439-97-6)		0.0006		
methyl chloroform (71-55-6)		12		245
methylene chloride (75-09-2)	2.4 x 10 ⁻²		1.7	
methyl ethyl ketone (78-93-3)		3.7		88.5
methyl isobutyl ketone (108-10-1)		2.56		30
methyl mercaptan (74-93-1)			0.05	
nickel carbonyl (13463-39-3)		0.0006		
nickel metal (7440-02-0)		0.006		
nickel, soluble compounds, as nickel		0.0006		
nickel subsulfide (12035-72-2)	2.1 x 10 ⁻⁶			
nitric acid (7697-37-2)				1
nitrobenzene (98-95-3)		0.06	0.5	
n-nitrosodimethylamine (62-75-9)	5.0 x 10 ⁻⁵			

Acceptable Ambient Levels (AAL) in Milligrams per Cubic Meter (mg/m ³) Except Where Noted				
Pollutant (CAS Number)	Annual (Carcinogens)	24-hour (Chronic Toxicants)	1-hour (Acute Systemic Toxicants)	1-hour (Acute Irritants)
non-specific chromium (VI) compounds, as chromium (VI) equivalent	8.3 x 10 ⁻⁸			
pentachlorophenol (87-86-5)		0.003	0.025	
perchloroethylene (127-18-4)	1.9 x 10 ⁻¹			
phenol (108-95-2)			0.95	
phosgene (75-44-5)		0.0025		
phosphine (7803-51-2)				0.13
polychlorinated biphenyls (1336-36-3)	8.3 x 10 ⁻⁵			
soluble chromate compounds, as chromium (VI) equivalent		6.2 x 10 ⁻⁴		
styrene (100-42-5)			10.6	
sulfuric acid (7664-93-9)		0.012	0.1	
tetrachlorodibenzo-p-dioxin (1746-01-6)	3.0 x 10 ⁻⁹			
1,1,1,2-tetrachloro-2,2-difluoroethane (76-11-9)		52		
1,1,2,2-tetrachloro-1,2-difluoroethane (76-12-0)		52		
1,1,2,2-tetrachloroethane (79-34-5)	6.3 x 10 ⁻³			
toluene (108-88-3)		4.7		56
toluene diisocyanate, 2,4- (584-84-9) and 2,6- (91-08-7) isomers		0.0002		
trichloroethylene (79-01-6)	5.9 x 10 ⁻²			
trichlorofluoromethane (75-69-4)			560	
1,1,2-trichloro-1,2,2-trifluoroethane (76-13-1)				950
vinyl chloride (75-01-4)	3.8 x 10 ⁻⁴			
vinylidene chloride (75-35-4)		0.12		
xylene (1330-20-7)		2.7		65

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(3),(4),(5); 143B-282.

**15A NCAC 02D .1105 FACILITY REPORTING,
RECORDKEEPING (READOPTION WITHOUT
SUBSTANTIVE CHANGES)**

**15A NCAC 02D .1106 DETERMINATION OF
AMBIENT AIR CONCENTRATION**

(a) Modeling shall not be used for enforcement. Modeling shall be used to determine process operational and air pollution control parameters and emission rates for toxic air pollutants to place in the air quality permit for that facility that will prevent any of the acceptable ambient levels in ~~Rule .1104 of this Section~~ 15A NCAC 02D .1104 from being exceeded, with such exceptions as may be allowed ~~under~~ pursuant to 15A NCAC 02Q .0700. Enforcing these permit stipulations and conditions shall be the mechanism used to ensure that the requirements of ~~Rule .1104 of this Section~~, 15A NCAC 02D .1104, with such exceptions as may be allowed by 15A NCAC 02Q .0700, are met.

(b) The owner or operator of the facility may provide a modeling analysis or may request the Division to perform a modeling analysis of the ~~facility or provide the analysis himself.~~ facility. If the owner or operator of the facility requests the Division to perform the modeling analysis, ~~he~~ the owner or operator shall provide emissions rates, stack parameters, and other information that the Division needs to ~~do~~ conduct the modeling. The data that the owner or operator of the facility provides the Division to use in the model or in deriving the data used in the model shall be the process, operational and air pollution control equipment parameters and emission rates that will be contained in the ~~facility's~~ facility's permit. If the ~~Division's~~ Division's initial review of the modeling request indicates extensive or inappropriate use of state ~~resources~~ resources, or if the ~~Division's~~ Division's modeling analysis fails to show compliance with the acceptable ambient levels in ~~Rule .1104 of this Section~~, 15A

NCAC 02D .1104, the modeling demonstration becomes the responsibility of the owner or operator of the facility.

(c) When the owner or operator of the facility is responsible for providing the modeling demonstration and the data used in the modeling, the owner or operator of the facility shall use in the model or in deriving data used in the model the process operational and air pollution control equipment parameters and emission rates that will be contained in his permit. Sources that are not required to be included in the model ~~will~~ shall not be included in the permit to emit toxic air pollutants.

(d) For the following pollutants, modeled emission rates shall be based on the highest emissions occurring in any single 15 minute period. The resultant modeled 1-hour concentrations shall then be compared to the applicable 1-hour acceptable ambient levels to determine compliance. These pollutants are:

- (1) acetaldehyde ~~(75-07-0)~~(75-07-0);
- (2) acetic acid ~~(64-19-7)~~(64-19-7);
- (3) acrolein ~~(107-02-8)~~(107-02-8);
- (4) ammonia ~~(7664-41-7)~~(7664-41-7);
- (5) bromine ~~(7726-95-6)~~(7726-95-6);
- (6) chlorine ~~(7782-50-5)~~(7782-50-5);
- (7) formaldehyde ~~(50-00-0)~~(50-00-0);
- (8) hydrogen chloride ~~(7647-01-0)~~(7647-01-0);
- (9) hydrogen fluoride ~~(7664-39-3)~~(7664-39-3); and
- (10) nitric acid ~~(7697-37-2)~~(7697-37-2).

(e) The owner or operator of the facility and the Division may use any model allowed by ~~40 CFR 51.166(f)~~ 40 CFR Part 51, Appendix W, provided that the model is appropriate for the facility being modeled. The owner or operator or the Division may use a model other than one allowed by ~~40 CFR 51.166(f)~~ 40 CFR Part 51, Appendix W provided that the Director determines that the model is equivalent to the model allowed by ~~40 CFR 51.166(f)~~ 40 CFR Part 51, Appendix W. ~~Regardless of model used, the owner or operator and the Division shall model for cavity effects and shall comply with the modeling requirements for stack height set out in Rule .0533 of this Subchapter.~~

(f) Ambient air concentrations ~~are to~~ shall be evaluated for annual periods over a calendar year, for 24-hour periods from midnight to midnight, and for one-hour periods beginning on the hour.

(g) The owner or operator of the facility shall identify each toxic air pollutant emitted and its corresponding emission rate using mass balancing analysis, source testing, or other methods that the Director may approve as providing an equivalently accurate estimate of the emission rate.

(h) The owner or operator of the facility shall either submit a modeling plan prior to submitting modeling or submit a model protocol checklist with modeling to the Director and ~~shall have received approval of that plan from the before submitting a modeling demonstration to the~~ Director. The modeling plan or protocol checklist shall include:

- (1) a diagram of the plant site, including locations of all stacks and associated buildings;
- (2) on-site building dimensions;
- (3) a diagram showing property boundaries, including a scale, key and north indicator;
- (4) the location of the site on a United States Geological Survey (USGS) map;
- (5) discussion of good engineering stack height and building wake effects for each stack;

- (6) discussion of cavity calculations, impact on rolling and complex terrain, building wake effects, and urban/rural considerations;
- (7) discussion of reasons for model selection;
- (8) discussion of meteorological data to be used;
- (9) discussion of sources emitting the pollutant that are not to be included in the model with an explanation of why they are being excluded (i.e. why the source will not affect the modeling analysis); and
- (10) any other pertinent information.

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(3),(5); 143B-282; S.L. 1989, c. 168, s. 45.

**15A NCAC 02D .1107 MULTIPLE FACILITIES
(READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**15A NCAC 02D .1108 MULTIPLE POLLUTANTS
(READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**15A NCAC 02D .1109 112(J) CASE-BY-CASE
MAXIMUM ACHIEVABLE CONTROL TECHNOLOGY
(READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**15A NCAC 02D .1110 NATIONAL EMISSION
STANDARDS FOR HAZARDOUS AIR POLLUTANTS**

(a) With the exception of Paragraph (b) of this Rule, sources subject to national emission standards for hazardous air pollutants promulgated in 40 CFR Part 61 shall comply with emission standards, monitoring and reporting requirements, maintenance requirements, notification and record keeping requirements, performance test requirements, test method and procedural provisions, and any other provisions, as required therein, rather than with any otherwise-applicable Rule in ~~Section .0500 of this Subchapter~~ 15A NCAC 02D .0500 that would be in conflict therewith.

(b) Along with the notice appearing in the North Carolina Register for a public hearing to amend this Rule to exclude a standard from this Rule, the Director shall state whether or not the national emission standards for hazardous air pollutants promulgated under 40 CFR Part 61, or part thereof, shall be enforced. If the Commission does not adopt the amendment to this Rule to exclude or amend the standard within 12 months after the close of the comment period on the proposed amendment, the Director shall begin enforcing that standard when 12 months has elapsed after the end of the comment period on the proposed amendment.

~~(c) New sources of volatile organic compounds that are located in an area designated in 40 CFR 81.334 as nonattainment for ozone or an area identified in accordance with 15A NCAC 02D .0902 as in violation of the ambient air quality standard for ozone shall comply with the requirements of 40 CFR Part 61 that are not excluded by this Rule, as well as with any applicable requirements in Section .0900 of this Subchapter.~~

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

except that all such reports, applications, submittals, and other communications to the administrator required by 40 CFR 61.145 shall be submitted to the Director, Division of Epidemiology.

~~(e)(d)~~ In the application of this Rule, definitions contained in 40 CFR Part 61 shall apply rather than those of ~~Section .0100 of this Subchapter.~~ in 15A NCAC 02D .0100.

~~(f)(e)~~ 15A NCAC 02Q .0102 and .0302 ~~are~~ shall not be applicable to any source to which this Rule applies. The owner or operator of the source shall apply for and receive a permit ~~as if~~ if required ~~in pursuant to~~ 15A NCAC 02Q .0300 or .0500.

Authority G.S. 143-215.3(a)(1); 143-215.107 (a)(5); 150B-21.6.

15A NCAC 02D .1111 MAXIMUM ACHIEVABLE CONTROL TECHNOLOGY

(a) With the exception of Paragraph (b) or (c) of this Rule, sources subject to national emission standards for hazardous air pollutants for source categories promulgated in 40 CFR Part 63 shall comply with emission standards, monitoring and reporting requirements, maintenance requirements, notification and record keeping requirements, performance test requirements, test method and procedural provisions, and any other provisions, as required therein, rather than with any otherwise-applicable rule in ~~Section .0500 of this Subchapter~~ 15A NCAC 02D .0500 which would be in conflict therewith.

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

- (1) approval of state programs and delegation of federal authorities (40 CFR 63.90 to 63.96, Subpart E); and
- (2) requirements for control technology determined for major sources in accordance with Clean Air Act Sections 112(g) and 112(j)(40 CFR 63.50 to 63.57, Subpart B).

(c) Along with the notice appearing in the North Carolina Register for a public hearing to amend this Rule to exclude a standard from this Rule, the Director shall state whether or not the national emission standard for hazardous air pollutants for source categories promulgated under 40 CFR Part 63, or part thereof, shall be enforced. If the Commission does not adopt the amendment to this Rule to exclude or amend the standard within 12 months after the close of the comment period on the proposed amendment, the Director shall begin enforcing that standard when 12 months has elapsed after the end of the comment period on the proposed amendment.

~~(d) New sources of volatile organic compounds that are located in an area designated in 40 CFR 81.334 as nonattainment for ozone or an area identified in accordance with 15A NCAC 02D .0902 as being in violation of the ambient air quality standard for ozone shall comply with the requirements of 40 CFR Part 63 that are not excluded by this Rule as well as with any applicable requirements in Section .0900 of this Subchapter.~~

~~(e)(d)~~ All requests, reports, applications, submittals, and other communications to the administrator required under Paragraph (a) of this Rule shall be submitted to the Director of the Division of Air Quality rather than to the Environmental Protection Agency; except that all such reports, applications, submittals, and other communications to the administrator required by 40 CFR Part 63, Subpart M for dry cleaners covered under Chapter 143, Article

21A, Part 6 of the General Statutes shall be submitted to the Director of the Division of Waste Management.

~~(f)(e)~~ In the application of this Rule, definitions contained in 40 CFR Part 63 shall apply rather than those of Section .0100 of this Subchapter when conflict exists.

~~(g)(f)~~ 15A NCAC 02Q .0102 and .0302 ~~are~~ is not applicable to any source to which this Rule applies if the source is required to be permitted under 15A NCAC 02Q .0500, Title V Procedures. The owner or operator of the source shall apply for and receive a permit ~~as if~~ if required ~~in pursuant to~~ 15A NCAC 02Q .0300 or .0500. Sources that have heretofore been exempted from needing a permit and become subject to requirements promulgated under 40 CFR 63 shall apply for a permit in accordance to 15A NCAC 02Q .0109.

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5); 150B-21.6.

15A NCAC 02D .1112 112(G) CASE BY CASE MAXIMUM ACHIEVABLE CONTROL TECHNOLOGY (READOPTION WITHOUT SUBSTANTIVE CHANGES)

SECTION .1200 - CONTROL OF EMISSIONS FROM INCINERATORS AND COMBUSTION UNITS

15A NCAC 02D .1201 PURPOSE AND SCOPE

~~(a) This Section sets forth rules for the control of the emissions of air pollutants from incinerators.~~

~~(b)(a)~~ The rules in this Section ~~apply to all types of incinerators as defined by 15A NCAC 02D .0101(21), including incinerators with heat recovery and industrial incinerators.~~ apply to incinerators and combustor units as defined in 15A NCAC 02D .1202 or regulated under 15A NCAC 02D .1208.

~~(c)(b)~~ The rules in this Section do not apply to:

- (1) afterburners, flares, fume incinerators, and other similar devices used to reduce the emissions of air pollutants from processes, whose emissions shall be regulated as process emissions;
- (2) any boilers or industrial furnaces that burn waste as a fuel, except ~~hazardous waste as defined in 40 CFR 260.10; solid waste as defined in 40 CFR 241.2;~~
- (3) air curtain burners, which shall comply with ~~Section .1900 of this Subchapter;~~ 15A NCAC 02D .1900; or
- (4) incinerators used to dispose of dead animals or poultry, that meet all the following requirements:
 - (A) the incinerator is located on a farm and is operated by the farm owner or by the farm operator;
 - (B) the incinerator is used solely to dispose of animals or poultry originating on the farm where the incinerator is located;
 - (C) the incinerator is not charged at a rate that exceeds its design capacity; and
 - (D) the incinerator complies with Rule 15A NCAC 02D .0521 (visible

~~emissions) and .1806 (odorous emissions) of this Subchapter. (visible emissions).~~

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

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

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

~~(f)(c) Referenced document SW-846 "Test Methods for Evaluating Solid Waste," Third Edition, cited by rules in this Section is hereby incorporated by reference and may be obtained free of charge online at <https://www.epa.gov/hw-sw846>. does not include subsequent amendments or editions. A copy of this document is available for inspection at the North Carolina Department of Environment and Natural Resources Library located at 512 North Salisbury Street, Raleigh, NC 27603. Copies of this document may be obtained through the US Government Printing Office, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954, or by calling (202) 783-3238. The cost of this document is three hundred nineteen dollars (\$319.00).~~

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(1), (3), (4), (5).

15A NCAC 02D .1202 DEFINITIONS

(a) For the purposes of this Section, the definitions at G.S. 143-212 and 143-213 and 15A NCAC 02D .0101 in 40 CFR 60.5250, 40 CFR 60.2875, and 40 CFR 60.51c shall apply, and apply in addition; addition to the following definitions shall apply. definitions; If a term in this Rule is also defined at 15A NCAC 02D .0101, then the definition in this Rule controls.

- (1) ~~"Class I municipal waste combustor" means a small municipal waste combustor located at a municipal waste combustion plant with an aggregate plant combustion capacity greater than 250 tons per day of municipal solid waste.~~
- (1) "Air curtain incinerator" (also referred to as an "air curtain burner") means an incinerator that operates by forcefully projecting a curtain of air across an open chamber or pit in which combustion occurs as defined in 40 CFR 60.2875.
- (2) "Commercial and industrial solid waste incinerator" (CISWI) or "commercial and industrial solid waste incineration unit" means

any distinct operating unit of any commercial or industrial facility that combusts, or has combusted in the preceding six months, any solid waste as defined in 40 CFR 241. If the operating unit burns materials other than traditional fuels as defined in 40 CFR 241.2 that have been discarded, and the owner or operator does not keep and produce records as required by 40 CFR 60.2740(u), the operating unit is a CISWI unit. A CISWI unit includes, but is not limited to, the solid waste feed system, grate system, flue gas system, waste heat recovery equipment, if any, and bottom ash system. The CISWI unit does not include air pollution control equipment or the stack. The CISWI unit boundary starts at the solid waste hopper (if applicable) and extends through two areas: The combustion unit flue gas system, which ends immediately after the last combustion chamber or after the waste heat recovery equipment, if any; and the combustion unit bottom ash system, which ends at the truck loading station or similar equipment that transfers the ash to final disposal. The CISWI unit includes all ash handling systems connected to the bottom ash handling system as defined in 40 CFR 60.2875. any combustion device, except air pollution control devices, that combusts commercial and industrial waste.

(3) "Commercial and industrial waste" means solid waste combusted in an enclosed device using controlled flame combustion without energy recovery that is a distinct operating unit of any commercial or industrial facility (including field erected, modular, and custom built incineration units operating with starved or excess air).

(4)(3) "Co-fired combustor" means a unit combusting hospital, medical, or infectious waste with other fuels or wastes (e.g., coal, municipal solid waste) and subject to an enforceable requirement limiting the unit to combusting a fuel feed stream, 10 percent or less of the weight of which is comprised, in aggregate, of hospital, medical, or infectious waste as measured on a calendar quarter basis as defined in 40 CFR 60.51c. For the purposes of this definition, pathological waste, chemotherapeutic waste, and low-level radioactive waste are considered "other" wastes when calculating the percentage of hospital, medical, or infectious waste combusted.

(5)(4) "Crematory incinerator" means any incinerator located at a crematory regulated under 21 NCAC 34C that is used solely for the cremation of human remains.

(6) "Construction and demolition waste" means wood, paper, and other combustible waste, except for hazardous waste and asphaltic

~~material, resulting from construction and demolition projects.~~

(7)(5) "Dioxin and Furan" (also referred to as "dioxins/furans") means tetra- through octa-chlorinated dibenzo-p-dioxins and dibenzofurans.

(8) ~~"Hazardous waste incinerator" means an incinerator regulated under 15A NCAC 13A .0101 through .0119, 40 CFR 264.340 to 264.351, Subpart O, or 265.340 to 265.352, Subpart O.~~

(9)(6) "Hospital, medical and infectious waste incinerator (HMIWI)" means any device that combusts any amount of hospital, medical and infectious waste.

(10)(7) "Large HMIWI" means:

- (A) a HMIWI whose maximum design waste burning capacity is more than 500 pounds per hour;
- (B) a continuous or intermittent HMIWI whose maximum charge rate is more than 500 pounds per hour; or
- (C) a batch HMIWI whose maximum charge rate is more than 4,000 pounds per day.

(11)(8) "Hospital waste" means discards generated at a hospital, except unused items returned to the manufacturer. The definition of hospital waste does not include human corpses, remains, and anatomical parts that are intended for interment or cremation.

(12) ~~"Institutional facility" means a land-based facility owned or operated by an organization having a governmental, educational, civic, or religious purpose, such as a school, hospital, prison, military installation, church, or other similar establishment or facility.~~

(13) ~~"Institutional waste" means solid waste that is combusted at any institutional facility using controlled flame combustion in an enclosed, distinct operating unit:~~

- (A) ~~whose design does not provide for energy recovery and~~
- (B) ~~which is operated without energy recovery or operated with only waste heat recovery.~~

~~Institutional waste also means solid waste combusted on site in an air curtain incinerator that is a distinct operating unit of any institutional facility.~~

(14) ~~"Institutional waste incineration unit" means any combustion unit that combusts institutional waste and is a distinct operating unit of the institutional facility that generated the waste.~~

(15) ~~"Large municipal waste combustor" means each municipal waste combustor unit with a combustion capacity greater than 250 tons per day of municipal solid waste.~~

(16)(9) "Medical and Infectious Waste" means any waste generated in the diagnosis, treatment, or

immunization of human beings or animals, in research pertaining thereto, or in the production or testing of biologicals that is listed in Part (A)(i) through (A)(vii) of this Subparagraph.

(A) The definition of medical and infectious waste includes:

(i) cultures and stocks of infectious agents and associated biologicals, including:

- (I) cultures from medical and pathological laboratories;
- (II) cultures and stocks of infectious agents from research and industrial laboratories;
- (III) wastes from the production of biologicals;
- (IV) discarded live and attenuated vaccines; and
- (V) culture dishes and devices used to transfer, inoculate, and mix cultures;

(ii) human pathological waste, including tissues, organs, and body parts and body fluids that are removed during surgery or autopsy, or other medical procedures, and specimens of body fluids and their containers;

(iii) human blood and blood products including:

- (I) liquid waste human blood;
- (II) products of blood;
- (III) items saturated or dripping with human blood; or
- (IV) items that were saturated or dripping with human blood that are now caked with dried human blood including serum, plasma, and other blood components, and their containers, which were used or intended for use in either patient care, testing and

- laboratory analysis or the development of pharmaceuticals. Intravenous bags are also included in this category;
 - (iv) sharps that have been used in animal or human patient care or treatment or in medical, research, or industrial laboratories, including hypodermic needles, syringes (with or without the attached needle), pasteur pipettes, scalpel blades, blood vials, needles with attached tubing, and culture dishes (regardless of presence of infectious agents). Also included are other types of broken or unbroken glassware that were in contact with infectious agents, such as used slides and cover slips;
 - (v) animal waste including contaminated animal carcasses, body parts, and bedding of animals that were known to have been exposed to infectious agents during research (including research in veterinary hospitals), production of biologicals or testing of pharmaceuticals;
 - (vi) isolation wastes including biological waste and discarded materials contaminated with blood, excretions, exudates, or secretions from humans who are isolated to protect others from highly communicable diseases, or isolated animals known to be infected with highly communicable diseases; and
 - (vii) unused sharps including the following unused or discarded sharps;
 - (I) hypodermic needles;
 - (II) suture needles;
 - (III) syringes; and
 - (IV) scalpel blades.
 - (B) The definition of medical and infectious waste does not include:
 - (i) hazardous waste identified or listed under 40 CFR Part 261;
 - (ii) household waste, as defined in 40 CFR 261.4(b)(1);
 - (iii) ash from incineration of medical and infectious waste, once the incineration process has been completed;
 - (iv) human corpses, remains, and anatomical parts that are intended for interment or cremation; and
 - (v) domestic sewage materials identified in 40 CFR 261.4(a)(1).
- (17)(10) "Medium HMIWI" means:
- (A) a HMIWI whose maximum design waste burning capacity is more than 200 pounds per hour but less than or equal to 500 pounds per hour;
 - (B) a continuous or intermittent HMIWI whose maximum charge rate is more than 200 pounds per hour but less than or equal to 500 pounds per hour; or
 - (C) a batch HMIWI whose maximum charge rate is more than 1,600 pounds per day but less than or equal to 4,000 pounds per day.
- (18) ~~"Municipal waste combustor (MWC) or municipal waste combustor unit" means a municipal waste combustor as defined in 40 CFR 60.51b.~~
- (19) ~~"Municipal waste combustor plant" means one or more designated units at the same location.~~
- (20) ~~"Municipal waste combustor unit capacity" means the maximum charging rate of a municipal waste combustor unit expressed in tons per day of municipal solid waste combusted, calculated according to the procedures under 40 CFR 60.58b(j). Section 60.58b(j) includes procedures for determining municipal waste combustor unit capacity for continuous and batch feed municipal waste combustors.~~
- (21) ~~"Municipal type solid waste (MSW) or Municipal Solid Waste" means municipal type solid waste defined in 40 CFR 60.51b.~~
- (22)(11) "POTW" means a publicly owned treatment works as defined in 40 CFR 501.2.
- (23) ~~"Other solid waste incineration unit" or "OSWI unit" means either a very small municipal waste combustion unit or an institutional waste incineration unit, as defined in this Paragraph.~~
- (24) ~~"Same Location" means the same or contiguous property that is under common ownership or control including properties that are separated only by a street, road, highway, or other public right of way. Common ownership or control includes properties that are owned, leased, or operated by the same entity, parent entity, subsidiary, subdivision, or any combination~~

- thereof including any municipality or other governmental unit, or any quasi-governmental authority (e.g., a public utility district or regional waste disposal authority).
- (25) ~~"Sewage sludge incinerator" means any incinerator regulated under 40 CFR Part 503, Subpart E.~~
- (12) "Sewage sludge" means solid, semi-solid, or liquid residue generated during the treatment of domestic sewage in a treatment works as defined in 40 CFR 60.5250. Sewage sludge includes, but is not limited to, domestic septage; scum or solids removed in primary, secondary, or advanced wastewater treatment processes; and a material derived from sewage sludge. Sewage sludge does not include ash generated during the firing of sewage sludge in a sewage sludge incineration unit or grit and screenings generated during preliminary treatment of domestic sewage in a treatment works.
- (13) "Sewage sludge incineration (SSI) unit" means an incineration unit combusting sewage sludge for the purpose of reducing the volume of the sewage sludge by removing combustible matter as defined in 40 CFR 60.5250.
- (26) ~~"Sludge incinerator" means any incinerator regulated under Rule .1110 of this Subchapter but not under 40 CFR Part 503, Subpart E.~~
- (27)(14) "Small HMIWI" means:
- (A) a HMIWI whose maximum design waste burning capacity is less than or equal to 200 pounds per hour;
- (B) a continuous or intermittent HMIWI whose maximum charge rate is less than or equal to 200 pounds per hour; or
- (C) a batch HMIWI whose maximum charge rate is less than or equal to 1,600 pounds per day.
- (28) ~~"Small municipal waste combustor" means each municipal waste combustor unit with a combustion capacity that is greater than 11 tons per day but not more than 250 tons per day of municipal solid waste.~~
- (29)(15) "Small remote HMIWI" means any small HMIWI which is located more than 50 miles from the boundary of the nearest Standard Metropolitan Statistical Area (SMSA) and which burns less than 2,000 pounds per week of hospital, medical and infectious waste. The 2,000 pound per week limitation does not apply during performance tests.
- (16) "Solid waste" means the term solid waste as defined in 40 CFR 241.2.
- (30)(17) "Standard Metropolitan Statistical Area (SMSA)" means any area listed in Office of Management and Budget (OMB) Bulletin No. 93-17, entitled "Revised Statistical Definitions for Metropolitan Areas" dated July 30, 1993.

The referenced document cited by this Item is hereby incorporated by reference and does not include subsequent amendments or editions. A copy of this document may be obtained from the Division of Air Quality, P.O. Box 29580, Raleigh, North Carolina 27626-0580 at a cost of 10 cents (\$0.10) per page or may be obtained through the internet at <http://www.census.gov/population/estimates/metro-city/93mfips.txt>.

- (34) ~~"Very small municipal waste combustion unit" means any municipal waste combustion unit that has the capacity to combust less than 35 tons per day of municipal solid waste or refuse-derived fuel, as determined by the calculations in 40 CFR 60.3076.~~

(b) Whenever reference is made to the Code of Federal Regulations in this Section, the definition in the Code of Federal Regulations shall apply unless specifically stated otherwise in a particular rule. The Code of Federal Regulations is available in electronic form free of charge at <https://www.gpo.gov/fdsys/search/home.action>.

Authority G.S. 143-213; 143-215.3(a)(1).

15A NCAC 02D .1203 HAZARDOUS WASTE INCINERATORS

(a) ~~Applicability. This Rule applies to hazardous waste incinerators.~~

(b) ~~Definitions. For the purpose of this Rule, the definitions contained in 40 CFR 260.10, 270.2, and 40 CFR 63.1201 shall apply in addition to the definitions in Rule .1202 of this Section.~~

(c) ~~Emission Standards.~~

- (1) ~~The emission standards in this Paragraph apply to all incinerators subject to this Rule except where Rule .0524, .1110, or .1111 of this Subchapter applies. However, when Subparagraphs (8) or (9) of this Paragraph or Paragraph (h) of this Rule and Rules .0524, .1110, or .1111 of this Subchapter regulate the same pollutant, the more restrictive provision for each pollutant shall apply, notwithstanding provisions of Rules .0524, .1110, or .1111 of this Subchapter to the contrary.~~
- (2) ~~Particulate Matter. Any incinerator subject to this Rule shall meet the particulate matter emission requirements of 40 CFR 264.343(c).~~
- (3) ~~Visible Emissions. Any incinerator subject to this Rule shall comply with Rule .0521 of this Subchapter for the control of visible emissions.~~
- (4) ~~Sulfur Dioxide. Any incinerator subject to this Rule shall comply with Rule .0516 of this Subchapter for the control of sulfur dioxide emissions.~~
- (5) ~~Odorous Emissions. Any incinerator subject to this Rule shall comply with Rule .1806 of this Subchapter for the control of odorous emissions.~~

- (6) ~~Hydrogen Chloride. Any incinerator subject to this Rule shall meet the hydrogen chloride emission requirements of 40 CFR 264.343(b). Compliance with this Subparagraph shall be determined by averaging emissions over a one-hour period.~~
- (7) ~~Mercury Emissions. The emissions of mercury and mercury compounds from the stack or chimney of any incinerator subject to this Rule shall not exceed 0.032 pounds per hour. Compliance with this Subparagraph shall be determined by averaging emissions over a one-hour period.~~
- (8) ~~Toxic Emissions. The owner or operator of any incinerator subject to this Rule shall demonstrate compliance with Section .1100 of this Subchapter according to 15A NCAC 02Q .0700 for the control of toxic emissions.~~
- (9) ~~Ambient Standards.~~
- (A) ~~In addition to the ambient air quality standards in Section .0400 of this Subchapter, the following ambient air quality standards, which are an annual average, in milligrams per cubic meter at 77 degrees F (25 degrees C) and 29.92 inches (760 mm) of mercury pressure and which are increments above background concentrations, shall apply aggregately to all incinerators at a facility subject to this Rule:~~
- (i) ~~arsenic and its compounds
2.3x10⁻⁷~~
- (ii) ~~beryllium and its compounds
4.1x10⁻⁶~~
- (iii) ~~cadmium and its compounds
5.5x10⁻⁶~~
- (iv) ~~chromium (VI) and its compounds
8.3x10⁻⁸~~
- (B) ~~The owner or operator of a facility with incinerators subject to this Rule shall demonstrate compliance with the ambient standards in Subparts (i) through (iv) of Part (A) of this Subparagraph by following the procedures set out in Rule .1106 of this Subchapter. Modeling demonstrations shall comply with the requirements of Rule .0533 of this Subchapter.~~
- (C) ~~The emission rates computed or used under Part (B) of this Subparagraph that demonstrate compliance with the ambient standards under Part (A) of this Subparagraph shall be specified as a permit condition for the facility with incinerators subject to this Rule as their allowable emission limits unless Rules .0524, .1110, or .1111 of this Subchapter requires more restrictive rates.~~
- (d) ~~Operational Standards.~~
- (1) ~~The operational standards in this Rule do not apply to any incinerator subject to this Rule when applicable operational standards in Rules .0524, .1110, or .1111 of this Subchapter apply.~~
- (2) ~~Hazardous waste incinerators shall comply with 15A NCAC 13A .0101 through .0119, which are administered and enforced by the Division of Waste Management.~~
- (e) ~~Test Methods and Procedures.~~
- (1) ~~The test methods and procedures described in Section .2600 of this Subchapter and in 40 CFR Part 60 Appendix A and 40 CFR Part 61 Appendix B shall be used to determine compliance with emission rates. Method 29 of 40 CFR Part 60 shall be used to determine emission rates for metals. However, Method 29 shall be used to sample for chromium (VI), and SW 846 Method 0060 shall be used for the analysis.~~
- (2) ~~The Director may require the owner or operator to test his incinerator to demonstrate compliance with the emission standards listed in Paragraph (c) of this Rule.~~
- (f) ~~Monitoring, Recordkeeping, and Reporting.~~
- (1) ~~The owner or operator of an incinerator subject to the requirements of this Rule shall comply with the monitoring, recordkeeping, and reporting requirements in Section .0600 of this Subchapter, 40 CFR 270.31, and 40 CFR 264.347.~~
- (2) ~~The owner or operator of an incinerator subject to the requirements of this Rule shall maintain and operate a continuous temperature monitoring and recording device for the primary chamber and, where there is a secondary chamber, for the secondary chamber. The owner or operator of an incinerator that has installed air pollution abatement equipment to reduce emissions of hydrogen chloride shall install, operate, and maintain continuous monitoring equipment to measure pH for wet scrubber systems and rate of alkaline injection for dry scrubber systems. The Director shall require the owner or operator of an incinerator with a permitted charge rate of 750 pounds per hour or more to install, operate, and maintain continuous monitors for oxygen or for carbon monoxide or both as necessary to determine proper operation of the incinerator. The Director may require the owner or operator of an incinerator with a permitted charge rate of less than 750 pounds per hour to install, operate, and maintain monitors for oxygen or for carbon monoxide or both as necessary to determine proper operation of the incinerator.~~

~~(g) Excess Emissions and Start up and Shut down. All incinerators subject to this Rule shall comply with Rule .0535, Excess Emissions Reporting and Malfunctions, of this Subchapter.~~

~~(h) Incinerators subject to this Rule shall comply with the emission limits, operational specifications, and other restrictions or conditions determined by the Division of Waste Management under 40 CFR 270.32, establishing Resource Conservation and Recovery Act permit conditions, as necessary to protect human health and the environment.~~

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).

15A NCAC 02D .1205 LARGE MUNICIPAL WASTE COMBUSTORS

~~(a) Applicability. This Rule applies to large municipal waste combustors as defined in Rule .1202 of this Section.~~

~~(b) Definitions. For the purpose of this Rule, the definitions contained in 40 CFR 60.31b (except administrator means the Director of the Division of Air Quality) apply in addition to the definitions in Rule .1202 of this Section.~~

~~(c) Emission Standards.~~

- ~~(1) The emission standards in this Paragraph apply to any municipal waste combustor subject to the requirements of this Rule except where Rule .0524, .1110, or .1111 of this Subchapter applies. However, when Subparagraphs (13) or (14) of this Paragraph and Rule .0524, .1110, or .1111 of this Subchapter regulate the same pollutant, the more restrictive provision for each pollutant apply, notwithstanding provisions of Rules .0524, .1110, or .1111 of this Subchapter to the contrary.~~
- ~~(2) Particulate Matter. Emissions of particulate matter from each municipal waste combustor shall not exceed 25 milligrams per dry standard cubic meter corrected to seven percent oxygen.~~
- ~~(3) Visible Emissions. The emission limit for opacity from any municipal waste combustor shall not exceed 10 percent (6 minute average).~~
- ~~(4) Sulfur Dioxide. Emissions of sulfur dioxide from each municipal waste combustor shall be reduced by at least 75 percent by weight or volume or to no more than 29 parts per million by volume, whichever is less stringent. Percent reduction shall be determined from continuous emissions monitoring data and according to Reference Method 19, Section 12.5.4 of 40 CFR Part 60 Appendix A 7. Compliance with either standard is based on a 24 hour daily block geometric average of concentration data corrected to seven percent oxygen (dry basis).~~
- ~~(5) Nitrogen Oxide. Emissions of nitrogen oxides from each municipal waste combustor shall not exceed the emission limits in Table 1 to Subpart Cb of Part 60 "Nitrogen Oxide Guidelines for Designated Facilities." Nitrogen oxide emissions averaging is allowed as specified in 40 CFR 60.33b(d)(1)(i) through (d)(1)(v). If~~

~~nitrogen oxide emissions averaging is used, the emissions shall not exceed Table 2 to Subpart Cb of Part 60 "Nitrogen Oxides Limits for Existing Designated Facilities Included in an Emission Averaging Plan at a Municipal Waste Combustor Plant."~~

~~(6) Odorous Emissions. Each municipal waste combustor shall comply with Rule .1806 of this Subchapter for the control of odorous emissions.~~

~~(7) Hydrogen Chloride. Emissions of hydrogen chloride from each municipal waste combustor shall be reduced by at least 95 percent (simultaneously at the inlet and outlet data sets with a minimum of three valid test periods, the length of each test period shall be a minimum of one hour); or shall not exceed, as determined by Reference Method 26 or 26A of 40 CFR Part 60 Appendix A 8, more than 29 parts per million volume, whichever is less stringent. Compliance with this Subparagraph shall be determined by averaging emissions over three 1 hour test runs, with paired data sets for percent reduction and correction to seven percent oxygen (dry basis).~~

~~(8) Mercury Emissions. Emissions of mercury from each municipal waste combustor shall be reduced by at least 85 percent by weight of potential mercury emissions (simultaneously at the inlet and outlet data sets with a minimum of three valid test periods, the length of each test period shall be a minimum of one hour); or shall not exceed, as determined by Reference Method 29 of 40 CFR Part 60 Appendix A 8 or ASTM D6784 02 (Ontario Hydro method), more than 50 micrograms per dry standard cubic meter, whichever is less stringent. Compliance with this Subparagraph shall be determined by averaging emissions over three 1 hour test runs corrected to seven percent oxygen (dry basis).~~

~~(9) Lead Emissions. Emissions of lead from each municipal waste combustor shall not exceed, as determined by Reference Method 29 of 40 CFR Part 60 Appendix A 8, 400 micrograms per dry standard cubic meter and corrected to seven percent oxygen.~~

~~(10) Cadmium Emissions. Emissions of cadmium from each municipal waste combustor shall not exceed, as determined by Reference Method 29 of 40 CFR Part 60 Appendix A 8, 35 micrograms per dry standard cubic meter and corrected to seven percent oxygen.~~

~~(11) Dioxins and Furans. Emissions of dioxins and furans from each municipal waste combustor:~~

- ~~(A) that employs an electrostatic precipitator based emission control system, shall not exceed 35 nanograms~~

- per dry standard cubic meter (total mass dioxins and furans).
- (B) that does not employ an electrostatic precipitator based emission control system, shall not exceed 30 nanograms per dry standard cubic meter (total mass dioxins and furans). Compliance with this Subparagraph shall be determined by averaging emissions over three test runs with a minimum of four hour duration per test run, performed in accordance with Reference Method 23 of 40 CFR Part 60 Appendix A 7, and corrected to seven percent oxygen.
- (12) Fugitive Ash.
- (A) On or after the date on which the initial performance test is completed, no owner or operator of a municipal waste combustor shall cause to be discharged to the atmosphere visible emissions of combustion ash from an ash conveying system (including conveyor transfer points) in excess of five percent of the observation period (i.e., nine minutes per three hour block period), as determined by visible emission observations using Reference Method 22 of 40 CFR 60 Appendix A 7, except as provided in Part (B) of this Subparagraph. Compliance with this Part shall be determined from at least three one-hour observation periods when the facility transfers ash from the municipal waste combustor to the area where the ash is stored or loaded into containers or trucks.
- (B) The emission limit specified in Part (A) of this Subparagraph covers visible emissions discharged to the atmosphere from buildings or enclosures, not the visible emissions discharged inside of the building or enclosures, of ash conveying systems.
- (13) Toxic Emissions. The owner or operator of a municipal waste combustor shall demonstrate compliance with Section .1100 of this Subchapter according to 15A NCAC 02Q .0700.
- (14) Ambient Standards.
- (A) In addition to the ambient air quality standards in Section .0400 of this Subchapter, the following are annual average ambient air quality standards in milligrams per cubic meter at 77 degrees F (25 degrees C) and 29.92 inches (760 mm) of mercury pressure:
- (i) arsenic and its compounds
2.3x10⁻⁷
 - (ii) beryllium and its compounds
4.1x10⁻⁶
 - (iii) cadmium and its compounds
5.5x10⁻⁶
 - (iv) chromium (VI) and its compounds
8.3x10⁻⁸
- These are increments above background concentrations and apply aggregately to all municipal waste combustors at a facility subject to this Rule.
- (B) The owner or operator of a facility with municipal waste combustors shall demonstrate compliance with the ambient standards in Subparts (i) through (iv) of Part (A) of this Subparagraph by following the procedures set out in Rule .1106 of this Subchapter. Modeling demonstrations shall comply with the good engineering practice stack height requirements of Rule .0533 of this Subchapter.
- (C) The emission rates computed or used under Part (B) of this Subparagraph that demonstrate compliance with the ambient standards under Part (A) of this Subparagraph shall be specified as a permit condition for the facility with municipal waste combustors as their allowable emission limits unless Rule .0524, .1110, or .1111 of this Subchapter requires more restrictive rates.
- (15) The emission standards of Subparagraphs (1) through (14) of this Paragraph apply at all times except during periods of municipal waste combustor startup, shutdown, or malfunction that last no more than three hours.
- (d) Operational Standards.
- (1) The operational standards in this Rule do not apply to any municipal waste combustor when applicable operational standards in Rule .0524, .1110, or .1111 of this Subchapter apply.
- (2) Each municipal waste combustor shall meet the following operational standards:
- (A) The concentration of carbon monoxide at the municipal waste combustor outlet shall not exceed the applicable emissions level contained in Table 3 to Subpart Cb of Part 60 "Municipal Waste Combustor Operating Guidelines."
- (B) The load level shall not exceed 110 percent of the maximum demonstrated municipal waste combustor load

- determined from the highest 4 hour block arithmetic average achieved during four consecutive hours in the course of the most recent dioxins and furans stack test that demonstrates compliance with the emission limits of Paragraph (c) of this Rule.
- (C) The combustor operating temperature measured at the particulate matter control device inlet shall not exceed 63 degrees F above the maximum demonstrated particulate matter control device temperature from the highest 4 hour block arithmetic average measured at the inlet of the particulate matter control device during four consecutive hours in the course of the most recent dioxins and furans stack test that demonstrates compliance with the emission limits of Paragraph (c) of this Rule.
- (D) The owner or operator of a municipal waste combustor with activated carbon control system to control dioxins and furans or mercury emissions shall maintain an eight hour block average carbon feed rate at or above the highest average level established during the most recent dioxins and furans or mercury test.
- (E) The owner or operator of a municipal waste combustor is exempted from limits on load level, temperature at the inlet of the particulate matter control device, and carbon feed rate during:
- (i) the annual tests for dioxins and furans;
 - (ii) the annual mercury tests for carbon feed requirements only;
 - (iii) the two weeks preceding the annual tests for dioxins and furans;
 - (iv) the two weeks preceding the annual mercury tests (for carbon feed rate requirements only); and
 - (v) any activities to improve the performance of the municipal waste combustor or its emission control including performance evaluations and diagnostic or new technology testing.
- The municipal waste combustor load limit continues to apply and remains enforceable until and unless the Director grants a waiver in writing.
- (F) The limits on load level for a municipal waste combustor are waived when the Director concludes that the emission control standards would not be exceeded based on test activities to evaluate system performance, test new technology or control technology, perform diagnostic testing, perform other activities to improve the performance; or perform other activities to advance the state of the art for emissions controls.
- (3) The operational standards of this Paragraph apply at all times except during periods of municipal waste combustor startup, shutdown, or malfunction that last no more than three hours, with the following exception: For the purpose of compliance with the carbon monoxide emission limits in Subparagraph (2) of this Paragraph, if a loss of boiler water level control (e.g., boiler waterwall tube failure) or a loss of combustion air control (e.g., loss of combustion air fan, induced draft fan, combustion grate bar failure) is determined to be a malfunction according to 15A NCAC 02D .0535, the duration of the malfunction period is limited to 15 hours per occurrence. During such periods of malfunction, monitoring data shall be dismissed or excluded from compliance calculations, but shall be recorded and reported in accordance with the provisions of Paragraph (f) of this Rule.
- (e) Test Methods and Procedures.
- (1) The test methods and procedures described in Section .2600 of this Subchapter and in Parts (A) through (K) in this Subparagraph shall be used to demonstrate compliance:
- (A) 40 CFR 60.58b(b) for continuous emissions monitoring of oxygen or carbon monoxide at each location where carbon monoxide, sulfur dioxide, or nitrogen oxides are monitored;
 - (B) 40 CFR 60.58b(c) for determination of compliance with particulate and opacity emission limits. The data from the continuous opacity monitoring system shall not be used to determine compliance with the opacity limit.
 - (C) 40 CFR 60.58b(d) for determination of compliance with emission limits for cadmium, lead and mercury;
 - (D) 40 CFR 60.58b(e) for determination of compliance with sulfur dioxide emission limits from continuous emissions monitoring data;

- (E) ~~40 CFR 60.58b(f) for determination of compliance with hydrogen chloride emission limits;~~
- (F) ~~40 CFR 60.58b(g) for determination of compliance with dioxin/furan emission limits;~~
- (G) ~~40 CFR 60.58b(h) for determination of compliance with nitrogen oxides limits from continuous emission monitoring data;~~
- (H) ~~40 CFR 60.58b(i) for determination of compliance with operating requirements under Paragraph (d);~~
- (I) ~~40 CFR 60.58b(j) for determination of municipal waste combustor capacity;~~
- (J) ~~40 CFR 60.58b(k) for determination of compliance with the fugitive ash emission limit; and~~
- (K) ~~40 CFR 60.58b(m)(1) to determine parametric monitoring for carbon injection control systems.~~
- (2) ~~Method 29 of 40 CFR Part 60 Appendix A 8 shall be used to determine emission rates for metals. However, Method 29 shall be used only to collect sample for chromium (VI), and SW 846 Method 0060 shall be used for the analysis.~~
- (3) ~~The owner or operator shall conduct initial stack tests to measure the emission levels of dioxins and furans, cadmium, lead, mercury, beryllium, arsenic, chromium (VI), particulate matter, opacity, hydrogen chloride, and fugitive ash. Annual stack tests for the same pollutants except beryllium, arsenic, and chromium (VI) shall be conducted no less than 9 months and no more than 15 months since the previous test and must complete five performance tests in each 5-year calendar period.~~
- (4) ~~The testing frequency for dioxin and furan may be reduced to the alternative testing schedule specified in 40 CFR 60.58b(g)(5)(iii) if the owner or operator notifies the Director of the intent to begin the reduced dioxin and furan performance testing schedule during the following calendar year.~~
- (5) ~~The owner or operator of an affected facility may request that compliance with the dioxin and furan emission limit be determined using carbon dioxide measurements corrected to an equivalent of seven percent oxygen. The relationship between oxygen and carbon dioxide levels for the affected facility shall be established as specified in 40 CFR 60.58b(b)(6). The Director will approve the request after verification of the correct calculations that provides the relationship between oxygen and carbon dioxide levels and of the completeness of stack test data used to establish the relationship between oxygen and carbon dioxide levels.~~
- (6) ~~The Director may require the owner or operator of any municipal waste combustor subject to this Rule to test his municipal waste combustor to demonstrate compliance with the emission standards in Paragraph (e) of this Rule.~~
- (f) ~~Monitoring, Recordkeeping, and Reporting.~~
 - (1) ~~The owner or operator of a municipal waste combustor shall comply with the monitoring, recordkeeping, and reporting requirements in Section .0600 of this Subchapter.~~
 - (2) ~~The owner or operator of a municipal waste combustor that has installed air pollution abatement equipment to reduce emissions of hydrogen chloride shall install, operate, and maintain continuous monitoring equipment to measure pH for wet scrubber systems and rate of alkaline injection for dry scrubber systems.~~
 - (3) ~~The owner or operator of a municipal waste combustor shall:~~
 - (A) ~~install, calibrate, operate, and maintain, for each municipal waste combustor, continuous emission monitors to determine:~~
 - (i) ~~sulfur dioxide concentration;~~
 - (ii) ~~nitrogen oxides concentration;~~
 - (iii) ~~oxygen or carbon dioxide concentration;~~
 - (iv) ~~opacity according to 40 CFR 60.58b(e); and~~
 - (v) ~~carbon monoxide at the combustor outlet and record the output of the system and shall follow the procedures and methods specified in 40 CFR 60.58b(i)(3);~~
 - (B) ~~monitor the load level of each municipal waste combustor according to 40 CFR 60.58b(i)(6);~~
 - (C) ~~monitor the temperature of each municipal waste combustor flue gases at the inlet of the particulate matter air pollution control device according to 40 CFR 60.58b(i)(7);~~
 - (D) ~~monitor carbon feed rate of each municipal waste combustor carbon delivery system and total plant predicted quarterly usage if activated carbon is used to abate dioxins and furans or mercury emissions according to 40 CFR 60.58b(m)(2) and (m)(3);~~
 - (E) ~~maintain records of the information listed in 40 CFR 60.59b(d)(1) through (d)(15) for a period of at least five years;~~
 - (F) ~~following the first year of municipal combustor operation, submit an annual report specified in 40 CFR~~

60.59b(g) for municipal waste combustors no later than February 1 of each year following the calendar year in which the data were collected. Once the municipal waste combustor is subject to permitting requirements under 15A NCAC 02Q .0500, Title V Procedures, the owner or operator of an affected facility shall submit these reports semiannually; and

- (G) submit a semiannual report specified in 40 CFR 60.59b(h) for each municipal waste combustor for any recorded pollutant or parameter that does not comply with the pollutant or parameter limit specified in this Section, according to the schedule specified in 40 CFR 60.59b(h)(6).

(g) Excess Emissions and Start up and Shut down. All municipal waste combustors shall comply with Rule .0535, Excess Emissions Reporting and Malfunctions, of this Subchapter.

(h) Operator Certification.

- (1) Each facility operator and shift supervisor shall have completed full certification or scheduled a full certification exam with the American Society of Mechanical Engineers (ASME QRO 1 1994).
- (2) The requirement to complete full certification or schedule a full certification exam with the American Society of Mechanical Engineers (ASME QRO 1 1994) does not apply to chief facility operators, shift supervisors, and control room operators who have obtained full certification from the American Society of Mechanical Engineers on or before July 1, 1998.
- (3) No owner or operator of an affected facility shall allow the facility to be operated at any time unless one of the following persons is on duty and at the affected facility:
 - (A) a fully certified chief facility operator;
 - (B) a provisionally certified chief facility operator who is scheduled to take the full certification exam within six months;
 - (C) a fully certified shift supervisor; or
 - (D) a provisionally certified shift supervisor who is scheduled to take the full certification exam within six months.
- (4) Operator Substitution
 - (A) A provisionally certified control room operator may perform the duties of the certified chief facility operator or certified shift supervisor if both are off site for 12 hours or less and no other certified operator is on site.
 - (B) If the certified chief facility operator and certified shift supervisor are both

off site for longer than 12 hours but for two weeks or less, then the owner or operator of the affected facility must record the period when the certified chief facility operator and certified shift supervisor are off site and include that information in the annual report as specified under 60.59b(g)(5).

- (C) If the certified chief facility operator and certified shift supervisor are off site for more than two weeks, and no other certified operator is on site, the provisionally certified control room operator may perform the duties of the certified chief facility operator or certified shift supervisor. However, the owner or operator of the affected facility must notify the Director in writing and state what caused the absence and actions are being taken to ensure that a certified chief facility operator or certified shift supervisor is on site as expeditiously as practicable. The notice shall be delivered within 30 days of the start date of when the provisionally certified control room operator takes over the duties of the certified chief facility operator or certified shift supervisor. A status report and corrective action summary shall be submitted to the Director every four weeks following the initial notification.

- (D) If the Director provides notice that the status report or corrective action summary is disapproved, the municipal waste combustor may continue operation for 90 days, but then must cease operation. If corrective actions are taken in the 90-day period such that the Director withdraws the disapproval, municipal waste combustor operation may continue.

- (E) The Director shall disapprove the status report or corrective action summary report, described in Part (C) of this Subparagraph, if operating permit requirements are not being met, the status and corrective action reports indicate that the effort to have a certified chief facility operator or certified shift supervisor on site as expeditiously as practicable is not being met, or the reports are not delivered in a timely manner.

- (5) A provisionally certified operator who is newly promoted or recently transferred to a shift supervisor position or a chief facility operator

~~position at the municipal waste combustion facility may perform the duties of the certified chief facility operator or certified shift supervisor without notice to, or approval by, the Director for up to six months before taking the ASME QRO Certification for Municipal Solid Waste Combustion Facilities Operators.~~

- (6) ~~If the certified chief facility operator and certified shift supervisor are both unavailable, a provisionally certified control room operator who is scheduled to take the full certification exam, may fulfill the requirements of this Subparagraph.~~

~~The referenced ASME exam (ASME QRO 1-1994), "Standard for the Qualification and Certification of Resource Recovery Facility Operators," in this Paragraph is hereby incorporated by reference and includes subsequent amendments and editions. Copies of the referenced ASME exam may be obtained from the American Society of Mechanical Engineers (ASME), 22 Law Drive, Fairfield, NJ 07007, at a cost of forty nine dollars (\$49.00).~~

~~(i) Training.~~

- (1) ~~The owner or operator of each municipal waste combustor shall develop and update on a yearly basis a site specific operating manual that shall address the elements of municipal waste combustor operation specified in 40 CFR 60.54b(e)(1) through (e)(11). The operating manual shall be kept in a readily accessible location for all persons required to undergo training under Subparagraph (2) of this Paragraph. The operating manual and records of training shall be available for inspection by the personnel of the Division on request.~~

- (2) ~~The owner or operator of the municipal waste combustor plant shall establish a training program to review the operating manual according to the schedule specified in Parts (A) and (B) of this Subparagraph with each person who has responsibilities affecting the operation of the facility including chief facility operators, shift supervisors, control room operators, ash handlers, maintenance personnel, and crane and load handlers:~~

- (A) ~~A date prior to the day when the person assumes responsibilities affecting municipal waste combustor operation; and~~
- (B) ~~Annually, following the initial training required by Part (A) of this Subparagraph.~~

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(3),(4),(5); 40 CFR 60.35b; 40 CFR 60.34e; 40 CFR 60.1515.

15A NCAC 02D .1206 HOSPITAL, MEDICAL, AND INFECTIOUS WASTE INCINERATORS

(a) Applicability. This Rule applies to any hospital, medical, and infectious waste incinerator (HMIWI), except:

- (1) any HMIWI required to have a permit ~~under~~ pursuant to Section 3005 of the Solid Waste Disposal Act;
- (2) any pyrolysis unit;
- (3) any cement kiln firing hospital waste or medical and infectious waste;
- (4) any physical or operational change made to an existing HMIWI solely for the purpose of complying with the emission standards for HMIWIs in this Rule. These physical or operational changes are not considered a modification and do not result in an existing HMIWI becoming subject to the provisions of 40 CFR Part 60, Subpart Ec;
- (5) any HMIWI during periods when only pathological waste, low-level radioactive waste, or chemotherapeutic waste is burned, provided that the owner or operator of the HMIWI:
 - (A) notifies the Director of an exemption claim; and
 - (B) keeps records on a calendar quarter basis of the periods of time when only pathological waste, low-level radioactive waste, or chemotherapeutic waste is burned; or
- (6) any co-fired HMIWI, if the owner or operator of the co-fired HMIWI:
 - (A) notifies the Director of an exemption claim;
 - (B) provides an estimate of the relative weight of hospital, medical and infectious waste, and other fuels or wastes to be combusted; and
 - (C) keeps records on a calendar quarter basis of the weight of hospital, medical and infectious waste combusted, and the weight of all other fuels and wastes combusted at the co-fired HMIWI.

(b) Definitions. For the purpose of this Rule, the definitions contained in 40 CFR 60.51c shall apply in addition to the definitions in ~~Rule .1202 of this Section.~~ 15A NCAC 02D .1202.

(c) Emission Standards.

- (1) The emission standards in this Paragraph apply to all HMIWIs ~~subject to this Rule~~ except where ~~Rules 15A NCAC 02D .0524, .1110, or .1111 of this Subchapter~~ applies. However, when Subparagraphs ~~(7)(6) or (8)(7)~~ of this Paragraph and ~~Rules 15A NCAC 02D .0524, .1110, or .1111 of this Subchapter~~ regulate the same pollutant, the more restrictive provision for each pollutant shall apply, notwithstanding provisions of ~~Rules 15A NCAC 02D .0524, .1110, or .1111 of this Subchapter~~ to the contrary;
- (2) ~~Prior to July 1, 2013, each HMIWI for which construction was commenced on or before June 20, 1996, or for which modification is~~

- commenced on or before March 16, 1998, shall not exceed the requirements listed in Table 1A of Subpart Ce of 40 CFR Part 60;
- (3)(2) On or after July 1, 2013, each Each HMIWI for which construction was commenced on or before June 20, 1996, or for which modification is commenced on or before March 16, 1998, shall not exceed the requirements listed in Table 1B of Subpart Ce of 40 CFR Part 60;
- (4)(3) Each HMIWI for which construction was commenced after June 20, 1996 but no later than December 1, 2008, or for which modification is commenced after March 16, 1998 but no later than April 6, 2010, shall not exceed the more stringent of the requirements listed in Table 1B of Subpart Ce and Table 1A of Subpart Ec of 40 CFR Part 60;
- (5)(4) ~~Each small remote HMIWI for which construction was commenced on or before June 20, 1996, or for which modification was commenced on or before March 16, 1998, and which burns less than 2,000 pounds per week of hospital waste and medical or infectious waste shall not exceed emission standards listed in Table 2A of Subpart Ce of 40 CFR Part 60 before July 1, 2013. On or after July 1, 2013, each Each small remote HMIWI shall not exceed emission standards listed in Table 2B of Subpart Ce of 40 CFR Part 60;~~
- (6)(5) ~~Visible Emissions. Prior to July 1, 2013, the owner or operator of any HMIWI shall not cause to be discharged into the atmosphere from the stack of the HMIWI any gases that exhibit greater than 10 percent opacity (6-minute block average). On or after July 1, 2013, the The owner or operator of any HMIWI shall not cause to be discharged into the atmosphere from the stack of the HMIWI any gases that exhibit greater than six percent opacity six-minute (six-minute block average);~~
- (7)(6) ~~Toxic Emissions. Air Pollutants. The owner or operator of any HMIWI subject to this Rule shall demonstrate compliance with Section 15A NCAC 02D .1100 of this Subchapter according to 15A NCAC 02Q .0700; and .0700.~~
- (7) ~~Ambient Standards.~~
- (A) ~~In addition to the ambient air quality standards in Section .0400 of this Subchapter, the following ambient air quality standards, which are an annual average, in milligrams per cubic meter at 77 degrees F (25 degrees C) and 29.92 inches (760 mm) of mercury pressure, and which are increments above background concentrations, shall apply aggregately to all HMIWIs at a facility subject to this Rule:~~
- (i) ~~arsenic and its compounds~~
2.3x10⁻⁷

- (ii) ~~beryllium and its compounds~~
4.1x10⁻⁶
- (iii) ~~cadmium and its compounds~~
5.5x10⁻⁶
- (iv) ~~chromium (VI) and its compounds~~
8.3x10⁻⁸;
- (B) ~~The owner or operator of a facility with HMIWIs subject to this Rule shall demonstrate compliance with the ambient standards in Subparts (i) through (iv) of Part (A) of this Subparagraph by following the procedures set out in Rule .1106 of this Subchapter. Modeling demonstrations shall comply with the requirements of Rule .0533 of this Subchapter; and~~
- (C) ~~The emission rates computed or used under Part (B) of this Subparagraph that demonstrate compliance with the ambient standards under Part (A) of this Subparagraph shall be specified as a permit condition for the facility with HMIWIs subject to this Rule as their allowable emission limits unless Rules .0524, .1110, or .1111 of this Subchapter requires more restrictive rates.~~
- (d) Operational Standards.
- (1) The operational standards in this Rule do not apply to any HMIWI ~~subject to this Rule~~ when applicable operational standards in Rule 15A NCAC 02D .0524, .1110, or .1111 of this Subchapter apply;
- (2) Annual Equipment Inspection.
- (A) ~~Each HMIWI shall undergo an equipment inspection initially within 6 months upon this Rule's effective date and an annual equipment inspection (no more than 12 months following the previous annual equipment inspection);~~
- (B) The equipment inspection shall include all the elements listed in 40 CFR 60.36e(a)(1)(i) through (xvii);
- (C) Any necessary repairs found during the inspection shall be completed within 10 operating days of the inspection unless the owner or operator submits a written request to the Director for an extension of the 10 operating day period; and
- (D) The Director shall grant the extension if the owner or operator submits a written request to the Director for an extension of the 10 operating day period if the owner or operator of the small remote HMIWI demonstrates that achieving compliance by the time allowed under this Part is not feasible,

- the Director does not extend the time allowed for compliance by more than 30 days following the receipt of the written request, and the Director concludes that the emission control standards would not be exceeded if the repairs were delayed;
- (3) Air Pollution Control Device Inspection.
- (A) Each HMIWI shall undergo air pollution control device ~~inspections, as applicable, initially within six months upon this Rule's effective date and inspections~~ annually (no more than 12 months following the previous annual air pollution control device inspection) to inspect air pollution control device(s) for proper operation, if applicable: ensure proper calibration of thermocouples, sorbent feed systems, and any other monitoring equipment; and generally observe that the equipment is maintained in good operating condition. Any necessary repairs found during the inspection shall be completed within 10 operating days of the inspection unless the owner or operator submits a written request to the Director for an extension of the 10 operating day period; and
- (B) The Director shall grant the extension if the owner or operator of the HMIWI demonstrates that achieving compliance by the 10 operating day period is not feasible, the Director does not extend the time allowed for compliance by more than 30 days following the receipt of the written request, and the Director concludes that the emission control standards would not be exceeded if the repairs were delayed;
- (4) Any HMIWI, except for a small HMIWI for which construction was commenced on or before June 20, 1996, or for which modification was commenced on or before March 16, 1998, and subject to the requirements listed in Table 1B of Subpart Ce of 40 CFR Part 60, shall comply with 40 CFR 60.56c except ~~for~~ for
- (A) ~~Before July 1, 2013, the test methods listed in Paragraphs 60.56c(b)(7) and (8), the fugitive emissions testing requirements under 40 CFR 60.56c(b)(14) and (c)(3), the CO CEMS requirements under 40 CFR 60.56c(e)(4), and the compliance requirements for monitoring listed in 40 CFR 60.56c(e)(5)(ii) through (v), (e)(6), (e)(7), (e)(6) through (10),~~
- ~~(f)(7) through (10), (g)(6) through (10), and (h); and~~
- (B) ~~On or after July 1, 2013, sources subject to the emissions limits under pursuant to Table 1B of Subject Ce of 40 CFR Part 60 or more stringent of the requirements listed in Table 1B of Subpart 1B of Subpart Ce of 40 CFR Part 60 and Table 1A of Subpart Ec of 40 CFR Part 60 may, however, elect to use CO CEMS as specified under in 40 CFR 60.56c(c)(4) or bag detection systems as specified under in 40 CFR 60.57c(h);~~
- (5) ~~Prior to July 1, 2013, the owner or operator of any small remote HMIWI shall comply with the following compliance and performance testing requirements:~~
- (A) ~~conduct the performance testing requirements in 40 CFR 60.56c(a), (b)(1) through (b)(9), (b)(11)(mercury only), and (c)(1). The 2,000 pound per week limitation does not apply during performance tests;~~
- (B) ~~establish maximum charge rate and minimum secondary chamber temperature as site specific operating parameters during the initial performance test to determine compliance with applicable emission limits; and~~
- (C) ~~following the date on which the initial performance test is completed, ensure that the HMIWI does not operate above the maximum charge rate or below the minimum secondary chamber temperature measured as three hour rolling averages, calculated each hour as the average of all previous three operating hours, at all times except during periods of start-up, shut down and malfunction. Operating parameter limits do not apply during performance tests. Operation above the maximum charge rate or below the minimum secondary chamber temperature shall constitute a violation of the established operating parameters;~~
- (6)(5) ~~On or after July 1, 2013, any Any small remote HMIWI constructed on or before June 20, 1996, or for which modification was commenced on or before March 16, 1998, is subject to the requirements listed in Table 2B of Subpart Ce of 40 CFR Part 60. The owner or operator shall comply with the compliance and performance testing requirements of 40 CFR 60.56c, excluding test methods listed in 40 CFR 60.56c(b)(7), (8), (12), (13)(Pb and Cd), and~~

(14), the annual PM, CO, and HCl emissions testing requirements ~~under~~ pursuant to 40 CFR 60.56c(c)(2), the annual fugitive emissions testing requirements ~~under~~ pursuant to 40 CFR 60.56c(c)(3), the CO CEMS requirements ~~under~~ pursuant to 40 CFR 60.56c(c)(4), and the compliance requirements for monitoring listed in 40 CFR 60.56c(c)(5) through (7), and (d) through (k);

(7)(6) ~~On or after July 1, 2013, any~~ Any small remote HMIWI ~~For~~ for which construction was commenced on or before June 20, 1996, or for which modification was commenced on or before March 16, 1998, subject to the requirements listed in Table 2A or 2B of Subpart Ce of 40 CFR Part 60, and not equipped with an air pollution control device shall meet the following compliance and performance testing requirements:

- (A) Establish maximum charge rate and minimum secondary chamber temperature as site-specific operating parameters during the initial performance test to determine compliance with applicable emission limits. The 2,000 pounds per week limitation ~~does~~ shall not apply during performance tests;
- (B) The owner or operator shall not operate the HMIWI above the maximum charge rate or below the minimum secondary chamber temperature measured as ~~3-hour~~ three-hour rolling averages (calculated each hour as the average of the previous three operating hours) at all times. Operating parameter limits shall not apply during performance tests. Operation above the maximum charge rate or below the minimum secondary chamber temperature shall constitute a violation of the established operating parameter(s); and
- (C) Operation of an HMIWI above the maximum charge rate and below the minimum secondary chamber temperature (each measured on a three-hour rolling average) simultaneously shall constitute a violation of the PM, CO, and dioxin/furan emissions limits. The owner or operator of an HMIWI may conduct a repeat performance test within 30 days of violation of applicable operating ~~parameter(s)~~ parameters to demonstrate that the designated facility is not in violation of the applicable emissions ~~limit(s)~~ limits. Repeat performance tests

conducted shall be conducted under process and control device operating conditions duplicating as nearly as possible those that indicated during the violation;

(8)(7) ~~On or after July 1, 2013, any~~ Any small HMIWI ~~constructed commenced emissions guidelines as promulgated on September 15, 1997, meeting all requirements listed in Table 2B of Subpart Ce of 40 CFR Part 60, which is located more than 50 miles from the boundary of the nearest Standard Metropolitan Statistical Area and which burns less than 2,000 pounds per week of hospital, medical and infectious waste and is subject to the requirements listed in Table 2B of Subpart Ce of 40 CFR Part 60. The 2,000 pounds per week limitation does not apply during performance tests. The owner or operator for which construction was commenced after June 20, 1996 but no later than December 1, 2008, or for which modification is commenced after March 16, 1998 but no later than April 6, 2010, shall comply with the compliance and performance testing requirements of 40 CFR 60.56c, excluding the annual fugitive emissions testing requirements ~~under~~ pursuant to 40 CFR 60.56c(c)(3), the CO CEMS requirements ~~under~~ pursuant to 40 CFR 60.56c(c)(4), and the compliance requirements for monitoring listed in 40 CFR 60.56c(c)(5)(ii) through (v), (c)(6), (c)(7), (e)(6) through (10), (f)(7) through (10), and (g)(6) through (10). The owner or operator may elect to use CO CEMS as specified ~~under~~ in 40 CFR 60.56c(c)(4) or bag leak detection systems as specified ~~under~~ in 40 CFR 60.57c(h); and~~

(9)(8) ~~On or after July 1, 2013, the~~ The owner or operator of any HMIWI equipped with selective noncatalytic reduction technology shall:

- (A) Establish the maximum charge rate, the minimum secondary chamber temperature, and the minimum reagent flow rate as site specific operating parameters during the initial performance test to determine compliance with the emissions limits;
- (B) Ensure that the affected facility does not operate above the maximum charge rate, or below the minimum secondary chamber temperature or the minimum reagent flow rate measured as three-hour rolling averages (calculated each hour as the average of the previous three operating hours) at all times. Operating parameter limits shall not apply during performance tests; and

(C) Operation of any HMIWI above the maximum charge rate, below the minimum secondary chamber temperature, and below the minimum reagent flow rate simultaneously shall constitute a violation of the NO_x emissions limit. The owner or operator may conduct a repeat performance test within 30 days of violation of applicable operating ~~parameter(s)~~ parameters to demonstrate that the affected facility is not in violation of the applicable emissions ~~limit(s)~~ limits. Repeat performance tests conducted pursuant to this paragraph shall be conducted using the identical operating parameters that indicated a violation.

(e) Test Methods and Procedures.

- (1) The test methods and procedures described in ~~Section .2600 of this Subchapter~~ 15A NCAC 02D .2600 and in 40 CFR Part 60 Appendix A and 40 CFR Part 61 Appendix B shall be used to determine compliance with emission rates. Method 29 of 40 CFR Part 60 shall be used to determine emission rates for metals. However, Method 29 shall be used to sample for chromium (VI), and SW 846 Method 0060 shall be used for the analysis; and
- (2) The Director may require the owner or operator to test the HMIWI to demonstrate compliance with the emission standards listed in Paragraph (c) of this Rule.

(f) Monitoring, Recordkeeping, and Reporting.

- (1) The owner or operator of an HMIWI subject to the requirements of this Rule shall comply with the monitoring, recordkeeping, and reporting requirements in ~~Section .0600 of this Subchapter;~~ 15A NCAC 02D .0600.
- (2) The owner or operator of an HMIWI subject to the requirements of this Rule shall maintain and operate a continuous temperature monitoring and recording device for the primary chamber and, where there is a secondary chamber, for the secondary chamber. The owner or operator of an HMIWI that has installed air pollution abatement equipment to reduce emissions of hydrogen chloride shall install, operate, and maintain continuous monitoring equipment to measure pH for wet scrubber systems and rate of alkaline injection for dry scrubber systems. The Director shall require the owner or operator of an HMIWI with a permitted charge rate of 750 pounds per hour or more to install, operate, and maintain continuous monitors for oxygen or for carbon monoxide or both as necessary to determine proper operation of the HMIWI. The Director may require the owner or operator of an HMIWI with a permitted charge rate of less

than 750 pounds per hour to install, operate, and maintain monitors for oxygen or for carbon monoxide or both as necessary to determine proper operation of the HMIWI;

(3) In addition to the requirements of Subparagraphs (1) and (2) of this Paragraph, the owner or operator of a HMIWI shall comply with the reporting and recordkeeping requirements listed in 40 CFR 60.58c ~~(b), (c), (d), (e), and (f),~~ (b) through (g), excluding 40 CFR 60.58c(b)(2)(ii) and (b)(7);

(4) In addition to the requirements of Subparagraphs (1), (2) and (3) of this Paragraph, the owner or operator of a small remote HMIWI shall:

- (A) maintain records of the annual equipment inspections, any required maintenance, and any repairs not completed within 10 days of an inspection;
- (B) submit an annual report containing information recorded in Part (A) of this Subparagraph to the Director no later than 60 days following the year in which data were collected. Subsequent reports shall be sent no later than 12 calendar months following the previous report. The report shall be signed by the HMIWI manager; and
- (C) submit the reports required by Parts (A) and (B) of this Subparagraph to the Director semiannually once the HMIWI is subject to the permitting procedures of 15A NCAC 02Q .0500, Title V Procedures;

(5) Waste Management Guidelines. The owner or operator of a HMIWI shall comply with the requirements of 40 CFR 60.55c for the preparation and submittal of a waste management plan;

(6) Except as provided in Subparagraph (7) of this Paragraph, the owner or operator of any HMIWI shall comply with the monitoring requirements in 40 CFR 60.57c;

(7) The owner or operator of any small remote HMIWI shall:

- (A) install, calibrate, maintain, and operate a device for measuring and recording the temperature of the secondary chamber on a continuous basis, the output of which shall be recorded, at a minimum, once every minute throughout operation;
- (B) install, calibrate, maintain, and operate a device which automatically measures and records the date, time, and weight of each charge fed into the HMIWI; and

- (C) obtain monitoring data at all times during HMIWI operation except during periods of monitoring equipment malfunction, calibration, or repair. At a minimum, valid monitoring data shall be obtained for 75 percent of the operating hours per day and for 90 percent of the operating hours per calendar quarter that the HMIWI is combusting hospital, medical, and infectious waste;
- (8) ~~On or after July 1, 2013, any~~ Any HMIWI, except for small remote HMIWI not equipped with an air pollution control device, subject to the emissions requirements in Table 1B or Table 2B of Subpart Ce of 40 CFR Part 60, or the more stringent of the requirements listed in Table 1B of Subpart Ce of 40 CFR Part 60 and Table 1A of Subpart Ec of 40 CFR Part 60, shall perform the monitoring requirements listed in 40 CFR 60.57c;
- (9) ~~On or after July 1, 2013, the~~ The owner or operator of a small remote HMIWI, not equipped with an air pollution control device and subject to the emissions requirements in Table 2B of Subpart Ce of 40 CFR Part 60 shall:
 - (A) install, calibrate ~~(to manufacturers' specifications),~~ to manufacturers' specifications, maintain, and operate a device for measuring and recording the temperature of the secondary chamber on a continuous basis, the output of which shall be recorded, at a minimum, once every minute throughout operation;
 - (B) install, calibrate ~~(to manufacturers' specifications),~~ to manufacturers' specifications, maintain, and operate a device which automatically measures and records the date, time, and weight of each charge fed into the HMIWI; and
 - (C) obtain monitoring data at all times during HMIWI operation except during periods of monitoring equipment malfunction, calibration, or repair. At a minimum, valid monitoring data shall be obtained for 75 percent of the operating hours per day for 90 percent of the operating hours per calendar quarter that the designated facility is combusting hospital, medical and infectious waste;
- (10) ~~On or after July 1, 2013, any~~ Any HMIWI for which construction commenced on or before June 20, 1996, or for which modification was commenced on or before March 16, 1998, and is subject to requirements listed in Table 1B of Subpart Ce of 40 CFR Part 60; or any HMIWI which construction was commenced after June 20, 1996 but no later than December 1, 2008, or for which modification is commenced after March 16, 1998 but no later than April 6, 2010, and subject to the requirements of Table 1B of this Subpart and Table 1A of Subpart Ec of 40 CFR Part 60, may use the results of previous emissions tests to demonstrate compliance with the emissions limits, provided that:
 - (A) Previous emissions tests had been conducted using the applicable procedures and test methods listed in 40 CFR 60.56c(b);
 - (B) The HMIWI is currently operated in a manner that would be expected to result in the same or lower emissions than observed during the previous emissions test and not modified such that emissions would be expected to exceed; and
 - (C) The previous emissions ~~test(s)~~ tests had been conducted in 1996 or later;
- (11) ~~On or after July 1, 2013, any~~ Any HMIWI, (with the exception of small remote HMIWI and HMIWIs for which construction was commenced no later than December 1, 2008, or for which modification is commenced no later than April 6, 2010, and subject to the requirements listed in Table 1B of Subpart Ce of 40 CFR Part 60 or the more stringent of the requirements listed in Table 1B of Subpart Ce of 40 CFR Part 60 and Table 1A of Subpart Ec), shall include the reporting and recordkeeping requirements listed in 40 CFR 60.58c ~~(b);~~ (b) through (g) in Subpart Ec; and
- (12) ~~On or after July 1, 2013, any~~ Any HMIWI for which construction was commenced no later than December 1, 2008, or for which modification is commenced no later than April 6, 2010, and subject to the requirements listed in Table 1B or the more stringent of the requirements listed in Table 1B of Subpart Ce of 40 CFR Part 60 and Table 1A of Subpart Ec of 40 CFR Part 60, ~~is shall not be required to maintain records required in 40 CFR 60.58c(b)(2)(xviii)(bag leak detection system alarms), (b)(2)(xix)(CO CEMS data), and (b)(7)(siting documentation).~~
 - ~~(g) Excess Emissions and Start-up and Shut-down. All HMIWIs subject to this Rule shall comply with Rule .0535, Excess Emissions Reporting and Malfunctions, of this Subchapter. Emissions from bypass conditions shall not be exempted as provided under Paragraphs (e) and (g) of Rule 0.535 of this Subchapter.~~
 - ~~(h)~~ (g) Operator Training and Certification.
 - (1) The owner or operator of a HMIWI shall not allow the HMIWI to operate at any time unless a fully trained and qualified HMIWI operator is accessible, either at the facility or available

within one hour. The trained and qualified HMIWI operator may operate the HMIWI directly or be the direct supervisor of one or more HMIWI operators;

- (2) Operator training and qualification shall be obtained by completing the requirements of 40 CFR 60.53c(c) through (g);
- (3) The owner or operator of a HMIWI shall maintain, at the facility, all items required by 40 CFR 60.53c(h)(1) through (h)(10);
- (4) The owner or operator of a HMIWI shall establish a program for reviewing the information required by Subparagraph (3) of this Paragraph annually with each HMIWI operator. The reviews of the information shall be conducted annually; and
- (5) The information required by Subparagraph (3) of this Paragraph shall be kept in a readily accessible location for all HMIWI operators. This information, along with records of training shall be available for inspection by Division personnel upon request.

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5); 40 CFR 60.34e.

15A NCAC 02D .1207 CONICAL INCINERATORS

(a) ~~Purpose. The purpose of this Rule is to set forth the requirements of the Commission relating to the use of conical incinerators in the burning of wood and agricultural waste.~~

(b) ~~Scope. This Rule shall apply to all conical incinerators which are designed to incinerate wood and agricultural waste.~~

(c) ~~Each conical incinerator subject to this Rule shall be equipped and maintained with:~~

- (1) ~~an underfire and an overfire forced air system and variable damper which is automatically controlled to ensure the optimum temperature range for the complete combustion of the amount and type of material waste being charged into the incinerator;~~
- (2) ~~a temperature recorder for continuously recording the temperature of the exit gas;~~
- (3) ~~a feed system capable of delivering the waste to be burned at a sufficiently uniform rate to prevent temperature from dropping below 800°F during normal operation, with the exception of one startup and one shutdown per day.~~

(d) ~~The owner of the conical incinerator shall monitor and report ambient particulate concentrations using the appropriate method specified in 40 CFR Part 50 with the frequency specified in 40 CFR Part 58. The Director may require more frequent monitoring if measured particulate concentrations exceed the 24 hour concentration allowed under 15A NCAC 2D .0400. The owner or operator shall report the monitoring data quarterly to the Division.~~

(e) ~~In no case shall the ambient air quality standards as defined in Section .0400 of this Subchapter be exceeded.~~

(f) ~~The conical incinerator shall not violate the opacity standards in Rule .0521 of this Subchapter.~~

~~(g) The distance a conical incinerator is located and operated from the nearest structure(s) in which people live or work shall be optimized to prevent air quality impact and shall be subject to approval by the Commission.~~

~~(h) New conical incinerators shall be in compliance with this Rule on startup.~~

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(4),(5).

15A NCAC 02D .1208 OTHER INCINERATORS (READOPTIOIN WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02D .1211 OTHER SOLID WASTE INCINERATION UNITS

~~(a) Applicability. With the exceptions in Paragraph (b), this Rule applies to other solid waste incineration (OSWI) units.~~

~~(b) Exemptions. The following types of incineration units are exempted from this Rule:~~

- (1) ~~incineration units covered under Rules .1203 through .1206 and .1210 of this Section;~~
- (2) ~~units burning 90 percent or more by weight on a calendar quarter basis, excluding the weight of auxiliary fuel and combustion air, pathological waste, low level radioactive waste, or chemotherapeutic waste, if the owner or operator of the unit:~~
 - (A) ~~notifies the Director that the unit qualifies for this exemption; and~~
 - (B) ~~keeps records on a calendar quarter basis of the weight, pathological waste, low level radioactive waste, or chemotherapeutic waste burned, and the weight of all other fuels and wastes burned in the unit;~~
- (3) ~~Cogeneration units if:~~
 - (A) ~~The unit qualifies as a cogeneration facility under section 3(18)(B) of the Federal Power Act (16 U.S.C. 796(18)(B));~~
 - (B) ~~The unit burns homogeneous waste (not including refuse derived fuel) to produce electricity and steam or other forms of energy used for industrial, commercial, heating, or cooling purposes; and~~
 - (C) ~~The owner or operator of the unit notifies the Director that the unit qualifies for this exemption;~~
- (4) ~~Small power production unit if:~~
 - (A) ~~The unit qualifies as a small power production facility under section 3(17)(C) of the Federal Power Act (16 U.S.C. 796(17)(C));~~
 - (B) ~~The unit burns homogeneous waste (not including refuse derived fuel) to produce electricity; and~~
 - (C) ~~The owner or operator of the unit notifies the Director that the unit qualifies for this exemption.~~

- (5) units that combust waste for the primary purpose of recovering metals;
- (6) rack, part, and drum reclamation units that burn the coatings off racks used to hold items for application of a coating;
- (7) cement kilns;
- (8) laboratory analysis units that burn samples of materials for the purpose of chemical or physical analysis;
- (9) air curtain burners covered under Rule .1904 of this Subchapter;
- (10) institutional boilers and process heaters regulated under 40 CFR Part 63, Subpart DDDDD (National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers and Process Heaters);
- (11) rural institutional waste incinerators that meet the conditions in 40 CFR 60.2993(h);
- (12) incinerators that combust contraband or prohibited goods if owned or operated by a government agency, such as police, customs, agricultural inspection, or a similar agency, to destroy only illegal or prohibited goods, such as illegal drugs, or agricultural food products that cannot be transported into the country or across state lines to prevent biocontamination. The exclusion does not apply to items either confiscated or incinerated by private, industrial, or commercial entities; or
- (13) Incinerators used for national security and is used solely:
 - (A) to destroy national security materials integral to the field exercises during military training field exercises; or
 - (B) to incinerate national security materials when necessary to safeguard national security if the owner or operator follows to procedures in 40 CFR 60.2993(q)(2) to receive this exemption.

(c) ~~Definitions.~~ For the purpose of this Rule, the definitions contained in 40 CFR 60.3078 shall apply in addition to the definitions in Rule .1202 of this Section.

(d) ~~Emission Standards.~~ The emission standards in this Rule apply to all incinerators subject to this Rule except where Rule .0524, .1110, or .1111 of this Subchapter applies. When Subparagraphs (12) or (13) of this Paragraph and Rules .0524, .1110, or .1111 of this Subchapter regulate the same pollutant, the more restrictive provision for each pollutant shall apply, notwithstanding provisions of Rules .0524, .1110, or .1111 of this Subchapter to the contrary.

- (1) ~~Particulate Matter.~~ Emissions of particulate matter from an OSWI unit shall not exceed 0.013 grains per dry standard cubic foot corrected to seven percent oxygen, dry basis (3-run average with 1 hour minimum sample time per run).

- (2) ~~Opacity.~~ Visible emissions from the stack of an OSWI unit shall not exceed 10 percent opacity (6 minute block average with 1 hour minimum sample time per run).
- (3) ~~Sulfur Dioxide.~~ Emissions of sulfur dioxide from an OSWI unit subject to the requirements of this Rule shall not exceed 3.1 parts per million by volume corrected to seven percent oxygen, dry basis (3 run average with 1 hour minimum sample time per run).
- (4) ~~Nitrogen Oxides.~~ Emissions of nitrogen oxides from an OSWI unit shall not exceed 103 parts per million by dry volume corrected to seven percent oxygen, dry basis (3 run average with 1 hour minimum sample time per run).
- (5) ~~Carbon Monoxide.~~ Emissions of carbon monoxide from an OSWI unit shall not exceed 40 parts per million by dry volume, corrected to seven percent oxygen, dry basis (3 run average with 1 hour minimum sample time per run) and 12 hour rolling averages measured using continuous emissions monitoring system (CEMS).
- (6) ~~Odorous Emissions.~~ An OSWI unit shall comply with Rule .1806 of this Subchapter for the control of odorous emissions.
- (7) ~~Hydrogen Chloride.~~ Emissions of hydrogen chloride from an OSWI unit shall not exceed 15 parts per million by dry volume, corrected to seven percent oxygen, dry basis (3 run average with 1 hour minimum sample time per run).
- (8) ~~Mercury Emissions.~~ Emissions of mercury from an OSWI unit shall not exceed 74 micrograms per dry standard cubic meter, corrected to seven percent oxygen, dry basis (3-run average with 1 hour minimum sample time per run).
- (9) ~~Lead Emissions.~~ Emissions of lead from an OSWI unit shall not exceed 226 micrograms per dry standard cubic meter, corrected to seven percent oxygen, dry basis (3 run average with 1 hour minimum sample time per run).
- (10) ~~Cadmium Emissions.~~ Emissions of cadmium from an OSWI unit shall not exceed 18 micrograms per dry standard cubic meter, corrected to seven percent oxygen, dry basis (3-run average with 1 hour minimum sample time per run).
- (11) ~~Dioxins and Furans.~~ Emissions of dioxins and furans from an OSWI unit shall not exceed 33 nanograms per dry standard cubic meter, corrected to seven percent oxygen, dry basis (3-run average with 1 hour minimum sample time per run).
- (12) ~~Toxic Emissions.~~ The owner or operator of any incinerator subject to the requirements of this Rule shall demonstrate compliance with Section .1100 of this Subchapter according to Section 15A NCAC 02Q .0700.

(13) Ambient Standards.

(A) In addition to the ambient air quality standards in Section .0400 of this Subchapter, the following ambient air quality standards, which are an annual average, in milligrams per cubic meter at 77°F (25°C) and 29.92 inches (760 mm) of mercury pressure, and which are increments above background concentrations, shall apply aggregately to all incinerators at a facility subject to this Rule:

POLLUTANT	STANDARD
arsenic and its compounds	2.3x10 ⁻⁷
beryllium and its compounds	4.1x10 ⁻⁶
cadmium and its compounds	5.5x10 ⁻⁶
chromium (VI) and its compounds	8.3x10 ⁻⁸

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

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

(e) Operational Standards.

- (1) The operational standards in this Rule do not apply to an OSWI unit when applicable operational standards in Rule .0524, .1110, or .1111 of this Subchapter apply.
- (2) The owner or operator of the OSWI shall meet the emission standards in Paragraph (d) of this Rule by July 1, 2010.
- (3) If a wet scrubber is used to comply with emission limitations, then the owner or operator of the OSWI unit:
 - (A) shall establish operating limits for the four operating parameters as specified in the Table 3 of 40 CFR 60, Subpart FFFF and as described in Paragraphs

40 CFR 60.3023(a) during the initial performance test, and;

(B) shall meet the operating limits established during the initial performance test beginning on July 1, 2010.

(4) If an air pollution control device other than a wet scrubber is used or if emissions are limited in some other manner to comply with the emission standards of Paragraph (d) of this Rule, the owner or operator of the OSWI unit subject to the requirements of this Rule shall petition the US Environmental Protection Agency (EPA) for specific operating limits that shall be established during the initial performance test and continuously monitored thereafter. The initial performance test shall not be conducted until after the EPA approves the petition. The petition shall include the five items listed in the Paragraph 40 CFR 60.3024(a) through (e).

(f) Periods of Startup, Shutdown, and Malfunction. The emission and operating standards apply at all times except during OSWI unit startups, shutdowns, or malfunctions.

(g) Test Methods and Procedures.

(1) The test methods and procedures described in Rule .0501 of this Subchapter, 40 CFR Part 60, Appendix A, 40 CFR Part 61, Appendix B, and 40 CFR 60.3027 shall be used to determine compliance with the emission standards in Paragraph (d) this Rule.

(2) The owner or operator of OSWI unit shall conduct:

(A) an initial performance test as required under 40 CFR 60.8 and according to 40 CFR 60.3027, no later than July 1, 2010; and after that;

(B) annual performance tests according to 40 CFR 60.3027 and 40 CFR 60.3033, within 12 months following the initial performance test and within each 12 months thereafter.

(3) The owner or operator of OSWI unit shall use the results of these tests:

(A) to demonstrate compliance with the emission standards in Paragraph (d) of this Rule, and;

(B) to establish operating standards using the procedures in Subparagraphs (e)(3) and (e)(4) of this Rule.

(4) The owner or operator of OSWI unit may conduct annual performance testing less often if the requirements of 40 CFR 60.3035 are met.

(5) The owner or operator of OSWI unit may conduct a repeat performance test at any time to establish new values for the operating limits. The Director may request a repeat performance test at any time if he finds that the current operating limits are no longer appropriate.

(h) Monitoring:

- (1) ~~The owner or operator of OSWI unit shall comply with the monitoring, recordkeeping, and reporting requirements in Section .0600 of this Subchapter and in 40 CFR 60.13, Monitoring Requirements.~~
 - (2) ~~The owner or operator of OSWI unit shall:~~
 - (A) ~~install, calibrate to manufacturers specifications, maintain, and operate continuous emission monitoring systems for carbon monoxide and for oxygen. The oxygen concentration shall be monitored at each location where the carbon monoxide concentrations are monitored;~~
 - (B) ~~operate the continuous monitoring system according to 40 CFR 60.3039;~~
 - (C) ~~conduct daily, quarterly, and annual evaluations of the continuous emission monitoring systems according to 40 CFR 60.3040;~~
 - (D) ~~collect the minimum amount of monitoring data using the procedures in 40 CFR 60.3041(a) through (e) if the continuous emission monitoring system is operating or the procedures in 40 CFR 60.3041(f) if the continuous emissions monitoring system is temporarily unavailable; and~~
 - (E) ~~convert the one hour arithmetic averages into the appropriate averaging times and units as specified in 40 CFR 60.3042 to monitor compliance with the emission standards in Paragraph (d) of this Rule.~~
 - (3) ~~The owner or operator of OSWI unit shall:~~
 - (A) ~~install, calibrate to manufacturers specifications, maintain, and operate devices or establish methods for monitoring or measuring the operating parameters as specified in 40 CFR 60.3043; and~~
 - (B) ~~obtain operating parameter monitoring data as specified in 40 CFR 60.3044 to monitor compliance with the operational standards in Paragraph (e) of this Rule.~~
- ~~(i) Recordkeeping and Reporting. The owner or operators of an OSWI unit:~~
- (1) ~~shall maintain all records required specified in 40 CFR 60.3046;~~
 - (2) ~~shall keep and submit records according to 40 CFR 60.3047;~~
 - (3) ~~shall submit, as specified in 40 CFR 60.3048, the following reports:~~

- (A) ~~an initial test report and operating limits, as specified in 40 CFR 60.3049(a) and (b);~~
 - (B) ~~a waste management plan as specified in 40 CFR 60.3049(e); and~~
 - (C) ~~an annual report as specified in 40 CFR 60.3050 and 40 CFR 60.3051;~~
 - (D) ~~a deviation report as specified in 40 CFR 60.3053 if a deviation from the operating limits or the emission limitations occurs according to 40 CFR 60.3052(a); the deviation report shall be submitted following 40 CFR 60.3052(b);~~
 - (E) ~~a deviation report according to 40 CFR 60.3054(a) if a deviation from the requirement to have a qualified operator accessible occurs;~~
- (4) ~~shall keep records and submit reports and notifications as required by 40 CFR 60.7;~~
 - (5) ~~may request changing semiannual or annual reporting dates as specified in this Paragraph; the Director may approve the request change using the procedures in 40 CFR 60.19(f).~~
 - (6) ~~shall submit reports in electronic or paper format postmarked on or before the submittal due dates.~~
- (j) ~~Excess Emissions and Start up and Shut down. All OSWI units shall comply with Rule .0535, Excess Emissions Reporting and Malfunctions, of this Subchapter.~~
- (k) ~~Operator Training and Certification:~~
- (1) ~~No OSWI unit shall be operated unless a fully trained and qualified OSWI unit operator is accessible, either at the facility or available within one hour. The trained and qualified OSWI unit operator may operate the OSWI unit directly or be the direct supervisor of one or more other plant personnel who operate OSWI unit.~~
 - (2) ~~Operator training and qualification shall be obtained by completing the requirements of 40 CFR 60.3014(c) by the latest of:~~
 - (A) ~~January 1, 2010,~~
 - (B) ~~six month after OSWI unit startup, or~~
 - (C) ~~six month after an employee assumes responsibility for operating the OSWI unit or assumes responsibility for supervising the operation of the OSWI unit.~~
 - (3) ~~Operator qualification shall be valid from the date on which the training course is completed and the operator successfully passes the examination required in 40 CFR 60.3014 (c)(2).~~
 - (4) ~~Operator qualification shall be maintained by completing an annual review or refresher course covering:~~
 - (A) ~~update of regulations;~~

- (B) ~~incinerator—operation,—including startup and shutdown procedures, waste charging, and ash handling;~~
- (C) ~~inspection and maintenance;~~
- (D) ~~responses to malfunctions or conditions that may lead to malfunction; and~~
- (E) ~~discussion of operating problems encountered by attendees.~~
- (5) ~~Lapsed operator qualification shall be renewed by:~~
 - (A) ~~Completing a standard annual refresher course as specified in Subparagraph (4) of this Paragraph for a lapse less than three years, and~~
 - (B) ~~Repeating the initial qualification requirements as specified in Subparagraph (3) of this Paragraph for a lapse of three years or more.~~
- (6) ~~The owner or operator of the OSWI unit subject to the requirements of this Rule shall:~~
 - (A) ~~have documentation specified in 40 CFR 60.3019(a) and (c) available at the facility and readily accessible for all OSWI unit operators and are suitable for inspection upon request;~~
 - (B) ~~establish a program for reviewing the documentation specified in Part (A) of this Subparagraph with each OSWI unit operator in a manner that the initial review of the information listed in Part (A) of this Subparagraph shall be conducted by the later of the three dates: January 1, 2010, six month after OSWI unit startup, or six month after an employee assumes responsibility for operating the OSWI unit or assumes responsibility for supervising the operation of the OSWI unit; and subsequent annual reviews of the information listed in Part (A) of this Subparagraph shall be conducted no later than twelve month following the previous review.~~
- (7) ~~The owner or operator of the OSWI unit shall follow the procedures in 40 CFR 60.3020 if all qualified OSWI unit operators are temporarily not at the facility and not able to be at the facility within one hour.~~
- (4) ~~Waste Management Plan.~~
 - (1) ~~The owner or operator of the OSWI unit shall submit a waste management plan that identifies in writing the feasibility and the methods used to reduce or separate components of solid waste from the waste stream in order to reduce or eliminate toxic emissions from incinerated waste. A waste management plan shall be submitted to the Director before September 1, 2010.~~
- (2) ~~The waste management plan shall include:~~
 - (A) ~~consideration of the reduction or separation of waste stream elements such as paper, cardboard, plastics, glass, batteries, or metals; and the use of recyclable materials;~~
 - (B) ~~identification of any additional waste management measures;~~
 - (C) ~~implementation of those measures considered practical and feasible, based on the effectiveness of waste management measures already in place;~~
 - (D) ~~the costs of additional measures and the emissions reductions expected to be achieved; and~~
 - (E) ~~any other environmental or energy impacts.~~
- (m) ~~Compliance Schedule.~~
 - (1) ~~This Paragraph applies only to OSWI that commenced construction on or before December 9, 2004.~~
 - (2) ~~The owner or operator of an OSWI unit shall submit a permit application, including a compliance schedule, to the Director before January 1, 2008.~~
 - (3) ~~All OSWI shall be in compliance with this Rule no later than January 1, 2010.~~
 - (4) ~~The owner or operator of an CISWI unit shall notify the Director within 10 business days after the OSWI unit is to be in final compliance whether the final compliance has been achieved. The final compliance is achieved by completing all process changes and retrofitting construction of control devices, as specified in the permit application and required by its permit, so that, if the affected OSWI unit is brought on line, all necessary process changes and air pollution control devices would operate as designed and permitted. If the final compliance has not been achieved the owner or operator of the OSWI unit, shall submit a notification informing the Director that the final compliance has not been met and submit reports each subsequent calendar month until the final compliance is achieved.~~
 - (5) ~~The owner or operator of an OSWI unit who closes the OSWI unit and restarts it before January 1, 2010 shall submit a permit application, including a compliance schedule, to the Director. Final compliance shall be achieved by January 1, 2010.~~
 - (6) ~~The owner or operator of an OSWI unit who closes the OSWI unit and restarts it after January 1, 2010, shall submit a permit application to the Director and shall complete the emission control retrofit and meet the emission limitations of this Rule by the date that the OSWI unit restarts operation. The initial~~

performance test shall be conducted within 30 days of restarting the OSWI unit.

- (7) The permit applications for OSWI units shall be processed under 15A NCAC 02Q .0500, Title V Procedures.
- (8) The owner or operator of an OSWI unit who plans to close it rather than comply with the requirements of this Rule shall submit a closure notification including the date of closure to the Director by January 1, 2008, and shall cease operation by January 1, 2010.

Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(4), (5), (10); 40 CFR 60.3014 through 60.3020.

15A NCAC 02D .1212 SMALL MUNICIPAL WASTE COMBUSTORS

(a) ~~Applicability.~~ This Rule applies to Class I municipal waste combustors, as defined in Rule .1202 of this Section.

(b) ~~Definitions.~~ For the purpose of this Rule, the definitions contained in 40 CFR 60.1940 (except administrator means the Director of the Division of Air Quality) apply in addition to the definitions in Rule .1202 of this Section.

(c) ~~Emission Standards.~~

- (1) The emission standards in this Paragraph apply to any municipal waste combustor subject to the requirements of this Rule except where Rule .0524, .1110, or .1111 of this Subchapter applies. However, when Subparagraphs (13) or (14) of this Paragraph and Rule .0524, .1110, or .1111 of this Subchapter regulate the same pollutant, the more restrictive provision for each pollutant applies, notwithstanding provisions of Rules .0524, .1110, or .1111 of this Subchapter to the contrary.
- (2) ~~Particulate Matter.~~ Emissions of particulate matter from each municipal waste combustor shall not exceed 27 milligrams per dry standard cubic meter corrected to seven percent oxygen.
- (3) ~~Visible Emissions.~~ The emission limit for opacity from each municipal waste combustor shall not exceed 10 percent average during any six minute period.
- (4) ~~Sulfur Dioxide.~~ Emissions of sulfur dioxide from each municipal waste combustor shall not exceed 31 parts per million by volume, dry basis, or potential sulfur dioxide emissions shall be reduced by at least 75 percent volume, dry basis, whichever is less stringent. Percent reduction shall be determined from continuous emissions monitoring data and in accordance with Reference Method 19, Section 12.5.4 of 40 CFR Part 60, Appendix A 7. Compliance with either standard is based on a 24-hour daily block geometric average of concentration data corrected to seven percent oxygen.
- (5) ~~Nitrogen Oxide.~~ Emissions of nitrogen oxide from each municipal waste combustor shall not

exceed the emission limits in Table 3 of 40 CFR Part 60, Subpart BBBB.

- (6) ~~Odorous Emissions.~~ Each municipal waste combustor shall comply with Rule .1806 of this Subchapter for the control of odorous emissions.
- (7) ~~Hydrogen Chloride.~~ Emissions of hydrogen chloride from each municipal waste combustor shall not exceed 31 milligrams per dry standard cubic meter (31 parts per million by weight as determined by Reference Method 26 or 26A of 40 CFR Part 60, Appendix A 8) or potential hydrogen chloride emissions shall be reduced by at least 95 percent of the mass concentration, dry basis, whichever is less stringent. Compliance with this Part shall be determined by averaging emissions over three one hour test runs, with paired data sets for percent reduction and correction to seven percent oxygen.
- (8) ~~Mercury Emissions.~~ Emissions of mercury from each municipal waste combustor shall not exceed 0.080 milligrams per dry standard cubic meter (as determined by Reference Method 29 of 40 CFR Part 60, Appendix A 8) or potential mercury emissions shall be reduced by at least 85 percent of the mass concentration, basis, whichever is less stringent. Compliance with this Subparagraph shall be determined by averaging emissions over three one hour test runs, with paired data sets for percent reduction and correction to seven percent oxygen.
- (9) ~~Lead Emissions.~~ Emissions of lead from each municipal waste combustor shall not exceed 0.490 milligrams per dry standard cubic meter and corrected to seven percent oxygen (as determined by Reference Method 29 of 40 CFR Part 60, Appendix A 8).
- (10) ~~Cadmium Emissions.~~ Emissions of cadmium from each municipal waste combustor shall not exceed 0.040 milligrams per dry standard cubic meter, corrected to seven percent oxygen (as determined by Reference Method 29 of 40 CFR Part 60, Appendix A 8).
- (11) ~~Dioxins and Furans.~~ Emissions of dioxins and furans from each municipal waste combustor shall not exceed:
 - (A) 60 nanograms per dry standard cubic meter (total mass) for facilities that employ an electrostatic precipitator-based emission control system, or
 - (B) 30 nanograms per dry standard cubic meter (total mass) for facilities that do not employ an electrostatic precipitator-based emission control system.

Compliance with this Subparagraph shall be determined by averaging emissions over three test runs with a minimum four hour run duration, performed in accordance with

- Reference Method 23 of 40 CFR Part 60, Appendix A 7, and corrected to seven percent oxygen.
- (12) ~~Fugitive Ash.~~
- (A) ~~On or after the date on which the initial performance test is completed, no owner or operator of a municipal waste combustor shall cause to be discharged to the atmosphere visible emissions of combustion ash from an ash conveying system (including conveyor transfer points) in excess of five percent of the observation period as determined by Reference Method 22 (40 CFR Part 60, Appendix A 7), except as provided in Part (B) of this Subparagraph. Compliance with this Part shall be determined from at least three 1-hour observation periods when the facility transfers ash from the municipal waste combustor to the area where the ash is stored or loaded into containers or trucks.~~
- (B) ~~The emission limit specified in Part (A) of this Subparagraph covers visible emissions discharged to the atmosphere from buildings or enclosures, not the visible emissions discharged inside of the building or enclosures, of ash conveying systems.~~
- (13) ~~Toxic Emissions. The owner or operator of a municipal waste combustor shall demonstrate compliance with Section .1100 of this Subchapter in accordance with 15A NCAC 02Q .0700.~~
- (14) ~~Ambient Standards.~~
- (A) ~~In addition to the ambient air quality standards in Section .0400 of this Subchapter, the following annual average ambient air quality standards in milligrams per cubic meter (77 degrees Fahrenheit, 25 degrees Celsius, and 29.92 inches, 760 millimeters of mercury pressure) are arsenic and its compounds (2.3×10^{-7}), beryllium and its compounds (4.1×10^{-6}), cadmium and its compounds (5.5×10^{-6}), and chromium (VI) and its compounds (8.3×10^{-6}). These are increments above background concentrations and apply aggregately to all municipal waste combustors at a facility.~~
- (B) ~~The owner or operator of a facility with municipal waste combustors shall demonstrate compliance with the ambient standards in Part (A) of this Subparagraph by following the procedures set out in Rule .1106 of this Subchapter. Modeling demonstrations shall comply with the good engineering practice stack height requirements of Rule .0533 of this Subchapter.~~
- (C) ~~The emission rates computed or used under Part (B) of this Subparagraph that demonstrate compliance with the ambient standards under Part (A) of this Subparagraph shall be specified as a permit condition for the facility with municipal waste combustors as their allowable emission limits unless Rule .0524, .1110, or .1111 of this Subchapter requires more restrictive rates.~~
- (15) ~~The emission standards of Subparagraphs (1) through (14) of this Paragraph apply at all times except during periods of municipal waste combustor startup, shutdown, or malfunction that last no more than three hours.~~
- (d) ~~Operational Standards.~~
- (1) ~~The operational standards in this Rule do not apply to any municipal waste combustors subject to this Rule when applicable operational standards in Rule .0524, .1110, or .1111 of this Subchapter apply.~~
- (2) ~~Each municipal waste combustor shall meet the following operational standards:~~
- (A) ~~The concentration of carbon monoxide at the municipal waste combustor outlet shall not exceed the concentration in Table 5 of 40 CFR Part 60, Subpart BBBB for each municipal waste combustor. The municipal waste combustor technology named in this table is defined in 40 CFR 60.1940.~~
- (B) ~~The load level shall not exceed 110 percent of the maximum demonstrated municipal waste combustor load determined from the highest four hour block arithmetic average achieved during four consecutive hours in the course of the most recent dioxins and furans stack test that demonstrates compliance with the emission limits of Paragraph (c) of this Rule.~~
- (C) ~~The temperature at which the combustor operates measured at the particulate matter control device inlet shall not exceed 63 degrees F (17 degrees C) above the maximum demonstrated particulate matter control device temperature determined from the highest 4 hour block arithmetic average measured at the inlet of the particulate matter control device during four consecutive hours~~

- in the course of the most recent dioxins and furans stack test that demonstrates compliance with the emission limits of Paragraph (e) of this Rule.
- (D) ~~The owner or operator of a municipal waste combustor with activated carbon control system to control dioxins and furans or mercury emissions shall maintain an eight hour block average carbon feed rate at or above the highest average level established during the most recent dioxins and furans or mercury test. The owner or operator of a municipal waste combustor shall calculate the required quarterly usage of carbon using the equation in 40 CFR 60.1935(f).~~
- (E) ~~The owner or operator of a municipal waste combustor is exempted from limits on load level, temperature at the inlet of the particulate matter control device, and carbon feed rate during the annual tests for dioxins and furans, the annual mercury tests (for carbon feed requirements only), the two weeks preceding the annual tests for dioxins and furans, and the two weeks preceding the annual mercury tests (for carbon feed rate requirements only).~~
- (F) ~~The limits on load level for a municipal waste combustor are waived when the Director concludes that the emission control standards would not be exceeded based on test activities to evaluate system performance, test new technology or control technology, perform diagnostic testing, perform other activities to improve the performance; or perform other activities to advance the state of the art for emissions controls.~~
- (3) ~~The operational standards of this Paragraph apply at all times except during periods of municipal waste combustor startup, shutdown, or malfunction that last no more than three hours. For periods of municipal waste combustor startup, shutdown, or malfunction that last more than three hours emission data shall not be discarded from compliance calculations and all provisions of 40 CFR 60.11(d) apply. During all periods of municipal waste combustor startup, shutdown, or malfunction, data shall be recorded and reported in accordance with the provisions of Paragraphs (f) and (g) of this Rule.~~
- (e) ~~Test Methods and Procedures.~~
- (1) ~~References contained in Table 8 of 40 CFR Part 60, Subpart BBBBB shall be used to determine the sampling location, pollutant concentrations, number of traverse points, individual test methods, and other testing requirements for the different pollutants.~~
- (2) ~~Stack tests for all the pollutants shall consist of at least three test runs, as specified in 40 CFR 60.8 and use the average of the pollutant emission concentrations from the three test runs to determine compliance with the applicable emission limits of Paragraph (e).~~
- (3) ~~An oxygen (or carbon dioxide) measurement shall be obtained at the same time as pollutant measurements to determine diluent gas levels, as specified in 40 CFR 60.1720.~~
- (4) ~~The equations in 40 CFR 60.1935 shall be used to calculate emission levels at seven percent oxygen (or an equivalent carbon dioxide basis), the percent reduction in potential hydrogen chloride emissions, and the reduction efficiency for mercury emissions. Other required equations are contained in individual test methods specified in Table 6 of 40 CFR Part 60, Subpart BBBBB.~~
- (5) ~~The owner or operator may apply to the Director for approval under 40 CFR 60.8(b) to use a reference method with minor changes in methodology, use an equivalent method, use an alternative method the results of which the Director has determined are adequate for demonstrating compliance, waive the requirement for a performance test because the owner or operator have demonstrated compliance by other means, or use a shorter sampling time or smaller sampling volume.~~
- (6) ~~The test methods and procedures described in Section 15A NCAC 02D .2600 of this Subchapter, 40 CFR Part 60, Appendix A and 40 CFR Part 61, Appendix B shall be used to determine compliance with emission standards in Paragraph (e) according to table 8 of 40 CFR Part 60, Subpart BBBBB.~~
- (7) ~~Method 29 of 40 CFR Part 60, Appendix A-8 shall be used to determine emission rates for metals for toxic evaluations except for chromium (VI). Method 29 shall be used only to collect samples and SW 846 Method 0060 shall be used to analyze the samples of chromium (VI).~~
- (8) ~~The owner or operator shall conduct initial stack tests to measure the emission levels of dioxins and furans, cadmium, lead, mercury, beryllium, arsenic, chromium (VI), particulate matter, opacity, hydrogen chloride, and fugitive ash. Annual stack tests for the same pollutants except beryllium, arsenic, and chromium (VI) shall be conducted no less than 9 months and no~~

- more than 15 months since the previous test and must complete five performance tests in each five year calendar period.
- (9) ~~The owner or operator must use results of stack tests for dioxins and furans, cadmium, lead, mercury, particulate matter, opacity, hydrogen chloride, and fugitive ash to demonstrate compliance with the applicable emission limits in this rule except for carbon monoxide, nitrogen oxides, and sulfur dioxide.~~
- (10) ~~The owner or operator must use results of continuous emissions monitoring of carbon monoxide, nitrogen oxides, and sulfur dioxide to demonstrate compliance with the applicable emission limits in this rule. The data from the continuous opacity monitoring system shall not be used to determine compliance with the opacity limit.~~
- (11) ~~The testing frequency for dioxin and furan may be reduced if the conditions under 40 CFR 60.1795(b) are met.~~
- (12) ~~The Director may require the owner or operator of any municipal waste combustor subject to this Rule to test his municipal waste combustor to demonstrate compliance with the emission standards in Paragraph (c) of this Rule.~~
- (f) ~~Monitoring, Recordkeeping, and Reporting.~~
- (1) ~~The owner or operator shall comply with the monitoring, recordkeeping, and reporting requirements developed pursuant to Section .0600 of this Subchapter.~~
- (2) ~~The owner or operator that has installed air pollution abatement equipment to reduce emissions of hydrogen chloride shall install, operate, and maintain continuous parametric monitoring equipment to measure pH for wet scrubber systems and rate of alkaline injection for dry scrubber systems.~~
- (3) ~~The owner or operator shall:~~
- (A) ~~install, calibrate, operate, and maintain, for each municipal waste combustor, continuous emission monitors to determine opacity, sulfur dioxide emissions, nitrogen oxides emissions, carbon monoxide, and oxygen (or carbon dioxide) according to 40 CFR 60.1715 through 60.1770;~~
- (B) ~~monitor load level of each municipal waste combustor according to 40 CFR 60.1810 and 60.1825;~~
- (C) ~~monitor temperature of the flue gases at the inlet of the particulate matter air pollution control device according to 40 CFR 60.1815 and 60.1825;~~
- (D) ~~monitor carbon feed rate if activated carbon is used to abate dioxins and furans or mercury emissions according to 40 CFR 60.1820 and 60.1825;~~
- (E) ~~maintain records of the information listed in 40 CFR 60.1830 through 60.1855 for a period of at least five years;~~
- (F) ~~submit a semiannual report specified in 40 CFR 60.1885, no later than February 1 and August 1 each year; and~~
- (G) ~~submit semiannual reports specified in 40 CFR 60.1900 of any recorded pollutant or parameter that does not comply with the pollutant or parameter limit specified in this Section using the schedule specified in 40 CFR 60.1895.~~
- (g) ~~Excess Emissions and Start up and Shut down. All municipal waste combustors subject to this Rule shall comply with Rule .0535, Excess Emissions Reporting and Malfunctions, of this Subchapter.~~
- (h) ~~Operator Certification.~~
- (1) ~~Each chief facility operator and shift supervisor shall obtain and keep a current provisional certification within six months after he transfers to the municipal waste combustion facility or six months after he is hired to work at the municipal waste combustor facility.~~
- (2) ~~Each chief facility operator and shift supervisor shall have obtained a full certification or have scheduled a full certification exam with the American Society of Mechanical Engineers (ASME QRO 1 1994) after he transfers to the municipal waste combustor facility or six months after he is hired to work at the municipal waste combustor facility.~~
- (3) ~~The owner or operator of a municipal waste combustor facility shall not allow the facility to be operated at any time unless one of the following persons is on duty at the affected facility:~~
- (A) ~~a fully certified chief facility operator;~~
- (B) ~~a provisionally certified chief facility operator who is scheduled to take the full certification exam;~~
- (C) ~~a fully certified shift supervisor; or~~
- (D) ~~a provisionally certified shift supervisor who is scheduled to take the full certification exam.~~
- (4) ~~If the certified chief facility operator and certified shift supervisor both are unavailable, a provisionally certified control room operator at the municipal waste combustor may fulfill the certified operator requirement. Depending on the length of time that a certified chief facility operator and certified shift supervisor are away, one of three criteria shall be met:~~
- (A) ~~When the certified chief facility operator and certified shift supervisor are both offsite for 12 hours or less and no other certified operator is on site,~~

- ~~the provisionally certified control room operator may perform those duties without notice to or approval by the Director.~~
- (B) ~~When the certified chief facility operator and certified shift supervisor are offsite for more than 12 hours, but for two weeks or less, and no other certified operator is on site, the provisionally certified control room operator may perform those duties without notice to or approval by the Director. However, the owner or operator must record the periods when the certified chief facility operator and certified shift supervisor are offsite and include the information in the annual report as specified under 40 CFR 60.1885(l).~~
- (C) ~~When the certified chief facility operator and certified shift supervisor are offsite for more than two weeks and no other certified operator is on site, the provisionally certified control room operator may perform those duties without notice to or approval by the Director. However, the owner or operator shall notify the Director in writing and submit a status report and corrective action summary to the Director every four weeks. In the notice, the owner or operator shall state what caused the absence and what is being done to ensure that a certified chief facility operator or certified shift supervisor is on site. If the Director notifies the owner or operator that the status report or corrective action summary is disapproved, the municipal waste combustor may continue operation for 90 days, but then shall cease operation. If corrective actions are taken in the 90 day period such that the Director withdraws the disapproval, municipal waste combustor operations may continue.~~
- (D) ~~The Director shall disapprove the status report and corrective action summary report, described in Part (C) of this Subparagraph, if operating permit requirements are not being met, the status or corrective action reports indicate that the effort to have a certified chief facility operator or certified shift supervisor on site as expeditiously as practicable is not being met, or the reports are not delivered in a timely manner.~~
- ~~The referenced ASME exam (ASME QRO 1 1994), "Standard for the Qualification and Certification of Resource Recovery Facility Operators," in this Paragraph is hereby incorporated by reference and includes subsequent amendments and editions. Copies of the referenced ASME exam may be obtained from the American Society of Mechanical Engineers (ASME), 22 Law Drive, Fairfield, NJ 07007, at a cost of forty nine dollars (\$49.00).~~
- (i) ~~Training-~~
- (1) ~~The owner or operator of each municipal waste combustor shall develop and update on a yearly basis a site specific operating manual that shall address:~~
- ~~(A) a summary of all applicable requirements in this Rule;~~
 - ~~(B) a description of the basic combustion principles that apply to municipal waste combustors;~~
 - ~~(C) procedures for receiving, handling, and feeding municipal solid waste;~~
 - ~~(D) procedures to be followed during periods of startup, shutdown, and malfunction of the municipal waste combustor;~~
 - ~~(E) procedures for maintaining a proper level of combustion air supply;~~
 - ~~(F) procedures for operating the municipal waste combustor in compliance with the requirements contained in 40 CFR 60 Subpart JJJ;~~
 - ~~(G) procedures for responding to periodic upset or off specification conditions;~~
 - ~~(H) procedures for minimizing carryover of particulate matter;~~
 - ~~(I) procedures for handling ash;~~
 - ~~(J) procedures for monitoring emissions from the municipal waste combustor; and~~
 - ~~(K) procedures for recordkeeping and reporting.~~
- ~~The operating manual shall be updated continually and be kept in a readily accessible location for all persons required to undergo training under Subparagraph (2) of this Paragraph. The operating manual and records of training shall be available for inspection by the personnel of the Division on request.~~
- (2) ~~The owner or operator of the municipal waste combustor plant shall establish a training program to review the operating manual according to the schedule specified in Parts (A) and (B) of this Subparagraph with each person who has responsibilities affecting the operation of the facility including chief facility operators, shift supervisors, control room operators, ash handlers, maintenance personnel, and crane and load handlers:~~
- ~~(A) A date prior to the day when the person assumes responsibilities affecting municipal waste combustor operation; and~~

- (B) ~~Annually, following the initial training required by Part (A) of this Subparagraph.~~

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(3),(4),(5); 40 CFR 60.35b; 40 CFR 60.34e; 40 CFR 60.1515.

SUBCHAPTER 02Q - AIR QUALITY PERMITS PROCEDURES

SECTION .0700 – TOXIC AIR POLLUTANT PROCEDURES

15A NCAC 02Q .0701 APPLICABILITY (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02Q .0702 EXEMPTIONS

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

- (1) residential wood stoves, heaters, or fireplaces;
- (2) ~~hot~~ water heaters that are used for domestic purposes only and are not used to heat process water;
- (3) maintenance, structural changes, or repairs that do not change capacity of that process, fuel-burning, refuse-burning, or control equipment, and do not involve any change in quality or nature or increase in quantity of emission of any regulated air pollutant or toxic air pollutant;
- (4) housekeeping activities or building maintenance procedures, including painting buildings, resurfacing floors, roof repair, washing, portable vacuum cleaners, sweeping, use and associated storage of janitorial products, or non-asbestos bearing insulation removal;
- (5) use of office supplies, supplies to maintain copying equipment, or blueprint machines;
- (6) paving parking lots;
- (7) replacement of existing equipment with equipment of the same size, type, and function if the new equipment:
 - (A) does not result in an increase to the actual or potential emissions of any regulated air pollutant or toxic air pollutant;
 - (B) does not affect compliance status; and
 - (C) fits the description of the existing equipment in the permit, including the application, such that the replacement equipment can be operated under that permit without any changes to the permit;
- (8) comfort air conditioning or comfort ventilation systems that do not transport, remove, or exhaust regulated air pollutants to the atmosphere;
- (9) equipment used for the preparation of food for direct on-site human consumption;

- (10) non-self-propelled non-road ~~engines, except generators,~~ engines regulated by rules adopted by the Environmental Protection Agency under Title II of the federal Clean Air Act; Act, except generators;
- (11) stacks or vents to prevent escape of sewer gases from domestic waste through plumbing traps;
- (12) use of fire fighting equipment;
- (13) the use for agricultural operations by a farmer of fertilizers, pesticides, or other agricultural chemicals containing one or more of the compounds listed in 15A NCAC 02D .1104 if such compounds are applied according to agronomic practices for agricultural operations acceptable to the North Carolina Department of Agriculture;
- (14) asbestos demolition and renovation projects that comply with 15A NCAC 02D .1110 and that are being done by persons accredited by the Department of Health and Human Services under the Asbestos Hazard Emergency Response Act;
- (15) incinerators used only to dispose of dead animals or poultry as identified in 15A NCAC 02D ~~.1201(c)(4),~~ 1201(b)(4) or incinerators used only to dispose of dead pets as identified in 15A NCAC 02D .1208(a)(2)(A);
- (16) refrigeration equipment that is consistent with Section 601 through 618 of Title VI (Stratospheric Ozone Protection) of the federal Clean Air Act, 40 CFR Part 82, and any other regulations promulgated by EPA under Title VI for stratospheric ozone protection, except those units used as or with air pollution control equipment;
- (17) laboratory activities:
 - (A) bench-scale, on-site equipment used exclusively for chemical or physical analysis for quality control purposes, staff instruction, water or wastewater analyses, or non-production environmental compliance assessments;
 - (B) bench scale experimentation, chemical or physical analyses, training or instruction from nonprofit, non-production educational laboratories;
 - (C) bench scale experimentation, chemical or physical analyses, training or instruction from hospital or health laboratories pursuant to the determination or diagnoses of illnesses; and
 - (D) research and development laboratory activities that are not required to be permitted under Section .0500 of this Subchapter 15A NCAC 02Q .0500 provided the activity produces no

- commercial product or feedstock material;
- (18) combustion sources as defined in ~~Rule .0703 of this Section 15A NCAC 02Q .0703, except new or modified combustion sources permitted on or after July 10, 2010; that are not exempt pursuant to Subparagraph (a)(27) of this Rule;~~
- (19) storage tanks used only to store:
- (A) inorganic liquids with a true vapor pressure less than 1.5 pounds per square inch absolute;
- (B) fuel oils, kerosene, diesel, crude oil, used motor oil, lubricants, cooling oils, natural gas, liquefied petroleum gas, or petroleum products with a true vapor pressure less than 1.5 pounds per square inch absolute;
- (20) dispensing equipment used solely to dispense diesel fuel, kerosene, lubricants or cooling oils;
- (21) portable solvent distillation systems that are ~~exempted under Rule .0102(e)(1)(I) of this Subchapter; used for on-site solvent recycling if:~~
- (A) the portable solvent distillation system is not owned by the facility;
- (B) the portable solvent distillation system is not operated for more than seven consecutive days; and
- (C) the material recycled is recycled at the site of origin;
- (22) processes:
- (A) electric motor burn-out ovens with secondary combustion chambers or afterburners;
- (B) electric motor bake-on ovens;
- (C) burn-off ovens for paint-line hangers with afterburners;
- (D) hosiery knitting machines and associated lint screens, hosiery dryers and associated lint screens, and hosiery dyeing processes where bleach or solvent dyes are not used;
- (E) blade wood planers planing only green wood;
- (F) saw mills that saw no more than 2,000,000 board feet per year, provided only green wood is sawed;
- ~~(G) perchloroethylene drycleaning processes with 12 month rolling total consumption of:~~
- (i) ~~less than 1366 gallons of perchloroethylene per year for facilities with dry to dry machines only;~~
- (ii) ~~less than 1171 gallons of perchloroethylene per year for facilities with transfer machines only; or~~
- (iii) ~~less than 1171 gallons of perchloroethylene per year for facilities with both transfer and dry to dry machines;~~
- (23) wood furniture manufacturing operations as defined in 40 CFR 63.801(a) that comply with the emission limitations and other requirements of 40 CFR Part 63 Subpart JJ, provided that the terms of this exclusion shall not affect the authority of the Director under ~~Rule .0712 of this Section; 15A NCAC 02Q .0712;~~
- (24) wastewater treatment systems at pulp and paper mills for hydrogen sulfide and methyl mercaptan only;
- (25) natural gas and propane fired combustion sources with an aggregate allowable heat input value less than 450 million Btu per hour that are the only source of benzene at the facility;
- (26) emergency engines with an aggregate total horsepower less than 4843 horsepower that are the only source of formaldehyde at the facility;
- (27) an air emission source that is any of the following:
- (A) subject to an applicable requirement under 40 CFR Part 61, as amended;
- (B) an affected source under 40 CFR Part 63, as amended; or
- (C) subject to a case-by-case MACT permit requirement issued by the Division pursuant to Paragraph (j) of 42 U.S.C. Section 7412, as amended;
- (28) gasoline dispensing facilities or gasoline service station operations that comply with 15A NCAC 02D .0928 and .0932 and that receive gasoline from bulk gasoline plants or bulk gasoline terminals that comply with 15A NCAC 02D .0524, .0925, .0926, .0927, .0932, and .0933 via tank trucks that comply with 15A NCAC 02D .0932;
- (29) the use of ethylene oxide as a sterilant in the production and subsequent storage of medical devices or the packaging and subsequent storage of medical devices for sale if the emissions from all new and existing sources at the facility described in 15A NCAC 02D .0538(d) are controlled to the degree described in 15A NCAC 02D .0538(d) and the facility complies with 15A NCAC 02D .0538(e) and (f);
- (30) bulk gasoline plants, including the storage and handling of fuel oils, kerosenes, and jet fuels but excluding the storage and handling of other organic liquids, that comply with 15A NCAC 02D .0524, .0925, .0926, .0932, and .0933; unless the Director finds that a permit to emit toxic air pollutants is required under Paragraph (b) of this Rule or ~~Rule .0712 of this Section~~

- (31) 15A NCAC 02Q .0712 for a particular bulk gasoline plant; or
- (31) bulk gasoline terminals, including the storage and handling of fuel oils, kerosenes, and jet fuels but excluding the storage and handling of other organic liquids, that comply with 15A NCAC 02D .0524, .0925, .0927, .0932, and .0933 if the bulk gasoline terminal existed before November 1, 1992, unless:
- (A) the Director finds that a permit to emit toxic air pollutants is required under Paragraph (b) of this Rule or ~~Rule .0712 of this Section~~ 15A NCAC 02Q .0712 for a particular bulk gasoline terminal; or
- (B) the owner or operator of the bulk gasoline terminal meets the requirements of 15A NCAC 02D .0927(i).

(b) Emissions from the activities identified in Subparagraphs (a)(28) through (a)(31) of this Rule shall be included in determining compliance with the toxic air pollutant requirements in this Section and shall be included in the permit if necessary to assure compliance. Emissions from the activities identified in Subparagraphs (a)(1) through (a)(27) of this Rule shall not be included in determining compliance with the toxic air pollutant requirements in this Section provided that the terms of this exclusion shall not affect the authority of the Director under ~~Rule .0712 of this Section~~ 15A NCAC 02Q .0712.

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

(d) ~~An activity~~ A source that is exempt from being permitted under this Section ~~is shall not be~~ exempt from any applicable requirement other than those pursuant to 15A NCAC 02Q .0700 and 02D .1100, or that the ~~Additionally, the~~ owner or operator of the source ~~is shall not be~~ exempted from demonstrating compliance with any applicable ~~requirement~~ requirement other than those exempted under 15A NCAC 02Q .0700 and 02D .1100.

Authority G.S. 143-215.3(a)(1); 143-215.107; 143-215.108; 143B-282.

15A NCAC 02Q .0703 DEFINITIONS

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

- (1) "Actual rate of emissions" means:
- (a) for existing sources:
- (i) for toxic air pollutants with an annual averaging period, the average rate or rates at which the source actually emitted the pollutant during the two-year period preceding the date of the particular modification and that represents normal operation of the source. If this period does not represent normal operation, the

Director may allow the use of a different, more representative, period.

- (ii) for toxic air pollutants with a 24-hour or one-hour averaging period, the maximum actual emission rate at which the source actually emitted for the applicable averaging period during the two-year period preceding the date of the particular modification and that represents normal operation of the source. If this period does not represent normal operation, the Director may require or allow the use of a different, more representative, period.

- (b) for new or modified sources, the average rate or rates, determined for the applicable averaging period(s), that the proposed source will actually emit the pollutant as determined by engineering evaluation.

- (2) "Applicable averaging period" means the averaging period for which an acceptable ambient limit has been established by the Commission in ~~Rule 15A NCAC 02D .1104~~ 15A NCAC 02D .1104, including the provisions in 15A NCAC 02D .1106(d).

- (3) "Bioavailable chromate pigments" means the group of chromium (VI) compounds consisting of calcium chromate (CAS No.13765-19-0), calcium dichromate (CAS No. 14307-33-6), strontium chromate (CAS No. 7789-06-2), strontium dichromate (CAS No. 7789-06-2), zinc chromate (CAS No. 13530-65-9), and zinc dichromate (CAS No. 7789-12-0).

- (4) "CAS Number" means the Chemical Abstract Service registry number identifying a particular substance.

- (5) "Chromium (VI) equivalent" means the molecular weight ratio of the chromium (VI) portion of a compound to the total molecular weight of the compound multiplied by the associated compound emission rate or concentration at the facility.

- (6) "Combustion sources" means boilers, space heaters, process heaters, internal combustion engines, and combustion turbines, which ~~burn only wood or unadulterated fossil fuel~~ combusts wood, unadulterated fossil fuels, or non-hazardous secondary materials that are not solid wastes pursuant to 40 CFR Part 241. It does not include incinerators, waste combustors, kilns, dryers, or direct heat exchange industrial processes.

- (7) "Creditable emissions" means actual ~~decreased emissions~~ emission decreases that have not been previously relied on to comply with Subchapter 15A NCAC 02D. All creditable emissions shall be enforceable by permit condition.
- (8) "Cresol" means o-cresol, p-cresol, m-cresol, or any combination of these compounds.
- (9) "Evaluation" means:
- (a) a determination that the emissions from the facility, including emissions from sources exempted by ~~Rule 15A NCAC 02Q .0702(a)(28) through (31) of this Section;~~ Rule 15A NCAC 02Q .0711 of this Section; are less than the rate listed in ~~Rule .0711 of this Section;~~ 15A NCAC 02Q .0711; or
- (b) a determination of ambient air concentrations as described under 15A NCAC 02D .1106, including emissions from sources exempted by ~~Rule 15A NCAC 02Q .0702(a)(28) through (31) of this Section. (31).~~ Rule 15A NCAC 02Q .0702(a)(28) through (31) of this Section. (31).
- (10) "GACT" means any generally available control technology emission standard applied to an area source or facility pursuant to Section 112 of the federal Clean Air Act.
- (11) "Hexane isomers except n-hexane" means 2-methyl pentane, 3-methyl pentane, 2,2-dimethyl butane, 2,3-dimethyl butane, or any combination of these compounds.
- (12) "MACT" means any maximum achievable control technology emission standard applied to a source or facility pursuant to Section 112 federal Clean Air Act.
- (13) "Maximum feasible control" means the maximum degree of reduction for each pollutant subject to regulation under this Section using the best technology that is available taking into account, on a case-by-case basis, human health, energy, environmental, and economic impacts and other costs.
- (14) "Modification" means any physical changes or changes in the methods of operation that result in a net increase in emissions or ambient concentration of any pollutant listed in ~~Rule .0711 of this Section~~ 15A NCAC 02Q .0711 or that result in the emission of any pollutant listed in ~~Rule .0711 of this Section~~ 15A NCAC 02Q .0711 not previously emitted.
- (15) "Net increase in emissions" means for a modification the sum of any increases in permitted allowable and decreases in the actual rates of emissions from the proposed modification from the sources at the facility for which the air permit application is being filed. If the net increase in emissions from the proposed modification is greater than zero, all other increases in permitted allowable and decreases in the actual rates of emissions at the facility within five years immediately preceding the filing of the air permit application for the proposed modification that are otherwise creditable emissions may be included.
- (16) "Nickel, soluble compounds" means the soluble nickel salts of chloride (NiCl₂, CAS No. 7718-54-9), sulfate (NiSO₄, CAS No. 7786-81-4), and nitrate (Ni(NO₃)₂, CAS No. 13138-45-9).
- (17) "Non-specific chromium (VI) compounds" means the group of compounds consisting of any chromium (VI) compounds not specified in this Section as a bioavailable chromate pigment or a soluble chromate compound.
- (18) "Polychlorinated biphenyls" means any chlorinated biphenyl compound or mixture of chlorinated biphenyl compounds.
- (19) "Pollution prevention plan" means a written description of current and projected plans to reduce, prevent, or minimize the generation of pollutants by source reduction and recycling and includes a site-wide assessment of pollution prevention opportunities at a facility that addresses sources of air pollution, water pollution, and solid and hazardous waste generation.
- (20) ~~"SIC" means standard industrial classification code.~~
- (21)(20) "Soluble chromate compounds" means the group of chromium (VI) compounds consisting of ammonium chromate (CAS No. 7788-98-9), ammonium dichromate (CAS No. 7789-09-5), chromic acid (CAS No. 7738-94-5), potassium chromate (CAS No. 7789-00-6), potassium dichromate (CAS No. 7778-50-9), sodium chromate (CAS No. 7775-11-3), and sodium dichromate (CAS No. 10588-01-9).
- (22) ~~"Toxic air pollutant" means any of those carcinogens, chronic toxicants, acute systemic toxicants, or acute irritants listed in 15A NCAC 02D .1104.~~
- Authority G.S. 143-215.3(a)(1); 143-215.107; 143-215.108; 143B-282.*
- 15A NCAC 02Q .0704 NEW FACILITIES**
- (a) This Rule applies only to new facilities.
- (b) The owner or operator of a facility required to have a permit ~~because of applicability of~~ pursuant to 15A NCAC 02Q .0300 or .0500 and is subject to a Section in 15A NCAC 02D, other than 15A NCAC 02D .1100, ~~are~~ is required to receive a permit to emit toxic air pollutants before beginning construction, and shall comply with the permit when beginning operation. This ~~Paragraph~~ Rule does not apply to facilities whose emissions of toxic air pollutants result only from sources exempted under ~~Rule .0102 of this Subchapter.~~ 15A NCAC 02Q .0102.
- (c) The owner or operator of the facility shall submit a permit application to comply with 15A NCAC 02D .1100 if emissions of any toxic air ~~pollutant~~ pollutant, excluding sources exempt from evaluation in 15A NCAC 02Q .0702, exceed the levels contained

in ~~Rule .0711 of this Section.~~ 15A NCAC 02Q .0711. Sources meeting the exemption in 15A NCAC 02Q .0702(a)(27) shall be reviewed by the Division pursuant to G.S. 143-215.107(a)(5)b.

(d) The permit application filed pursuant to this Rule shall include an evaluation for all toxic air pollutants ~~listed in 15A NCAC 02D .1104.~~ pollutants. All sources at the facility, excluding sources exempt from evaluation in ~~Rule .0702 of this Section.~~ 15A NCAC 0702, emitting these toxic air pollutants shall be included in the evaluation.

Authority G.S. 143-215.3(a)(1); 143-215.107; 143-215.108; 143B-282.

15A NCAC 02Q .0706 MODIFICATIONS

(a) The owner or operator shall comply with Paragraphs (b) and (c) of this Rule for a modification of any facility required to have a permit because of applicability of that is subject to a Section in 15A NCAC 02D, other than 15A NCAC 02D .1100 and that:

- (1) requires a permit pursuant to 15A NCAC 02Q .0300; or
- (2) occurs at a facility with a permit pursuant to 15A NCAC 02Q .0500 and emits a pollutant that is part of the facility's previous modeling demonstration conducted pursuant to 02D .1104 and 02Q .0709, if that modification is not exempted pursuant to 15A NCAC 02Q .0702.

This ~~Paragraph Rule~~ does not apply to facilities whose emissions of toxic air pollutants result only from insignificant activities, as defined in ~~Rule .0103(20) of this Subchapter.~~ 15A NCAC 02Q .0103(20), or result only from sources exempted under Rule .0102 of this Subchapter. 15A NCAC 02Q .0102.

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

- (1) a net increase in emissions or ambient concentration as previously determined pursuant to 15A NCAC 02D .1106 and 02Q .0709 of any toxic air pollutant that the facility was emitting before the modification; or
- (2) emissions of any toxic air pollutant that the facility was not emitting before the modification if such emissions exceed the levels contained in Rule .0711 of this Section. 15A NCAC 02Q .0711.

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

- (1) ~~a net increase in emissions of any toxic air pollutant that the facility was emitting before the modification; and~~
- (2) ~~emission of any toxic air pollutant that the facility was not emitting before the modification if such emissions exceed the levels contained in Rule .0711 of this Section.~~

All sources at the facility, excluding sources exempt from evaluation in ~~Rule .0702 of this Section.~~ 15A NCAC 02Q .0702, emitting these toxic air pollutants shall be included in the

evaluation. Sources meeting the exemption in 15A NCAC 02Q .0702(a)(27) shall be reviewed by the Division pursuant to G.S. 143-215.107(a)(5)b.

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

Authority G.S. 143-215.3(a)(1); 143-215.107; 143-215.108; 143B-282.

15A NCAC 02Q .0707 PREVIOUSLY PERMITTED FACILITIES (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02Q .0708 COMPLIANCE SCHEDULE FOR PREVIOUSLY UNKNOWN TOXIC AIR POLLUTANT EMISSIONS

(a) The owner or operator of a facility permitted to emit toxic air pollutants shall submit a permit application within six months after the owner or operator learns of an emission of a previously unknown toxic air pollutant from a ~~permitted~~ source at the facility that would have been included in the permit when it was issued. The application shall include the information required by Paragraph (b) of this Rule.

(b) When an application to revise a permit is submitted under this Rule, the owner or operator shall in addition to the application, submit to the Director:

- (1) an evaluation for the pollutant according to this Section and 15 NCAC ~~2D 02D~~ .1100 that demonstrates compliance with the acceptable ambient level in 15A NCAC ~~2D 02D~~ .1104; or
- (2) a compliance schedule containing the information required under Paragraph (c) of this Rule for the proposed modifications to the facility required to comply with the acceptable ambient level according to this Section and Section 15A NCAC ~~2Q 02Q~~ .1100.

(c) The compliance schedule required under Subparagraph (b)(2) of this Rule shall contain the following increments of progress as applicable:

- (1) a date by which contracts for emission control and process equipment shall be awarded or orders shall be issued for the purchase of component parts;
- (2) a date by which on-site construction or installation of the emission control and process equipment shall begin;
- (3) a date by which on-site construction or installation of the emission control and process equipment shall be completed; and
- (4) the date by which final compliance shall be achieved.

(d) Final compliance shall be achieved no later than:

- (1) six months after the permit modification or renewal is issued if construction or installation of emission control or process equipment is not required;
- (2) one year after the permit modification or renewal is issued if construction or installation of emission control or process equipment is required; or
- (3) the time that is normally required to construct a stack or install other dispersion enhancement modifications but not more than one year after the permit modification or renewal is issued.

(e) The owner or operator shall certify to the Director within 10 days after each applicable deadline for each increment of progress required under Paragraph (c) of this Rule whether the required increment of progress has been met.

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(3),(5); 143B-282; S.L. 1989, c. 168, s. 45.

15A NCAC 02Q .0709 DEMONSTRATIONS

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

- (1) demonstrate to the satisfaction of the Director through dispersion modeling conducted pursuant to 15A NCAC 02D .1106 that the emissions of toxic air pollutants from the facility ~~will~~ shall not cause any acceptable ambient level listed in 15A NCAC 02D .1104 to be exceeded beyond the facility's premises (adjacent property boundary); with such exceptions as may be allowed under 15A NCAC 2Q .0700; or
- (2) demonstrate to the satisfaction of the Commission or its delegate that the ambient concentration beyond the premises (adjacent property boundary) for the subject toxic air pollutant shall not adversely affect human health (e.g., a risk assessment specific to the facility) though the concentration is higher than the acceptable ambient level in 15A NCAC 02D .1104 by providing one of the following demonstrations:
 - (A) the area where the ambient concentrations are expected to exceed the acceptable ambient levels in 15A NCAC 02D .1104 is not inhabitable or occupied for the duration of the averaging time of the pollutant of concern; or
 - (B) new toxicological data that show that the acceptable ambient level in 15A NCAC 02D .1104 for the pollutant of concern is too low and the facility's ambient impact is below the level indicated by the new toxicological data.

(b) Technical Infeasibility and Economic Hardship. This Paragraph shall not apply to any incinerator covered ~~under pursuant to~~ 15A NCAC 02D .1200. The owner or operator of any source constructed before May 1, 1990, ~~or a perchloroethylene dry cleaning facility subject to a GACT standard under 40 CFR 63.320 through 63.325;~~ or a combustion source as defined in ~~Rule .0703 of this Section~~ 15A NCAC 02Q .0703 permitted before July 10, 2010, who cannot supply a demonstration described in Paragraph (a) of this Rule shall:

- (1) demonstrate to the satisfaction of the Commission or its delegate that complying with the guidelines in 15A NCAC 02D .1104 is technically infeasible, as the technology necessary to reduce emissions to a level to prevent the acceptable ambient levels in 15A NCAC 02D .1104 from being exceeded does not exist; or
- (2) demonstrate to the satisfaction of the Commission or its delegate that complying with the guidelines in 15A NCAC 02D .1104 would result in serious economic hardship. In deciding if a serious economic hardship exists, the Commission or its delegate shall consider market impact; impacts on local, regional and state economy; risk of closure; capital cost of compliance; annual incremental compliance cost; and environmental and health impacts.

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

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

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

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

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

stringent emission levels according to its analysis under 15A NCAC 02D .1107.

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

- (1) The permit is renewed, at which time the owner or operator of the facility shall submit an air toxic evaluation, excluding sources exempt from evaluation in ~~Rule .0702 of this Section~~, 15A NCAC 02Q .0702, showing that the new acceptable ambient level will not be exceeded. If additional time is needed to bring the facility into compliance with the new acceptable ambient level, the owner or operator shall negotiate a compliance schedule with the Director. The compliance schedule shall be written into the facility's permit and final compliance shall not exceed two years from the effective date of the change in the acceptable ambient level; or

- (2) The owner or operator of the facility requests that the condition be changed and submits along with that request an air toxic evaluation, excluding sources exempt from evaluation in ~~Rule .0702 of this Section~~, 15A NCAC 02Q .0702, showing that the new acceptable ambient level shall not be exceeded.

Authority G.S. 143-215.3(a)(1); 143-215.107; 143-215.108; 143B-282.

15A NCAC 02Q .0710 PUBLIC NOTICE AND OPPORTUNITY FOR PUBLIC HEARING (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02Q .0711 EMISSION RATES REQUIRING A PERMIT

(a) A permit to emit toxic air pollutants shall be required for any ~~facility~~ facility, excluding sources exempt from evaluation in 15A NCAC 02Q .0702, where one or more emission release points are obstructed or non-vertically oriented whose actual rate of emissions by pollutant from all sources are greater than any one of the following toxic air pollutant permitting emissions rates:

Obstructed or Non-Vertical Oriented Toxic Air Pollutant Permitting Emission Rates (TPER)				
Pollutant (CAS Number)	Carcinogens lb/yr	Chronic Toxicants lb/day	Acute Systemic Toxicants lb/hr	Acute Irritants lb/hr
acetaldehyde (75-07-0)				6.8
acetic acid (64-19-7)				0.96
acrolein (107-02-8)				0.02
acrylonitrile (107-13-1)		0.4	0.22	
ammonia (7664-41-7)				0.68
aniline (62-53-3)			0.25	
arsenic and inorganic arsenic compounds	0.053			
asbestos (1332-21-4)	5.7 X 10 ⁻³			
aziridine (151-56-4)		0.13		
benzene (71-43-2)	8.1			
benzidine and salts (92-87-5)	0.0010			
benzo(a)pyrene (50-32-8)	2.2			
benzyl chloride (100-44-7)			0.13	
beryllium (7440-41-7)	0.28			
beryllium chloride (7787-47-5)	0.28			
beryllium fluoride (7787-49-7)	0.28			
beryllium nitrate (13597-99-4)	0.28			
bioavailable chromate pigments, as chromium (VI) equivalent	0.0056			
bis-chloromethyl ether (542-88-1)	0.025			
bromine (7726-95-6)				0.052
1,3-butadiene (106-99-0)	11			
cadmium (7440-43-9)	0.37			
cadmium acetate (543-90-8)	0.37			
cadmium bromide (7789-42-6)	0.37			
carbon disulfide (75-15-0)		3.9		
carbon tetrachloride (56-23-5)	460			
chlorine (7782-50-5)		0.79		0.23
chlorobenzene (108-90-7)		46		

PROPOSED RULES

Obstructed or Non-Vertical Oriented Toxic Air Pollutant Permitting Emission Rates (TPER)				
Pollutant (CAS Number)	Carcinogens lb/yr	Chronic Toxicants lb/day	Acute Systemic Toxicants lb/hr	Acute Irritants lb/hr
chloroform (67-66-3)	290			
chloroprene (126-99-8)		9.2	0.89	
cresol (1319-77-3)			0.56	
p-dichlorobenzene (106-46-7)				16.8
dichlorodifluoromethane (75-71-8)		5200		
dichlorofluoromethane (75-43-4)		40		
di(2-ethylhexyl)phthalate (117-81-7)		0.63		
dimethyl sulfate (77-78-1)		0.063		
1,4-dioxane (123-91-1)		12		
epichlorohydrin (106-89-8)	5600			
ethyl acetate (141-78-6)			36	
ethylenediamine (107-15-3)		6.3	0.64	
ethylene dibromide (106-93-4)	27			
ethylene dichloride (107-06-2)	260			
ethylene glycol monoethyl ether (110-80-5)		2.5	0.48	
ethylene oxide (75-21-8)	1.8			
ethyl mercaptan (75-08-1)			0.025	
fluorides		0.34	0.064	
formaldehyde (50-00-0)				0.04
hexachlorocyclopentadiene (77-47-4)		0.013	0.0025	
hexachlorodibenzo-p-dioxin (57653- 85-7)	0.0051			
n-hexane (110-54-3)		23		
hexane isomers except n-hexane				92
hydrazine (302-01-2)		0.013		
hydrogen chloride (7647-01-0)				0.18
hydrogen cyanide (74-90-8)		2.9	0.28	
hydrogen fluoride (7664-39-3)		0.63		0.064
hydrogen sulfide (7783-06-4)		1.7		
maleic anhydride (108-31-6)		0.25	0.025	
manganese and compounds		0.63		
manganese cyclopentadienyl tricarbonyl (12079-65-1)		0.013		
manganese tetroxide (1317-35-7)		0.13		
mercury, alkyl		0.0013		
mercury, aryl and inorganic compounds		0.013		
mercury, vapor (7439-97-6)		0.013		
methyl chloroform (71-55-6)		250		64
methylene chloride (75-09-2)	1600		0.39	
methyl ethyl ketone (78-93-3)		78		22.4
methyl isobutyl ketone (108-10-1)		52		7.6
methyl mercaptan (74-93-1)			0.013	
nickel carbonyl (13463-39-3)		0.013		
nickel metal (7440-02-0)		0.13		
nickel, soluble compounds, as nickel		0.013		
nickel subsulfide (12035-72-2)	0.14			
nitric acid (7697-37-2)				0.256
nitrobenzene (98-95-3)		1.3	0.13	
n-nitrosodimethylamine (62-75-9)	3.4			
non-specific chromium (VI) compounds, as chromium (VI) equivalent	0.0056			
pentachlorophenol (87-86-5)		0.063	0.0064	
perchloroethylene (127-18-4)	13000			

<u>Obstructed or Non-Vertical Oriented Toxic Air Pollutant Permitting Emission Rates (TPER)</u>				
Pollutant (CAS Number)	Carcinogens lb/yr	Chronic Toxicants lb/day	Acute Systemic Toxicants lb/hr	Acute Irritants lb/hr
phenol (108-95-2)			0.24	
phosgene (75-44-5)		0.052		
phosphine (7803-51-2)				0.032
polychlorinated biphenyls (1336-36-3)	5.6			
soluble chromate compounds, as chromium (VI) equivalent		0.013		
styrene (100-42-5)			2.7	
sulfuric acid (7664-93-9)		0.25	0.025	
tetrachlorodibenzo-p-dioxin (1746-01-6)	0.00020			
1,1,1,2-tetrachloro-2,2-difluoroethane (76-11-9)		4400		
1,1,2,2-tetrachloro-1,2-difluoroethane (76-12-0)		4400		
1,1,2,2-tetrachloroethane (79-34-5)	430			
toluene (108-88-3)		98		14.4
toluene diisocyanate, 2,4-(584-84-9) and 2,6-(91-08-7) isomers		0.003		
trichloroethylene (79-01-6)	4000			
trichlorofluoromethane (75-69-4)			140	
1,1,2-trichloro-1,2,2-trifluoroethane (76-13-1)				240
vinyl chloride (75-01-4)	26			
vinylidene chloride (75-35-4)		2.5		
xylene (1330-20-7)		57		16.4

(b) A permit to emit toxic air pollutants shall be required for any facility where all emission release points are unobstructed and vertically oriented whose actual rate of emissions from all sources are greater than any one of the following toxic air pollutant permitting emissions rates:

<u>Unobstructed Toxic Air Pollutant Permitting Emission Rates (TPER)</u>				
Pollutant (CAS Number)	Carcinogens lb/yr	Chronic Toxicants lb/day	Acute Systemic Toxicants lb/hr	Acute Irritants lb/hr
acetaldehyde (75-07-0)				28.43
acetic acid (64-19-7)				3.90
acrolein (107-02-8)				0.08
acrylonitrile (107-13-1)		1.3	1.05	
ammonia (7664-41-7)				2.84
aniline (62-53-3)			1.05	
arsenic and inorganic arsenic compounds	0.194			
asbestos (1332-21-4)	7.748×10^{-3}			
aziridine (151-56-4)		0.3		
benzene (71-43-2)	11.069			
benzidine and salts (92-87-5)	1.384×10^{-3}			
benzo(a)pyrene (50-32-8)	3.044			
benzyl chloride (100-44-7)			0.53	
beryllium (7440-41-7)	0.378			
beryllium chloride (7787-47-5)	0.378			

PROPOSED RULES

Unobstructed Toxic Air Pollutant Permitting Emission Rates (TPER)				
Pollutant (CAS Number)	Carcinogens lb/yr	Chronic Toxicants lb/day	Acute Systemic Toxicants lb/hr	Acute Irritants lb/hr
beryllium fluoride (7787-49-7)	0.378			
beryllium nitrate (13597-99-4)	0.378			
bioavailable chromate pigments, as chromium (VI) equivalent	0.008			
bis-chloromethyl ether (542-88-1)	0.034			
bromine (7726-95-6)				0.21
1,3-butadiene (106-99-0)	40.585			
cadmium (7440-43-9)	0.507			
cadmium acetate (543-90-8)	0.507			
cadmium bromide (7789-42-6)	0.507			
carbon disulfide (75-15-0)		7.8		
carbon tetrachloride (56-23-5)	618.006			
chlorine (7782-50-5)		1.6		0.95
chlorobenzene (108-90-7)		92.7		
chloroform (67-66-3)	396.631			
chloroprene (126-99-8)		18.5	3.69	
cresol (1319-77-3)			2.32	
p-dichlorobenzene (106-46-7)				69.50
dichlorodifluoromethane (75-71-8)		10445.4		
dichlorofluoromethane (75-43-4)		21.1		
di(2-ethylhexyl)phthalate (117-81-7)		1.3		
dimethyl sulfate (77-78-1)		0.1		
1,4-dioxane (123-91-1)		23.6		
epichlorohydrin (106-89-8)	7655.891			
ethyl acetate (141-78-6)			147.41	
ethylenediamine (107-15-3)		12.6	2.63	
ethylene dibromide (106-93-4)	36.896			
ethylene dichloride (107-06-2)	350.511			
ethylene glycol monoethyl ether (110-80-5)		5.1	2.00	
ethylene oxide (75-21-8)	2.490			
ethyl mercaptan (75-08-1)			0.11	
fluorides		0.7	0.26	
formaldehyde (50-00-0)				0.16
hexachlorocyclopentadiene (77-47-4)		2.5×10^{-2}	0.01	
hexachlorodibenzo-p-dioxin (57653- 85-7)	0.007			
n-hexane (110-54-3)		46.3		
hexane isomers except n-hexane				379.07
hydrazine (302-01-2)		2.5×10^{-2}		
hydrogen chloride (7647-01-0)				0.74
hydrogen cyanide (74-90-8)		5.9	1.16	
hydrogen fluoride (7664-39-3)		1.3		0.26
hydrogen sulfide (7783-06-4)		5.1		
maleic anhydride (108-31-6)		0.5	0.11	
manganese and compounds		1.3		
manganese cyclopentadienyl tricarbonyl (12079-65-1)		2.5×10^{-2}		
manganese tetroxide (1317-35-7)		0.3		
mercury, alkyl		2.5×10^{-3}		
mercury, aryl and inorganic compounds		2.5×10^{-2}		
mercury, vapor (7439-97-6)		2.5×10^{-2}		
methyl chloroform (71-55-6)		505.4		257.98
methylene chloride (75-09-2)	2213.752		1.79	

Unobstructed Toxic Air Pollutant Permitting Emission Rates (TPER)				
Pollutant (CAS Number)	Carcinogens lb/yr	Chronic Toxicants lb/day	Acute Systemic Toxicants lb/hr	Acute Irritants lb/hr
methyl ethyl ketone (78-93-3)		155.8		93.19
methyl isobutyl ketone (108-10-1)		107.8		31.59
methyl mercaptan (74-93-1)			0.05	
nickel carbonyl (13463-39-3)		2.5×10^{-2}		
nickel metal (7440-02-0)		0.3		
nickel, soluble compounds, as nickel		2.5×10^{-2}		
nickel subsulfide (12035-72-2)	0.194			
nitric acid (7697-37-2)				1.05
nitrobenzene (98-95-3)		2.5	0.53	
n-nitrosodimethylamine (62-75-9)	4.612			
non-specific chromium (VI) compounds, as chromium (VI) equivalent	0.008			
pentachlorophenol (87-86-5)		0.1	0.03	
perchloroethylene (127-18-4)	17525.534			
phenol (108-95-2)			1.00	
phosgene (75-44-5)		0.1		
phosphine (7803-51-2)				0.14
polychlorinated biphenyls (1336-36-3)	7.656			
soluble chromate compounds, as chromium (VI) equivalent		2.6×10^{-2}		
styrene (100-42-5)			11.16	
sulfuric acid (7664-93-9)		0.5	0.11	
tetrachlorodibenzo-p-dioxin (1746-01-6)	2.767×10^{-4}			
1,1,1,2-tetrachloro-2,2-difluoroethane (76-11-9)		2190.2		
1,1,2,2-tetrachloro-1,2-difluoroethane (76-12-0)		2190.2		
1,1,2,2-tetrachloroethane (79-34-5)	581.110			
toluene (108-88-3)		197.96		58.97
toluene diisocyanate, 2,4-(584-84-9) and 2,6-(91-08-7) isomers		8.4×10^{-3}		
trichloroethylene (79-01-6)	5442.140			
trichlorofluoromethane (75-69-4)			589.66	
1,1,2-trichloro-1,2,2-trifluoroethane (76-13-1)				1000.32
vinyl chloride (75-01-4)	35.051			
vinylidene chloride (75-35-4)		5.1		
xylene (1330-20-7)		113.7		68.44

(c) For the following pollutants, the highest emissions occurring for any 15-minute period shall be multiplied by four and the product shall be compared to the value in Paragraph (a) or (b) as applicable. These pollutants are:

- (1) acetaldehyde (75-07-0);
- (2) acetic acid (64-19-7);
- (3) acrolein (107-02-8);
- (4) ammonia (7664-41-7);
- (5) bromine (7726-95-6);
- (6) chlorine (7782-50-5);

- (7) formaldehyde (50-00-0);
- (8) hydrogen chloride (7647-01-0);
- (9) hydrogen fluoride (7664-39-3); and
- (10) nitric acid (7697-37-2).

Authority G.S. 143-215.3(a)(1); 143-215-107; 143-215.108; 143B-282.

**15A NCAC 02Q .0712 CALLS BY THE DIRECTOR
(READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**15A NCAC 02Q .0713 POLLUTANTS WITH
OTHERWISE APPLICABLE FEDERAL STANDARDS OR
REQUIREMENTS**

(a) ~~This Rule applies to the establishment of emission limitations or any other requirements pursuant to the requirements of this Section or 15A NCAC 2D .1100 for which a standard or requirement has been promulgated under Section 112 of the federal Clean Air Act including those contained in 15A NCAC 2D .1110 and .1111.~~

(b) ~~For each facility subject to emission standards or requirements under Section 112 of the federal Clean Air Act, permits issued or revised according to Section .0500 of this Subchapter shall contain specific conditions that:~~

- ~~(1) reflect applicability criteria no less stringent than those in the otherwise applicable federal standards or requirements;~~
- ~~(2) require levels of control for each affected facility and source no less stringent than those contained in the otherwise applicable federal standards or requirements;~~
- ~~(3) require compliance and enforcement measures for each facility and source no less stringent than those in the otherwise applicable federal standards or requirements;~~
- ~~(4) express levels of control, compliance, and enforcement measures in the same form and units of measure as the otherwise applicable federal standards or requirements; and~~
- ~~(5) assure compliance by each affected facility no later than would be required by the otherwise applicable federal standard or requirement.~~

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

TITLE 20 – DEPARTMENT OF STATE TREASURER

Notice is hereby given in accordance with G.S. 150B-21.2 that the Teachers' and State Employees' Retirement System Board of Trustees intends to adopt the rule cited as 20 NCAC 02B .0405.

Link to agency website pursuant to G.S. 150B-19.1(c):
<https://www.nctreasurer.com/inside-the-department-OpenGovernment/proposed-rules/Pages/default.aspx>.

Proposed Effective Date: May 1, 2018

Public Hearing:

Date: January 25, 2018

Time: 2:00 p.m.-4:00 p.m.

Location: 3200 Atlantic Avenue, Raleigh, NC 27604

Reason for Proposed Action: *The Fiscal Integrity/Pension-Spiking Prevention Act, Session Law 2014-88, was enacted by the North Carolina General Assembly in 2014. The Act contained the*

contribution-based benefit cap (CBBC), which protects all employing public agencies participating in the Teachers' and State Employees' Retirement System (TSERS or the System) from absorbing the costs of certain unforeseen liabilities caused by compensation decisions made by other employing agencies in the System. The law discourages the practice of "pension spiking" and also applies to liabilities caused by non-pension spiking factors such as significant late career promotions. The law allows government entities to maintain the flexibility to set compensation and only applies to employees with an average final compensation of \$100,000 or more, adjusted annually for inflation, and is limited to no more than 0.75% of expected retirements in a given year. (See Section 1 of the Act, codified as G.S. 135-4(jj), 135-5(a3), and 135-8(f)(2)).

The law established a formula to be used to determine a member's contribution-based benefit cap. The CBBC is then compared to the amount of that member's estimated lifetime retirement benefits, calculated by using the statutory formula for calculating a retirement benefit (total years of membership service x AFC x 1.82%). Under the CBBC law, no retirement benefit may be "capped" or reduced by application of the CBBC unless the member first entered service on or after January 1, 2015. For members who entered the System prior to January 1, 2015, if the amount of estimated lifetime retirement benefits exceeds the member's CBBC, the employer is required to pay the System in a lump sum the difference between the two amounts (i.e., the amount of the member's retirement benefit in excess of that funded by retirement contributions, according to the statutory formula) within 90 days of the date of retirement. In lieu of the lump-sum requirement, the General Assembly has authorized two payment plan options. For members who enter the System on or after January 1, 2015, employers are allowed, but not required, to submit this lump sum payment on members' behalf. If employers choose not to pay, members may elect to submit this payment or accept a pension benefit that is reduced to the amount of their benefit cap.

The General Assembly required the Boards of Trustees of the affected retirement systems to adopt a value recommended by the actuary to be used for the variable in the CBBC statutory formula called the "cap factor." This statute has been interpreted, in accordance with 20 NCAC 02B. 0202, to mean that the TSERS Board shall adopt this actuarial recommendation by motion, as it does with the annual actuarial valuation. The TSERS Board must review the cap factor no less than once every five years, in conjunction with the five-year experience study as required by G.S. 135-6(n).

The TSERS Board of Trustees adopted a contribution-based benefit cap factor based upon the recommendation of its actuary at its regular quarterly meeting in October 2014. A cap factor of 4.8 for TSERS went into effect for retirements commencing on or after January 1, 2015, the effective date of the CBBC law. Subsequently, following a new actuarial recommendation based on actual experience, in October 2015, the Board revised the factor to 4.5 for TSERS. This factor went into effect for retirements commencing on or after January 1, 2016. Pursuant to this action by the TSERS Board of Trustees, the Retirement

Systems Division has been administering the CBBC law since January 1, 2015.

Following this action by the Board and the Retirement Systems Division, four local school boards engaged in multiple legal actions designed to avoid paying the CBBC liabilities that have been incurred for five retirements from their school systems. These agencies have received invoices from the state totaling \$1.8 million. On May 30, 2017, on petition of the four school systems, a Wake County Superior Court judge ruled that adoption of the contribution-based cap factor requires rulemaking under the Administrative Procedure Act. The TSERS Board strongly disagrees with the ruling by the Superior Court and has filed a notice of appeal in the case. Out of an abundance of caution, the TSERS Board has decided to engage in rulemaking on the topic in the unlikely event that the four school systems prevail on appeal. The Local Governmental Employees' Retirement System (LGERS) Board of Trustees is undergoing similar rulemaking.

Comments may be submitted to: Laura Rowe, 3200 Atlantic Avenue, Raleigh, NC 27604; email dst.ncac@nctreasurer.com

Comment period ends: March 5, 2018

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**
- ☒ **Substantial economic impact (≥\$1,000,000)**
- ☒ **Approved by OSBM**
- ☐ **No fiscal note required by G.S. 150B-21.4**

CHAPTER 02 - RETIREMENT SYSTEMS

**SUBCHAPTER 02B - TEACHERS' AND STATE
EMPLOYEES' RETIREMENT SYSTEM**

SECTION .0400 - EMPLOYER CONTRIBUTIONS

**20 NCAC 02B .0405 ANTI-PENSION SPIKING
CONTRIBUTION-BASED BENEFIT CAP FACTOR
(TSERS)**

The contribution-based benefit cap factor for the Teachers' and State Employees' Retirement System is 4.5.

Authority G.S. 135-4(jj); 135-5(a3); 135-6(f).

Notice is hereby given in accordance with G.S. 150B-21.2 that the Local Governmental Employees' Retirement System Board of Trustees intends to adopt the rules cited as 20 NCAC 02C .0405.

Link to agency website pursuant to G.S. 150B-19.1(c):
<http://www.nctreasurer.com/inside-the-department/OpenGovernment/proposed-rules/Pages/default.aspx>

Proposed Effective Date: May 1, 2018

Public Hearing:

Date: January 25, 2018

Time: 2:00 p.m.-4:00 p.m.

Location: 3200 Atlantic Avenue, Raleigh, NC 27604

Reason for Proposed Action: *The Fiscal Integrity/Pension-Spiking Prevention Act, Session Law 2014-88, was enacted by the North Carolina General Assembly in 2014. The Act contained the contribution-based benefit cap (CBBC), which protects all employing public agencies participating in the Local Governmental Employees' Retirement System (LGERS or the System) from absorbing the costs of certain unforeseen liabilities caused by compensation decisions made by other employing entities in the System. The law discourages the practice of "pension spiking" and also applies to liabilities caused by non-pension spiking factors such as significant late career promotions. The law allows government entities to maintain the flexibility to set compensation and only applies to employees with an average final compensation of \$100,000 or more, adjusted annually for inflation, and is limited to no more than 0.75% of expected retirements in a given year. (See Section 1 of the Act, codified as G.S. 128-26(y), 128-27(a3), and 128-30(g)(2)).*

The law established a formula to be used to determine a member's contribution-based benefit cap. The CBBC is then compared to the amount of that member's estimated lifetime retirement benefits, calculated by using the statutory formula for calculating a retirement benefit (total years of membership service x AFC x 1.82%). Under the CBBC law, no retirement benefit may be "capped" or reduced by application of the CBBC unless the member first entered service on or after January 1, 2015. For members who entered the System prior to January 1, 2015, if the amount of estimated lifetime retirement benefits exceeds the member's CBBC, the employer is required to pay the System in a lump sum the difference between the two amounts (i.e., the amount of the member's retirement benefit in excess of that funded by retirement contributions, according to the statutory formula) within 90 days of the date of retirement. In lieu of the lump-sum requirement, the General Assembly has authorized two payment

plan options. For members who enter the System on or after January 1, 2015, employers are allowed, but not required, to submit this lump sum payment on members' behalf. If employers choose not to pay, members may elect to submit this payment or accept a pension benefit that is reduced to the amount of their benefit cap.

The General Assembly required the Boards of Trustees of the affected retirement systems to adopt a value recommended by the actuary to be used for the variable in the CBBC statutory formula called the "cap factor." This statute has been interpreted, in accordance with 20 NCAC 02C.0201, to mean that the LGERS Board shall adopt this actuarial recommendation by motion, as it does with the annual actuarial valuation. The LGERS Board must review the cap factor no less than once every five years, in conjunction with the five-year experience study as required by G.S. 128-28(o).

The LGERS Board of Trustees adopted a contribution-based benefit cap factor based upon the recommendation of its actuary at its regular quarterly meeting in October 2014. A cap factor of 5.1 for LGERS went into effect for retirements commencing on or after January 1, 2015, the effective date of the CBBC law. Subsequently, following a new actuarial recommendation based on actual experience, in October 2015, the Board revised the factor to 4.7 for LGERS. This factor went into effect for retirements commencing on or after January 1, 2016. Pursuant to this action by the Board of Trustees, the Retirement Systems Division (the "Division") has been administering the CBBC law since January 1, 2015.

Litigation is currently pending by four local school boards against the Teachers' and State Employees' Retirement System (TSERS) Board of Trustees who also adopted a cap factor effective in 2016 pursuant to the CBBC law. On May 30, 2017, on petition of four school systems, a Wake County Superior Court judge ruled that adoption of the contribution-based cap factor requires rulemaking under the Administrative Procedure Act; this ruling has been appealed. The LGERS Board strongly disagrees with the ruling by the Superior Court; however, out of an abundance of caution, the System has decided to engage in rulemaking on the topic in the unlikely event that the four school systems prevail on appeal. The TSERS Board of Trustees is undergoing similar rulemaking.

Comments may be submitted to: Laura Rowe, 3200 Atlantic Avenue, Raleigh, NC 27604; email dst.ncac@nctreasurer.com

Comment period ends: March 5, 2018

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**
- ☒ **Substantial economic impact (≥\$1,000,000)**
- ☒ **Approved by OSBM**
- ☐ **No fiscal note required by G.S. 150B-21.4**

CHAPTER 02 - RETIREMENT SYSTEMS

SUBCHAPTER 02C - LOCAL GOVERNMENTAL EMPLOYEES' RETIREMENT SYSTEM

SECTION .0400 - CONTRIBUTIONS

20 NCAC 02C .0405 ANTI-PENSION SPIKING CONTRIBUTION-BASED BENEFIT CAP FACTOR (LGERS)

The contribution-based benefit cap factor for the Local Governmental Employees' Retirement System is 4.7.

Authority G.S. 128-26(y); 128-27(a3); 128-28(g).

*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 November 16, 2017 Meeting.

**REGISTER CITATION TO THE
NOTICE OF TEXT**

CODE OFFICIALS QUALIFICATION BOARD

<u>Nature of Probationary Certificate</u>	11 NCAC 08 .0602*	31:23 NCR
<u>Certificate</u>	11 NCAC 08 .0708*	31:23 NCR

INSURANCE, DEPARTMENT OF

<u>Filing Requirements</u>	11 NCAC 18 .0103*	32:02 NCR
<u>Changes Requiring Approval</u>	11 NCAC 20 .0203*	32:02 NCR
<u>Application</u>	11 NCAC 20 .0404*	32:02 NCR
<u>Delegation of Credential Verification Activities</u>	11 NCAC 20 .0410*	32:02 NCR
<u>Applications for Modifications to Service Areas or Produc...</u>	11 NCAC 20 .0601*	32:02 NCR
<u>Payment of Claims</u>	11 NCAC 21 .0106	32:02 NCR

ALARM SYSTEMS LICENSING BOARD

<u>Purpose</u>	14B NCAC 17 .0101*	32:01 NCR
<u>Location</u>	14B NCAC 17 .0102	32:01 NCR
<u>Application for License</u>	14B NCAC 17 .0201*	32:01 NCR
<u>Experience Requirements for License</u>	14B NCAC 17 .0202*	32:01 NCR
<u>Application for Registration</u>	14B NCAC 17 .0301*	32:01 NCR

MIDWIFERY JOINT COMMITTEE

<u>Reporting Criteria</u>	21 NCAC 33 .0110*	32:02 NCR
---------------------------	-------------------	-----------

REFRIGERATION EXAMINERS, BOARD OF

<u>Office of the Board</u>	21 NCAC 60 .0102*	32:04 NCR
<u>Rule-making and Administrative Hearing Procedures</u>	21 NCAC 60 .0103	32:04 NCR
<u>Examination Application Duly Filed</u>	21 NCAC 60 .0206	32:04 NCR
<u>Requirements for Examination Applicants</u>	21 NCAC 60 .0207*	32:04 NCR
<u>Fees</u>	21 NCAC 60 .0209	32:04 NCR
<u>Qualifying Examinations</u>	21 NCAC 60 .0212*	32:04 NCR
<u>Examinations</u>	21 NCAC 60 .0213*	32:04 NCR

The following Rules are subject to the next Legislative Session. (see G.S. 150B-21.3(b1))

<u>Provider Availability Standards</u>	11 NCAC 20 .0301	32:02 NCR
<u>Provider Accessibility Standards</u>	11 NCAC 20 .0302*	32:02 NCR

TITLE 11 - DEPARTMENT OF INSURANCE

11 NCAC 08 .0602 NATURE OF PROBATIONARY CERTIFICATE

(a) A probationary certificate may be issued, without examination, to any newly employed or newly promoted code enforcement official who lacks a standard certificate that covers the new position. A probationary certificate shall be issued for three years only and shall not be renewed. During the three year period, the official shall complete the requirements set forth in 11 NCAC 08 .0706 to qualify for the appropriate standard certificate. A probationary certificate authorizes the official, during the effective period of the certificate, to hold the position of the type, level, and location specified. The certificate shall be conditioned on the applicant's completion of a high school diploma or a high school equivalency certificate (GED) and meeting one of the following:

- (1) working under supervision sufficient to protect the public health and safety;
- (2) possessing a minimum of two years of design, construction, or inspection experience working under a certified inspector or under a licensed professional engineer, registered architect, or licensed contractor;
- (3) possessing one of the experience qualifications listed in 11 NCAC 08 .0706 in each area of code enforcement for which the probationary certificate is issued; or
- (4) achieving a minimum score of 70 percent on the probationary prequalification exam administered by the Board in each area of code enforcement for which the probationary certificate is issued.

(b) A probationary certificate shall be issued if the Board determines from the information provided on the application that the applicant may obtain the experience required by Paragraph (a)(3) of this Rule before the expiration of the probationary certificate.

History Note: Authority G.S. 143-151.12(2); 143-151.13(d); Eff. June 28, 1979;
Amended Eff. December 1, 1982;
Temporary Amendment Eff. January 1, 1983; For a Period of 120 Days to Expire on April 30, 1983;
Amended Eff. December 1, 2017; July 18, 2002; October 1, 1992; February 1, 1991; May 1, 1983.

11 NCAC 08 .0708 CERTIFICATE

(a) If an application meets the requirements of Rules .0704 and .0706 of this Section and the application fee has been paid and the applicant qualified for a particular type and level of certificate, the Board's staff shall mail a standard certificate of that type and level to the applicant at the address specified on the application. The certificate shall be effective until the renewal date specified in G.S. 143-151.16(b).

(b) If the applicant does not meet the criteria for the certificate for which he or she applied, the applicant shall be given written notice of the criterion that the applicant fails to meet and offered a choice of:

- (1) accepting a certificate for a lower level for which the applicant is qualified;
- (2) submitting additional evidence in support of the application;
- (3) withdrawing the application; or
- (4) appealing the decision to the Board.

If an appeal is filed, the Board shall conduct a hearing and render a decision in accordance with Article 3A of G.S. 150B.

History Note: Authority G.S. 143-151.12; 143-151.13; 143-151.14; 143-151.17; 143-151.19;
Eff. January 15, 1980;
Amended Eff. December 1, 2017; July 18, 2002; January 1, 1991.

11 NCAC 18 .0103 FILING REQUIREMENTS

(a) All communications and filings shall be made to the Deputy Commissioner, Life and Health Division, North Carolina Department of Insurance, 1201 Mail Service Center, Raleigh, North Carolina 27699-1201.

(b) To apply for licensure, an applicant shall submit the following information required by G.S. 58-49-50:

- (1) A Form MEWA-1 entitled "Application for License for Multiple Employer Welfare Arrangement (MEWA)";
- (2) A Form MEWA-3A entitled "Biographical Affidavit," for all officers, directors, and trustees of the MEWA that shall contain information to enable the Commissioner to determine if such persons are disqualified pursuant to G.S. 58-49-40(e);
- (3) A list of all names, addresses, and telephone numbers of participating employers and the number of employees covered by the MEWA;
- (4) A statement of the reasons for applying for a North Carolina MEWA license;
- (5) A description of how the MEWA proposes to develop and supervise its operations in North Carolina;
- (6) The name, title, and qualifications of the person who will be responsible for the MEWA's operation in North Carolina (the managing general agent if the MEWA is domiciled outside of North Carolina); and
- (7) The location of and a description of the office facilities that will be provided by the MEWA in North Carolina.

(c) All forms may be obtained from the Department's website at http://www.ncdoi.com/LH/Licensing,_Renewals_and_Other_-_MEWA.aspx#Certificate. Every application shall contain a certification that any changes to the information required by G.S. 58-49-50 and this Rule shall be reported to the Commissioner.

(d) During the pendency of an application, the MEWA shall update the Commissioner of any changes in the required information, statements, documents, and materials.

(e) An application for a license is not complete until the MEWA has satisfied the Commissioner that the MEWA is in compliance with all of the requirements of Article 49 of General Statute

Chapter 58 and this Section. The Commissioner shall not process an incomplete application.

(f) All financial information required by G.S. 58-49-50 and the rules of this Section shall be prepared in accordance with statutory accounting principles.

(g) Any change in the information required by Article 49 of General Statute Chapter 58 or by this Section shall, unless otherwise specified in that Article or in this Section, be reported to the Commissioner within two business days after such change.

History Note: Authority G.S. 58-2-40(1); 58-49-40; 58-49-50; 58-49-60;
Eff. July 1, 1992;
Readopted Eff. December 1, 2017.

11 NCAC 20 .0203 CHANGES REQUIRING APPROVAL

All material changes to an approved contract form shall be filed with the Division for approval before use. For the purpose of this Rule, a "material change" includes a change in:

- (1) the means of calculating payment to the provider; for example, change from fee for service to capitation;
- (2) the distribution of risk between parties; or
- (3) the delegation of clinical and administrative responsibilities.

History Note: Authority G.S. 58-2-40(1); 58-65-25; 58-67-10; 58-67-20; 58-67-35; 58-67-115; 58-67-120; 58-67-150;
Eff. October 1, 1996;
Readopted Eff. December 1, 2017.

11 NCAC 20 .0301 PROVIDER AVAILABILITY STANDARDS

Each network plan carrier shall develop a methodology to determine the size and adequacy of the provider network necessary to serve the members. The methodology shall provide for the development of performance targets that shall address the following:

- (1) The number and type of primary care physicians, specialty care providers, hospitals, and other provider facilities, as defined by the carrier.
- (2) A method to determine when the addition of providers to the network will be necessary based on increases in the membership of the network plan carrier.
- (3) A method for arranging or providing health care services outside of the service area when providers are not available in the area.

History Note: Authority G.S. 58-2-40(1); 58-65-1; 58-65-25; 58-67-10; 58-67-20; 58-67-35; 58-67-65; 58-67-140; 58-67-150;
Eff. October 1, 1996;
Readopted Eff. Pending Legislative Review.

11 NCAC 20 .0302 PROVIDER ACCESSIBILITY STANDARDS

Each carrier shall establish performance targets for member accessibility to primary and specialty care physician services and hospital-based services. Carriers shall also establish similar performance targets for health care services provided by providers who are not physicians. Carriers shall establish written policies and performance targets that address the following:

- (1) The proximity of network providers, as measured by such means as driving distance or time a member must travel to obtain primary care, specialty care, and hospital services, taking into account local variations in the supply of providers, and geographic considerations.
- (2) The availability to provide emergency services on a 24-hour, 7 day per week basis.
- (3) Emergency provisions within and outside of the service area.
- (4) The average or expected waiting time for urgent, routine, and specialist appointments.

History Note: Authority G.S. 58-2-40(1); 58-65-1; 58-65-25; 58-67-10; 58-67-20; 58-67-35; 58-67-65; 58-67-140; 58-67-150;
Eff. October 1, 1996;
Readopted Eff. Pending Legislative Review.

11 NCAC 20 .0404 APPLICATION

For all providers who submit applications to be added to a carrier's network:

- (1) The definitions in G.S. 58-3-167 are incorporated into this Rule by reference. Each carrier that is an insurer that issues a health benefit plan shall obtain and retain on file each provider's signed and dated application on the form approved by the Commissioner under G.S. 58-3-230. All required information shall be current upon final approval of the provider by the carrier. The application shall include, when applicable:
 - (a) The provider's name, address, and telephone number.
 - (b) Practice information, including call coverage.
 - (c) Education, training, and work history.
 - (d) The current provider license, registration, or certification, and the names of other states where the applicant is or has been licensed, registered, or certified.
 - (e) Drug Enforcement Agency (DEA) registration number and prescribing restrictions.
 - (f) Specialty board or other certification.
 - (g) Professional and hospital affiliation.
 - (h) The amount of professional liability coverage and any malpractice history.
 - (i) Any disciplinary actions by medical organizations and regulatory agencies.

- (j) Any felony or misdemeanor convictions.
 - (k) The type of affiliation requested, for example, primary care, consulting specialists, ambulatory care.
 - (l) A signed and dated statement by the provider attesting that the information provided is true, accurate, and complete, and authorizing the release of information and materials related to the provider's qualifications and competence.
 - (m) Letters of reference or recommendation or letters of oversight from supervisors, or both, that attest to the qualifications or competence of the provider or otherwise recommend approval of the provider's application.
- (2) The carrier shall obtain and retain on file the following information regarding facility provider credentials, when applicable:
- (a) The Joint Commission's certification or certification from other accrediting agencies.
 - (b) State licensure.
 - (c) Medicare and Medicaid certification.
 - (d) Evidence of active malpractice insurance.
- (3) No credential item listed in Items (1) or (2) of this Rule shall be construed as a substantive threshold or criterion or as a standard for credentials that must be held by any provider in order to be a network provider.

History Note: Authority G.S. 58-2-40(1); 58-2-131; 58-3-167; 58-3-230; 58-65-1; 58-65-25; 58-65-105; 58-67-10; 58-67-20; 58-67-35; 58-67-65; 58-67-100; 58-67-140; 58-67-150; Eff. October 1, 1996; Temporary Amendment Eff. October 1, 2001; Amended Eff. May 1, 2008; August 1, 2002; Readopted Eff. December 1, 2017.

11 NCAC 20 .0410 DELEGATION OF CREDENTIAL VERIFICATION ACTIVITIES

Whenever any carrier delegates credential verification activities to a contracting entity, whether an intermediary or subcontractor, the carrier shall review the contracting entity's credential verification program before contracting to ensure that the entity complies with all applicable requirements in this Section. The carrier shall monitor the contracting entity's credential verification activities. The carrier shall implement oversight mechanisms, including:

- (1) Reviewing the contracting entity's credential verification plans, policies, procedures, forms, and adherence to verification procedures.
- (2) Requiring the contract entity to submit an updated list of providers quarterly.

- (3) Conducting an evaluation of the contracting entity's credential verification program every three years.

History Note: Authority G.S. 58-2-40(1); 58-65-1; 58-65-25; 58-67-10; 58-67-20; 58-67-35; 58-67-65; 58-67-140; 58-67-150; Eff. October 1, 1996; Readopted Eff. December 1, 2017.

11 NCAC 20 .0601 APPLICATIONS FOR MODIFICATIONS TO SERVICE AREAS OR PRODUCT LINES

(a) All requests to expand an HMO's service area shall be submitted in electronic format as an application to the Division for review and approval. The application shall include the following information:

- (1) a description of operational changes that will result from the expansion;
- (2) financial and actuarial information as required by 11 NCAC 11C .0311 and 11 NCAC 16 .0605;
- (3) a description of provider interest and network development in the service area requested and information as to the HMO's existing provider network; and
- (4) copies of any form contracts to be made as a result of the expansion, including providers and subcontractors.

(b) Material changes in the product lines offered by an HMO shall be submitted in electronic format as an application to the Division for review and approval. For the purposes of this Section, "material changes" include the addition of a point of service product, or the addition of or changes to the HMO's existing health care delivery model, such as the addition of an IPA product or group model product or the addition of a gatekeeper product. The application shall include the following information:

- (1) a description of operational changes that will result from the expansion;
- (2) financial and actuarial information as required by 11 NCAC 11C .0311 and 11 NCAC 16 .0605;
- (3) a description of provider interest and network development in the service area requested and information as to the HMO's existing provider network; and
- (4) copies of form contracts to be made as a result of the expansion, including providers and subcontractors.

(c) Notice of the addition of an intermediary shall be submitted by an HMO in writing to the Division within 30 days after the execution of the contract for the intermediary's services.

(d) Notice of the deletion of an intermediary shall be submitted by the HMO in writing within 30 days after termination of the contract, unless termination is immediate, along with a plan to select another intermediary or for the HMO to perform the formerly delegated functions in-house.

(e) All changes to provider and intermediary contract forms shall be submitted to the Division for review and approval in

accordance with Rule .0203 of this Chapter prior to the use of the amended form.

(f) Each HMO shall submit written notice to the Division of its intent to engage in any arrangement through which the HMO owns, controls, or manages any operations of another HMO in any other state, before entering into the arrangement.

History Note: Authority G.S. 58-2-40; 58-67-10; 58-67-150; Eff. October 1, 1996; Readopted Eff. December 1, 2017.

11 NCAC 21 .0106 PAYMENT OF CLAIMS

If claims filed with a TPA or insurer are not paid within 30 days after receipt of the initial claim by the TPA or the insurer, the TPA or the insurer shall at that time mail a claim status report to the claimant.

History Note: Authority G.S. 58-2-40; 58-3-100; 58-56-31; Eff. June 1, 1996; Readopted Eff. December 1, 2017.

TITLE 14B - DEPARTMENT OF PUBLIC SAFETY

14B NCAC 17 .0101 PURPOSE

The Alarm Systems Licensing Board is established within the North Carolina Department of Public Safety for the purpose of administering the licensing of and setting the educational and training requirements for persons, firms, associations, and corporations engaged in providing alarm systems and services to citizens of North Carolina.

History Note: Authority G.S. 74D-4; Temporary Rule Eff. January 9, 1984, for a Period of 120 Days to Expire on May 7, 1984; Eff. May 1, 1984; Transferred and Recodified from 12 NCAC 11 .0101 Eff. July 1, 2015; Amended Eff. December 1, 2017.

14B NCAC 17 .0102 LOCATION

The administrative offices of the Alarm Systems Licensing Board are located at 3101 Industrial Drive, Suite 104, Raleigh, North Carolina 27609, telephone (919) 788-5320.

History Note: Authority G.S. 74D-4; 74D-5; Temporary Rule Eff. January 9, 1984, for a Period of 120 Days to Expire on May 7, 1984; Eff. May 1, 1984; Amended Eff. December 1, 2012; Transferred and Recodified from 12 NCAC 11 .0102 Eff. July 1, 2015; Amended Eff. December 1, 2017.

14B NCAC 17 .0201 APPLICATION FOR LICENSE

(a) Each applicant for a license shall complete an application form provided by the Board. This form and one additional copy

shall be submitted to the administrator and shall be accompanied by:

- (1) one set of classifiable fingerprints on an applicant card provided by the Board;
- (2) one head and shoulders digital photograph of the applicant in JPG format of acceptable quality for identification, taken within six months prior to submission, and submitted by e-mail to PPSASL-Photos@ncdps.gov or by compact disc;
- (3) for residents of North Carolina, statements of the results of a statewide criminal history records search by the reporting service designated by the Board pursuant to G.S. 74C-8.1(a) for any state where the applicant has resided within the preceeding 60 months;
- (4) the applicant's application fee; and
- (5) an Equifax credit check run within 30 days of the license application submission date.

(b) Each applicant shall provide evidence of high school graduation either by diploma, G.E.D. certificate, or other equivalent documentation.

(c) Each applicant for a license shall meet personally with either a Board investigator, the Screening Committee, the Director, or a Board representative designated by the Director prior to being issued a license. The applicant shall discuss the provisions of G.S. 74D and the administrative rules in this Chapter during the personal meeting. The applicant shall sign a form provided by the Board indicating that the applicant has reviewed the information with the Board's representative and that the applicant has an understanding of G.S. 74D and the administrative rules in this Chapter.

(d) Each applicant for a branch office license shall complete an application form provided by the Board. This form and one additional copy shall be submitted to the administrator and shall be accompanied by the branch office application fee.

History Note: Authority G.S. 74D-2; 74D-3; 74D-5; 74D-7; Temporary Rule Eff. January 9, 1984, for a period of 120 days to expire on May 7, 1984; Eff. May 1, 1984; Amended Eff. December 1, 2012; February 1, 2012; January 1, 2007; September 1, 2006; March 1, 1993; July 1, 1987; January 1, 1986; Transferred and Recodified from 12 NCAC 11 .0201 Eff. July 1, 2015; Amended Eff. December 1, 2017.

14B NCAC 17 .0202 EXPERIENCE REQUIREMENTS FOR LICENSE

(a) Applicants for an alarm system license shall meet the following requirements, which are additional to those specified in G.S. 74D:

- (1) Establish to the Board's satisfaction two year's experience within the past five years in alarm systems installation, service, or alarm systems business management;
- (2) No longer than one year prior to the application date, successfully pass an oral or written

examination required by the Board to measure an individual's knowledge and competence in the alarm systems business; or

- (3) No longer than one year prior to the application date, successfully complete the Certified Alarm Technician Level I Course offered by the National Electronic Security Association or Elite CEU's on-line training course.

(b) Any applicant who takes the examination required by the Board under Subparagraph (a)(2) of this Rule and who does not successfully complete said examination after two attempts shall wait six months before being allowed to take the examination again.

*History Note: Authority G.S. 74D-5;
Temporary Rule Eff. January 9, 1984, for a period of 120 days to expire on May 7, 1984;
Eff. May 1, 1984;
Amended Eff. January 1, 2007; August 1, 1998; January 1, 1995;
March 1, 1993; August 3, 1992; June 1, 1990;
Transferred and Recodified from 12 NCAC 11 .0202 Eff. July 1, 2015;
Amended Eff. December 1, 2017.*

14B NCAC 17 .0301 APPLICATION FOR REGISTRATION

(a) Each licensee or qualifying agent shall submit and sign an application form for the registration of his employee on a form provided by the Board. This form, when sent to the Board, shall be accompanied by:

- (1) one set of classifiable fingerprints on a standard F.B.I. applicant card;
- (2) one head and shoulders digital photograph of the applicant in JPG format of acceptable quality for identification, taken within six months prior to submission, and submitted by e-mail to PPSASL-Photos@ncdps.gov or by compact disc;
- (3) for residents of North Carolina, statements of the results of a statewide criminal history records search by the reporting service designated by the Board pursuant to G.S. 74C-8.1(a) for any state where the applicant has resided within the preceeding 60 months; and
- (4) the registration fee required by Rule .0302 of this Section.

(b) The employer of an applicant who is currently registered with another alarm business shall complete an application form provided by the Board. This form shall be accompanied by the applicant's multiple registration fee.

(c) The employer of each applicant for registration shall retain a copy of the applicant's application in the individual applicant's personnel file in the employer's office.

(d) The employer of an applicant for registration shall complete and submit to the Board a certification of the background and criminal record check of each applicant signed by the licensee or qualifying agent. A copy of this certification shall be retained in the individual applicant's personnel file in the employer's office.

*History Note: Authority G.S. 74D-5; 74D-8;
Temporary Rule Eff. January 9, 1984 for a Period of 120 Days to Expire on May 7, 1984;
Eff. May 1, 1984;
Amended Eff. December 1, 2012; January 1, 2007; July 1, 1993;
March 1, 1993; September 1, 1990; November 1, 1988;
Transferred and Recodified from 12 NCAC 11 .0301 Eff. July 1, 2015;
Amended Eff. December 1, 2017.*

TITLE 21 - OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 33 - MIDWIFERY JOINT COMMITTEE

21 NCAC 33 .0110 REPORTING CRITERIA

(a) The Department of Health and Human Services ("Department") may report to the Committee information regarding the prescribing practices of those midwives ("prescribers") whose prescribing:

- (1) falls within the top two percent of those prescribing 100 morphine milligram equivalents ("MME") per patient per day; or
- (2) falls within the top two of those prescribing 100 MME's per patient per day in combination with any benzodiazepine and who are within the top one percent of all controlled substance prescribers by volume.

(b) In addition, the Department may report to the Committee information regarding midwives who have had two or more patient deaths in the preceding 12 months due to opioid poisoning where the prescribers authorized more than 30 tablets of an opioid to the decedent and the prescriptions were written within 60 days of the patient deaths.

(c) The Department may submit these reports to the Committee upon request and may include the information described in G.S. 90-113.73(b).

(d) The reports and communications between the Department and the Committee shall remain confidential pursuant to G.S. 90-113.74.

*History Note: Authority G.S. 90-113.74; 90-178.4;
Eff. May 1, 2016;
Amended Eff. December 1, 2017.*

CHAPTER 60 – BOARD OF REFRIGERATION EXAMINERS

21 NCAC 60 .0102 OFFICE OF BOARD

(a) The Board's office and mailing address is 1027 US 70 Highway West, Suite 221, Garner, North Carolina 27529.

(b) The Board's website is <http://www.refrigerationboard.org>.

*History Note: Authority G.S. 87 54;
Eff. February 1, 1976;
Readopted Eff. April 17, 1978;*

Amended Eff. June 1, 2015; April 1, 2015; September 1, 2011; August 1, 2004; July 1, 2000; August 1, 1995; December 1, 1993; October 1, 1994;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 19, 2015;
Amended Eff. January 1, 2018.

**21 NCAC 60 .0103 RULE-MAKING AND
ADMINISTRATIVE HEARING PROCEDURES**

History Note: Authority G.S. 87-54; 150B-21.6; 150B-38(h); Eff. February 1, 1981;
Amended Eff. October 1, 1995; April 1, 1989; May 1, 1988; October 1, 1984;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 19, 2015;
Repealed Eff. January 1, 2018.

**21 NCAC 60 .0206 EXAMINATION APPLICATION
DULY FILED**

History Note: Authority G.S. 87-54; 87-58;
Eff. October 1, 1984;
Repealed Eff. January 1, 2018

**21 NCAC 60 .0207 REQUIREMENTS FOR
EXAMINATION APPLICANTS**

(a) Applicants requesting to take a refrigeration examination in accordance with Rule .0213 of this Chapter shall:

- (1) Obtain 4,000 hours of refrigeration experience relevant to the classification of licensure desired prior to filing the application. Up to one-half of the experience may be in technical training related to the field of refrigeration contracting; and
- (2) File with the Board an application on a form provided by the Board together with the non-refundable examination fee as set forth in Rule .0209 of this Section. The form may be obtained on the Board's website (www.refrigerationboard.org) or by requesting a copy from the Board office. The application shall require the following:
 - (A) The Social Security Number of the applicant;
 - (B) The applicant's contact information;
 - (C) The name of the business under which licensee will be operating, if any;
 - (D) The license classification desired;
 - (E) Information indication whether the applicant has any disciplinary history with any other occupational licensing board or agency;
 - (F) Record of refrigeration experience and education; and
 - (G) Supervisor(s) statement verifying experience.

(b) Applicants who pass the examination shall receive a certificate issued by the Board bearing his or her license number.

The license shall not be assigned or transferred to another individual.

(c) An individual holding a valid transport or service contractor refrigeration license shall be eligible to sit for the commercial refrigeration examination upon filing with the Board an application as required in Paragraph (a) of this Rule.

(d) An applicant may be licensed in more than one classification of refrigerating contracting provided the applicant meets the qualifications for the classifications as set forth in this Rule, including passing the examinations for the classifications desired.

History Note: Authority G.S. 93B-14; 87-54; 87-58;
Eff. October 1, 1984;
Amended Eff. August 1, 2004, July 1, 2000; April 1, 1997; December 1, 1993; April 1, 1989; September 1, 1988;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 19, 2015;
Amended Eff. January 1, 2018.

21 NCAC 60 .0209 FEES

Fees shall be set as follows:

- (1) Examination application -- \$100.00;
- (2) License renewal -- \$80.00; and
- (3) License reinstatement -- \$120.00.

History Note: Authority G.S. 54; 87-58(d); 87-64;
Eff. May 1, 1989;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 19, 2015;
Amended Eff. January 1, 2018.

21 NCAC 60 .0212 QUALIFYING EXAMINATIONS

History Note: Authority G.S. 87-54; 87-58;
Eff. August 1, 2004;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 19, 2015;
Repealed Eff. January 1, 2018.

21 NCAC 60 .0213 EXAMINATIONS

(a) Upon approval to take an examination in accordance with Rule .0207 of this Chapter, the Board shall schedule and notify the approved applicant of the date, time, and place of the examination.

(b) Refrigeration Contractors Examinations shall be divided as follows:

- (1) Commercial and Industrial shall be divided into four parts; and
- (2) Service and Transport refrigeration shall be divided into three parts.

(c) All examinations shall be written or computer based.

(d) In order to pass the examination, an applicant shall obtain a grade of at least 70 percent of each part. An applicant shall pass all parts of the examination within the same one year period and within no more than three consecutive attempts. Each time an applicant takes the examination, the applicant shall take all parts for which he or she does not have passing grades. If the applicant fails to pass all parts within one year or within three consecutive attempts (whichever period is shorter), any passing grades for

individual parts shall no longer be valid and the applicant shall retake all parts of the examination.

(e) An applicant who fails an examination must wait a period of five business days from the date he or she last failed an examination before he or she will be eligible to take another examination.

(f) Each applicant who fails an examination shall be notified of his or her scores and the parts of the examination he or she failed.

(g) An applicant who fails to appear at a scheduled examination shall have the no show count toward the three attempts described in Paragraph (d) of this Rule unless notice is given five business days prior to the scheduled examination.

(h) If an applicant files an application for examination that is approved, and takes and fails the examination, his or her verification of refrigeration experience shall be kept and shall be sufficient for taking any future examination, provided he or she files another application accompanied by the required fee as set forth in these Rules.

History Note: Authority G.S. 87-54; 87-58;

Eff. August 1, 2004;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 19, 2015;

Amended Eff. January 1, 2018.

This Section contains information for the meeting of the Rules Review Commission January 18, 2018 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 2nd business day before the meeting. Please refer to RRC rules codified in 26 NCAC 05.

RULES REVIEW COMMISSION MEMBERS**Appointed by Senate**

Jeff Hyde (1st Vice Chair)
Robert A. Bryan, Jr.
Margaret Currin
Jay Hemphill
Jeffrey A. Poley

Appointed by House

Garth Dunklin (Chair)
Andrew P. Atkins
Anna Baird Choi
Paul Powell
Jeanette Doran (2nd Vice Chair)

COMMISSION COUNSEL

Abigail Hammond (919)431-3076
Amber Cronk May (919)431-3074
Amanda Reeder (919)431-3079
Jason Thomas (919)431-3081

RULES REVIEW COMMISSION MEETING DATES

January 18, 2018 February 15, 2018
March 15, 2018 April 19, 2018

AGENDA**RULES REVIEW COMMISSION****THURSDAY, JANUARY 18, 2018 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. Environmental Management Commission - 15A NCAC 02D .2203 (Thomas)
- IV. Review of Log of Filings (Permanent Rules) for rules filed November 21, 2017 through December 20, 2017
 - Pre-Reviewed Rules
 - Department of Commerce - Credit Union Division (Hammond)
 - Department of Natural and Cultural Resources (May)
 - Wildlife Resources Commission (Reeder)
 - Department of Transportation (May)
 - Non Pre-Reviewed Rules
 - Well Contractors Certification Commission (May)
 - Board of Certified Public Accountant Examiners (May)
 - Veterinary Medical Board (Reeder)
- V. Review of Log of Filings (Temporary Rules) for any rule filed within 15 business days prior to the RRC Meeting
- VI. Existing Rules Review
 - Review of Reports
 - 1. 10A NCAC 13F – Medical Care Commission (Thomas)
 - 2. 10A NCAC 28B - Commission for MH/DD/SAS (Thomas)
 - 3. 10A NCAC 28C – Commission for MH/DD/SAS (Thomas)
 - 4. 15A NCAC 07A – Coastal Resources Commission (Thomas)
 - 5. 15A NCAC 07H - Coastal Resources Commission (Thomas)

6. 15A NCAC 07I - Coastal Resources Commission (Thomas)
7. 15A NCAC 07J – Coastal Resources Commission (Thomas)
8. 15A NCAC 07K – Coastal Resources Commission (Thomas)
9. 15A NCAC 07L – Coastal Resources Commission (Thomas)

VII. Review of the 2018 State Medical Facilities Plan (Reeder)

VIII. Commission Business

- B. Periodic Review and Expiration of Existing Rules Readoption Schedule
 - Election of Commission Officers
 - Next meeting: Thursday, February 15, 2018

Commission Review
Log of Permanent Rule Filings
November 21, 2017 through December 20, 2017

COMMERCE, DEPARTMENT OF - CREDIT UNION DIVISION

The rules in Subchapter 6B concern rulemaking (.0300); declaratory rulings (.0400); and contested cases (.0500).

<u>Response of Administrator to Petition</u>	04	NCAC	06B	.0402
Readopt with Changes*				

The rules in Subchapter 6C concern credit unions and include general information (.0100); organization of credit unions (.0200); basic internal controls: accounting procedures and operation standards for state-chartered credit unions (.0300); loans (.0400); impairment and insolvency (.0500); dividends deposits and interest rebate (.0600); accounts (.0700); reports to administrator (.0800); pension plans (.0900); retention of records (.1000); forms used by credit union division (.1100); investments (.1200); reserves (.1300); and signature guarantee services.

<u>Definitions</u>	04	NCAC	06C	.0101
Readopt with Changes*				
<u>Incorporation of State Chartered Credit Unions</u>	04	NCAC	06C	.0201
Readopt with Changes*				
<u>Minimum Potential Membership Guidelines</u>	04	NCAC	06C	.0202
Readopt with Changes*				
<u>Fields of Membership</u>	04	NCAC	06C	.0203
Readopt without Changes*				
<u>Out of State Office Facilities</u>	04	NCAC	06C	.0209
Readopt with Changes*				
<u>General Provisions</u>	04	NCAC	06C	.0301
Readopt with Changes*				
<u>Procedures</u>	04	NCAC	06C	.0302
Readopt with Changes*				
<u>Management Duties</u>	04	NCAC	06C	.0304
Readopt with Changes*				
<u>Display of Financial Statements</u>	04	NCAC	06C	.0306
Readopt with Changes*				
<u>Listing of Officials and Operating Hours</u>	04	NCAC	06C	.0307
Readopt with Changes*				
<u>Fidelity and Surety Bonds and Insurance Coverage</u>	04	NCAC	06C	.0311
Readopt with Changes*				
<u>Insurance and Group Purchasing</u>	04	NCAC	06C	.0312
Readopt with Changes*				

<u>Credit Union Service Organization (CUSO)</u>	04	NCAC	06C	.0313
Readopt with Changes*				
<u>Delinquent Loans and Loan Losses</u>	04	NCAC	06C	.0401
Readopt with Changes*				
<u>Charge-Off of Uncollectible Loans</u>	04	NCAC	06C	.0402
Readopt with Changes*				
<u>Line of Credit Loans</u>	04	NCAC	06C	.0404
Readopt with Changes*				
<u>Commercial Lending and Member Business Loans</u>	04	NCAC	06C	.0407
Readopt without Changes*				
<u>Loan Limitations</u>	04	NCAC	06C	.0409
Readopt with Changes*				
<u>Impairment</u>	04	NCAC	06C	.0501
Readopt with Changes*				
<u>Insolvency</u>	04	NCAC	06C	.0502
Readopt without Changes*				
<u>Dividends</u>	04	NCAC	06C	.0601
Readopt with Changes*				
<u>Statements of Accounts</u>	04	NCAC	06C	.0707
Readopt with Changes*				
<u>Financial Statements and Other Information</u>	04	NCAC	06C	.0801
Readopt with Changes*				
<u>Credit Union as Custodian</u>	04	NCAC	06C	.0901
Readopt with Changes*				
<u>Permanent Records</u>	04	NCAC	06C	.1001
Readopt with Changes*				
<u>Non-Permanent Records</u>	04	NCAC	06C	.1002
Readopt with Changes*				
<u>Investment Activities</u>	04	NCAC	06C	.1201
Readopt with Changes*				
<u>Federal Funds</u>	04	NCAC	06C	.1204
Readopt without Changes*				
<u>Special Reserves for Liquidity</u>	04	NCAC	06C	.1301
Readopt with Changes*				
<u>Other Reserves</u>	04	NCAC	06C	.1302
Readopt with Changes*				

NATURAL AND CULTURAL RESOURCES, DEPARTMENT OF

The rules in Subchapter 2G concern the State Library of North Carolina.

<u>Scope of Rules</u>	07	NCAC	02G	.0101
Repeal*				
<u>Eligibility for State Library Services</u>	07	NCAC	02G	.0102
Repeal*				

The rules in Subchapter 2H concern library services including the government and heritage library (.0100); the state depository library system (.0200); and the library for the blind and physically handicapped (.0300).

<u>Access and Circulation</u>	07	NCAC	02H	.0103
Amend*				
<u>Reproduction Services</u>	07	NCAC	02H	.0104
Repeal*				

RULES REVIEW COMMISSION

<u>Information, Reference and Research Services</u>	07	NCAC	02H	.0105
Repeal*				
<u>Services for State Agencies</u>	07	NCAC	02H	.0106
Amend*				
<u>Eligibility</u>	07	NCAC	02H	.0302
Amend*				
<u>Application</u>	07	NCAC	02H	.0303
Readopt with Changes*				
<u>Library Collections</u>	07	NCAC	02H	.0304
Repeal*				
<u>Circulation</u>	07	NCAC	02H	.0305
Amend*				

The rules in Subchapter 2I concern library development including organizational rules (.0100); state aid to public libraries (.0200); and organization of regional libraries (.0300).

<u>Scope of Rules</u>	07	NCAC	02I	.0101
Repeal*				
<u>State Aid Grants</u>	07	NCAC	02I	.0202
Amend*				
<u>Regional Agreement</u>	07	NCAC	02I	.0302
Amend*				

WILDLIFE RESOURCES COMMISSION

The rules in Chapter 10 are promulgated by the Wildlife Resources Commission and concern wildlife resources and water safety.

The rules in Subchapter 10B are hunting and trapping rules and cover general hunting and wildlife provisions (.0100), hunting specific animals (.0200), trapping (.0300), and tagging furs (.0400).

<u>Wild Turkey</u>	15A	NCAC	10B	.0209
Amend*				

The rules in Subchapter 10H concern activities regulated by the Commission including controlled hunting preserves for domestically raised game birds (.0100), holding wildlife in captivity (.0300), commercial trout ponds (.0400), fish propagation (.0700), falconry (.0800), game bird propagators (.0900), taxidermy (.1000), furbearer propagation (.1100), controlled fox hunting preserves (.1200), and reptiles and amphibians (.1300).

<u>Definitions</u>	15A	NCAC	10H	.0801
Amend*				
<u>Permit and License Requirements</u>	15A	NCAC	10H	.0802
Amend*				
<u>Application for License</u>	15A	NCAC	10H	.0803
Amend*				
<u>Examination</u>	15A	NCAC	10H	.0804
Amend*				
<u>Duration of License</u>	15A	NCAC	10H	.0805
Amend*				
<u>Acquisition, Sale and Status Change</u>	15A	NCAC	10H	.0806
Amend*				
<u>Levels of Licenses</u>	15A	NCAC	10H	.0807
Amend*				
<u>Facilities and Equipment</u>	15A	NCAC	10H	.0808
Amend*				

<u>Banding and Marking</u>	15A	NCAC	10H	.0809
Amend*				
<u>Taking Raptors</u>	15A	NCAC	10H	.0810
Amend*				
<u>Other Restrictions and Conditions</u>	15A	NCAC	10H	.0811
Amend*				
<u>Interstate Transportation</u>	15A	NCAC	10H	.0812
Repeal*				
<u>Release of Raptors and Moving Raptors to Another License ...</u>	15A	NCAC	10H	.0814
Amend*				
<u>Other Uses and Allowed Activities</u>	15A	NCAC	10H	.0815
Amend*				
<u>Duty of a Taxidermist</u>	15A	NCAC	10H	.1002
Amend*				
<u>Records</u>	15A	NCAC	10H	.1003
Amend*				
<u>Purchase and Sale of Wildlife</u>	15A	NCAC	10H	.1004
Readopt with Changes*				
<u>Taxidermy Preservation Facility</u>	15A	NCAC	10H	.1005
Amend*				

WELL CONTRACTORS CERTIFICATION COMMISSION

The rules in Chapter 27 concern well contractor certification including duties and definitions (.0100); well contractor fees (.0200); certification of well contractors (.0300); certification by examination (.0400); certification without examination (.0500); certification renewal (.0600); types of certification (.0700); continuing education (.0800); and procedures for disciplinary actions (.0900).

<u>Requirements of Certification</u>	15A	NCAC	27	.0702
Amend*				

TRANSPORTATION, DEPARTMENT OF

The rules in Chapter 6 concern transit, rail, and aviation.

The rules in Subchapter 6D concern the bicycle and bikeway program.

<u>Designing for Bicycles and Bikeways</u>	19A	NCAC	06D	.0203
Repeal*				

CERTIFIED PUBLIC ACCOUNTANT EXAMINERS, BOARD OF

The rules in Subchapter 8F are the requirements for CPA examination and certificate applicants including general provisions (.0100), fees and refunds (.0200), educational requirements (.0300), experience (.0400), and applications (.0500).

<u>Filing of Examination Applications and Fees</u>	21	NCAC	08F	.0103
Amend*				
<u>Application for CPA Certificate</u>	21	NCAC	08F	.0502
Amend*				

VETERINARY MEDICAL BOARD

The rules in Chapter 66 are from the Veterinary Medical Board including statutory and administrative provisions (.0100); practice of veterinary medicine (.0200); examination and licensing procedures (.0300); rules petitions hearings (.0400); declaratory rulings (.0500); administrative hearings procedures (.0600); administrative hearings decisions related rights (.0700) and judicial review (.0800).

Minimum Standards for Continuing Education
Amend*

21 NCAC 66 .0206

CONTESTED CASE DECISIONS

This Section contains a listing of recently issued Administrative Law Judge decisions for contested cases that are non-confidential. Published decisions are available for viewing on the OAH website at <http://www.ncoah.com/hearings/decisions/>. If you are having problems accessing the text of the decisions online or for other questions regarding contested cases or case decisions, please contact the Clerk's office by email: oah.clerks@oah.nc.gov or phone 919-431-3000.

OFFICE OF ADMINISTRATIVE HEARINGS

Chief Administrative Law Judge
JULIAN MANN, III

Senior Administrative Law Judge
FRED G. MORRISON JR.

ADMINISTRATIVE LAW JUDGES

Melissa Owens Lassiter
Don Overby
J. Randall May
David Sutton

A. B. Elkins II
Selina Malherbe
J. Randolph Ward
Stacey Bawtinheimer

Year	Code	Number	Date Decision Filed	Petitioner		Respondent	ALJ
				<u>PUBLISHED</u>			
16/17	DHR	12119/02738	11/14/2017	Bessie Carter	v.	NC Department of Health and Human Services, Division of Health Service Regulation	Elkins
17	DOJ	01085	11/29/2017	Andre Tryon Caldwell	v.	NC Criminal Justice Education and Training Standards Commission	Bawtinheimer
17	DOJ	03200	11/7/2017; 11/8/2017	Carson Tate Puckett	v.	NC Sheriffs Education and Training Standards Commission	Sutton
17	DOJ	03362	11/3/2017	Edward W Hurley Jr	v.	NC Sheriffs Education and Training Standards Commission	Mann
17	DOJ	05697	11/13/2017	Arthur Marvin Dunkes III	v.	NC Department of Justice Company Police Program	Malherbe
17	DOJ	05846	11/6/2017	David Lee Koger	v.	North Carolina Alarm Sytems Licensing Board	Bawtinheimer
17	DOJ	06754	11/7/2017	Creo M McIver II	v.	NC Private Protective Services Board	Bawtinheimer
16	EHR	03414	11/14/2017	Mr. John Townson Director Environmental Management Div FOR: MCIEAST/Marine Corps Base Camp Lejeune NC	v.	State of North Carolina Department of Environmental Quality Division of Air Quality	Overby
16	EHR	11818	11/30/2017	Jerry Taylor	v.	NC Department of Environmental Quality	Elkins
17	EHR	03071/04540	11/16/2017	Concerned Citizens of Richmond County	v.	North Carolina Department of Environmental Quality Division of Air Quality/NC Department of	Sutton

CONTESTED CASE DECISIONS

						Environmental Quality, Division of Air Quality	
16	INS	10836	11/28/2017; 11/29/2017	NC Department of Insurance Agent Services Division	v.	Christopher David Manning	Ward
17	OSP	01503	11/7/2017	Luenetta Lewis	v.	Washington County Department of Social Services	Ward
17	OSP	03164	11/16/2017	William Austin Hardison	v.	North Carolina Department of Public Safety, North Carolina State Highway Patrol	Overby
				UNPUBLISHED			
16	CSE	11556	11/17/2017	Archie T McLeod	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Overby
16	DHR	12381	11/16/2017	Blue Sky Ped of Ashe Burlington Ped PA Cary Ped Ctr PA Coastal Children's Clinic Inc Goldsboro Ped PA Haywood Ped & Adolescent Med Group PA NC Acd of Family Phy Inc NC Ped Soc Inc & Sandhills Ped Inc	v.	Nc Department Of Health And Human Services Division of Medical Assistance	Ward
17	DHR	03795	11/3/2017	Cathy A Davis	v.	Orange County DSS AFDC/Work First	Lassiter
17	DHR	04495	11/1/2017	Francis Kiernan	v.	Pender County Health Department	Ward
17	DHR	05597	11/6/2017	Ken Gordon Gamekeeper Restaurant	v.	NC DHHS Watauga Health Department	Sutton
17	DHR	06020	11/16/2017	Jaroslav Kozel	v.	NC Department of Health and Human Services	Sutton
17	DHR	06038	11/27/2017	Elite Care Services Inc Christopher Bennett MHL #084-067	v.	NC Department of Health and Human Services, Division of Health Service Regulation, Mental Health Licensure and Certification	Malherbe
17	DHR	06470	11/30/2017	Yvette Leigh	v.	Department of Health and Human Services, Division of Health Service Regulation	Overby
17	DHR	06739	11/21/2017	Verena Denise Taylor	v.	Department of Health and Human Services	Lassiter
17	DHR	06876	11/27/2017	Barbara Jeanette Davis	v.	Department of Health and Human Services	Lassiter
17	DOT	06205	11/30/2017	Melissa Donavant	v.	North Carolina Department of Transportation	May
17	EDC	06953	11/9/2017	Tonesha Monique Mayo	v.	Glenn Elementary School and Mr. Cornelius Redfearn & DPS	Ward

CONTESTED CASE DECISIONS

17	EHR	01564	11/3/2017	Town of Atlantic Beach	v.	NC Department of Environmental Quality, Division of Marine Fisheries	Lassiter
17	INS	05504	11/28/2017	Gerald D Surh	v.	North Carolina State Health Plan	Overby
17	INS	05798	11/29/2017	Xiao O Fu (McLinton before) owner/president of Carrboro Family Clinic PA	v.	BCBS NC CEO Mr. Brad Wilson	Elkins
17	OSP	06960	11/27/2017	Dean William Guite	v.	North Carolina Office of State Human Resources (NCDPS)	Lassiter