

# NORTH CAROLINA

## IN THIS ISSUE



## REGISTER

Volume 16, Issue 7  
Pages 558 - 598

October 1, 2001

This issue contains documents officially filed through September 10, 2001.

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*North Carolina Register* is published semi-monthly for \$195 per year by the Office of Administrative Hearings, 424 North Blount Street, Raleigh, NC 27601. *North Carolina Register* (ISSN 15200604) to mail at Periodicals Rates is paid at Raleigh, NC. POSTMASTER: Send Address changes to the *North Carolina Register*, 6714 Mail Service Center, Raleigh, NC 27699-6714.

**NORTH CAROLINA ADMINISTRATIVE CODE CLASSIFICATION SYSTEM**

*The North Carolina Administrative Code (NCAC) has four major subdivisions of rules. Two of these, titles and chapters, are mandatory. The major subdivision of the NCAC is the title. Each major department in the North Carolina executive branch of government has been assigned a title number. Titles are further broken down into chapters which shall be numerical in order. The other two, subchapters and sections are optional subdivisions to be used by agencies when appropriate.*

**TITLE/MAJOR DIVISIONS OF THE NORTH CAROLINA ADMINISTRATIVE CODE**

<b>TITLE</b>	<b>DEPARTMENT</b>	<b>LICENSING BOARDS</b>	<b>CHAPTER</b>
1	Administration	Acupuncture	1
2	Agriculture	Architecture	2
3	Auditor	Athletic Trainer Examiners	3
4	Commerce	Auctioneers	4
5	Correction	Barber Examiners	6
6	Council of State	Certified Public Accountant Examiners	8
7	Cultural Resources	Chiropractic Examiners	10
8	Elections	Employee Assistance Professionals	11
9	Governor	General Contractors	12
10	Health and Human Services	Cosmetic Art Examiners	14
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12	Justice	Dietetics/Nutrition	17
13	Labor	Electrical Contractors	18
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16	Public Education	Geologists	21
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**NORTH CAROLINA REGISTER**  
 Publication Schedule for July 2000 – June 2001

Filing Deadlines			Notice of Rule-Making Proceedings	Notice of Text							Temporary Rule
volume & issue number	issue date	last day for filing	earliest register issue for publication of text	earliest date for public hearing	non-substantial economic impact			substantial economic impact			270 <sup>th</sup> day from issue date
					end of required comment period	deadline to submit to RRC for review at next meeting	first legislative day of the next regular session	end of required comment period	deadline to submit to RRC for review at next meeting	first legislative day of the next regular session	
15:13	01/02/01	12/07/00	03/15/01	01/17/01	02/01/01	02/20/01	05/00/02	03/05/01	03/20/01	05/00/02	09/29/01
15:14	01/16/01	12/20/00	04/02/01	01/31/01	02/15/01	02/20/01	05/00/02	03/19/01	03/20/01	05/00/02	10/13/01
15:15	02/01/01	01/10/01	04/02/01	02/16/01	03/05/01	03/20/01	05/00/02	04/02/01	04/20/01	05/00/02	10/29/01
15:16	02/15/01	01/25/01	05/01/01	03/02/01	03/19/01	03/20/01	05/00/02	04/16/01	04/20/01	05/00/02	11/12/01
15:17	03/01/01	02/08/01	05/01/01	03/16/01	04/02/01	04/20/01	05/00/02	04/30/01	05/21/01	05/00/02	11/26/01
15:18	03/15/01	02/22/01	05/15/01	03/30/01	04/16/01	04/20/01	05/00/02	05/14/01	05/21/01	05/00/02	12/10/01
15:19	04/02/01	03/12/01	06/01/01	04/17/01	05/02/01	05/21/01	05/00/02	06/01/01	06/20/01	05/00/02	12/28/01
15:20	04/16/01	03/26/01	06/15/01	05/01/01	05/16/01	05/21/01	05/00/02	06/15/01	06/20/01	05/00/02	01/11/02
15:21	05/01/01	04/10/01	07/02/01	05/16/01	05/31/01	06/20/01	05/00/02	07/02/01	07/20/01	05/00/02	01/26/02
15:22	05/15/01	04/24/01	07/16/01	05/30/01	06/14/01	06/20/01	05/00/02	07/16/01	07/20/01	05/00/02	02/09/02
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16:01	07/02/01	06/11/01	09/04/01	07/17/01	08/01/01	08/20/01	05/00/02	08/31/01	09/20/01	05/00/02	03/29/02
16:02	07/16/01	06/22/01	09/17/01	07/31/01	08/15/01	08/20/01	05/00/02	09/14/01	09/20/01	05/00/02	04/12/02
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16:06	09/17/01	08/24/01	12/03/01	10/02/01	10/17/01	10/22/01	05/00/02	11/16/01	11/20/01	05/00/02	06/14/02
16:07	10/01/01	09/10/01	12/03/01	10/16/01	10/31/01	11/20/01	05/00/02	11/30/01	12/20/01	05/00/02	06/28/02
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16:09	11/01/01	10/11/01	01/02/02	11/16/01	12/03/01	12/20/01	05/00/02	12/31/01	01/21/02	05/00/02	07/29/02
16:10	11/15/01	10/24/01	01/15/02	11/30/01	12/17/01	12/20/01	05/00/02	01/14/02	01/21/02	05/00/02	08/12/02
16:11	12/03/01	11/07/01	02/01/02	12/18/01	01/02/02	01/22/02	05/00/02	02/01/02	02/20/02	05/00/02	08/30/02
16:12	12/17/01	11/26/01	02/15/02	01/02/02	01/16/02	01/22/02	05/00/02	02/15/02	02/20/02	05/00/02	09/13/02

## EXPLANATION OF THE PUBLICATION SCHEDULE

This Publication Schedule is prepared by the Office of Administrative Hearings as a public service and the computation of time periods are not to be deemed binding or controlling. Time is computed according to 26 NCAC 2C .0302 and the Rules of Civil Procedure, Rule 6.

### GENERAL

The North Carolina Register shall be published twice a month and contains the following information submitted for publication by a state agency:

- (1) temporary rules;
- (2) notices of rule-making proceedings;
- (3) text of proposed rules;
- (4) text of permanent rules approved by the Rules Review Commission;
- (5) notices of receipt of a petition for municipal incorporation, as required by G.S. 120-165;
- (6) Executive Orders of the Governor;
- (7) final decision letters from the U.S. Attorney General concerning changes in laws affecting voting in a jurisdiction subject of Section 5 of the Voting Rights Act of 1965, as required by G.S. 120-30.9H;
- (8) orders of the Tax Review Board issued under G.S. 105-241.2; and
- (9) other information the Codifier of Rules determines to be helpful to the public.

**COMPUTING TIME:** In computing time in the schedule, the day of publication of the North Carolina Register is not included. The last day of the period so computed is included, unless it is a Saturday, Sunday, or State holiday, in which event the period runs until the preceding day which is not a Saturday, Sunday, or State holiday.

### FILING DEADLINES

**ISSUE DATE:** The Register is published on the first and fifteen of each month if the first or fifteenth of the month is not a Saturday, Sunday, or State holiday for employees mandated by the State Personnel Commission. If the first or fifteenth of any month is a Saturday, Sunday, or a holiday for State employees, the North Carolina Register issue for that day will be published on the day of that month after the first or fifteenth that is not a Saturday, Sunday, or holiday for State employees.

**LAST DAY FOR FILING:** The last day for filing for any issue is 15 days before the issue date excluding Saturdays, Sundays, and holidays for State employees.

### NOTICE OF RULE-MAKING PROCEEDINGS

**END OF COMMENT PERIOD TO A NOTICE OF RULE-MAKING PROCEEDINGS:** This date is 60 days from the issue date. An agency shall accept comments on the notice of rule-making proceeding until the text of the proposed rules is published, and the text of the proposed rule shall not be published until at least 60 days after the notice of rule-making proceedings was published.

**EARLIEST REGISTER ISSUE FOR PUBLICATION OF TEXT:** The date of the next issue following the end of the comment period.

### 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**  
**(1) RULE WITH NON-SUBSTANTIAL ECONOMIC IMPACT:** An agency shall accept comments on the text of a proposed rule for at least 30 days after the text is published or until the date of any public hearings held on the proposed rule, whichever is longer.

**(2) RULE WITH SUBSTANTIAL ECONOMIC IMPACT:** An agency shall accept comments on the text of a proposed rule published in the Register and that has a substantial economic impact requiring a fiscal note under G.S. 150B-21.4(b1) for at least 60 days after publication or until the date of any public hearing held on the rule, whichever is longer.

**DEADLINE TO SUBMIT TO THE RULES REVIEW COMMISSION:** The Commission shall review a rule submitted to it on or before the twentieth of a month by the last day of the next month.

**FIRST LEGISLATIVE DAY OF THE NEXT REGULAR SESSION OF THE GENERAL ASSEMBLY:** This date is the first legislative day of the next regular session of the General Assembly following approval of the rule by the Rules Review Commission. See G.S. 150B-21.3, Effective date of rules.

This Section contains public notices that are required to be published in the Register or have been approved by the Codifier of Rules for publication.

STATE OF NORTH CAROLINA

BEFORE THE  
TAX REVIEW BOARD

COUNTY OF WAKE

IN THE MATTER OF:

The Proposed Assessment of Inheritance )  
Tax by the Secretary of Revenue of )  
North Carolina )  
)  
vs. )  
)  
Kathryn H. Edwards, Taxpayer )

ADMINISTRATIVE DECISION

Number: 368

This matter was heard before the Regular Tax Review Board in the City of Raleigh, Wake County, North Carolina, on Tuesday, April 25, 2001, upon Taxpayer's petition for administrative review of the Final Decision of the Secretary of Revenue entered on May 26, 2000, sustaining the inheritance tax assessment levied against her as a result of life insurance proceeds that she received.

Chairman Richard H. Moore, State Treasurer presided over the hearing with Jo Anne Sanford, Chair, Utilities Commission and duly appointed member, Noel L. Allen, Attorney at Law participating.

Even though the Taxpayer did not appear at the hearing, she did submit on April 25, 2001 by facsimile, written documentation for the Board's consideration. Alexandra M. Hightower, Associate Attorney General appeared at the hearing on behalf of the Secretary of Revenue.

Pursuant to G.S. 105-241.1, a Notice of Inheritance Tax Assessment reflecting tax and interest in the amount of \$6,431.69 was mailed to the Taxpayer on September 24, 1998. The proposed assessment was based on life insurance proceeds received by Taxpayer upon the death of William C. Tucker, her former spouse. After conducting an administrative hearing, Assistant Secretary, Michael A. Hannah rendered his decision sustaining the assessment in every respect. Pursuant to G.S. 105-241.2, Taxpayer timely filed a notice of intent and petition for administrative review of the Assistant Secretary's final decision with the Tax Review Board.

ISSUE

The issue presented to the Board on administrative review of this matter is stated as follows:

1. Is the inheritance tax assessment proposed against the Taxpayer lawful and proper?

EVIDENCE

The evidence presented at the hearing before the Secretary of Revenue and submitted to the Board for review is listed below as follows:

1. Memorandum dated April 18, 1996, from Muriel K. Offerman, Secretary of Revenue, to Michael A. Hannah, Assistant Secretary of Revenue, a copy of which is designated as Exhibit PT-1.
2. Information from Pages 4 and 7 of the North Carolina Inheritance and Estate Tax Return of Spouse, copies of which are collectively designated as Exhibit PT-2.
3. Notice of Inheritance Tax Assessment dated September 24, 1998, a copy of which is designated as Exhibit PT-3.
4. Separation and Property Settlement Agreement between Spouse and Taxpayer, a copy of which is designated as Exhibit PT-4.
5. Order of Wake County Clerk of Superior Court to Terry A. Tucker, Administrator of the Estate of William C. Tucker v. Provident Life and Accident Insurance Company, a copy of which is designated as Exhibit PT-5.
6. Check for \$62,500 from Provident Life and Accident Insurance Company made payable to the Taxpayer and John W. Dees, attorney, dated October 24, 1997; check for \$12,500 from Dees, Smith, Powell, Jarrett, Dees & Jones Trust Account made payable to Dees Law Office dated November 25, 1997; and check for \$50,000.00 from Dees, Smith, Powell, Jarrett, Dees &

## *IN ADDITION*

- Jones Trust Account made payable to the Taxpayer dated November 25, 1997, copies of which are designated as Exhibit PT-6.
7. Letter from Carl W. Hibbert, attorney, to Department of Revenue dated August 17, 1998, a copy of which is designated as Exhibit PT-7.
  8. Letter from Carl W. Hibbert to John W. Dees, attorney, dated September 14, 1998, a copy of which is designated as Exhibit PT-8.
  9. Letter from Taxpayer to Wendy Walser, Tax Auditor, dated October 19, 1998, a copy of which is designated as Exhibit PT-10.
  10. Letter from the Taxpayer to the Department of Revenue dated October 30, 1998, a copy of which is designated as Exhibit PT-10.
  11. Letter from Charles T. Hawks, Administrative Officer, to Taxpayer dated November 18, 1998, a copy of which is designated as Exhibit PT-11.
  12. Letter from Rose Vaughn Williams, attorney, to Charles T. Hawks dated January 19, 1999, a copy of which is designated as Exhibit PT-12.
  13. Letter from Charles T. Hawks to Rose Vaughn Williams, dated February 17, 1999, with related attachments, copies of which are collectively designated as Exhibit PT-13.
  14. Letter from Charles T. Hawks to Taxpayer, dated July 1, 1999, a copy of which is designated as Exhibit PT-14.
  15. Letter from Taxpayer to Charles T. Hawks, dated July 27, 1999, a copy of which is designated as Exhibit PT-15.
  16. Letter from Taxpayer to Charles T. Hawks, dated July 29, 1999, a copy of which is designated as Exhibit PT-16.
  17. Letter from Charles T. Hawks to Taxpayer, dated August 3, 1999, a copy of which is designated as Exhibit PT-17.
  18. Letter from Michael A. Hannah, Assistant Secretary of Revenue to the Taxpayer, dated August 5, 1999, a copy of which is designated as Exhibit PT-18.
  19. Letter from Taxpayer to Michael A. Hannah, dated September 17, 1999, a copy of which is designated as Exhibit PT-19.
  20. Letter from Michael A. Hannah to the Taxpayer, dated September 20, 1999, a copy of which is designated as Exhibit PT-21.
  21. Letter from Michael A. Hannah to the Taxpayer, dated December 3, 1999, a copy of which is designated as Exhibit PT-22.
  22. Letter from the Taxpayer to Michael A. Hannah, dated January 26, 2000, a copy of which is designated as Exhibit PT-22.
  23. Letter from Michael A. Hannah to the Taxpayer, dated January 31, 2000, a copy of which is designated as Exhibit PT-23.

On March 3, 2000, the Taxpayer provided 41 pages of additional information to the Department, copies of which are collectively designated as Taxpayer Exhibit TP-1.

### **FINDINGS OF FACT**

The Board reviewed the following findings of fact made by the Assistant Secretary in his decision regarding this matter:

1. Taxpayer is and at all material times was a natural person, sui juris, and a resident of North Carolina.
2. Taxpayer and Spouse were divorced on June 10, 1994. Their separation agreement provided that Spouse would maintain a life insurance policy on his life in the amount of \$50,000 naming Taxpayer as sole beneficiary for two years following the date of the divorce or until the remarriage of either, whichever came first.
3. At the time of his death, Spouse owned a life insurance policy in the amount of \$100,000 which was payable to Taxpayer in spite of the fact that both had remarried and two years had passed since the divorce was final.
4. Spouse owned the insurance policy, which was a group life insurance policy he secured through his employer. The premiums were paid by Spouse through payroll deduction.
5. Both Taxpayer and Spouse's current wife requested payment of the proceeds from the insurance company. The proceeds were finally distributed under a court order; \$37,500 were payable to the estate and \$62,500 were payable to Taxpayer and her attorney.
6. Of the \$62,500 made payable to Taxpayer and her attorney, \$50,000 was distributed to Taxpayer and \$12,500 was distributed to her attorney.
7. The Department computed the inheritance tax on the entire \$62,500 and proposed a Notice of Inheritance Tax Assessment on September 24, 1998, for inheritance tax and interest of \$6,431.69.
8. Taxpayer paid inheritance tax and interest of \$5,277.62 on the \$50,000 distributed to her. Taxpayer did not pay tax and interest due on the \$12,500 distributed to her attorney.

### **CONCLUSIONS OF LAW**

The Board reviewed the following conclusions of law made by the Assistant Secretary in his decision regarding this matter:

1. Life insurance proceeds on a policy owned by a North Carolina resident and payable upon his death are subject to inheritance tax.
2. The inheritance tax rates are based upon the relationship of the beneficiary to the decedent.
3. Former spouses are taxed at the Class C rates with no exemptions because all spousal rights cease after divorce.

***IN ADDITION***

4. Only specified deductions and expenses are allowed to reduce the value of the taxable estate, which in turn reduces the amount of inheritance tax due.
5. Among the allowable deductions are costs of administration of the estate including reasonable attorneys' fees paid on behalf of the estate.
6. Taxation is the rule; exemption is the exception.
7. Deductions are in the nature of exemptions; they are privileges, not matters of right, and are allowed as a matter of legislative grace.
8. Attorneys' fees incurred by beneficiaries incident to litigation as to their respective interest are not deductible if the litigation is not essential to the proper settlement of the estate. An attorney's fee not meeting this test is not deductible as an administrative expense even if it is approved by a probate court as an expense payable or reimbursable by the estate.
9. The Notice of Inheritance Tax Assessment was properly issued.
10. All assessments bear interest from the time the tax or additional tax is due until paid.

**DECISION**

The scope of administrative review for petitions filed with the Tax Review Board is governed by G.S. 105-241.2(b2). After the Board conducts a hearing this statute provides in pertinent part:

(b2). "The Board shall confirm, modify, reverse, reduce or increase the assessment or decision of the Secretary."

Assessments of tax are presumed to be correct and the taxpayer has the burden to show that the assessment is not proper. From a review of the record, the Taxpayer failed to furnish any evidence to overcome this presumption. Thus, the Board having conducted an administrative hearing in this matter, and having considered the petition, the brief, the record and the Assistant Secretary's final decision, concludes that the findings of fact made by the Assistant Secretary were supported by competent evidence in the record; that based upon the findings of fact, the Assistant Secretary's conclusions of law were fully supported by the findings of fact; therefore the decision of the Assistant Secretary should be confirmed.

**WHEREFORE, THE BOARD ORDERS** that the Assistant Secretary's final decision be confirmed in every respect.

Made and entered into the 23rd day of July 2001.

Signature \_\_\_\_\_  
Richard H. Moore, Chairman  
State Treasurer

Signature \_\_\_\_\_  
Jo Anne Sanford, Member  
Chair, Utilities Commission

Signature \_\_\_\_\_  
Noel L. Allen, Appointed Member

STATE OF NORTH CAROLINA

BEFORE THE  
TAX REVIEW BOARD

COUNTY OF WAKE

IN THE MATTER OF:

The Proposed Assessment of )  
 Unauthorized Substance Tax )  
 dated December 8, 1991 by )  
 the Secretary of Revenue of )  
 of North Carolina )  
 )  
 vs. )  
 )  
 Suzanne Kaye Darwin )  
 Taxpayer )

ADMINISTRATIVE DECISION  
Number: 369

This matter was heard before the Tax Review Board (hereinafter "Board") in the City of Raleigh, North Carolina on Wednesday April 25, 2001, upon Suzanne Kaye Darwin's (hereinafter "Taxpayer") petition for administrative review of the Final Decision of the Assistant Secretary of Revenue entered on July 23, 1997, sustaining the assessment of unauthorized controlled substance tax for the period of December 8, 1991.

Chairman Richard H. Moore, State Treasurer, presided over the hearing with Jo Anne Sanford, Chair, Utilities Commission and duly appointed member, Noel L. Allen, Attorney at Law participating.

The Taxpayer did not appear at the hearing. David J. Adinolfi, II, Associate Attorney General, represented the Secretary of Revenue at the hearing.

Pursuant to G.S. 105-113.111, a Notice of Unauthorized Substance Tax Assessment was issued to the Taxpayer on December 8, 1991. The notice related to a proposed assessment of tax, penalty and interest in the amount of \$705.26 based upon the possession of 100.00 grams of marijuana. On April 22, 1997, the Assistant Secretary conducted a hearing and on July 23, 1997, the Assistant Secretary entered his decision that sustained the proposed assessment. Taxpayer timely filed notice and petition for administrative review of the Assistant Secretary's final decision with the Tax Review Board.

The issue considered by the Board upon petition for review is stated as follows:

1. Is the controlled substance tax assessment proposed against the Taxpayer lawful and proper?

The evidence presented at the hearing before the Secretary consisted of Exhibits CS-1 through CS-3. The Taxpayer presented no evidence at the hearing before the Assistant Secretary.

The Board considered the decision of the Assistant Secretary stated as follows:

1. An assessment of tax is presumed to be correct.
2. The burden is upon the taxpayer who takes exception to an assessment to overcome that presumption.
3. Notice of the time and place of the scheduled hearing was mailed to taxpayer's last known address by first class mail, postage prepaid, on April 9, 1997.
4. Neither the taxpayer nor anyone representing the taxpayer appeared at the hearing.
5. Taxpayer offered no evidence or argument at the hearing that would tend to contradict the assessment or overcome the presumption of correctness.

DECISION

The scope of administrative review for petitions filed with the Tax Review Board is governed by G.S. 105-241.2(b2). After the Board conducts a hearing this statute provides in pertinent part:

(b2). "The Board shall confirm, modify, reverse, reduce or increase the assessment or decision of the Secretary."



*IN ADDITION*

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Pursuant to G.S. 105-241.1(a), a proposed tax assessment is presumed to be correct and the burden is on to the Taxpayer to rebut that presumption. The Taxpayer failed to provide any evidence to overcome the presumption, thus the assessment is correct.

The Board having conducted a hearing in this matter and having considered the petition, the brief, and the final decision, concludes that the Assistant Secretary properly sustained the proposed assessment against the Taxpayer in this matter.

**WHEREFORE, THE BOARD ORDERS** that the Assistant Secretary's final decision be confirmed in every respect.

Made and entered into the 23rd day of July 2001.

**TAX REVIEW BOARD**

Signature \_\_\_\_\_  
Richard H. Moore, Chairman  
State Treasurer

Signature \_\_\_\_\_  
Jo Anne Sanford, Member  
Chair, Utilities Commission

Signature \_\_\_\_\_  
Noel L. Allen, Appointed Member

STATE OF NORTH CAROLINA

BEFORE THE  
TAX REVIEW BOARD

COUNTY OF WAKE

IN THE MATTER OF:

The Proposed Assessment of )  
 Controlled Excise Tax for )  
 Possession of Nontaxpaid )  
 Controlled Substance on )  
 November 26, 1996 by the )  
 Secretary of Revenue )  
 )  
 vs. )  
 )  
 Gary Lee Faulkner, )  
 Taxpayer )

ADMINISTRATIVE DECISION  
Number: 370

This matter was heard before the Tax Review Board (hereinafter "Board") in the City of Raleigh, North Carolina on Wednesday April 25, 2001, upon Gary Lee Faulkner's (hereinafter "Taxpayer") petition for administrative review of the Final Decision of the Assistant Secretary of Revenue entered on September 29, 1997, sustaining the assessment of unauthorized controlled substance tax for the period of November 26, 1996.

Chairman Richard H. Moore, State Treasurer presided over the hearing with Jo Anne Sanford, Chair, Utilities Commission and duly appointed member, Noel L. Allen, Attorney at Law participating.

The Taxpayer did not appear and was not represented by counsel at the hearing. David J. Adinolfi, II, Associate Attorney General, represented the Secretary of Revenue at the hearing.

Pursuant to G.S. 105-113.111(a) and G.S. 105-241.1, a Notice of Controlled Substance Tax Assessment was issued to the Taxpayer by M. L. Duke, Enforcement Officer, assessing \$1,200,000.00 tax, \$600,000.00 penalty and \$9,000.00 interest. The assessment resulted from a report of arrest issued by the State Bureau of Investigation and was based upon the possession of 6,000 grams of cocaine without tax stamps being affixed thereto as required by G.S. 105-113.108. Taxpayer filed a timely objection to the assessment and requested a hearing before the Secretary of Revenue. On May 22, 1997, the Assistant Secretary conducted a hearing and on September 29, 1997, the Assistant Secretary entered his decision that sustained the proposed assessment. Taxpayer timely filed notice and petition for administrative review of the Assistant Secretary's final decision with the Tax Review Board.

ISSUE

The issues considered by the Board upon petition for review are stated as follows:

1. Did the Taxpayer have unauthorized possession of the controlled substance?
2. Is the Taxpayer subject to the assessment in the sum of \$21,105.00?

EVIDENCE

The evidence presented at the hearing before the Secretary of Revenue and submitted to the Board for review is listed below as follows:

1. Letter to the Taxpayer dated February 17, 1997, advising him that his administrative tax hearing, scheduled for March 4, 1997, designated as Exhibit CS-1.
2. Letter to the Taxpayer's attorney dated May 12, 1997, informing him that his client's administrative tax hearing was rescheduled for May 22, 1997, designated as Exhibit CS-2.
3. Letter from the Taxpayer dated December 4, 1996, requesting a hearing, designated as Exhibit CS-3.
4. Report of Arrest and/or Seizure Involving Nontaxpaid (Unstamped) Controlled Substances and Counterfeit Controlled Substances dated November 26, 1996, designated as Exhibit CS-4.
5. Notice of Controlled Substance Tax Assessment dated November 26, 1996, designated as Exhibit CS-5.
6. Memorandum from Muriel K. Offerman, Secretary of Revenue, dated April 18, 1996 delegating Michael A. Hannah the authority to hold any hearing required or allowed under Chapter 105 of the General Statutes designated as Exhibit CS-6.

Subsequent to the hearing, the Taxpayer submitted a video, which was received as Exhibit TP-1.

**FINDINGS OF FACT**

The Board reviewed the following findings of fact in the Assistant Secretary's decision in this matter:

1. Assessments of controlled substance tax was made against the Taxpayer on November 26, 1996 in the sum of \$1,200,000.00 tax, \$600,000.00 penalty and \$9,000.00 interest based on possession of 6,000 grams of cocaine.
2. The Taxpayer made a timely objection and application for hearing.
3. The Taxpayer took possession of the cocaine on November 26, 1996.
4. There were no stamps attached to the controlled substance as required by law.

**CONCLUSIONS OF LAW**

The Board reviewed the following conclusions of law made by the Assistant Secretary in his decision regarding this matter:

1. The Taxpayer had unauthorized possession of 6,000 grams of cocaine and was therefore a dealer as that term is defined in G.S. 105-113.106.
2. Cocaine is a controlled substance.
3. That the Taxpayer is liable for the tax in the sum of \$1,200,000, penalty in the amount of \$600,000 and interest to date.

**DECISION**

The scope of administrative review for petitions filed with the Tax Review Board is governed by G.S. 105-241.2(b2). After the Board conducts a hearing this statute provides in pertinent part:

(b2). "The Board shall confirm, modify, reverse, reduce or increase the assessment or decision of the Secretary."

Pursuant to G.S. 105-241.1(a), a proposed tax assessment is presumed to be correct and the burden is on to the Taxpayer to rebut that presumption.

From a review of the record, the Taxpayer failed to furnish any evidence to overcome this presumption. Thus, the Board having conducted an administrative hearing in this matter, and having considered the petition, the briefs, the record and the Assistant Secretary's final decision, concludes that the findings of fact made by the Assistant Secretary were supported by competent evidence in the record; that based upon the findings of fact, the Assistant Secretary's conclusions of law were fully supported by the findings of fact; therefore the decision of the Assistant Secretary should be confirmed.

**WHEREFORE, THE BOARD ORDERS** that the Assistant Secretary's final decision be confirmed in every respect.

Made and entered into the 23rd day of July 2001.

**TAX REVIEW BOARD**

Signature \_\_\_\_\_  
Richard H. Moore, Chairman  
State Treasurer

Signature \_\_\_\_\_  
Jo Anne Sanford, Member  
Chair, Utilities Commission

Signature \_\_\_\_\_  
Noel L. Allen, Appointed Member

A Notice of Rule-making Proceedings is a statement of subject matter of the agency's proposed rule making. The agency must publish a notice of the subject matter for public comment at least 60 days prior to publishing the proposed text of a rule. Publication of a temporary rule serves as a Notice of Rule-making Proceedings and can be found in the Register under the section heading of Temporary Rules. A Rule-making Agenda published by an agency serves as Rule-making Proceedings and can be found in the Register under the section heading of Rule-making Agendas. Statutory reference: G.S. 150B-21.2.

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

**CHAPTER 09 – FOOD AND DRUG PROTECTION DIVISION**

**Notice of Rule-making Proceedings** is hereby given by the North Carolina Board of Agriculture in accordance with G.S. 150B-21.2. The agency shall subsequently publish in the Register the text of the rule(s) it proposes to adopt as a result of this notice of rule-making proceedings and any comments received on this notice.

**Citation to Existing Rule Affected by this Rule-making:** 02 NCAC 09G .0101 - Other rules may be proposed in the course of the rule-making process.

**Authority for the Rule-making:** G.S. 106-139

**Statement of the Subject Matter:** This Rule establishes standards relating to milk sanitation. Proposed changes would prohibit the sale of raw milk except to permitted haulers or processing facilities.

**Reason for Proposed Action:** Existing state law prohibits the sale of raw milk to consumers for human consumption. The proposed change is needed to prevent the sale or distribution of raw milk for other purposes, such as the manufacture of cheese, which may lead to human consumption of adulterated food products.

**Comment Procedures:** Written comments may be submitted to David S. McLeod, Secretary, North Carolina Board of Agriculture, PO Box 27647, Raleigh, NC 27611.

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**CHAPTER 20 – THE NORTH CAROLINA STATE FAIR**

**Notice of Rule-making Proceedings** is hereby given by the North Carolina Board of Agriculture in accordance with G.S. 150B-21.2. The agency shall subsequently publish in the Register the text of the rule(s) it proposes to adopt as a result of this notice of rule-making proceedings and any comments received on this notice.

**Citation to Existing Rule Affected by this Rule-making:** 02 NCAC 20B .0104 - Other rules may be proposed in the course of the rule-making process.

**Authority for the Rule-making:** G.S. 106-503

**Statement of the Subject Matter:** This Rule establishes admission prices for the annual State Fair. Proposed change would increase adult admission from \$6.00 to \$7.00, beginning with the 2002 Fair.

**Reason for Proposed Action:** The price of an adult admission ticket to the State Fair has not changed since 1993. Operating costs and other expenses have increased, and additional revenues are needed to offset these costs. The change would become effective for the 2002 Fair.

**Comment Procedures:** Written comments may be submitted to David S. McLeod, Secretary, North Carolina Board of Agriculture, PO Box 27647, Raleigh, NC 27611.

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**CHAPTER 39 - STATE ORGANIC PROGRAM**

**Notice of Rule-making Proceedings** is hereby given by the North Carolina Board of Agriculture in accordance with G.S. 150B-21.2. The agency shall subsequently publish in the Register the text of the rule(s) it proposes to adopt as a result of this notice of rule-making proceedings and any comments received on this notice.

**Citation to Existing Rule Affected by this Rule-making:** 02 NCAC 39 - Other rules may be proposed in the course of the rule-making process.

**Authority for the Rule-making:** G.S. 106-22.3

**Statement of the Subject Matter:** The United States Department of Agriculture has recently adopted rules (7 CFR 205) to provide for a National Organic Program. These rules prescribe standards for production and marketing of agricultural products labeled as "organic". The proposed rules would adopt these standards by reference in order to provide for a State Organic Program.

**Reason for Proposed Action:** The National Organic Program rules adopted by USDA provide for cooperative agreements with states that have State Organic Programs that meet certain requirements set forth in the Federal rules. The North Carolina Department of Agriculture and Consumer Services believes it will be in the best interest of North Carolina organic producers, dealers and consumers to have the State involved in the implementation of the national organic standards.

**Comment Procedures:** Written comments may be submitted to David S. McLeod, Secretary, North Carolina Board of Agriculture, PO Box 27647, Raleigh, NC 27611.

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CHAPTER 52 – VETERINARY DIVISION

Notice of Rule-making Proceedings is hereby given by NC Board of Agriculture in accordance with G.S. 150B-21.2. The agency shall subsequently publish in the Register the text of the rule(s) it proposes to adopt as a result of this notice of rule-making proceedings and any comments received on this notice.

Citation to Existing Rule Affected by this Rule-making: 02 NCAC 52B.0212; 52C .0701. Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 106-22(3); 106-307.3; 106-307.5; 106-317

Statement of the Subject Matter:

02 NCAC 52B .0212 – This rule establishes requirements for importation of wild animals, in order to protect domestic livestock from disease. Proposed amendments would delete the requirement for testing camelids (e.g. llamas) for brucellosis and tuberculosis prior to entry. This rule establish requirements for importation and sale of cervidae (e.g., elk, deer). Proposed changes would establish additional requirements in order to prevent the introduction or spread of disease affecting livestock and other animals.

02 NCAC 52C .0701 – These rules establish requirements for importation and sale of cervidae (e.g., elk, deer). Proposed changes would establish additional requirements in order to prevent the introduction or spread of disease affecting livestock and other animals.

Reason for Proposed Action:

02 NCAC 52B .0212 – The State Veterinarian has determined that there is minimal risk of transmission of tuberculosis and brucellosis by camelids, and that the testing requirement constitutes an unnecessary burden to the importation of camelids, such as llamas. An official health certificate would continue to be required. The State Veterinarian has determined that current rules for importation and movement of cervidae are not adequate to prevent the spread of animal disease. Proposed changes would include stricter rules for importation; testing requirements for cervids that die in captivity; and inventory and record keeping requirements for cervid owners.

02 NCAC 52C .0701 – The State Veterinarian has determined that current rules for importation and movement of cervidae are not adequate to prevent the spread of animal disease. Proposed changes would include stricter rules for importation; testing requirements for cervids that die in captivity; and inventory and record keeping requirements for cervid owners.

Comment Procedures: Written comments may be submitted to David S. McLeod, Secretary, North Carolina Board of Agriculture, PO Box 27647, Raleigh, NC 27611.

Notice of Rule-making Proceedings is hereby given by DHHS – Division of Medical Assistance in accordance with G.S. 150B-21.2. The agency shall subsequently publish in the Register the text of the rule(s) it proposes to adopt as a result of this notice of rule-making proceedings and any comments received on this notice.

Citation to Existing Rule Affected by this Rule-making: 10 NCAC 50B .0101; .0404-.0405. Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 108A-25(b); 108A-54; 42 U.S.C. 1396a(a)(10); 42 U.S.C. 1396a(e)(4); 42 U.S.C. 1396a(f); 42 C.F.R. 233.20; 42 C.F.R. 233.51; 42 C.F.R. 435.110; 42 C.F.R.435.112; 42 C.F.R. 435.113; 42 C.F.R. 435.114; 42 C.F.R. 435.115; 42 C.F.R. 435.116; 42 C.F.R. 435.117; 42 C.F.R. 435.118; 42 C.F.R. 435.121; 42 C.F.R. 435.131; 42 C.F.R. 435.132; 42 C.F.R. 435.133; 42 C.F.R. 435.401; 42 C.F.R. 435.603; 42 C.F.R. 435.731; 42 C.F.R. 435.732; 42 C.F.R. 435.734; 42 C.F.R. 435.812; 42 C.F.R. 435.831; 42 C.F.R. 435.845; 42 C.F.R. 435.851; 42 C.F.R. 435.914

Statement of the Subject Matter: These rules changes are necessary to prevent a delink in Medicaid from Work First. Delinking would require separate application and eligibility determination processes for the two programs. Delinking would cause a delay in receipt of benefits as well as create an administrative hardship and hinder the local departments of social services efforts to respond to families' immediate needs.

Reason for Proposed Action: Families where the parent or other caretaker relative lose eligibility because of increased earnings are allowed a maximum of 12 months of Medicaid. Changes to income allow for new disregard for parents and caretakers who begin employment. The new deductions, three months of job bonus and 27.5%, enable recipients of Work First to continue receiving Medicaid. Changes to certification and authorization include a certification period of a maximum of 12 months for families whose parent or caretaker has earnings that make the family ineligible for Medicaid. Also categorically needy children under age 19 are allowed to receive continuous Medicaid for 12 months without regard to changes in situation. These changes are a result of the changes to the Social Security Act and two legislative changes (SL 97-443/99-0237).

Comment Procedures: Written comments concerning this rule-making action must be submitted to Portia W. Rochelle, Rule-making Coordinator, Division of Medical Assistance, 1985 Umstead Drive – 2504 Mail Service Center-Raleigh, NC 27699-2504.

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

CHAPTER 03 – MARINE FISHERIES

Notice of Rule-making Proceedings is hereby given by NC Marine Fisheries Commission in accordance with G.S. 150B-

TITLE 10 – DEPARTMENT OF HEALTH AND HUMAN SERVICES

CHAPTER 50 – MEDICAL ASSISTANCE

21.2. The agency shall subsequently publish in the Register the text of the rule(s) it proposes to adopt as a result of this notice of rule-making proceedings and any comments received on this notice.

**Citation to Existing Rule Affected by this Rule-making:** 15A NCAC 03. Other rules may be proposed in the course of the rule-making process.

**Authority for the Rule-making:** G.S. 113-134; 113-182; 113-221; 143B-289.52

**Statement of the Subject Matter:** Long haul panels, rangia clams, all Marine Fisheries Rules with coordinates, bluefish, Interjurisdictional fishery management plan.

**Reason for Proposed Action:** Amend specifications for long haul panels; amend rangia clam rules; update, correct and adjust to a uniform format all Marine Fisheries Rules with coordinates and resulting adjustments to some designated areas; amend rules on bluefish; and adopt or amend rules to implement the Interjurisdictional fishery management plan.

**Comment Procedures:** Written comments are encouraged and may be submitted to MFC, Juanita Gaskill, PO Box 769, Morehead City, NC 28557.

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**CHAPTER 19 – HEALTH: EPIDEMIOLOGY**

**Notice of Rule-making Proceedings** is hereby given by Department of Health and Human Services in accordance with G.S. 150B-21.2. The agency shall subsequently publish in the Register the text of the rule(s) it proposes to adopt as a result of this notice of rule-making proceedings and any comments received on this notice.

**Citation to Existing Rule Affected by this Rule-making:** 15A NCAC 19A .0101; .0201-.0204. Other rules may be proposed in the course of the rule-making process.

**Authority for the Rule-making:** G.S. 130A-134; 1304A-135; 130A-139; 130A-141; 130A-144; 130A-148

**Statement of the Subject Matter:**  
15A NCAC 19A .0101 - Chlamydia laboratory reporting.  
15A NCAC 19A .0201 and .0203 – Communicable Disease Control Measures  
15A NCAC 19A .0202 – Billing third party payors for HIV Counseling and Testing  
15A NCAC 19A .0204 – Syphilis testing of pregnant women.

**Reason for Proposed Action:**  
15A NCAC 19A .0101 - The rule change will require that laboratories report positive chlamydia tests to the local health department.  
15A NCAC 19A .0201 – Revisions are proposed to ensure compliance with current national standards.  
15A NCAC 19A .0202 – The current rule only allows third party payors to be billed when HIV Counseling and Testing is done as part of family planning or maternal and child health. This rule change will allow local health departments to bill third party payors for HIV counseling and testing done anywhere in the local health department setting. The patient cannot be billed.  
15A NCAC 19A .0203 – Revisions are proposed to expand and update hepatitis B control measures in order to ensure compliance with national standards.  
15A NCAC 19A .0204 – The rule change will define when the third trimester syphilis test should be drawn in order to prevent congenital syphilis.

**Comment Procedures:** Written comments concerning this rule-making action may be submitted within 60 days after the date of the publication in the North Carolina Register. Comments must be submitted to Chris Hoke, Rule Making Coordinator, Division of Public Health, 2001 Mail Service Center, Raleigh, NC 27699-2001.

*This Section contains the text of proposed rules. At least 60 days prior to the publication of text, the agency published a Notice of Rule-making Proceedings. The agency must accept comments on the proposed rule for at least 30 days from the publication date, or until the public hearing, or a later date if specified in the notice by the agency. The required comment period is 60 days for a rule that has a substantial economic impact of at least five million dollars (\$5,000,000). Statutory reference: G.S. 150B-21.2.*

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

*Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Marine Fisheries Commission intends to amend the rules cited as 15A NCAC 03M .0301; 03O .0101. Notice of Rule-making Proceedings was published in the Register on December 15, 1999 for 15A NCAC 03M .0301 and January 2, 2001 for 15A NCAC 03O .0101.*

**Proposed Effective Date:** August 1, 2002

**Reason for Proposed Action:**

*15A NCAC 03M .0301 – Prohibition of gill nets south of Cape Lookout would cause State waters to reflect what the South Atlantic Fisheries Management Plan for mackerel presently requires in the EEZ. This would prevent a directed gill net fishery for king mackerel in State waters to be established. Allowing three king mackerel per person per day would allow for bycatch. Requiring fishermen fishing for king mackerel in State waters would clarify the interpretation of the rule, ease enforcement problems, and require that only permitted fisherman be contributing to the quota. Public comments at public hearings identified a potential problem in that a traditional fishery exists for fishermen in small vessels fishing in State waters north of Hatteras. These fishermen are not presently required to have a permit and because of a moratorium on NMFS permits, cannot get a permit. In order to allow this fishery to continue and prohibit a new fishery from becoming established south of Hatteras, the rule has been amended.*

*15A NCAC 03O .0101 – The Fisheries Reform Act of 1997 and its amendments (House Bill 1448) created a new license system that became effective July 1, 1999. Included in the Fisheries Reform Act of 1997 was the authority of the Marine Fisheries Commission to adopt rules to implement such a license system. Due to the complexity and comprehensiveness of the Fisheries Reform Act into all areas of fishery management as well as licensing, the Marine Fisheries Commission has phased implementation of various aspects of the Fisheries Reform Act, such as licensing and permits, to allow for more thorough review by the various Committees of the Commission and the Commission itself. The renewal process was not addressed in the original licensing rules because the emphasis was on getting this new complex license scheme implemented. In 1999, the General Assembly modified the licensing provisions to allow the advance sale or renewal of licenses prior to the beginning of the fiscal year in Session Laws 1999-209, s. 6, which added Subsection (j) to G.S. 113-168.1. The development of a mail-in renewal system to better implement this advance sale provision and the streamlining of the renewal process is still part of the implementation process of the Fisheries Reform Act. During public hearings on this proposed amendment, the public*

*suggested that the requirement for notarization of signatures on renewals be eliminated. After review, this requirement was eliminated.*

**Comment Procedures:** *Written comments are encouraged and may be submitted to the MFC, Juanita Gaskill, PO Box 769, Morehead City, NC 28557. The public comment period will end on October 31, 2001.*

**Fiscal Impact**

- State
- Local
- Substantive ( $\geq$ \$5,000,000)
- None

**CHAPTER 03 – MARINE FISHERIES**

**SUBCHAPTER 03M – FINFISH**

**SECTION .0300 – SPANISH AND KING MACKEREL**

**15A NCAC 03M .0301 SPANISH AND KING MACKEREL**

**(a) Spanish Mackerel:**

- (1) The Fisheries Director may, by proclamation, impose any or all of the following restrictions ~~for on the taking of~~ Spanish ~~or king~~-mackerel:
  - (A)(1) Specify areas.
  - (B)(2) Specify seasons.
  - (C)(3) Specify ~~commercial~~ quantity.
  - (D)(4) Specify means/methods.
  - (E)(5) Specify ~~size, size for fish taken by commercial fishing operations.~~

(2) It is unlawful to possess Spanish mackerel less than 12 inches fork length.

(3) It is unlawful to possess more than 15 Spanish mackerel per person per day taken for recreational purposes.

(4) It is unlawful to possess more than 15 Spanish mackerel per person per day in the Atlantic Ocean beyond three miles in a commercial fishing operation except for persons holding a valid National Marine Fisheries Service Spanish Mackerel Commercial Vessel Permit.

**(b) King mackerel: ~~mackerel and Spanish mackerel taken for recreational purposes or by hook and line:~~**

- (1) The Fisheries Director may, by proclamation, impose any or all of the following restrictions for king mackerel:
  - (A) Specify areas.
  - (B) Specify seasons.
  - (C) Specify quantity.
  - (D) Specify means/methods.

(E) Specify size.

- ~~(2)(1)~~ It is unlawful to possess king mackerel less than 24 inches fork length.
- ~~(3)(2)~~ It is unlawful to possess more than three king mackerel per person per day taken for recreational purposes.
- ~~(4)~~ It is unlawful to possess more than three king mackerel per person per day in the Atlantic Ocean:
  - ~~(A)~~ by hook and line except for persons holding a valid National Marine Fisheries Service King Mackerel Commercial Vessel Permit; or
  - ~~(B)~~ between three miles and 200 miles from the State's mean low water mark in a commercial fishing operation except for persons holding a valid National Marine Fisheries Service King Mackerel Commercial Vessel Permit.
- ~~(5)~~ It is unlawful to use gill nets in the Atlantic Ocean to take more than three king mackerel per person per day south of 34° 37.3000' N (Cape Lookout).

~~(c)~~ Charter vessels or head boats that hold a valid National Marine Fisheries Service Coastal Migratory Pelagic (Charter Boat and Head Boat) permit must comply with the king mackerel and Spanish mackerel possession limits established in Subparagraphs (a)(3) and (b)(3) of this Rule when fishing with more than three persons (including the captain and mate) on board.

- ~~(3)~~ It is unlawful to possess Spanish mackerel less than 12 inches fork length.
- ~~(4)~~ It is unlawful to possess more than 15 Spanish mackerel per person per day.

~~(e)~~ King mackerel and Spanish mackerel taken by commercial fishing operations, exclusive of hook and line:

- ~~(1)~~ It is unlawful to possess king mackerel less than 24 inches fork length.
- ~~(2)~~ It is unlawful to possess Spanish mackerel less than 12 inches fork length.

~~(d)~~ Persons in possession of a valid National Marine Fisheries Service King Mackerel Permit to fish on the commercial mackerel quota are exempt from the mackerel creel restrictions established in Paragraph (b) of this Rule.

~~(e)~~ Persons in possession of a valid National Marine Fisheries Service Federal Coastal Migratory Pelagic (Mackerel) Permit must comply with the mackerel creel restrictions established in Paragraph (b) of this Rule when fishing with more than three persons (including the captain and mate) on board.

~~(d)(f)~~ It is unlawful to possess aboard or land from a vessel, or combination of vessels that form a single operation, more than 3,500 pounds of Spanish or king mackerel, in the aggregate, aggregate, in any one day.

Authority G.S. 113-134; 113-182; 113-221; 143B-289.52.

**SUBCHAPTER 030 - LICENSES, LEASES, AND FRANCHISES**

**SECTION .0100 - LICENSES**

**15A NCAC 030 .0101 PROCEDURE AND REQUIREMENTS TO OBTAIN LICENSES, ENDORSEMENTS AND COMMERCIAL FISHING VESSEL REGISTRATIONS**

(a) To obtain any Marine Fisheries licenses, endorsements, commercial fishing vessel registrations except Recreational Fishing Tournament Licenses to Sell Fish and Land or Sell Licenses, the following information is required for a proper application by the licensee, a responsible party or person holding a power of attorney:

- (1) Full name, physical address, mailing address, date of birth, and signature of the licensee on the application. If the licensee is not appearing before a license agent or a representative of the Division, the licensee's signature on the application must be notarized;
- (2) Current picture identification of licensee or responsible party; acceptable forms of picture identification are driver's license, state identification card, military identification card, resident alien card (green card) or passport or if purchased by mail, a copy thereof;
- (3) Certification that the applicant does not have four or more marine or estuarine resource violations during the previous three years;
- (4) Valid documentation papers or current motor boat registration or copy thereof when purchasing a commercial fishing vessel registration. If an application for transfer of documentation is pending, a copy of the pending application and a notarized bill of sale may be submitted;
- (5) Current articles of incorporation and a current list of corporate officers when purchasing a license or commercial fishing vessel registration in a corporate name. In the case of incorporation of an individual fishing vessel, the name of the master of that vessel shall also be specified. It is unlawful to fail to notify the Morehead City Office of the Division of Marine Fisheries within five days of change of the master specified for that vessel;
- (6) If a partnership is established by a written partnership agreement, a current copy of such agreement shall be provided when purchasing a license, endorsement or commercial fishing vessel registration in a partnership name;
- (7) For nonresidents, certification of the state of residency;
- (8) In addition to the information required in G.S. 113-169.4, linear length of pier when purchasing an Ocean Fishing Pier License;
- (9) In addition to the information required in G.S. 113-171.1, current aircraft registration and list of operator(s) when purchasing a Spotter Plane License;
- (10) In addition, for fish dealers licenses, the physical address of the established location where business is conducted and, if different, the address where records are kept.



**PROPOSED RULES**

(b) To obtain a License to Land Flounder from the Atlantic Ocean:

- (1) To qualify for a License to Land Flounder from the Atlantic Ocean, the applicant shall:
  - (A) have landed in North Carolina at least 1,000 pounds of flounder from a single vessel each year from the Atlantic Ocean during any two of the 1992-93, 1993-94, 1994-95 license years for which the person had a vessel that was licensed to land in North Carolina; and
  - (B) have been licensed under G.S. 113-152 or 113-153 during any two of the 1992-93, 1993-94, or 1994-95 license years; and
  - (C) hold a valid Standard or Retired Standard Commercial Fishing License or valid Land or Sell License.
- (2) It is lawful for a person to hold Licenses to Land Flounder from the Atlantic Ocean equal to the number of vessels that he owns that individually met the eligibility requirements of Parts (b)(1)(A) and (b)(1)(B) of this Rule.
- (3) The License to Land Flounder from the Atlantic Ocean is only valid when used on the vessel specified at the time of license issuance.
- (4) At the time of issuance, the applicant for the License to Land Flounder from the Atlantic Ocean shall specify the name of the master of the vessel for each License to Land Flounder from the Atlantic Ocean issued.
- (5) Applicants for a License to Land Flounder from the Atlantic Ocean shall complete an application form provided by the Division of Marine Fisheries and submit it to the Morehead City Office of the Division of Marine Fisheries for processing.
- (6) It is unlawful for the holder of the License to Land Flounder from the Atlantic Ocean to fail to notify the Morehead Office of the Division of Marine Fisheries within five days of change as to the master identified on the license.
- (7) Licenses to Land Flounder from the Atlantic Ocean are issued for the current license year and expire on June 30.

(c) To obtain a Recreational Fishing Tournament License to Sell Fish, the following information is required for a proper application:

- (1) Full name, physical address, mailing address, date of birth, signature of the tournament organizer, name of tournament, and dates of tournament on the license application. If the licensee is not appearing before a representative of the Division, the licensee's signature must be notarized on the application.
- (2) Current picture identification of tournament organizer; acceptable forms of picture identification are driver's license, state identification card, military identification card,

or passport, or if purchased by mail, a copy thereof.

- (3) The tournament organizer must apply with the Division of Marine Fisheries at least 30 days prior to the starting date of the tournament.

(d) To obtain a Land or Sell License, the following information is required for a proper application:

- (1) Full name, physical address, mailing address, date of birth, and signature of the responsible party or master for the vessel on the license application. If the licensee is not appearing before a representative of the Division, the licensee's signature on the application must be notarized on the application;
- (2) Current picture identification of responsible party or master; acceptable forms of picture identification are driver's license, state identification card, military identification card, or passport or if applying by mail, a copy thereof;
- (3) Valid documentation papers or current motor boat registration or copy thereof when purchasing a commercial fishing vessel registration. If an application for transfer of documentation is pending, a copy of the pending application and a notarized bill of sale may be submitted.

Fees will be based on the vessel's homeport as it appears on the U.S. Coast Guard documentation papers or the State in which the vessel is registered.

(e) Proof of residency in North Carolina for:

- (1) Standard Commercial Fishing License or Retired Standard Commercial Fishing License shall be:
  - (A) a notarized certification from the applicant that the applicant is a resident of the State of North Carolina as defined by G.S. 113-130(4); and
  - (B) a notarized certification from the applicant that a North Carolina State Income Tax Return was filed for the previous calendar or tax year as a North Carolina resident; or
  - (C) a notarized certification that the applicant was not required to file a North Carolina State Income Tax Return for the previous calendar or tax year; or
  - (D) military identification, military dependent identification and permanent change of station orders or assignment orders substantiating individual's active duty assignment at a military facility in North Carolina.
- (2) All other types of licenses:
  - (A) North Carolina voter registration card; or
  - (B) Current North Carolina Driver's License; or

PROPOSED RULES

- (C) Current North Carolina Certificate of Domicile; or
- (D) Current North Carolina Identification Card issued by the North Carolina Division of Motor Vehicles; or
- (E) Military identification, military dependent identification and permanent change of station orders or assignment orders substantiating individual's active duty assignment at a military facility in North Carolina.

(6) If the linear length of the pier has not changed for the Ocean Fishing Pier License renewal, the responsible party will certify that the length is accurate; otherwise, a Marine Patrol Officer's signature is required to certify the linear length before the license can be renewed.

(f) Applications submitted without complete and required information will be deemed incomplete and will not be considered further until resubmitted with all required information.

(g) It is unlawful for a license or registration holder to fail to notify the Division of Marine Fisheries within 30 days of a change of address.

(h) Licenses are available at Offices of the Division or by mail from the Morehead City Office, unless otherwise specified. In addition, Recreational Commercial Gear Licenses are available at Wildlife Service Agents who have been designated as agents of the Department.

(i) To renew any Marine Fisheries licenses, endorsements, and commercial fishing vessel registration, except Recreational Commercial Gear Licenses, the following is required for a proper renewal application by the licensee, a responsible party or person holding a power of attorney:

- (1) The information required in Subparagraphs (a)(4), (a)(5), and (a)(6) of this Rule are only required if a change has occurred since the last issuance of license, endorsement or commercial fishing vessel registration.
- (2) Certification that articles of incorporation and list of corporate officers, if incorporated, written partnership agreement, if written partnership, or documentation papers or motor boat registration previously provided for initial license purchase are still valid and current for renewal.
- (3) Current and valid state driver's license or state identification picture identification numbers and expiration dates must be verified on mail license renewal applications or any other electronic license renewal process, otherwise the licensee must provide a photocopy for renewal by mail or visit a Division License Office and present a current and valid picture identification pursuant to Subparagraph (a)(2) of this Rule.
- (4) The licensee's or responsible party's signature on the application shall certify all information as true and accurate. Notarization of signature on renewal applications is not required.
- (5) The Division of Marine Fisheries may require current copies of documentation for licenses, endorsements, commercial fishing vessel registration on renewal when necessary to verify inconsistent information or the information cannot be verified by independent sources.

Authority G.S. 113-134; 113-168; 113-168.1; 113-168.2; 113-168.3; 113-168.4; 113-168.5; 113-168.6; 113-169; 113-169.2; 113-169.3; 113-169.4; 113-169.5; 113-171.1; 143B-289.52.

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Notice is hereby given in accordance with G.S. 150B-21.2 that the Coastal Resources Commission intends to adopt the rules cited as 15A NCAC 07H .0311 and 07K .0212. Notice of Rule-making Proceedings was published in the Register on April 16, 2001.

**Proposed Effective Date:** August 1, 2002

**Public Hearing:**

**Date:** Wednesday, October 24, 2001

**Time:** 4:30 p.m.

**Location:** Coastline Convention Center, 501 Nutt St., Wilmington, NC

**Reason for Proposed Action:** These proposed new rules would regulate sand fencing, which is the most commonly used method of promoting dune accretion along the State's coast. These rules are designed to ensure that sand fences are installed and maintained in a manner that does not impede nesting sea turtles, emergency vehicles, or public access rights.

**Comment Procedures:** Comments may be submitted to Bill Crowell, NC Division of Coastal Management, 1638 Mail Service Center, Raleigh, NC 27699-1638; telephone 919-733-2293.

**Fiscal Impact**

- State
- Local
- Substantive ( $\geq$ \$5,000,000)
- None

**CHAPTER 07 – COASTAL MANAGEMENT**

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

**SECTION .0300 – OCEAN HAZARD AREAS**

**15A NCAC 07H .0311 INSTALLATION AND MAINTENANCE OF SAND FENCING**

(a) Sand fencing may only be installed for the purpose of building sand dunes by trapping wind blown sand, the protection of the dune(s) and vegetation (planted or existing).

(b) Sand fencing shall not impede existing public access to the beach, recreational use of the beach, or emergency vehicle access. Sand fencing shall not be installed in a manner that

impedes or restricts established common law and statutory rights of public access and use of public trust lands and waters.

(c) Sand fencing shall not be installed in a manner that impedes, traps or otherwise endangers sea turtles, sea turtle nests or sea turtle hatchlings. CAMA permit applications for sand fencing shall be subject to review by the Wildlife Resources Commission and the U.S. Fish and Wildlife Service in order to determine whether or not the proposed design or installation will have an adverse impact on sea turtles or other threatened or endangered species.

(d) Non-functioning, damaged, or unsecured sand fencing shall be immediately removed by the property owner.

(e) Sand fencing shall not be placed on the wet sand beach area.

Authority G.S. 113A-107; 113A-113(b)(6).

**SUBCHAPTER 07K – ACTIVITIES IN AREAS OF ENVIRONMENTAL CONCERN WHICH DO NOT REQUIRE A COASTAL AREA MANAGEMENT ACT PERMIT**

**SECTION .0200 – CLASSES OF MINOR MAINTENANCE AND IMPROVEMENTS WHICH SHALL BE EXEMPTED FROM THE CAMA MAJOR DEVELOPMENT PERMIT REQUIREMENT**

**15A NCAC 07K .0212 INSTALLATION AND MAINTENANCE OF SAND FENCING**

Sand fences that are installed and maintained subject to the following criteria are exempt from the Permit requirements of the Coastal Area Management Act:

- (1) Sand fencing may only be installed for the purpose of building sand dunes by trapping wind blown sand, the protection of the dune(s) and vegetation (planted or existing).
- (2) Sand fencing shall not impede existing public access to the beach, recreational use of the beach or emergency vehicle access. Sand fencing shall not be installed in a manner that impedes or restricts established common law and statutory rights of public access and use of public trust lands and waters.
- (3) Sand fencing shall not be installed in a manner that impedes, traps or otherwise endangers sea turtles, sea turtle nests or sea turtle hatchlings.
- (4) Non-functioning, damaged, or unsecured, sand fencing shall be immediately removed by the property owner.
- (5) Sand fencing shall be constructed from evenly spaced thin wooden vertical slats connected with twisted wire, no more than 5 feet in height. Wooden posts or stakes no larger than 2" X 4" or 3" diameter shall support sand fencing.
- (6) Location. Sand fencing shall be placed as far landward as possible to avoid interference with sea turtle nesting, existing public access, recreational use of the beach, and emergency vehicle access.
  - (a) Sand fencing shall not be placed on the wet sand beach area.

(b) Sand fencing installed parallel to the shoreline shall be located no farther waterward than the crest of the frontal or primary dune; or

(c) Sand fencing installed waterward of the crest of the frontal or primary dune shall be installed at an angle no less than 45 degrees to the shoreline. Individual sections of sand fence shall not exceed more than 10 feet in length (except for public accessways) and shall be spaced no less than seven feet apart, and shall not extend more than 10 feet waterward of the following locations, whichever is most waterward, as defined in 15A NCAC 07H .0305: the first line of stable natural vegetation, the toe of the frontal or primary dune, or erosion escarpment of frontal or primary dune; and

(d) Sand fencing along public accessways may equal the length of the accessway, and may include a 45 degree funnel on the waterward end. The waterward location of the funnel shall not exceed 10 feet of the locations as identified in Item (6)(c) of this Rule.

Authority G.S. 113A-103(5)c.

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*Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Commission for Health Services intends to adopt the rule cited as 15A NCAC 18A .0436 and amend the rules cited as 15A NCAC 18A .0164; .0168-.0169; .0173; .0618. Notice of Rule-making Proceedings was published in the Register on June 15, 2001 and August 1, 2001.*

**Proposed Effective Date:** August 1, 2002

**Public Hearing:**

**Date:** October 25, 2001

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

**Location:** 1330 Saint Mary Street, Conference Room G1A, Raleigh, NC

**Reason for Proposed Action:** *The purpose of these rule changes is to bring shellfish rules into compliance with National Shellfish Sanitation Program Model Ordinance requirements and to have updated crustacea meat rules which will provide public health protection for the consumer and at the same time recognize the needs of the industry.*

**Comment Procedures:** *Comments will be accepted through October 31, 2001. Mail to Dave Clawson, Shellfish Sanitation Section, P.O. Box 769, Morehead City, NC 28557.*

**Fiscal Impact**

- State
- Local
- Substantive (≥\$5,000,000)
- None

**CHAPTER 18 – ENVIRONMENTAL HEALTH**

**SUBCHAPTER 18A - SANITATION**

**SECTION .0100 – HANDLING: PACKING: AND SHIPPING OF CRUSTACEA MEAT**

**15A NCAC 18A .0164 COOKED CRUSTACEA PICKING**

- (a) The picking operation shall be conducted in a manner to prevent contamination.
- (b) All cooked crustacea shall be picked before a new supply is delivered to the picking table.
- (c) Picked crustacea meat shall be delivered to the packing room at least every 90 minutes or upon the accumulation of five pounds per picker whichever is sooner.
- (d) Paper towels used at the picking table shall be discarded after initial use.
- (e) If provided, bactericidal solutions at picking tables shall be maintained at 100 ppm chlorine solution or an equivalent bactericidal solution. A suitable testing method or equipment shall be available and used to test chemical sanitizers to insure minimum prescribed strengths.
- (f) Handles of picking knives shall not be covered with any material.
- (g) ~~Picking of crustacea cooked at any facility, other than the original cooking facility, is prohibited. Mechanical picking of claws may be approved under written authority from the Division if it complies with these Rules. Crustacea shall be cooked and picked in the same permitted facility unless a written plan for interfacility shipment has been approved by the Division. The plan shall address the following:~~
  - (1) time-temperature;
  - (2) shipping-destination;
  - (3) handling;
  - (4) labeling;
  - (5) records;
  - (6) processing;
  - (7) sanitation; and
  - (8) HACCP plan.

*Authority G.S. 130A-230.*

**15A NCAC 18A .0168 SINGLE-SERVICE CONTAINERS**

- (a) Single-service containers used for packing or repacking cooked crustacea and crustacea meat shall be made from food safe materials approved by the United States Food and Drug Administration.
- (b) Containers shall not be reused for packing or repacking cooked crustacea and crustacea meat.
- (c) No person shall use containers bearing a permit number other than the number assigned to the facility.
- (d) Each container or lid shall be legibly impressed, embossed or lithographed with the name and address of the original packer, repacker or distributor. The original packer's or repacker's permit

- number preceded by the state abbreviation shall be legibly impressed, embossed or lithographed on each container or lid.
- (e) Each container or lid shall be permanently and legibly identified with a code date.
- (f) All containers and lids shall be stored and handled in accordance with these Rules, sanitized by a procedure as stated in Rule .0157 of this Section and drained prior to filling.
- ~~(g) All containers shall be sealed so that tampering can be detected. The words "Sealed For Your Protection" or equivalent shall be prominently displayed on the container or lid.~~

*Authority G.S. 130A-230.*

**15A NCAC 18A .0169 FREEZING**

- (a) If crustacea or crustacea meat is to be frozen, the code date shall be followed by the letter "F."
- ~~(b) Thawed crustacea or crustacea meat shall be labeled as "Previously Frozen" or equivalent.~~
- ~~(b)(e)~~ Frozen crustacea or crustacea meat shall be stored at a temperature of 0° F (-18° C) or less.
- ~~(c)(d)~~ The frozen storage rooms shall be equipped with an accurate, operating thermometer.

*Authority G.S. 130A-230.*

**15A NCAC 18A .0173 REPACKING**

- (a) Crustacea meat for repacking which is processed in North Carolina shall comply with Rules .0134 through .0187 of this Section. Crustacea meat for repacking which is processed outside of North Carolina shall comply with Rule .0182 of this Section. Quarterly bacteriological reports shall be provided to the Division by the repacker of all foreign crustacea meat for repacking.
- (b) The repacker shall provide the Division a current written list of all sources of crustacea meat used for repacking.
- (c) Repacking of crustacea meat:
  - (1) Crustacea meat shall not exceed 45° F (7.1° C) during the repacking process.
  - (2) Repacking shall be conducted separately by time or space from the routine crustacea meat picking and packing process.
  - (3) The food contact surfaces and utensils utilized in the repacking process shall be cleaned and sanitized prior to repacking and thereafter on 30 minute intervals during repacking.
  - (4) Repacked crustacea meat shall be maintained at or below 40° F (4.4° C).
  - (5) Blending or combining of any of the following shall be prohibited:
    - (A) Fresh crustacea meat.
    - (B) Frozen crustacea meat.
    - (C) Pasteurized crustacea meat.
    - (D) Crustacea meat packed in another facility.
  - (6) Crustacea meat shall not be repacked more than one time.
  - (7) All empty containers shall be rendered unusable.
- (d) Labeling of repacked crustacea meat:

PROPOSED RULES

- (1) Each container shall be legibly embossed, impressed or lithographed with the repacker's or the distributor's name and address.
(2) Each container shall be legibly embossed, impressed or lithographed with the repacker's certification number followed by the letters "RP."
(3) Each container shall be permanently and legibly identified with a code indicating the repack date.
(4) Each container shall be sealed so that tampering can be detected.
(5) Each container of thawed crustacea meat which has been repacked shall be labeled as "Previously Frozen" or equivalent.
(6) Each container of pasteurized crustacea meat which has been repacked shall be labeled as "Previously Pasteurized" or equivalent.
(5)(7) Each container of foreign crustacea meat which has been repacked shall be labeled in accordance with Federal labeling requirements.
(e) Repacked crustacea meat shall meet bacteriological and contamination standards in Rule .0182 of this Section.
(f) Records shall be kept for all purchases of crustacea meat for repacking and sales of repacked meat for one year. The records shall be available for inspection by the Division.

Authority G.S. 130A-230.

15A NCAC 18A .0436 MONITORING RECORDS
Monitoring records of critical control points and general sanitation requirements shall be recorded, as specified in plan, signed and dated when recorded. The records shall be reviewed by owner or designee within one week of recording.

Authority G.S. 130A-230.

SECTION .0600 - OPERATION OF SHELLFISH SHUCKING AND PACKING PLANTS AND REPACKING PLANTS

15A NCAC 18A .0618 HEAT SHOCK METHOD OF PREPARATION OF SHELLFISH

- (a) Facilities. If a shucking and packing plant uses the heat shock process, it shall be done in an separate room adjacent to the shellstock storage room and the shucking room.
(b) Tank construction. The heat shock tank shall be constructed of smooth, non-corrosive metal, designed to drain quickly and completely and to be easily and thoroughly cleaned.
(c) Booster heaters. All heat shock tanks shall be equipped with booster heaters that are thermostatically controlled.
(d) Shellstock washing. All shellstock subjected to the heat shock process shall be thoroughly washed with flowing potable water immediately prior to the heat shock operation.
(e) Water temperature. During the heat shock process the water shall be maintained at not less than 145°F (63°C) or more than 150°F (65°C). An accurate thermometer shall be available and used to determine the temperature during the heat shock process.
All water shall be completely drained from heat shock tanks and the tanks cleaned at least once in each three hour operational

- period or more often if necessary. The heat shock tanks shall be drained and cleaned at the end of each day's operation.
(f) Time requirements. Shellstock subjected to the heat shock process shall not be immersed in the heat shock water longer than three and one half minutes. An accurate timing device shall be available and used to determine the immersion time.
(g) Alternatives to heat shock method. Nothing in these Rules shall be construed to prohibit any other process which has been found equally effective.
(h) Water requirements. At least eight gallons of heat shock water shall be maintained in the tank for each one half bushel of shellstock being treated. All water used in the heat shock process shall be from a source approved by the Division under Rule .0913 of this Subchapter.
(i) Cooling. Immediately after the heat shock process, all treated shellstock shall be subjected to a cool-down with potable tap water. All heat shocked shellstock shall be handled in a manner to prevent adulteration of the product. Shellfish which have been subjected to the heat shock process shall be cooled to an internal temperature of 45°F (7°C) or below within two hours after this process and shall be placed in storage at 40°F (4°C) or below.
(j) Cleaning. At the close of each day's operation, the heat shock tank shall be completely emptied of all water, mud, detritus, and thoroughly cleaned and then rinsed with flowing potable water.
(k) Sanitizing. All heat shock tanks shall be sanitized immediately before starting each day's operation.
(l) Records. All time and temperature records of heat shock processes shall be kept and maintained on file for one year.

Authority G.S. 130A-230.

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Notice is hereby given in accordance with G.S. 150B-21.2 that the DENR - Commission for Health Services intends to amend the rules cited as 15A NCAC 18C .0408, .1505-.1506, .1515, .1519-.1523, .1525-.1526, .1607, .2003, .2008. Notice of Rule-making Proceedings was published in the Register on August 1, 2001.

Proposed Effective Date: August 1, 2002

Public Hearing:

Date: October 25, 2001

Time: 1:00 p.m.

Location: Conference Room G1A, 1330 St. Mary's St., Raleigh, NC

Reason for Proposed Action:

15A NCAC 18C .0408 (Lead Free Construction) - Section .0408(d) specifies "By June 19, 1988, each public water system shall provide notice to all persons served by the system that they may be affected by lead contamination of their drinking water. The manner and form of the notice shall be in accordance with 40 C.F. R. 141.34 which is hereby adopted by reference in accordance with G.S. 150B-14(c)." Since 40 CFR 141.34 no longer exists, this section of North Carolina's rules needs to be deleted.



**15A NCAC 18C .1505-.1506, .1515, .1523, .1525-.1526** (Public Notification) - In order to meet the conditions of the primacy agreement with the US Environmental Protection Agency, North Carolina must adopt rules that are no less stringent than the Federal Regulations as required in Section 1413 of the Safe Drinking Water Act. The National Primary Drinking Water Regulations: Public Notification Rule was promulgated on May 4, 2000. North Carolina will amend existing State rules and adopt the Federal Rule by reference. This rule revises the public notification regulations for implementation of the 1996 Federal Safe Drinking Water Act requirements. The rule specifies requirements that public water systems must follow regarding the form, manner, frequency, and content of a public notice. The revised regulations require faster notice in emergencies and fewer notices overall, and will result in notices that better communicate the potential health risks from drinking water violations.

**15A NCAC 18C .1519-.1522; .1607** (Radionuclides Rules) - In order to meet the conditions of the primacy agreement with the US Environmental Protection Agency, North Carolina must adopt rules that are no less stringent than the Federal Regulations as required in Section 1413 of the Safe Drinking Water Act. The National Primary Drinking Water Regulations: Radionuclides was promulgated on December 7, 2000. North Carolina will amend State rules and adopt the Federal Rule by reference. This rule is applicable to community water systems. EPA has set a maximum contaminant level (MCL) for uranium and is retaining the MCLs for radium-226/-228, gross alpha particle radioactivity, and beta particle and photon activity. This rule also revises monitoring requirements for radionuclides.

**15A NCAC 18C .2003** (Filter Backwash Recycling Rule) - In order to meet the conditions of the primacy agreement with the US Environmental Protection Agency, North Carolina must adopt rules that are no less stringent than the Federal Regulations as required in Section 1413 of the Safe Drinking Water Act. The National Primary Drinking Water Regulations: Filter Backwash Recycling Rule was promulgated on June 8, 2001. North Carolina will amend existing State rules and adopt the Federal Rule by reference. This rule requires public water systems to institute changes, where necessary, to the return of recycle flows to the plant's treatment process. When recycling filter backwash water, contaminants may be reintroduced into the treatment process. Poor recycle practices can degrade influent water quality and impair treatment process performance. This regulation will improve plant performance by reducing the opportunity for recycle practices to adversely affect plant performance in a way that would allow microbes to pass through finished drinking water.

**15A NCAC 18C .2008** (Disinfectants and Disinfection Byproducts) - In order to meet the conditions of the primacy agreement with the US Environmental Protection Agency, North Carolina must adopt rules that are no less stringent than the Federal Regulations as required in Section 1413 of the Safe Drinking Water Act. 15A NCAC 18C .2008(f), as currently written, exempts travel trailer parks, campgrounds, and marina slips that are community water systems as defined by G.S. 130A-313(10), but do not serve 25 or more of the same persons more than six months per year from the requirements of this rule. By Federal law, these units should be regulated as transient, non-community systems; therefore, revision to this rule is necessary.

**Comment Procedures:** Send comments to Linda F. Raynor, Public Water Supply Section, 1634 Mail Service Center, Raleigh, NC 27699-1634 or phone (919) 715-3225. Comments will be accepted through October 31, 2001.

**Fiscal Impact**

- State** 15A NCAC 18C .1505-.1506, .1515, .1519-.1522-.1523, .1525-.1526, .1607, .2003
- Local** 15A NCAC 18C .1505-.1506, .1515, .1519-.1522-.1523, .1525-.1526, .1607, .2003
- Substantive** (≥\$5,000,000)
- None** 15A NCAC 18C .0408, .2008

**CHAPTER 18 – ENVIRONMENTAL HEALTH**

**SUBCHAPTER 18C – WATER SUPPLIES**

**SECTION .0400 – WATER SUPPLY DESIGN CRITERIA**

**15A NCAC 18C .0408 LEAD FREE CONSTRUCTION**

- (a) Any pipe, pipe fitting, solder or flux used after June 19, 1988 in the installation or repair of any public water system shall be lead free.
- (b) "Lead free" means that solders and flux shall not contain more than 0.2 percent lead, and pipes and pipe fittings shall not contain more than 8.0 percent lead.
- (c) This rule shall not apply to leaded joints necessary for the repair of cast iron pipes.
- ~~(d) By June 19, 1988, each public water system shall provide notice to all persons served by the system that they may be affected by lead contamination of their drinking water. The manner and form of the notice shall be in accordance with 40 C.F.R. 141.34 which s hereby adopted by reference in accordance with G.S. 150B-14(c).~~

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

**15A NCAC 18C .1505 TURBIDITY SAMPLING AND ANALYSIS**

- ~~(a) The requirements of this Rule shall apply only to public water systems which use water obtained in whole or in part from surface sources.~~
- ~~(b) Samples shall be taken by suppliers of water for both community and non-community water systems at representative entry points to the water distribution system at least once per day, for the purpose of making turbidity measurements to determine compliance with Rule .1506 of this Section. If the Department determines that a reduced sampling frequency in a non-community system will not pose a risk to public health, it can reduce the required sampling frequency. The option of reducing the turbidity frequency shall be permitted only in those public water systems that practice disinfection and which maintain an active residual disinfectant in the distribution system, and in those cases where the Department has indicated in writing that no unreasonable risk to health existed under the circumstances of this option. The turbidity measurements shall be made by the Nephelometric Method in accordance with the recommendations set forth in "Standard Methods for Examination of Water and Wastewater," American Public~~

Health Association, 14th Edition, pp. 132-134; or Method 180.1, 1-Nephometric Method.

~~(c) If the result of a turbidity analysis indicates that the maximum allowable limit has been exceeded, the sampling and measurement shall be confirmed by resampling within one hour. If the repeat sample confirms that the maximum allowable limit has been exceeded, the supplier of water shall report to the Department within 48 hours. The repeat sample shall be the sample used for the purpose of calculating the monthly average. If the monthly average of the daily samples exceeds the maximum allowable limit, or if the average of two samples taken on consecutive days exceeds five TU, the supplier of water shall report to the Department and notify the public as directed in Rule .1523 and .1525 of this Section.~~

~~(d) Sampling for non-community water systems shall begin within two years after the effective date of the National Primary Drinking Water Regulations (40 C.F.R. 141.22, eff. June 24, 1977).~~

~~(e) The Department has the authority to determine compliance or initiate enforcement action based upon analytical results or other information compiled by their sanctioned representatives and agencies.~~

~~(f) The requirements of this Rule apply to an unfiltered public water system until December 30, 1991. If the Department has determined that an unfiltered system must install filtration, the maximum contaminant level applies until June 29, 1993 or until filtration is installed whichever is later. The requirements of this Rule apply to a filtered public water system until June 29, 1993. The provisions of 40 C.F.R. 141.22 are hereby incorporated by reference including any subsequent amendments and editions. This material is available for inspection at the Department of Environment and Natural Resources, Division of Environmental Health, 2728 Capital Boulevard, Raleigh, North Carolina. Copies may be obtained from the Environmental Protection Agency's (USEPA) Drinking Water Hotline at 1-800-426-4791 or from EPA's homepage at <http://www.epa.gov/OGWDW/>.~~

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

**15A NCAC 18C .1506 MAXIMUM CONTAMINANT LEVELS FOR TURBIDITY**

~~(a) The maximum contaminant levels for turbidity are applicable to both community water systems and non-community water systems using surface water sources in whole or in part. The maximum contaminant levels for turbidity in drinking water, measured at representative entry points to the distribution system, are:~~

- ~~(1) One turbidity unit (TU), as determined by a monthly average pursuant to Rule .1505 of this Section except that five or fewer turbidity units may be allowed if the supplier of water can demonstrate to the Department that the higher turbidity does not do any of the following:
 
  - ~~(A) interfere with disinfection,~~
  - ~~(B) prevent maintenance of an effective disinfectant agent throughout the distribution system, or~~
  - ~~(C) interfere with microbiological determinations.~~~~

~~(2) Five turbidity units based on an average for two consecutive days pursuant to Rule .1505 of this Section.~~

~~(b) The maximum contaminant level for turbidity applies to an unfiltered public water system until December 30, 1991. If the Department has determined that an unfiltered system must install filtration, the maximum contaminant level applies until June 29, 1993 or until filtration is installed whichever is later. The maximum contaminant level for turbidity applies to a filtered public water system until June 29, 1993.~~

~~The provisions of 40 C.F.R. 141.13 are hereby incorporated by reference including any subsequent amendments and editions. This material is available for inspection at the Department of Environment and Natural Resources, Division of Environmental Health, 2728 Capital Boulevard, Raleigh, North Carolina. Copies may be obtained from the Environmental Protection Agency's (USEPA) Drinking Water Hotline at 1-800-426-4791 or from EPA's homepage at <http://www.epa.gov/OGWDW/>.~~

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

**15A NCAC 18C .1515 ORGANIC CHEMICALS OTHER THAN TTHM, SAMPLING AND ANALYSIS**

~~(a) The provisions of 40 C.F.R. 141.24 are hereby incorporated by reference including any subsequent amendments and editions; however, 40 C.F.R. 141.24(b) is not adopted. This material is available for inspection at the Department of Environment, Health, and Natural Resources, Division of Environmental Health, 1330 Saint Mary's Street, 2728 Capital Boulevard, Raleigh, North Carolina. Non-members may obtain copies from the American Water Works Association, Information Services, 6666 West Quincy Avenue, Denver, Colorado 80235 at a cost of fifteen dollars (\$15.00) up to 20 pages and thirty cents (\$0.30) per page for each additional page. Copies may be obtained from the Environmental Protection Agency's (USEPA) Drinking Water Hotline at 1-800-426-4791 or from EPA's homepage at <http://www.epa.gov/OGWDW/>.~~

~~(b) If the result of an analysis made pursuant to Paragraph (a) of this Rule indicates that the level of any contaminant listed in 15A NCAC 18C .1517 exceeds the maximum contaminant level, the supplier of water shall report to the Department within 48 hours and initiate three additional analyses within one month.~~

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

**15A NCAC 18C .1519 MONITORING FREQUENCY FOR RADIOACTIVITY**

~~(a) The provisions of 40 C.F.R. 141.26 are hereby incorporated by reference including any subsequent amendments and editions. This material is available for inspection at the Department of Environment, Health, and Natural Resources, Division of Environmental Health, 1330 Saint Mary's Street, 2728 Capital Boulevard, Raleigh, North Carolina. Non-members may obtain copies from the American Water Works Association, Information Services, 6666 West Quincy Avenue, Denver, Colorado 80235 at a cost of fifteen dollars (\$15.00) up to 20 pages and thirty cents (\$0.30) per page for each additional page. Copies may be obtained from the Environmental Protection Agency's (USEPA) Drinking Water~~

Hotline at 1-800-426-4791 or from EPA's homepage at <http://www.epa.gov/OGWDW/>.

(b) An adjacent water system shall conform to the following sampling schedule rather than the schedule set forth in 40 C.F.R. 141.26(a) and (b). A water supplier shall take samples for gross alpha particle activity, radium-226, radium-226 and radium-228, and uranium, and for man-made radioactivity from the water system when the Secretary determines that the system is in an area subject to radiological contamination. When the sampling is required, a water supplier shall submit samples every four years from each section of the water system supplied from a separate source.

(c) Travel trailer parks, campgrounds, and marina slips that are community water systems as defined by G.S. 130A-313(10), but do not serve 25 or more of the same persons more than six months per year shall monitor the same as required by adjacent systems in Paragraph (b) of this Rule.

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

**15A NCAC 18C .1520 MAXIMUM CONTAMINANT LEVELS FOR RADIONUCLIDES**

The provisions of 40 C.F.R. 141.15-141.66 are hereby incorporated by reference including any subsequent amendments and editions. This material is available for inspection at the Department of Environment, Health, Environment and Natural Resources, Division of Environmental Health, 1330 Saint Mary's Street, 2728 Capital Boulevard, Raleigh, North Carolina. Non-members may obtain copies from the American Water Works Association, Information Services, 6666 West Quincy Avenue, Denver, Colorado 80235 at a cost of fifteen dollars (\$15.00) up to 20 pages and thirty cents (\$0.30) per page for each additional page. Copies may be obtained from the Environmental Protection Agency's (USEPA) Drinking Water Hotline at 1-800-426-4791 or from EPA's homepage at <http://www.epa.gov/OGWDW/>.

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

**15A NCAC 18C .1521 MAXIMUM CONTAMINANT LEVEL GOALS FOR RADIONUCLIDES**

The provisions of 40 C.F.R. 141.16-141.55 are hereby incorporated by reference including any subsequent amendments and editions. This material is available for inspection at the Department of Environment, Health, Environment and Natural Resources, Division of Environmental Health, 1330 Saint Mary's Street, 2728 Capital Boulevard, Raleigh, North Carolina. Non-members may obtain copies from the American Water Works Association, Information Services, 6666 West Quincy Avenue, Denver, Colorado 80235 at a cost of fifteen dollars (\$15.00) up to 20 pages and thirty cents (\$0.30) per page for each additional page. Copies may be obtained from the Environmental Protection Agency's (USEPA) Drinking Water Hotline at 1-800-426-4791 or from EPA's homepage at <http://www.epa.gov/OGWDW/>.

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

**15A NCAC 18C .1522 ANALYTICAL METHODS FOR RADIOACTIVITY**

~~(a) The methods specified in "INTERIM RADIOCHEMICAL METHODOLOGY FOR DRINKING WATER," Environmental Monitoring and Support Laboratory, EPA-600/4-75-008, USEPA, Cincinnati, Ohio 45268, or those listed below, which are adopted by reference in accordance with G.S. 150B-14(c), shall be used to determine compliance with Rules 1520 and 1521 of this Section except in cases where alternative methods have been approved in accordance with Rule 1528 of this Section:~~

- ~~(1) Gross Alpha and Beta Method 302 "Gross Alpha and Beta Radioactivity in Water," STANDARD METHODS FOR THE EXAMINATION OF WATER AND WASTEWATER, American Public Health Association, New York, N.Y.;~~
- ~~(2) Total Radium Method 304 "Radium in Water by Precipitation," STANDARD METHODS FOR THE EXAMINATION OF WATER AND WASTEWATER, American Public Health Association, New York, N.Y.;~~
- ~~(3) Radium 226 Method 305 "Radium 226 by Radon in Water," STANDARD METHODS FOR THE EXAMINATION OF WATER AND WASTEWATER, American Public Health Association, New York, N.Y.;~~
- ~~(4) Strontium 89,90 Method 303 "Total Strontium and Strontium 90 in Water," STANDARD METHODS FOR THE EXAMINATION OF WATER AND WASTEWATER, American Public Health Association, New York, N.Y.;~~
- ~~(5) Tritium Method 306 "Tritium in Water," STANDARD METHODS FOR THE EXAMINATION OF WATER AND WASTEWATER, American Public Health Association, New York, N.Y.;~~
- ~~(6) Cesium 134 ASTM D-2459 "Gamma Spectrometry in Water," ANNUAL BOOK OF ASTM STANDARDS, WATER AND ATMOSPHERIC ANALYSIS, Part 31, American Society for Testing and Materials, Philadelphia, PA;~~
- ~~(7) Uranium ASTM D 2907 "Micro quantities of Uranium in Water by Fluorometry," STANDARD METHODS FOR THE EXAMINATION OF WATER AND WASTEWATER, American Public Health Association, New York, N.Y.~~

~~(b) When the identification and measurement of radionuclides other than those listed in (a) of this Rule is required, the following references, which are adopted by reference in accordance with G.S. 150B-14(c), shall be used, except in cases where alternative methods have been approved in accordance with Rule 1528 of this Section.~~

- ~~(1) PROCEDURES FOR RADIOCHEMICAL ANALYSIS OF NUCLEAR REACTOR AQUEOUS SOLUTIONS, H.L. Krieger and S. Godd, EPA R4-73-014; USEPA, Cincinnati, Ohio;~~
- ~~(2) HASL PROCEDURE MANUAL, Edited by John H. Harley, HASL 300, ERDA Health and Safety Laboratory, New York, N. Y.~~



(c) For the purpose of monitoring radioactivity concentrations in drinking water, the required sensitivity of the radioanalysis is defined in terms of a detection limit. The detection limit shall be that concentration which can be counted with a precision of plus or minus 100 percent at the 95 percent confidence level ( $1.96\sigma$  where  $\sigma$  is the standard deviation of the net counting rate of the sample):

- (1) To determine compliance with .1520(1) of this Section the detection limit shall not exceed 1 pCi/l. To determine compliance with .1520(2) of this Section the detection limit shall not exceed 3 pCi/l.
- (2) To determine compliance with .1521 of this Section the detection limits shall not exceed the concentrations listed in Table B:

**TABLE B  
DETECTION LIMITS FOR MAN-MADE BETA  
PARTICLE AND PHOTON EMITTERS**

Tritium	1,000 pCi/l
Strontium 89	10 pCi/l
Strontium 90	2 pCi/l
Iodine 131	1 pCi/l
Cesium 134	10 pCi/l
Gross beta	4 pCi/l
Other radionuclides	1/10 of the applicable limit

(d) To judge compliance with the maximum contaminant levels listed in .1520 and .1521 of this Section, averages of data shall be used and shall be rounded to the same number of significant figures as the maximum contaminant level for the substance in question.

(e) The Department has the authority to determine compliance or initiate enforcement action based upon analytical results or other information compiled by its authorized representatives and agencies.

The provisions of 40 C.F.R. 141.25 are hereby incorporated by reference including any subsequent amendments and editions. This material is available for inspection at the Department of Environment and Natural Resources, Division of Environmental Health, 2728 Capital Boulevard, Raleigh, North Carolina. Copies may be obtained from the Environmental Protection Agency's (USEPA) Drinking Water Hotline at 1-800-426-4791 or from EPA's homepage at <http://www.epa.gov/OGWDW/>.

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

**15A NCAC 18C .1523 PUBLIC NOTIFICATION REQUIREMENTS**

(a) The provisions of 40 C.F.R. 141.32 are hereby incorporated by reference including any subsequent amendments and editions, except that multi-lingual notice shall be given if 30 percent or more of the consumers served by the system are non-English speaking. This material is available for inspection at the Department of ~~Environment~~ Environment, Health, and Natural Resources, Division of Environmental Health, 1330 Saint Mary's Street, 2728 Capital Boulevard, Raleigh, North Carolina. Non-members may obtain copies from the American Water Works Association, Information Services, 6666 West Quincy Avenue, Denver, Colorado 80235 at a cost of fifteen dollars (\$15.00) up to 20 pages and thirty cents (\$0.30) per page for

~~each additional page. Copies may be obtained from the Environmental Protection Agency's (USEPA) Drinking Water Hotline at 1-800-426-4791 or from EPA's homepage at <http://www.epa.gov/OGWDW/>.~~

~~(b) The provisions of 40 C.F.R. 141, Subpart Q – Public Notification of Drinking Water Violations are hereby incorporated by reference including any subsequent amendments and editions. This material is available for inspection at the Department of Environment and Natural Resources, Division of Environmental Health, 2728 Capital Boulevard, Raleigh, North Carolina. Copies may be obtained from the Environmental Protection Agency's (USEPA) Drinking Water Hotline at 1-800-426-4791 or from EPA's homepage at <http://www.epa.gov/OGWDW/>.~~

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

**15A NCAC 18C .1525 REPORTING REQUIREMENTS**

~~(a) Except where a shorter period is specified in this part, the supplier of water shall report to the Department the results of any test measurement or analysis required by this part within the first ten days following the month in which the result is received, or within the first ten days following the end of the required monitoring period as stipulated by the Department, whichever of these is shortest. (b) Except where a shorter reporting period is specified in this part, the supplier of water shall report to the Department within 48 hours the failure to comply with any regulation of 15A NCAC 18C .1501 through .1535 (including failure to comply with monitoring requirements).~~

~~(c) The supplier of water is not required to report analytical results where a state laboratory performs the analysis and reports to the Department. When a certified laboratory analyzes a compliance sample for a supplier of water, the certified laboratory shall report the results within the required periods of (a) and (b) to both the Department and to the supplier of water or his designated representative. The reports shall be on a form acceptable to the Department and shall contain all essential information. When a certified laboratory fails to report a compliance sample result, it shall be the responsibility of the supplier of water to report results to the Department as required by this Rule.~~

~~(d) The water supply system, within ten days of completion of each public notification required pursuant to Rule .1523 of this Section, shall submit to the Department a representative copy of each type of notice distributed, published, posted, and/or made available to the persons served by the system and/or to the media.~~

~~(e) The water supply system shall submit to the Department within the time stated in the request copies of any records required to be maintained under Rule .1526 of this Section or copies of any documents then in existence which the Department or the administrator is entitled to inspect pursuant to the authority of Section 1445 of the Federal Safe Drinking Water Act or of G.S. 130A-17.~~

~~(a) The provisions of 40 C.F.R. 141.31 are hereby incorporated by reference including any subsequent amendments and editions. This material is available for inspection at the Department of Environment and Natural Resources, Division of Environmental Health, 2728 Capital Boulevard, Raleigh, North Carolina. Copies may be obtained from the Environmental Protection~~

Agency's (USEPA) Drinking Water Hotline at 1-800-426-4791 or from EPA's homepage at <http://www.epa.gov/OGWDW/>.

(b) When a certified laboratory analyzes a compliance sample for a supplier of water, the certified laboratory shall report the results within the required periods of Paragraph (a) of this Rule to both the Department and to the supplier of water or his designated representative. The laboratory reporting to the State shall include analytical results for any MCL exceedence within the timeframes applicable to the system owner. Reporting shall be in a format, to include electronic reporting, provided by the Department and shall contain all required information. Should a certified laboratory fail to properly report a compliance sample result, it shall be the responsibility of the supplier of water to report results to the Department as required by this Rule.

Authority G.S. 130A-315.

**15A NCAC 18C .1526 RECORD MAINTENANCE**

~~Any owner or operator of a public water system shall retain on its premises or at a convenient location near its premises the following records:~~

- ~~(1) Records of bacteriological analyses made pursuant to this Section shall be kept for not less than five years. Records of chemical analyses made pursuant to this Section shall be kept for not less than 10 years. Records of radiological analyses made pursuant to this Section shall be kept for not less than 10 years. Actual laboratory reports may be kept, or data may be transferred to tabular summaries, provided that the following information is included:
 
  - ~~(a) the date, place and time of sampling, and the name of the person who collected the sample;~~
  - ~~(b) identification of the sample as to whether it was a routine distribution system sample, check sample, raw or process water sample or other special purpose sample;~~
  - ~~(c) date of analysis;~~
  - ~~(d) laboratory and person responsible for performing analysis;~~
  - ~~(e) the analytical technique/method used; and~~
  - ~~(f) the results of the analysis.~~~~
- ~~(2) Records of action taken by the system to correct violations of primary drinking water regulations shall be kept for a period not less than three years after the last action taken with respect to the particular violation involved.~~
- ~~(3) Copies of any written reports, summaries or communications relating to sanitary surveys of the system conducted by the system itself, by a private consultant, or by a local, state or federal agency, shall be kept for a period not less than 10 years after completion of the sanitary survey involved.~~
- ~~(4) Records concerning a variance or exemption granted to the system shall be kept for a period~~

~~ending not less than five years following the expiration of such variance or exemption.~~

~~The provisions of 40 C.F.R. 141.33 are hereby incorporated by reference including any subsequent amendments and editions. This material is available for inspection at the Department of Environment and Natural Resources, Division of Environmental Health, 2728 Capital Boulevard, Raleigh, North Carolina. Copies may be obtained from the Environmental Protection Agency's (USEPA) Drinking Water Hotline at 1-800-426-4791 or from EPA's homepage at <http://www.epa.gov/OGWDW/>.~~

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

**15A NCAC 18C .1607 VARIANCES AND EXEMPTIONS FOR CHEMICALS, LEAD AND COPPER, AND RADIONUCLIDES**

~~(a) The provisions of 40 C.F.R. 142.62 are hereby incorporated by reference including any subsequent amendments and editions. This material is available for inspection at the Department of Environment, Health, and Natural Resources, Division of Environmental Health, 1330 Saint Mary's Street, 2728 Capital Boulevard, Raleigh, North Carolina. Non-members may obtain copies from the American Water Works Association, Information Services, 6666 West Quincy Avenue, Denver, Colorado 80235 at a cost of fifteen dollars (\$15.00) up to 20 pages and thirty cents (\$0.30) per page for each additional page. Copies may be obtained from the Environmental Protection Agency's (USEPA) Drinking Water Hotline at 1-800-426-4791 or from EPA's homepage at <http://www.epa.gov/OGWDW/>.~~

~~(b) The provisions of 40 C.F.R. 142.65 are hereby incorporated by reference including any subsequent amendments and editions. This material is available for inspection at the Department of Environment and Natural Resources, Division of Environmental Health, 2728 Capital Boulevard, Raleigh, North Carolina. Copies may be obtained from the Environmental Protection Agency's (USEPA) Drinking Water Hotline at 1-800-426-4791 or from EPA's homepage at <http://www.epa.gov/OGWDW/>.~~

Authority G.S. 130A-315; P.L. 93-523; 40 C.F.R. 142.

**15A NCAC 18C .2003 FILTRATION**

~~(a) The provisions of 40 C.F.R. 141.73 are hereby adopted by reference in accordance with G.S. 150B-14(c).~~

~~(b) The provisions of 40 C.F.R. 141.76 are hereby incorporated by reference including any subsequent amendments and editions. This material is available for inspection at the Department of Environment and Natural Resources, Division of Environmental Health, 2728 Capital Boulevard, Raleigh, North Carolina. Copies may be obtained from the Environmental Protection Agency's (USEPA) Drinking Water Hotline at 1-800-426-4791 or from EPA's homepage at <http://www.epa.gov/OGWDW/>.~~

Authority G.S. 130A-315; P.L. 93-523; 40 C.F.R. 141.73.

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

~~(a) The provisions of 40 C.F.R. 141.53 are hereby incorporated by reference including any subsequent amendments and editions. This material is available for inspection at the Department of Environment and Natural Resources, Division of Environmental~~

**PROPOSED RULES**

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Health, 2728 Capital Boulevard, Raleigh, North Carolina. Copies may be obtained from the Environmental Protection Agency's (USEPA) Drinking Water Hotline at 1-800-426-4791 or from EPA's webpage at

<http://www.epa.gov/ogwdw/regs.html>.

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

<http://www.epa.gov/ogwdw/regs.html>.

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

<http://www.epa.gov/ogwdw/regs.html>.

(d) The provisions of 40 C.F.R. 141.65 are hereby incorporated by reference including any subsequent amendments and editions.

This material is available for inspection at the Department of Environment and Natural Resources, Division of Environmental Health, 2728 Capital Boulevard, Raleigh, North Carolina. Copies may be obtained from the Environmental Protection Agency's (USEPA) Drinking Water Hotline at 1-800-426-4791 or from EPA's webpage at

<http://www.epa.gov/ogwdw/regs.html>.

(e) The provisions of 40 C.F.R. 141, Subpart L- Disinfectant Residuals, Disinfection Byproducts, and Disinfection Byproduct Precursors are hereby incorporated by reference including any subsequent amendments and editions. This material is available for inspection at the Department of Environment and Natural Resources, Division of Environmental Health, 2728 Capital Boulevard, Raleigh, North Carolina. Copies may be obtained from the Environmental Protection Agency's (USEPA) Drinking Water Hotline at 1-800-426-4791 or from EPA's webpage at

<http://www.epa.gov/ogwdw/regs.html>.

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

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

## TEMPORARY RULES

*This Section includes temporary rules reviewed by the Codifier of Rules and entered in the North Carolina Administrative Code and includes, from time to time, a listing of temporary rules that have expired. See G.S. 150B-21.1 and 26 NCAC 02C .0500 for adoption and filing requirements. Pursuant to G.S. 150B-21.1(e), publication of a temporary rule in the North Carolina Register serves as a notice of rule-making proceedings unless this notice has been previously published by the agency.*

### TITLE 01 – DEPARTMENT OF ADMINISTRATION

**Rule-making Agency:** *Department of Administration*

**Rule Citation:** *01 NCAC 17 .0701-.0713*

**Effective Date:** *August 29, 2001*

**Findings Reviewed and Approved by:** *Beecher R. Gray*

**Authority for the rulemaking:** *S.L. 2000-67, s. 21-5*

**Reason for Proposed Action:** *Under recently enacted legislation, judges in the General Court of Justice now have the authority to order a person responsible for domestic violence to attend and complete an abuser treatment program that has been approved by the Department of Administration. This authority first was granted in civil actions under Chapter 50B of the General Statutes and then as a special condition of probation in criminal matters in G.S. 15A-1343. With the grant of rulemaking authority in S.L. 2000-67, 21.5, the Department of Administration proposes these Rules as procedures it will use to determine which programs it approves for this purpose. The original temporary rules expired on August 12, 2001. In good faith, the Department of Administration filed the permanent rules for review by the Rules Review Commission at the Rules Division of OAH on August 3, 2001. The Rules Division forwarded the proposed rules to the RRC on August 3, 2001. For an undetermined reason, the envelope containing the proposed rule was not delivered to the RRC until late in the day on August 23, 2001. This date was beyond the 270 days of the previous temporary rule.*

**Comment Procedures:** *The public hearing and receipt of comments have already been conducted.*

### TITLE 01 – DEPARTMENT OF ADMINISTRATION

#### CHAPTER 17 – COUNCIL ON THE STATUS OF WOMEN

#### SECTION .0700 – ABUSER TREATMENT PROGRAMS

##### 01 NCAC 17 .0701 RESPONSIBILITY

The Department of Administration is responsible for approving abuser treatment programs prior to judges in the General Court of Justice being able to order parties responsible for acts of domestic violence to attend and complete such a program under the provisions of G.S. 50B-3(a)(12) or as a special condition of probation under G.S. 15A-1343(b1)(9a). The Secretary of the Department of Administration is authorized to adopt and is responsible for adopting rules regarding the process for attaining and maintaining approval of abuser treatment programs for this purpose. The administration of this approval program is delegated to the North Carolina Council for Women ("Council").

*History Note: Authority G.S. 15A-1343(b1)(9a); 50B-3(a)(12); Temporary Adoption Eff. October 17, 2000; Temporary Adoption Expired on August 12, 2001; Temporary Adoption Eff. August 29, 2001.*

##### 01 NCAC 17 .0702 ORGANIZATION

A Coordinator for approval of abuser treatment programs is located within the Council and reports to the Executive Director of the Council. The Coordinator may designate a member of the Council staff approved by the Executive Director of the Council to perform any act or duty on behalf of the coordinator. The Abuser Treatment Program Oversight Committee ("Committee") is established within the Council to approve, review and remove programs from the department's approved list. The Committee shall make recommendations to the Council on the operation of this approval program and shall advise the Council on standards for abuser treatment programs.

*History Note: Authority G.S. 15A-1343(b1)(9a); 50B-3(a)(12); Temporary Adoption Eff. October 17, 2000; Temporary Adoption Expired on August 12, 2001; Temporary Adoption Eff. August 29, 2001.*

##### 01 NCAC 17 .0703 ABUSER TREATMENT PROGRAM OVERSIGHT COMMITTEE

(a) The Abuser Treatment Program Oversight Committee shall be appointed by the Executive Director of the Council, subject to the approval of the Secretary of Administration. Each member shall serve a term of two years, which may be renewed.

(b) The committee shall consist of 17 persons as follows:

- (1) The Abuser Treatment Program Coordinator of the Council;
- (2) The Program Coordinator for Domestic Violence & Sexual Assault of the Council;
- (3) The General Counsel of the Department of Administration;
- (4) One of the Council's Region Directors;
- (5) Two representatives of providers of abuser treatment program services;
- (6) Two advocates for victims of domestic violence;
- (7) The Director from the North Carolina Coalition Against Domestic Violence;
- (8) The Executive Director from the Domestic Violence Commission;
- (9) The chair or designee from North Carolina Providers of Abuser Treatment;
- (10) A District Court Judge;
- (11) One representative from the law enforcement community;
- (12) One representative from the Division of Adult Probation and Parole of the Department of Correction;



- (13) One representative from the Governor's Crime Commission;
- (14) One representative from the military community in North Carolina; and
- (15) One other representative at large.

*History Note: Authority G.S. 15A-1343(b1)(9a); 50B-3(a)(12); Temporary Adoption Eff. October 17, 2000; Temporary Adoption Expired on August 12, 2001; Temporary Adoption Eff. August 29, 2001.*

**01 NCAC 17 .0704 ABUSER TREATMENT PROGRAM APPROVAL**

(a) The Council must approve any abuser treatment program that desires to receive referrals from District Court to provide treatment to domestic violence offenders. In addition to initial approval, each abuser treatment program must be reapproved annually by the Council.

(b) In order to be approved, an abuser treatment program must complete and submit an original and four copies of the approval application to the Council for review. Applications can be obtained by contacting the Council at 1320 Mail Service Center, Raleigh, NC 27699-1320, or by telephone at (919) 733-2455.

(c) The Council will approve applications semi-annually on February 15 and August 15, and each application must be received by the Council at least 30 days prior to initial review.

(d) As part of its application, a program shall demonstrate community support by submitting three letters of support from a local domestic violence victims' program, a local domestic violence task force or coalition, or a local governmental agency which is directly associated with the problem of domestic violence (such as a local department of social services, district attorney's office or law enforcement agency.) Letters of support must address issues of victim safety. Letters of support must not be from agencies organizationally affiliated with the abuser treatment program.

(e) Every abuser treatment program shall provide documentation and assurances that it, as well as its individual or contracted providers, adhere to all program rules and program structure set out in this Section at the time of the submission of its application to the Council. If a program is not in full compliance with any rule, its application will be returned to the applicant with any rule deficiencies noted. Any deficiencies must be corrected before the application is approved. If any deficiencies are not corrected during the review period for which the application was submitted, the program must reapply in full at the next review period in order to be approved.

(f) Before approving an abuser treatment program, the Council or a member of the Oversight Committee may perform a site visit.

(g) Each program submitting an application for approval shall receive a notice from the Council indicating its approval status. There shall be two categories of approval:

- (1) "Approved" status is for a program that fully complies with all rules set out in this Section, and has been in operation for more than one calendar year; and
- (2) "Provisionally Approved" status is for a program that fully complies with all rules set

out in this Section, but has been in operation for less than one calendar year.

A program which receives a "Provisionally Approved" status must reapply after it has completed one full year of operation to request a change to "Approved" status and annually thereafter to maintain that status.

(h) The Council shall maintain a list of all approved abuser treatment programs and shall notify each District Court judge and each Clerk of Superior Court of those approved programs semi-annually.

*History Note: Authority G.S. 15A-1343(b1)(9a); 50B-3(a)(12); Temporary Adoption Eff. October 17, 2000; Temporary Adoption Expired on August 12, 2001; Temporary Adoption Eff. August 29, 2001.*

**01 NCAC 17 .0705 PROGRAM RULES: ABUSER ASSESSMENT**

(a) All abuser treatment programs must have written policies to establish abuser assessment procedures. Each participant shall be assessed and those policies will detail how the program shall complete the assessment and document that assessment. Each assessment shall include, but not be limited to, the following for each participant:

- (1) mental health history;
- (2) family and social history;
- (3) relationship history;
- (4) history of violent, abusive, and controlling behavior;
- (5) lethality assessment;
- (6) assessment of past criminal behavior;
- (7) substance abuse screening; and
- (8) assessment of and significant deficits in the participant's cognitive or social skills; and/or
- (9) any other factors that would interfere with participation in a group program.

Results of this assessment shall not preclude other recommended interventions except that in no case shall "couples counseling" be considered a component of abuser treatment.

(b) All abuser treatment programs must have written policies that establish evaluation procedures. These policies shall include written outcome measures to evaluate the effectiveness of the program. This evaluation shall include, but not be limited to, the following for each participant:

- (1) recidivism;
- (2) a report from the victim when available, in addition to a self-report from the participant; and
- (3) an assessment of behavior and attitude changes of the participant.

*History Note: Authority G.S. 15A-1343(b1)(9a); 50B-3(a)(12); Temporary Adoption Eff. October 17, 2000; Temporary Adoption Expired on August 12, 2001; Temporary Adoption Eff. August 29, 2001.*

**01 NCAC 17 .0706 PROGRAM RULES: SAFETY FOR VICTIMS AND THEIR CHILDREN**

All abuser treatment programs must have written policies to establish victim safety procedures. The policies shall include the following points:

- (1) The program shall not accept participants into the program in lieu of the termination of any criminal or civil proceedings pending against the applicant.
- (2) The program shall assess and verify the safety of the victim, which shall include contact with the victim, when possible, to inform the victim about the program and its limitations.
- (3) The program shall offer the victim referral and assistance information directly or in cooperation with a local domestic violence program.
- (4) The program shall conduct safety checks, which shall include contact with the victim when possible, either directly or in cooperation with the local domestic violence program, in order to keep the victim informed of the program participant's status in the program.
- (5) All information about or from the victim shall be kept confidential from the program participant.
- (6) The program shall not provide "couples counseling" to program participants.
- (7) The program shall not schedule victims groups and abuser treatment groups to occur simultaneously at the same facility.
- (8) The abuser treatment program must network with its local domestic violence program and is encouraged to have a current memorandum of understanding regarding cooperation with that program in place.

*History Note: Authority G.S. 15A-1343(b1)(9a); 50B-3(a)(12); Temporary Adoption Eff. October 17, 2000; Temporary Adoption Expired on August 12, 2001; Temporary Adoption Eff. August 29, 2001.*

**01 NCAC 17 .0707 PROGRAM STRUCTURE**

- (a) All abuser treatment programs must have written policies and procedures for the establishment and collection of locally determined abuser program fees and to ensure participant responsibility for payment of the fees. All programs shall discourage local judges from waiving abuser program fees.
- (b) All abuser treatment programs must have written policies and procedures regarding required attendance, punctuality, and criteria for absences and participation. All abuser treatment programs must also have written policies that establish criteria to determine non-compliance by the participant and its consequences. These procedures shall establish methods for notifying victims and the judicial system regarding each participant's compliance status.
- (c) All abuser treatment programs must last at least 26 sessions, which shall include any intake, orientation, and psycho-educational group sessions.
- (d) Each abuser treatment program shall have at least two group facilitators per session, preferably male and female, and culturally diverse.

- (e) Each group session held in an abuser treatment program shall last at least one and one-half hours.
- (f) The size of each group in an abuser treatment program's group session shall not exceed 15 members.
- (g) Program participants and persons who have been victimized by those participants may receive direct services from the same agency; however, services shall not be provided to both a participant and that person's victim by the same staff person or volunteer.
- (h) Female participants who are referred to the program shall not attend or be enrolled in groups with male participants.
- (i) Attendance must be taken at each group session.
- (j) Abuser treatment program professional staff must have documented education, training and experience in the domestic violence field. Programs must require that professional staff participate in at least six hours of training in domestic violence documented on an annual basis.
- (k) All staff, consultants, or volunteers involved in direct services in an abuser treatment program must not have had any criminal convictions related to personal offenses, nor be the subject of or the defendant in a protective order action, for a period of 5 years prior to working at the program. Other criminal history, including crimes related to alcohol or drugs shall be evaluated by the program, and decided on a case-by-case basis.
- (l) All abuser treatment programs shall be involved in efforts to provide information and awareness to the community, criminal justice personnel and service agencies, in conjunction with local victim programs. In addition to documenting those efforts, abuser treatment programs must have documented participation in local, state or national coalitions that work to prevent and eliminate domestic violence.

*History Note: Authority G.S. 15A-1343(b1)(9a); 50B-3(a)(12); Temporary Adoption Eff. October 17, 2000; Temporary Adoption Expired on August 12, 2001; Temporary Adoption Eff. August 29, 2001.*

**01 NCAC 17 .0708 PROGRAM STRUCTURE: TERMINATION OF PROGRAM PARTICIPANTS**

- (a) All abuser treatment programs must have written policies and procedures for terminating participants from further participation in the program. Without limiting a program's ability to make more stringent requirements, termination shall occur:
  - (1) When a participant:
    - (A) Has a recurrence of violence or arrest, or conviction;
    - (B) Fails to abide by the rules and regulations of the program, including absences and any other matter set forth in these standards;
    - (C) Fails to participate and attend sessions, according to the criteria of the program; or
    - (D) Fails to comply with the alcohol and drug policy of the program and;
  - (2) When the program completes a risk assessment that the safety of the victim is not negatively impacted by the participant's termination.

(b) If a participant is terminated from the program, the program shall:

- (1) Document clearly and specifically the reasons for the termination without jeopardizing the safety of the victim;
- (2) Make specific recommendations to probation or the court, including any alternatives such as weekend incarceration, community service hours, restitution, probation violation or return to the program;
- (3) Attempt to inform the victim and/or the local domestic violence program of the participant's termination within two days; and
- (4) Inform the probation officer and referring judge (or the chief district court judge in the absence of the referring judge) of the participant's termination within five days.

*History Note: Authority G.S. 15A-1343(b1)(9a); 50B-3(a)(12); Temporary Adoption Eff. October 17, 2000; Temporary Adoption Expired on August 12, 2001; Temporary Adoption Eff. August 29, 2001.*

**01 NCAC 17 .0709 ABUSER TREATMENT PROGRAM COMPLAINTS AND INVESTIGATIONS**

(a) A person who believes that any program previously approved by the Committee for inclusion in the list of approved abuser treatment programs is in violation of any of the provisions of this Section may file a written complaint with the Coordinator. The Coordinator may also initiate proceedings under this Rule without a third party complaint having been filed. The Coordinator shall produce a document outlining the concerns about the individual program in response to each complaint.

(b) A complaint shall be reviewed initially by the Coordinator, who may dismiss the complaint, after consultation with at least one other Committee member, as unfounded, frivolous or trivial.

(c) Unless the complaint is dismissed pursuant to Paragraph (b) of this Rule, the Coordinator shall notify the program of the complaint in writing. Such notice shall be sent by certified mail, return receipt requested, shall state the alleged facts as contained in the complaint, or may enclose a copy of the complaint, and shall contain a request that the program submit an answer in writing within 20 days from the date the notice of the complaint is received by the program.

(d) If the program acknowledges the violations in the complaint, and if, in the opinion of the Coordinator, the violations do not merit review by the Committee, the Coordinator shall accept the admission in consultation with at least one other Committee member and shall issue a First Notice of Violation and the program shall enter into a probationary period. A program that is not in compliance with the rules will have 60 days to bring its program into compliance. If, after 60 days, the program is still not in compliance, a letter will be sent to District Court judges and Clerks of Superior Court to notify them of the program's status. The Notice shall include a recommended timetable for correcting the violation(s) and shall provide the program with an opportunity for training as approved by the Council.

(e) If the program does not respond to or denies the violations, the Coordinator shall investigate the allegations contained in the

complaint. The Coordinator may dismiss the complaint as unfounded, frivolous or trivial, or may refer the complaint, evidence and investigative findings to the Committee for review. A notice of the meeting at which the Committee will review the matter shall be sent by the Coordinator to the program.

(f) The program shall be able to make a presentation of its position at the meeting if it desires, but subject to the control of the Committee chair. The chair shall allow sufficient time to allow the program to present its explanation as to the matter. From such review, the Committee shall make a determination as to the violation. If the Committee finds the program is in violation, the Coordinator shall issue a First Notice of Violation as in Paragraph (d) of this Rule.

(g) The Coordinator shall maintain the complaint, evidence, investigative findings and disposition of each matter. If a First Notice of Violation has been issued, the Coordinator shall determine if the program has come into compliance within the recommended timetable. If the program is still not in compliance as determined by the Coordinator, the Coordinator shall issue a Second Notice of Violation to the program, setting forth a new timetable for correcting the violations.

(h) If the Coordinator determines that the program is still not in compliance at the end of the time set forth in the Second Notice of Violation, the Coordinator shall refer the matter to the Committee for action. A notice of the meeting at which the Committee will again review the matter shall be sent by the Coordinator to the program.

(i) At the meeting, the same procedure as set out in Paragraph (f) of this Rule shall be followed. From such review, the Committee shall make a determination as to whether the program is still in violation of the provisions of this Section. If the Committee finds the program is still in violation, the Committee shall have the Coordinator remove the program from the list of approved programs effective as of the first day of the next calendar quarter and issue a Letter of Termination to the program. Appropriate court personnel shall be notified immediately of the termination.

(j) All participants in a terminated program shall be remanded back to the court that referred the individuals for referral to another program or other action deemed appropriate by the court. Any program so terminated may reapply to the Council for inclusion on the approval list at the next application period.

(k) When a program is terminated from the approved list the Program Coordinator for Domestic Violence & Sexual Assault shall notify relevant domestic violence and sexual assault agencies and North Carolina Providers of Abuser Treatment.

*History Note: Authority G.S. 15A-1343(b1)(9a); 50B-3(a)(12); Temporary Adoption Eff. October 17, 2000; Temporary Adoption Expired on August 12, 2001; Temporary Adoption Eff. August 29, 2001.*

**01 NCAC 17 .0710 RIGHT TO ACCESS**

The Council or any of its authorized representatives shall have the right of access to any books, documents, papers, participant or other records of any applicant program needed to make a determination during the approval process or anytime thereafter unless other protected by law.

*History Note: Authority G.S. 15A-1343(b1)(9a);*

50B-3(a)(12);  
Temporary Adoption Eff. October 17, 2000;  
Temporary Adoption Expired on August 12, 2001;  
Temporary Adoption Eff. August 29, 2001.

**01 NCAC 17 .0711      REPORTS**

- (a) Each abuser treatment program shall comply with any reporting requirements and requests for information regarding statistics and other data as may be requested by Council.
- (b) Failure to comply with reporting deadlines and requests for information shall result in a program being deemed noncompliant, which shall lead to termination and removal from the approved abuser treatment program list.

History Note: Authority G.S. 15A-1343(b1)(9a);  
50B-3(a)(12);  
Temporary Adoption Eff. October 17, 2000;  
Temporary Adoption Expired on August 12, 2001;  
Temporary Adoption Eff. August 29, 2001.

**01 NCAC 17 .0712      EQUAL OPPORTUNITY**

The Council shall not discriminate against any program, or its providers, because of age, race, sex, creed, color, national origin or disabling condition. No approved program shall discriminate against any participant, or its providers, because of age, race, sex, creed, color, national origin or disabling condition.

History Note: Authority G.S. 15A-1343(b1)(9a);  
50B-3(a)(12);  
Temporary Adoption Eff. October 17, 2000;  
Temporary Adoption Expired on August 12, 2001;  
Temporary Adoption Eff. August 29, 2001.

**01 NCAC 17 .0713      TRANSITION**

All programs on the Council roster on the effective date of these temporary rules shall remain on the roster until the February, 2001, review of applications. All programs must submit complete applications with all required documentation and assurances as set out in Rule .0704 of this Section to attain "Approved" or "Provisionally Approved" status at that review. Any program's failure to do so will result in that program being dropped from the roster.

History Note: Authority G.S. 15A-1343(b1)(9a);  
50B-3(a)(12);  
Temporary Adoption Eff. October 17, 2000;  
Temporary Adoption Expired on August 12, 2001;  
Temporary Adoption Eff. August 29, 2001.

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

**Rule-making Agency:** DHHS – Division of Medical Assistance

**Rule Citation:** 10 NCAC 26H .0401

**Effective Date:** September 11, 2001

**Findings Reviewed and Approved by:** Beecher R. Gray

**Authority for the rulemaking:** G.S. 108A-25(b)

**Reason for Proposed Action:** *This change represents a portion of the action that the Division of Medical Assistance will undertake to control program expenditures for the current and future fiscal years. Physician providers will receive approximately a five-percent decrease in Medicaid payments.*

**Comment Procedures:** *Written comments concerning this rule-making action must be submitted to Portia W. Rochelle, Rule-making Coordinator, Division of Medical Assistance, 1985 Umstead Dr., 2504 Mail Service Center, Raleigh, NC 27699-2504.*

**CHAPTER 26 – MEDICAL ASSISTANCE**

**SUBCHAPTER 26H – REIMBURSEMENT PLANS**

**SECTION .0400 – PROVIDER FEE SCHEDULES**

**10 NCAC 26H .0401      PHYSICIAN'S FEE SCHEDULE**

(a) Effective ~~January 1, 2000~~, September 1, 2001, physicians' services whether furnished in the office, the patient's home, a hospital, a nursing facility or elsewhere shall be reimbursed based on the North Carolina Medicaid Fee Schedule ~~shall be which is~~ based on 95 percent of the Medicare Fee Schedule Resource Based Relative Value System (~~RBRVS~~), (RBRVS) in effect on the date of service, except for payments to the various Medical Faculty Practice Plans of the University of North Carolina - Chapel Hill and East Carolina University which shall be reimbursed at cost and cost settled at year end; but with the following clarifications and modifications:

- (1) A maximum fee is established for each service and is applicable to all specialties and settings in which the service is rendered. Payment is equal to the lower of the maximum fee or the providers customary charge to the general public for the particular service rendered.
- (2) Fees for services deemed to be associated with adequacy of access to health care services may be increased based on administrative review. The service must be essential to the health needs of the Medicaid recipients, no other comparable treatment available and a fee adjustment must be necessary to maintain physician participation at a level adequate to meet the needs of Medicaid recipients.
- (3) Fees for new services are established based on this Rule, utilizing the most recent RBRVS, if applicable. If there is no relative value unit (RVU) available from Medicare, fees shall be established based on the fees for similar services. If there is no RVU or similar service, the fee shall be set at 75 percent of the provider's customary charge to the general public. For codes not covered by Medicare that Medicaid covers, annual changes in the Medicaid payments shall be applied each January 1 and fee increases shall be applied based on the forecasted Gross National Product (GNP) Implicit Price Deflator. Said



TEMPORARY RULES

manual changes in the Medicaid payments shall not exceed the percentage increase granted by the North Carolina State Legislature.

- (4) For codes not covered by Medicare that Medicaid covers, a code may also be decreased, based on administrative review, if it is determined that the fee may exceed the Medicare allowable amount for similar services, or if the fee is higher than Medicaid fees for similar services, or if the fee is too high in relation to the skills, time, and other resources required to provide the particular service.

The Resource Based Relative Value System (RBRVS), published annually in the Federal Register, is hereby incorporated by reference including any subsequent amendments and editions. A copy is available for inspection at the Division of Medical Assistance, 1985 Umstead Drive, Raleigh, NC. Copies may be obtained from Superintendent of Documents, PO Box 371954, Pittsburgh, PA 15250-7954 at a cost of nine dollars (\$9.00) for the issue containing the RBRVS values. Purchasing instructions may be received by calling 202/512-1800.

(b) This reimbursement limitation shall become effective in accordance with the provisions of G.S. 108A-55(c). These changes to the Physician's Fee Schedule allowables shall become effective when the Health Care Financing Administration, Centers for Medicare and Medicaid Services, U.S. Department of Health and Human Services, approves amendment to HCEFA CMS by the Director of the Division of Medical Assistance on or about January 1, 2000 September 1, 2001, as #MA 99-12, 01-18, wherein the Director proposes amendments of the State Plan to amend the Physician's Fee Schedule.

History Note: Authority G.S. 108A-25(b); Eff. October 1, 1982; Amended Eff. July 1, 1997; July 1, 1995; January 4, 1993; June 1, 1990; December 1, 1988; Temporary Amendment Eff. July 22, 1998; January 22, 1998; Amended Eff. April 1, 1999; Temporary Amendment Eff. January 1, 2000 (This temporary amendment amends and replaces a permanent rulemaking originally proposed to be effective August 2000); Amended Eff. March 19, 2001; Temporary Amendment Eff. September 10, 2001.

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Rule-making Agency: Social Services Commission

Rule Citation: 10 NCAC 41H .0409-.0410

Effective Date: August 31, 2001

Findings Reviewed and Approved by: Beecher R. Gray

Authority for the rulemaking: G.S. 143B-153; 131D-10.5

Reason for Proposed Action: Eligibility Requirements for the Special Children Adoption Incentive Fund was previously

adopted as a temporary rule on December 6, 2000, with an effective date of January 1, 2001. The Division of Social Services immediately began working with county departments of social services to determine if the children that they had targeted would be eligible to participate in the Fund. In mid-April 2001, the House and Senate Appropriations Committee on Health and Human Services produced a list of optional programs and services to be considered for modified zero-based budget. The list included the newly created Special Children Adoption Incentive Fund. At that point the Division of Social Services put a hold on further adoptions that would be utilizing these funds. At the time the hold was placed on the Fund, there was one adoption that had been completed and the first payment had been prepared for release under the Fund. The Division of Social Services contacted the co-chairs of the Joint Health and Human Services Appropriations Subcommittee to notify them of the first commitment made under this Fund. Since the Fund was in limbo, the Division along with the Social Services Commission deemed it critical to wait on moving the temporary rules to permanency in the event the temporary rules had to be amended. When neither the Senate or House version of the Budget included this item for reduction, Division staff contacted legislative staff to see if we were safe to move forward. Shortly after contacting legislative staff, the House and Senate Budget Conferees released a new set of rules for addressing the budget differences. The new Conferee rules stated "New reductions allowed - Subcommittees may identify reductions that are not in either House of Senate budgets." When the new rules were issued we feared that the Fund would be put in limbo status again because it is funded solely with State and county funds. If the State funds are reduced or eliminated, the county funds would also be reduced or eliminated because the county funds are used as the match. Division staff conferred with legislative staff and was told that they did not believe this item was on the table for consideration and recommended that the Agency proceed. We immediately filed the Notice of Text form with the Office of Administrative Hearings; however, it was brought to our attention that the temporary rules would expire on September 29, 2001, five days before the end of the statutorily required 30 day comment period. The Special Needs Adoption Incentive Fund is critical to the Adoption Program; therefore, it is imperative that the Social Services Commission move immediately to adopt the same temporary rules that were adopted on December 6, 2000. There are several children and families waiting to utilize the Fund. We cannot afford to have a lapse in the temporary rules and the permanent rule. Action to adopt the temporary rule is required to ensure that the rules of the Social Services Commission continue to be consistent with Session Law 2000-67, Section 11.16 that established the Special Children Adoption Incentive Fund. The Fund provides financial incentives to foster families desiring to adopt special needs children residing in their care. These Rules establish the eligibility requirements for participation in the Fund, as well as payment procedures.

Comment Procedures: If you wish to make comments please contact Ms. Sharnese Ransome, APA Coordinator, Division of Social Services, 2401 Mail Service Center, Raleigh, NC 27699-2401; (919) 733-3055. Verbal comments may be presented at the public hearing. Written comments must be received by Ms. Ransome no later than December 3, 2001 at 9:00 a.m.

CHAPTER 41 – CHILDREN'S SERVICES

SUBCHAPTER 41H – ADOPTION STANDARDS

SECTION .0400 – ADOPTION ASSISTANCE: GENERAL

**10 NCAC 41H .0409 ELIGIBILITY REQUIREMENTS FOR THE SPECIAL CHILDREN ADOPTION INCENTIVE FUND AND EFFECTIVE DATE**

(a) Within the limits of available funding, the following criteria shall establish eligibility for the Special Children Adoption Incentive Fund. Eligibility is verified and approved on a case-by-case basis by staff of the Division of Social Services for compliance with budgetary limitations and all of the following eligibility criteria:

- (1) The child must be in the custody and placement responsibility of the participating county departments of social services;
- (2) The child has been in the legal custody of a participating county department of social services for at least six consecutive months and has a health condition (physical, mental, etc.) that is expected to result in impairment in the child's ability to function in the home, school or community and to endure throughout childhood. The child's health condition and the duration of the condition shall be documented by a written statement from a licensed physician and maintained in the child's record;
- (3) The child requires eight or more hours daily of direct supervision for personal health care or prevention of self-destructive or assaultive behavior. The status of the child's condition and the supervision needed for the child's condition shall be documented in a written statement from a licensed health or mental health practitioner. The county department of social services working with the foster family and child shall document knowledge of the child's condition and the need for eight or more hours of daily direct supervision by the foster family, health professional or special education teacher;
- (4) The foster parent(s) are licensed and the child has resided in the home for the previous six months on a continuous basis. The child's length of stay shall be documented in a written statement from the county department of social services. A copy of the foster home license shall be maintained in the child's record;
- (5) The foster parent(s) have been receiving monthly cash assistance from any governmental source whether federal, State or local above the state adoption assistance rate established by the General Assembly for the previous six months on a continuous basis to provide the care required for the child's health condition and functional impairment;

(6) The foster parent(s) are willing to adopt the child only if the monthly cash assistance from any governmental source whether federal, State or local above the state adoption assistance rate received as foster parent(s) is not terminated.

(7) The foster parent(s) have signed an adoption assistance agreement and a supplemental agreement that includes the additional amount of cash assistance that the foster parent(s) have agreed to accept prior to the finalization of the adoption. The supplemental agreement will acknowledge that the Special Children Adoption Incentive Fund benefits are not an entitlement and are subject to the availability of State and county funds for this purpose.

(8) The Decree of Adoption for the child was issued by the court on or after January 1, 2001; and

(9) The county department of social services having legal custody of the child voluntarily agrees to participate in the Special Children Adoption Incentive Fund and agrees to assume 50% of the payment above the State adoption assistance rate established by the General Assembly.

(b) The Special Children Adoption Incentive Fund benefits for which the child may be eligible will become effective the first month following the month in which the Decree of Adoption is issued.

(c) When more than one application is received at the same time and funding is not available to serve all applicants the Division of Social Services will base a decision as to which application(s) will be approved on the child's need for greater direct supervision and the child least likely to be adopted.

*History Note: Authority G.S. 108A-49; 108A-50; 143B-153; S.L. 2000-67, s. 11.16; Temporary Adoption Eff. January 1, 2001; Temporary Adoption Eff. August 31, 2001.*

**10 NCAC 41H .0410 PAYMENTS FROM THE SPECIAL CHILDREN ADOPTION INCENTIVE FUND**

(a) Payments from the Special Children Adoption Incentive Fund will be made by the Division of Social Services to the adoptive parent(s).

(b) Participating county departments of social services shall submit claims for payments to the Division of Social Services.

(c) The initial payment claim must include the following items:

- (1) verification of child's placement authority;
- (2) verification that the child has lived with the foster family six consecutive months;
- (3) copy of written statement from a licensed physician regarding the child's health condition;
- (4) copy of written statement from a licensed health, mental health, or developmental disability professional regarding the status of the child's condition;
- (5) copy of signed adoption assistance agreement;

~~(6) copy of signed supplemental assistance agreement; and~~

~~(7) copy of Decree of Adoption.~~

~~(d) Monthly payment claims shall be submitted on the "Request for Special Children Adoption Incentive Fund Payment" form developed by the Division of Social Services.~~

*History Note: Authority G.S. 108A-49; 108A-50; 143B-153; S.L. 2000-67, s. 11.16; Temporary Adoption Eff. January 1, 2001; Temporary Adoption Eff. August 31, 2001.*

**TITLE 11 – DEPARTMENT OF INSURANCE**

**Rule-making Agency:** *NC Department of Insurance*

**Rule Citation:** *11 NCAC 20 .0404-.0405; .0407*

**Effective Date:** *October 1, 2001*

**Findings Reviewed and Approved by:** *Beecher R. Gray*

**Authority for the rulemaking:** *G.S. 58-2-40; 58-2-131; 58-3-230(b); 58-50-55; 58-65-1; 58-65-105; 58-65-140*

**Reason for Proposed Action:** *G.S. 58-3-230(b) (S.L. 2001-172) requires the Commissioner of Insurance to adopt rules for a uniform provider credentialing application form.*

**Comment Procedures:** *Written comments may be sent to Nancy O'Dowd, Managed Care Section, NC Department of Insurance, 111 Seaboard Avenue, Raleigh, NC 27604.*

**CHAPTER 20 – MANAGED CARE HEALTH BENEFIT PLANS**

**SECTION .0400 – NETWORK PROVIDER CREDENTIALS**

**11 NCAC 20 .0404 APPLICATION**

For all providers ~~who submit applications to be added to a carrier's network on or after October 1, 2001; the effective date of this Section and for all providers participating in a carrier's network on or after 21 months after the effective date of this Section:~~

- (1) Each carrier shall obtain and retain on file a complete signed and dated application ~~on the form approved by the Commissioner, entitled "Uniform Application to Participate as a Health Care Practitioner",~~ that details credentials ~~from~~ of each individual provider participating in the plan network. ~~All required information shall be current upon final approval by the health plan.~~ The application shall include, when applicable:
  - (a) ~~Personal Demographic and personal information (for example, name, address, telephone number);~~
  - (b) Practice information, including call coverage;

- (c) ~~Education and training~~ 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, etc.);
- (l) A statement of completeness, veracity, and release of information, signed and dated by the applicant; and
- (m) Letters of reference or recommendation or letters of oversight from supervisors, or both.

- (2) The carrier shall obtain and retain on file the following information regarding facility provider credentials, when applicable:
  - (a) Joint Commission on Accreditation of Healthcare Organization's certification or certification from other accrediting agencies;
  - (b) State licensure;
  - (c) Medicare and Medicaid certification; and
  - (d) Evidence of current malpractice insurance.
- (3) No credential item listed in Subparagraph ~~(a) or (b)~~ (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.
- (4) A carrier shall not require an applicant to submit information not required by the "Uniform Application to Participate as a Health Care Practitioner" form.

*History Note: Authority G.S. 58-2-40(1); 58-2-131; 58-3-230; 58-50-55(b); 58-65-1; 58-65-25; 58-65-105; 58-65-140; 58-67-5; 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.*

**11 NCAC 20 .0405 VERIFICATION OF CREDENTIALS**

Upon the receipt of the application containing information about the presence or absence of credentials and all supporting documents, each carrier shall verify all information provided in 11 NCAC 20 .0404. Each carrier that provides a health benefit plan and credentials providers for its network shall maintain a process to assess and verify the qualifications of a licensed health care practitioner within 60 days of receipt of a completed "Uniform Application to Participate as a Health Care Practitioner" form. Each carrier's process for verifying credentials shall take into account and make allowance for the time required to request and obtain primary source verifications and other information that must be obtained from third parties in order to authenticate the applicant's credentials, and shall make allowance for the scheduling of a final decision by a credentialing committee, if the carrier's credentialing program requires such review.

- (1) Within 60 days after receipt of a completed application and all supporting documents, the carrier shall assess and verify the applicant's qualifications and notify the applicant of its decision. If, by the 60<sup>th</sup> day after receipt of the application, the carrier has not received all of the information or verifications it requires from third parties, or date-sensitive information has expired, the carrier shall issue a written notification to the applicant either closing the application and detailing the carrier's attempts to obtain the information or verification, or pending the application and detailing the carrier's attempts to obtain the information or verifications. If the application is held, the carrier shall inform the applicant of the length of time the application will be pending. The notification shall include the name, address and phone number of a credentialing staff person who will serve as a contact person for the applicant.
- (2) Within 15 days after receipt of an incomplete application, the carrier shall notify the applicant in writing of all missing or incomplete information or supporting documents.
  - (a) The notice to the applicant shall include a complete and detailed description of all of the missing or incomplete information or documents that must be submitted in order for review of the application to continue. The notification shall include the name, address, and telephone number of a credentialing staff person who will serve as a contact person for the applicant.
  - (b) Within 60 days after receipt of all of the missing or incomplete information or documents, the carrier shall assess and verify the applicant's qualifications and notify the applicant of its decision, in accordance with Subparagraph (1) of this Rule.

(c) If the missing information or documents have not been received within 60 days after initial receipt of the applicant or if date-sensitive information has expired, the carrier shall close the application or delay final review, pending receipt of the necessary information. The carrier shall provide written notification to the applicant of the closed or pending status of the application and where applicable, the length of time the application will be pending. The notification shall include the name, address, and telephone number of a credentialing staff person who will serve as a contact person to the applicant.

- (3) If a carrier elects not to include an applicant in its network, for reasons that do not require review of the application, the carrier shall provide written notice to the applicant of that determination within 30 days after receipt of the application.
- (4) Nothing in this Rule shall require a carrier to include a health care practitioner in its network or prevent a carrier from conducting a complete review and verification of an applicant's credentials, including an assessment of the applicant's office, before agreeing to include the applicant in its network.

*History Note:* Authority G.S. 58-2-40(1); 58-3-230; 58-50-55(b); 58-65-1; 58-65-25; 58-65-105; 58-65-140; 58-67-5; 58-67-10; 58-67-20; 58-67-35; 58-67-65; 58-67-140; 58-67-150;  
 Eff. October 1, 1996;  
 Temporary Amendment Eff. October 1, 2001.

**11 NCAC 20 .0407 REVERIFICATION OF PROVIDER CREDENTIALS**

Each carrier shall reverify the credentials of all network providers at least every three years. On or after October 1, 2001, carriers shall utilize the "Uniform Application to Participate as a Health Care Practitioner" form for reverification of provider credentials and shall not require a network provider to submit information not requested by the form. Carriers may require completion of all or only selected sections of the form for reverification of credentials.

*History Note:* Authority G.S. 58-2-40(1); 58-3-230; 58-50-55(b); 58-65-1; 58-65-25; 58-65-105; 58-65-140; 58-67-5; 58-67-10; 58-67-20; 58-67-35; 58-67-65; 58-67-140; 58-67-150;  
 Eff. October 1, 1996;  
 Temporary Amendment Eff. October 1, 2001.

**Rule-making Agency:** *NC Wildlife Resources Commission*

**Rule Citation:** *15A NCAC 10D .0102*

**Effective Date:** *August 31, 2001*

**Findings Reviewed and Approved by:** *Beecher R. Gray*

**Authority for the rulemaking:** *G.S. 113-134; 113-264; 113-270.3; 113-291.2; 113-291.5; 113-305; 113-306*

**Reason for Proposed Action:** *The NC Wildlife Resources Commission initiated this temporary rule to address concerns about public nudity on gamelands. A permanent rule will be filed for this temporary rule*

**Comment Procedures:** *Comments may be mailed to the attention of Joan Troy, NC-WRC, 1701 Mail Service Center, Raleigh, NC 27699-1701.*

**CHAPTER 10 - WILDLIFE RESOURCES AND WATER SAFETY**

**SUBCHAPTER 10D - GAME LANDS REGULATIONS**

**SECTION .0100 - GAME LANDS REGULATIONS**

**15A NCAC 10D .0102 GENERAL REGULATIONS REGARDING USE**

(a) Trespass. Entry on game lands for purposes other than hunting, trapping or fishing shall be as authorized by the landowner and there shall be no removal of any plants or parts thereof, or other materials, without the written authorization of the landowner. Travel is restricted, except by authorized personnel, to direct access from SR 2074 to the established waterfowl viewing stands on Cowan's Ford Waterfowl Refuge. The Wildlife Resources Commission may designate areas on game lands as either an Archery Zone, Safety Zone; Restricted Firearms Zone, or Restricted Zone.

- (1) Archery Zone. On portions of game lands posted as "Archery Zones" hunting is limited to bow and arrow hunting only.
- (2) Safety Zone. On portions of game lands posted as "Safety Zones" hunting is prohibited. No person shall hunt or discharge a firearm or bow and arrow within, into, or across a posted safety zone on any game land.
- (3) Restricted Firearms Zone. On portions of game lands posted as "Restricted Firearms Zones" the use of centerfire rifles is prohibited.
- (4) Restricted Zone. Portions of game lands posted as "Restricted Zones" are closed to all use by the general public, and entry upon such an area for any purpose is prohibited without first having obtained specific written approval of such entry or use from an authorized agent of the Wildlife Resources Commission.
- (5) Establishment of Archery, Restricted Firearms, and Restricted Zones. The Commission shall

conduct a public input meeting in the area where the game land is located before establishing any archery, restricted firearms or restricted zone. After the input meeting the public comments shall be presented to an official Commission meeting for final determination.

(b) Littering. No person shall deposit any litter, trash, garbage, or other refuse at any place on any game land except in receptacles provided for disposal of such refuse at designated camping and target-shooting areas. No garbage dumps or sanitary landfills shall be established on any game land by any person, firm, corporation, county or municipality, except as permitted by the landowner.

(c) Possession of Hunting Devices. It is unlawful to possess a firearm or bow and arrow on a game land at any time except during the open hunting seasons or hunting days for game birds or game animals, other than fox, thereon unless said device is cased or not immediately available for use, provided that such devices may be possessed and used by persons participating in field trials on field trial areas and on target shooting areas designated by the landowner, and possessed in designated camping areas for defense of persons and property; and provided further that .22 caliber pistols with barrels not greater than seven and one-half inches in length and shooting only short, long, or long rifle ammunition may be carried as side arms on game lands at any time other than by hunters during the special bow and arrow and muzzle-loading firearms deer hunting seasons and by individuals training dogs during closed season without field trial authorization. This Rule shall not prevent possession or use of a bow and arrow as a licensed special fishing device in those waters where such use is authorized. During the closed firearms seasons on big game (deer, bear, boar, wild turkey), no person shall possess a shotgun shell containing larger than No. 4 shot or any rifle or pistol larger than a .22 caliber rimfire while on a game land, except that shotgun shells containing any size steel or non-toxic shot may be used while waterfowl hunting. Furthermore, only shotguns with any size shot may be possessed during the big game season for turkey. No person shall hunt with or have in possession any shotgun shell containing lead or toxic shot while hunting on any posted waterfowl impoundment on any game land, or while hunting waterfowl on Butner-Falls of Neuse Game Land or New Hope Game Land, except shotgun shells containing lead buckshot may be used while deer hunting.

- (d) Game Lands License: Hunting and Trapping
  - (1) Requirement. Except as provided in Subparagraph (2) of this Paragraph, any person entering upon any game land for the purpose of hunting, trapping, or participating in dog training or field trial activities shall have in his possession a game lands license in addition to the appropriate hunting or trapping licenses.
  - (2) Exceptions
    - (A) A person under 16 years of age may hunt on game lands on the license of his parent or legal guardian.
    - (B) The resident and nonresident sportsman's licenses include game lands use privileges.



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- (C) Judges and nonresidents participating in field trials under the circumstances set forth in Paragraph (e) of this Rule may do so without the game lands license.
- (D) On the game lands described in Rule .0103(e)(2) of this Section the game lands license is required only for hunting doves; all other activities are subject to the control of the landowners.

(e) Field Trials and Training Dogs. A person serving as judge of a field trial which, pursuant to a written request from the sponsoring organization, has been officially authorized in writing and scheduled for occurrence on a game land by an authorized representative of the Wildlife Resources Commission, and any nonresident participating therein may do so without procuring a game lands license, provided such nonresident has in his possession a valid hunting license issued by the state of his residence. Any individual or organization sponsoring a field trial on the Sandhills Field Trial grounds or the Laurinburg Fox Trial facility shall file with the commission's agent an application to use the area and facility accompanied by the facility use fee computed at the rate of one hundred dollars (\$100.00) for each scheduled day of the trial. The total facility use fee shall cover the period from 12:00 noon of the day preceding the first scheduled day of the trial to 10:00 a.m. of the day following the last scheduled day of the trial. The facility use fee shall be paid for all intermediate days on which for any reason trials are not run but the building or facilities are used or occupied. A fee of twenty-five dollars (\$25.00) per day shall be charged to sporting, educational, or scouting groups for scheduled events utilizing the club house only. No person or group of persons or any other entity shall enter or use in any manner any of the physical facilities located on the Laurinburg Fox Trial or the Sandhills Field Trial grounds without first having obtained specific written approval of such entry or use from an authorized agent of the Wildlife Resources Commission, and no such entry or use of any such facility shall exceed the scope of or continue beyond the specific approval so obtained. The Sandhills Field Trial facilities shall be used only for field trials scheduled with the approval of the Wildlife Resources Commission. No more than 16 days of field trials may be scheduled for occurrence on the Sandhills facilities during any calendar month, and no more than four days may be scheduled during any calendar week; provided, that a field trial requiring more than four days may be scheduled during one week upon reduction of the maximum number of days allowable during some other week so that the monthly maximum of 16 days is not exceeded. Before October 1 of each year, the North Carolina Field Trial Association or other organization desiring use of the Sandhills facilities between October 22 and November 18 and between December 3 and March 31 shall submit its proposed schedule of such use to the Wildlife Resources Commission for its consideration and approval. The use of the Sandhills Field Trial facilities at any time by individuals for training dogs is prohibited; elsewhere on the Sandhills Game Lands dogs may be trained only on Mondays, Wednesdays and Saturdays from October 1 through April 1. Dogs may not be trained or permitted to run unleashed from April 1 through August 15 on any game land located west of I-95, except when participating in

field trials sanctioned by the Wildlife Resources Commission. Additionally, on game lands located west of I-95 where special hunts are scheduled for sportsmen participating in the Disabled Sportsman Program, dogs may not be trained or allowed to run unleashed during legal big game hunting hours on the dates of the special hunts.

(f) Trapping. Subject to the restrictions contained in 15A NCAC 10B .0110, .0302 and .0303, trapping of furbearing animals is permitted on game lands during the applicable open seasons, except that trapping is prohibited:

- (1) on the field trial course of the Sandhills Game Land;
- (2) on the Harmon Den and Sherwood bear sanctuaries in Haywood County;
- (3) in posted "safety zones" located on any game land;
- (4) by the use of multiple sets (with anchors less than 15 feet apart) or bait on the National Forest Lands bounded by the Blue Ridge Parkway on the south, US 276 on the north and east, and NC 215 on the west;
- (5) on Cowan's Ford Waterfowl Refuge in Gaston, Lincoln and Mecklenburg Counties;
- (6) on the Hunting Creek Swamp Waterfowl Refuge;
- (7) on the John's River Waterfowl Refuge in Burke County;
- (8) on the Dupont State Forest Game Lands.

On those areas of state-owned land known collectively as the Roanoke River Wetlands controlled trapping is allowed under a permit system.

(g) Use of Weapons. In addition to zone restrictions described in Paragraph (a) no person shall discharge a weapon from a vehicle, or within 150 yards of any Game Lands building or designated Game Lands camping area, or within 150 yards of any residence located on or adjacent to game lands.

(h) Vehicular Traffic. No person shall drive a motorized vehicle on any game land except on those roads constructed, maintained and opened for vehicular travel and those trails posted for vehicular travel, unless such person:

- (1) is a participant in scheduled bird dog field trials held on the Sandhills Game Land; or
- (2) holds a Disabled Access Program Permit as described in (n) below and is abiding by the rules described in that paragraph.

(i) Camping. No person shall camp on any game land except on an area designated by the landowner for camping. Camping and associated equipment in designated Hunter Camping Areas at Butner-Falls of the Neuse, Caswell, and Sandhills Game Lands is limited to Sept. 1 - Feb. 29 and Apr. 7 - May 14.

(j) Swimming. Swimming is prohibited in the lakes located on the Sandhills Game Land.

(k) Disabled Sportsman Program. In order to qualify for special hunts for disabled sportsmen listed in 15A NCAC 10D .0103 an individual shall have in their possession a Disabled Sportsman permit issued by the Commission. In order to qualify for the permit, the applicant shall provide medical certification of one or more of the following disabilities:

- (1) amputation of one or more limbs;
- (2) paralysis of one or more limbs;

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- (3) dysfunction of one or more limbs rendering the person unable to perform the task of grasping and lifting with the hands and arms or unable to walk without mechanical assistance, other than a cane;
- (4) disease or injury or defect confining the person to a wheelchair, walker, or crutches; or
- (5) legal deafness, meaning the inability to hear or understand oral communications with or without assistance of amplification devices.

Participants in the program, except those qualifying by deafness, may operate vehicles on ungated or open-gated roads normally closed to vehicular traffic on Game Lands owned by the Wildlife Resources Commission. Each program participant may be accompanied by one able-bodied companion provided such companion has in his possession the companion permit issued with the Disabled Sportsman permit.

(l) Release of Animals and Fish. It is unlawful to release pen-raised animals or birds, wild animals or birds, or hatchery-raised fish on game lands without prior written authorization. Also, it is unlawful to move wild fish from one stream to another on game lands without prior written authorization.

(m) Non-Highway Licensed Vehicles. It is unlawful to operate motorized land vehicles not licensed for highway use on Game Lands except for designated areas on National Forests. People who have obtained a Disabled Access Program permit are exempt from this rule but must comply with the terms of their permit.

(n) Disabled Access Program. Permits issued under this program shall be based upon competent medical evidence submitted by the person verifying that a handicap exists that limits physical mobility to the extent that normal utilization of the game lands is not possible without vehicular assistance. Persons meeting this requirement may operate electric wheel chairs, all terrain vehicles, and other passenger vehicles on ungated or open-gated roads otherwise closed to vehicular traffic on game lands owned by the Wildlife Resources Commission

and on game lands whose owners have agreed to such use. Those game lands where this special rule applies shall be designated in the game land rules and map book. This special access rule for disabled sportsmen does not permit vehicular access on fields, openings, roads, paths, or trails planted to wildlife food or cover. One able-bodied companion, who is identified by a special card issued to each qualified disabled person, may accompany a disabled person to provide assistance, provided the companion is at all times in visual or verbal contact with the disabled person. The companion may participate in all lawful activities while assisting a disabled person, provided license requirements are met. Any vehicle used by a qualified disabled person for access to game lands under this provision shall prominently display the vehicular access permit issued by the Wildlife Resources Commission in the passenger area of the vehicle. It shall be unlawful for anyone other than those holding a Disabled Access Permit to hunt, during waterfowl season, within 100 yards of a waterfowl blind designated by the Wildlife Resources Commission as a Disabled Sportsman's hunting blind.

(o) Public nudity. Public nudity, including nude sunbathing, is prohibited on any gameland, including land or water. For the purposes of this Section, "public nudity" means a person's intentional failure to cover with a fully opaque covering the person's genitals, pubic area, anal area, or female breasts below a point from the top of the areola while in a public place.

*History Note: Authority G.S. 113-134; 113-264; 113-270.3; 113-291.2; 113-291.5; 113-305; 113-306; Eff. February 1, 1976; Amended Eff. July 1, 1993; April 1, 1992; Temporary Amendment Eff. October 11, 1993; Amended Eff. July 1, 1998; July 1, 1996; July 1, 1995; July 1, 1994; Temporary Amendment Eff. July 1, 1999; Amended Eff. July 1, 2000; Temporary Amendment Eff. August 31, 2001.*

**CONTESTED CASE DECISIONS**

*This Section contains the full text of some of the more significant Administrative Law Judge decisions along with an index to all recent contested cases decisions which are filed under North Carolina's Administrative Procedure Act. Copies of the decisions listed in the index and not published are available upon request for a minimal charge by contacting the Office of Administrative Hearings, (919) 733-2698. Also, the Contested Case Decisions are available on the Internet at the following address: <http://www.ncoah.com/hearings>.*

**OFFICE OF ADMINISTRATIVE HEARINGS**

*Chief Administrative Law Judge  
JULIAN MANN, III*

*Senior Administrative Law Judge  
FRED G. MORRISON JR.*

**ADMINISTRATIVE LAW JUDGES**

*Sammie Chess Jr.  
Beecher R. Gray  
Melissa Owens Lassiter*

*James L. Conner, II  
Beryl E. Wade  
A.B. (Butch) Elkins*

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Thomas M Poole v. Dept. of Health & Human Services	01 DHR 0335	Lassiter	07/26/01
Terry Westmoreland v. John Umstead Hospital	01 DHR 0392	Elkins	08/15/01
Duane E McCoyle v. DHHS, Broughton Hospital	01 DHR 0398	Wade	06/19/01
Lara Beth Henrick v. DHHS, Dorothea Dix Hospital	01 DHR 0409	Mann	07/19/01
Terry W Hartsoe v. NC Dept. of Health & Human Services	01 DHR 0420	Chess	07/06/01
Richard L Foster, Reansia M Foster v. DHHS, Broughton Hospital	01 DHR 0454	Wade	06/25/01
Yvonne D Cole v. Cherry Hospital, Brenda Wells	01 DHR 0502	Morrison	07/23/01
Cheryl Holloway v. DHHS, Health Care Register	01 DHR 0513	Morrison	07/27/01
Adam Query Fisher, Jr. v. DHHS, Julian F Keith, ADATC	01 DHR 0559	Wade	06/19/01
Dennis E Partridge v. DHHS, Julian F Keith, ADATC	01 DHR 0560	Wade	06/19/01
Robert & Shirley Harmon on behalf of Gary Harmon v. NC DMH/DD/SAS	01 DHR 0955	Chess	06/25/01
Eric L Belton v. Dept. of Health & Human Services, ADATC	01 DHR 0610	Lassiter	06/04/01
Tawn Milteer-Ellerbe v. Dept. of Health & Human Services	01 DHR 0629	Conner	09/04/01
Charles Anthony Tart v. DHHS, Walter B Jones, ADATC	01 DHR 0665	Lassiter	06/22/01
Calvin Lucas v. Butner Alcohol & Drug Abuse Treatment Center	01 DHR 0738	Morrison	07/02/01
Mollie Williams v. Dept. of Health & Human Services	01 DHR 0753	Conner	07/10/01
Elveter Johnson v. Office of Administrative Hearings	01 DHR 0779	Gray	08/16/01
Fannie Brown v. Caswell Center Healthcare Personnel Registry	01 DHR 0780	Gray	07/02/01
Monique S. Wearren v. NC Dept. of Health & Human Services	01 DHR 0841	Conner	09/04/01
Edward D Connor v. Dept. of Health & Human Services	01 DHR 0978	Chess	07/05/01
Subrenia Fillyow v. NC Dept. of Human Resources	01 DHR 0996	Lassiter	08/16/01
Portia A Davis v. Dept. of Health & Human Services	01 DHR 1055	Mann	08/06/01

#### ***Division of Child Development***

Vickie L. Anderson, Camelot Academy v. DHHS, Division of Child Development	00 DHR 1270	Wade	05/22/01
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#### ***Division of Medical Assistance***

Littleton Pharmacy, Inc. James A King v. DHHS, Division of Medical Assistance, Mary J Coward	01 DHR 0835	Conner	07/12/01
Dr. Mitchell James Lequire, PharmD Realo Drug v. DHHS, Division of	01 DHR 0989	Chess	07/12/01

<sup>3</sup> Combined Cases  
<sup>2</sup> Combined Cases

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***Division of Facility Services***

Donna Kay Pittman v. DHHS, Division of Facility Services	00 DHR 0086	Overby	06/29/01
Wendy Denise Callender v. DHHS, Division of Facility Services	00 DHR 0608	Conner	08/17/01
Linda Gail Funke v. DHHS, Division of Facility Services	00 DHR 0625	Wade	06/04/01
Audrey E Alston v. DHHS, Division of Facility Services	00 DHR 1017	Gray	06/14/01
David Mull v. DHHS, Division of Facility Services	00 DHR 1495	Lassiter	06/12/01
Ethlyne Phipps v. DHHS, Division of Facility Services	00 DHR 1505	Conner	07/26/01
Yelton's Healthcare, Inc. v. DHHS, Division of Facility Services	00 DHR 1540	Chess	06/21/01
Jacqueline A Alexander v. DHHS, Division of Facility Services	00 DHR 1586	Gray	06/28/01
Debra Brown v. DHHS, Division of Facility Services	00 DHR 2009	Gray	06/28/01
Dana McQueen v. DHHS, Division of Facility Services	00 DHR 2261	Elkins	06/27/01
Peter Lynn Mosher v. DHHS, Division of Facility Services	01 DHR 0178	Mann	05/30/01
Samuel McKinley Tugman v. DHHS, Division of Facility Services	01 DHR 0512	Gray	07/25/01
Keysha Lynn Ragas v. DHHS, Division of Facility Services	01 DHR 0214	Wade	06/28/01
Davina Brook Grant v. DHHS, Division of Facility Services	01 DHR 0363	Conner	06/08/01
Tara Livingston v. DHHS, Division of Facility Services	01 DHR 0667	Conner	06/26/01
Arlene E Jackson v. DHHS, Division of Facility Services	01 DHR 0740	Morrison	07/11/01
Genevieve McLean v. DHHS, Division of Facility Services	01 DHR 0808	Lassiter	07/03/01
Daphne Michelle Pressley v. DHHS, Division of Facility Services	01 DHR 0863	Morrison	07/27/01
Candice J Smith v. DHHS, Division of Facility Services	01 DHR 0911	Lassiter	07/27/01
Cleo James v. DHHS, Division of Facility Services	01 DHR 1054	Conner	08/16/01
Nora Michell Trafton v. DHHS, Division of Facility Services	01 DHR 1057	Gray	09/04/01

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Delie L. Anthony v. Edgecombe Co. Dept. of Social Services Child Abuse and Neglect Dept. Tarsha McCray	01 DHR 0324	Wade	06/18/01
Angel McDowell v. Office of Administrative Hearings	01 DHR 0370	Conner	06/05/01
Kristie N Crabtree v. Greene County Social Services	01 DHR 0401	Lassiter	06/05/01
Claire Diggs v. DHHS, Moore Co. Dept. of Social Services	01 DHR 0551	Elkins	08/02/01
Elizabeth Jackson v. DHHS, Dept. of Social Services	01 DHR 0601	Lassiter	06/22/01
John H Anderson v. Bladen County Dept. of Social Services	01 DHR 0605	Morrison	06/22/01
Kishja Marlin v. NC DHHS, Social Svcs. Program Integrity Section	01 DHR 0634	Elkins	07/11/01

**ADMINISTRATION**

Fordion Packaging, Ltd., Bird Bailey v. Dept. of State Purchasing, J. Arthur Leaston	01 DOA 1001	Gray	08/24/01
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**JUSTICE**

Deona Renna Hooper v. Co. Police Program, Co. Police Administrator	00 DOJ 2177	Wade	06/22/01
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***Alarm Systems Licensing Board***

Edward James Summers v. Alarm Systems Licensing Board	01 DOJ 0352	Morrison	06/13/01
Joseph Brian Moses v. Alarm Systems Licensing Board	01 DOJ 0582	Wade	06/01/01
Arthur Eugene Corpening v. Alarm Systems Licensing Board	01 DOJ 0789	Morrison	06/13/01
Donny Lamor Phillips v. Alarm Systems Licensing Board	01 DOJ 0997	Lassiter	07/24/01
Stephen Wayne Farmer v. Alarm Systems Licensing Board	01 DOJ 0998	Lassiter	07/24/01

***Private Protective Services Board***

Linda Morton Kiziah v. Private Protective Services Board	01 DOJ 0353	Wade	06/01/01
Willie Carl Wilson v. Private Protective Services Board	01 DOJ 0580	Morrison	06/04/01
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Calvin McNair v. Private Protective Services Board	01 DOJ 1000	Lassiter	07/03/01

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Larry Russell Jackson v. NC Criminal Justice & Trng. Stds. Comm.	00 DOJ 0721	Gray	07/20/01
Joshua Craig Brothers v. NC Sheriffs' Educ. & Trng. Stds. Comm.	00 DOJ 1558	Elkins	06/12/01
Wardell R.K. Scott v. NC Sheriffs' Educ. & Trng. Stds. Comm.	00 DOJ 1577	Gray	08/27/01
James D. Panther v. NC Sheriffs' Educ. & Trng. Stds. Comm.	01 DOJ 0616	Wade	08/29/01

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Gwen A Lindsey v. Timothy S Bryan, State of NC, Dept. of State Treasurer, Retirement Systems	00 DST 0727	Mann	08/06/01
Bruce E. Colvin v. Board of Trustees of the Local Governmental Employees' Retirement System	00 DST 0776	Gray	07/06/01

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Leahman Coday, Jr. v. NC DENR	99 EHR 1651	Wade	06/21/01
David T. Stephenson, owner, John P. Williams, Agent, Lot 86 v. NC DENR (Brunswick County Health Department)	00 EHR 0769 <sup>1</sup>	Gray	08/07/01
Anson County Citizens Against Chemical Toxins in Underground Storage, Blue Ridge Environmental Defense League, Inc., Mary Gaddy, Bobby Smith and Emma Smith v. DENR	00 EHR 0938	Conner	06/05/01
Acreage Brokers, Inc., Doug Golightly, Officer, James T. Gully Jr., (Agent) v. NC DENR (Brunswick County Health Department)	00 EHR 1214 <sup>1</sup>	Gray	08/07/01
Albert Galluzzo, James T. Gully, Jr. (Agent) v. NC DENR	00 EHR 1245 <sup>1</sup>	Gray	08/07/01
David T. Stephenson, Lot 62 v. NC DENR (Brunswick County Health Department)	00 EHR 1249 <sup>1</sup>	Gray	08/07/01

<sup>1</sup> Combined Cases

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David T. Stephenson, Lot 65 v. NC DENR (Brunswick County Health Department)	00 EHR 1250 <sup>0</sup>	Gray	08/07/01	16:05 NCR	463
David T. Stephenson, Lot 64 v. NC DENR (Brunswick County Health Department)	00 EHR 1251 <sup>1</sup>	Gray	08/07/01	16:05 NCR	463
David T. Stephenson, Lot 69 +½ 68 v. NC DENR, (Brunswick County Health Department)	00 EHR 1252 <sup>1</sup>	Gray	08/07/01	16:05 NCR	463
David T. Stephenson v. NC DENR, (Brunswick County Health Dept.)	00 EHR 1253 <sup>1</sup>	Gray	08/07/01	16:05 NCR	463
David T. Stephenson, Lot 90 v. NC DENR, (Brunswick County Health Department)	00 EHR 1254 <sup>1</sup>	Gray	08/07/01	16:05 NCR	463
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David T. Stephenson v. NC DENR (Brunswick County Health Dept.)	00 EHR 1877 <sup>1</sup>	Gray	08/07/01	16:05 NCR	463
David T. Stephenson v. NC DENR (Brunswick County Health Dept.)	00 EHR 1878 <sup>1</sup>	Gray	08/07/01	16:05 NCR	463
David T. Stephenson v. NC DENR (Brunswick County Health Dept.)	00 EHR 1879 <sup>1</sup>	Gray	08/07/01	16:05 NCR	463
David T. Stephenson v. NC DENR (Brunswick County Health Dept.)	00 EHR 1880 <sup>1</sup>	Gray	08/07/01	16:05 NCR	463
David T. Stephenson v. NC DENR (Brunswick County Health Dept.)	00 EHR 1881 <sup>1</sup>	Gray	08/07/01	16:05 NCR	463
Barbara Barham, Angels at Play v. Alamance Co. Health Dept.	01 EHR 0142	Morrison	08/16/01		
Paul J Williams v. NC Dept.of Env. Man. Comm. and Keith Overcash, PE Deputy Director	01 EHR 0212	Lassiter	07/12/01		
Laura Walters v. Environmental Management Commission	01 EHR 0230	Lassiter	07/19/01		
Brandon H Clewis, Christy Swails Clewis v. Chatham County Health Dept., Office of Environmental Health	01 EHR 0305	Lassiter	06/04/01		
James L. Horton v. NC DENR, Division of Land Resources	01 EHR 0310	Conner	08/30/01		
M/I Homes, Donald Fraley v. Durham County	01 EHR 0687	Conner	07/10/01		
Country Lake Estates, by & through David T. Hawks, Manager v. Wm G Ross, Sec. NC Dept of Env. & Natural Resources	01 EHR 0697	Conner	08/17/01		
Marc P Walch v. Haywood Co. Health Dept. c/o Daniel F McLawhorn NC DENR	01 EHR 0730	Morrison	06/26/01		
Richard W Brannock v. NC DENR, Div. of Waste Management	01 EHR 0767	Elkins	07/30/01		
Billy James Miller, Jr., Peggy Matthews Miller v. NC Dept. of Health/ Environmental Health Inspections, John Stucky (Inspector)	01 EHR 0934	Elkins	08/02/01		
<b><u>ENGINEERS AND LAND SURVEYORS</u></b>					
NC Bd. of Examiners for Engineers and Surveyors v. C. Phil Wagoner	01 ELS 0078	Overby	07/11/01		
<b><u>HUMAN RELATIONS COMMISSION</u></b>					
NC Human Relations Commission on behalf of Jeanette Guffey and Harvey Myers	99 HRC 1383	Wade	08/06/01		
<b><u>DEPARTMENT OF INSURANCE</u></b>					
Wellpath Select, Inc. v. NC Teachers' & State Employees' Comp.	01 INS 0388	Morrison	07/03/01		
<b><u>MISCELLANEOUS</u></b>					
Tony L. Arnett v. Administrative Office of the Courts	00 MIS 0424	Wade	06/26/01		
<b><u>OFFICE OF STATE PERSONNEL</u></b>					
Debbie Whitley v. Wake County Department of Health	96 OSP 1997	Chess	05/22/01		
Larry R Lane v. NC DOT, G.F. Neal, Cty. Maintenance Engineer	99 OSP 0105	Lassiter	07/16/01		
Timothy Ramey v. NC Department of Correction	99 OSP 1085	Chess	06/27/01		
Richard W. Lee v. NC Department of Transportation	99 OSP 1145	Wade	08/29/01		
Miriam Dukes v. Albemarle Mental Health Center Bd. of Directors	00 OSP 0234	Wade	05/22/01		
Angela Ellen Jones v. Mr. Weldon Freeman, Personnel Director, NC Dept. of Crime Control & Public Safety	00 OSP 0345	Lassiter	07/03/01		
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A. Mark Esposito v. Dept. of Transportation	00 OSP 1333	Gray	06/13/01		
Bobbie D Sanders v. UNC-CH	00 OSP 1806	Chess	06/21/01	16:03 NCR	271
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Natalynn P. Tollison v. NCSU <i>et al</i>	00 OSP 1909	Wade	06/01/01		
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Kit Locklear v. NC Department of Correction	01 OSP 0106	Elkins	07/17/01		
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Lee Woodburn v. NC State University	01 OSP 0275	Lassiter	06/21/01		
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Arlene R. Burwell v. Warren Correctional Institute	01 OSP 0448	Mann	07/18/01		
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Wanda Lou Mitchell v. Walter B Jones, Alcohol & Drug Treatment Center, Greenville, NC	01 OSP 0852	Conner	08/14/01		
William David Fox v. NC Department of Transportation	01 OSP 0853	Morrison	07/02/01		
Nancy T. Rimmer v. UNC School of Medicine	01 OSP 0952	Gray	08/24/01		
Jeffrey Scott Zaccari v. NC Department of Transportation	01 OSP 0970	Conner	08/17/01		
John A Smith v. Department of Corrections, State of NC	01 OSP 0984	Chess	07/25/01		

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Faith J Jackson v. NC Department of Correction	01 OSP 0986	Lassiter	07/12/01
Lisa C. Wells v. Hyde County	01 OSP 1113	Gray	09/04/01
Calvia Lynn Hill v. Lumberton Correctional Inst., DOC	01 OSP 1205	Conner	08/07/01

**UNIVERSITY OF NORTH CAROLINA**

Tammie Davis v. UNC Hospitals & UNC Physicians	01 UNC 0506	Mann	07/13/01
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