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The **NORTH CAROLINA REGISTER**

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ISSUE DATE: SEPTEMBER 14, 1990

Volume 5 • Issue 12 • Pages 792-859



INFORMATION ABOUT THE NORTH CAROLINA REGISTER AND ADMINISTRATIVE CODE

NORTH CAROLINA REGISTER

The *North Carolina Register* is published bi-monthly and contains information relating to agency, executive, legislative and judicial actions required by or affecting Chapter 150B of the General Statutes. All proposed, administrative rules and amendments filed under Chapter 150B must be published in the Register. The Register will typically comprise approximately fifty pages per issue of legal text.

State law requires that a copy of each issue be provided free of charge to each county in the state and to various state officials and institutions. The *North Carolina Register* is available by yearly subscription at a cost of one hundred and five dollars (\$105.00) for 24 issues.

Requests for subscriptions to the *North Carolina Register* should be directed to the Office of Administrative Hearings, P. O. Drawer 11666, Raleigh, N. C. 27604, Attn: *Subscriptions*.

ADOPTION, AMENDMENT, AND REPEAL OF RULES

An agency intending to adopt, amend, or repeal a rule must first publish notice of the proposed action in the *North Carolina Register*. The notice must include the time and place of the public hearing; a statement of how public comments may be submitted to the agency either at the hearing or otherwise; the text of the proposed rule or amendment; a reference to the Statutory Authority for the action and the proposed effective date.

The Director of the Office of Administrative Hearings has authority to publish a summary, rather than the full text, of any **amendment** which is considered to be too lengthy. In such case, the full text of the rule containing the proposed amendment will be available for public inspection at the Rules Division of the Office of Administrative Hearings and at the office of the promulgating agency.

Unless a specific statute provides otherwise, at least 30 days must elapse following publication of the proposal in the *North Carolina Register* before the agency may conduct the required public hearing and take action on the proposed adoption, amendment or repeal.

When final action is taken, the promulgating agency must file any adopted or amended rule for approval by the Administrative Rules Review Commission. Upon approval of ARRC, the adopted or amended rule must be filed with the Office of Administrative Hearings. If it differs substantially from the proposed form published as part of the public notice, upon request by the agency, the adopted version will again be published in the *North Carolina Register*.

A rule, or amended rule cannot become effective earlier than the first day of the second calendar month after the adoption is filed with the Office of Administrative Hearings for publication in the NCAC.

Proposed action on rules may be withdrawn by the promulgating agency at any time before final action is taken by the agency.

TEMPORARY RULES

Under certain conditions of an emergency nature, some agencies may issue temporary rules. A temporary rule becomes effective when adopted and remains in

effect for the period specified in the rule or 180 days, whichever is less. An agency adopting a temporary rule must begin normal rule-making procedures on the permanent rule at the same time the temporary rule is adopted.

NORTH CAROLINA ADMINISTRATIVE CODE

The North Carolina Administrative Code (NCAC) is a compilation and index of the administrative rules of 25 state agencies and 38 occupational licensing boards. The NCAC comprises approximately 15,000 letter size single spaced pages of material of which approximately 35% is changed annually. Compilation and publication of the NCAC is mandated by G.S. 150B-63(b).

The Code is divided into Titles and Chapters. Each state agency is assigned a separate title which is further broken down by chapters. Title 21 is designated for occupational licensing boards.

The NCAC is available in two formats.

- (1) Single pages may be obtained at a minimum cost of two dollars and 50 cents (\$2.50) for 10 pages or less, plus fifteen cents (\$0.15) per each additional page.
- (2) The full publication consists of 52 volumes totaling in excess of 15,000 pages. It is supplemented monthly with replacement pages. A one year subscription to the full publication including supplements can be purchased for seven hundred and fifty dollars (\$750.00). Individual volumes may also be purchased with supplement service. Renewal subscriptions for supplements to the initial publication available.

Requests for pages of rules or volumes of the NCAC should be directed to the Office of Administrative Hearings.

NOTE

The foregoing is a generalized statement of the procedures to be followed. For specific statutory language it is suggested that Articles 2 and 5 of Chapter 150B of the General Statutes be examined carefully.

CITATION TO THE NORTH CAROLINA REGISTER

The *North Carolina Register* is cited by volume, issue page number and date. **1:1 NCR 101-201, April 1, 1986** refers to Volume 1, Issue 1, pages 101 through 201 of the *North Carolina Register* issued on April 1, 1986.

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NORTH CAROLINA REGISTER



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NORTH CAROLINA REGISTER

Publication Schedule

(April 1990 - December 1991)

Issue Date	Last Day for Filing	Last Day for Electronic Filing	Earliest Date for Public Hearing & Adoption by Agency	* Earliest Effective Date
*****	*****	*****	*****	*****
04/02/90	03/12/90	03/19/90	05/02/90	08/01/90
04/16/90	03/23/90	03/30/90	05/16/90	08/01/90
05/01/90	04/09/90	04/17/90	05/31/90	09/01/90
05/15/90	04/24/90	05/01/90	06/14/90	09/01/90
06/01/90	05/10/90	05/17/90	07/01/90	10/01/90
06/15/90	05/24/90	06/01/90	07/15/90	10/01/90
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08/15/91	07/25/91	08/01/91	09/14/91	12/01/91
09/03/91	08/12/91	08/19/91	10/03/91	01/01/92
09/16/91	08/23/91	08/30/91	10/16/91	01/01/92
10/01/91	09/10/91	09/17/91	10/31/91	02/01/92
10/15/91	09/24/91	10/01/91	11/14/91	02/01/92
11/01/91	10/11/91	10/18/91	12/01/91	03/01/92
11/15/91	10/24/91	10/31/91	12/15/91	03/01/92
12/02/91	11/07/91	11/14/91	01/01/92	04/01/92
12/16/91	11/21/91	12/02/91	01/15/92	04/01/92

* The "Earliest Effective Date" is computed assuming that the public hearing and adoption occur in the calendar month immediately following the "Issue Date", that the agency files the rule with The Administrative Rules Review Commission by the 20th of the same calendar month and that ARRC approves the rule at the next calendar month meeting.

VOTING RIGHTS ACT FINAL DECISION LETTER

[G.S. 120-30.9H, effective July 16, 1986, requires that all letters and other documents issued by the Attorney General of the United States in which a final decision is made concerning a "change affecting voting" under Section 5 of the Voting Rights Act of 1965 be published in the North Carolina Register.]

U.S. Department of Justice
Civil Rights Division

JRD:LLT:DJH:tlb
DJ 166-012-3
AG784

Voting Section
P.O. Box 66128
Washington, D.C. 20035-6128

August 21, 1990

Robert C. Cogswell, Jr., Esq.
City Attorney
P.O. Box 1513
Fayetteville, North Carolina 28302-1513

Dear Mr. Cogswell:

This refers to the procedures for conducting the August 28, 1990 special election for the City of Fayetteville in Cumberland County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submission on June 22, 1990.

The Attorney General does not interpose any objection to the changes in question. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

By:

J. Gerald Hebert
Acting Chief, Voting Section

**TITLE 11 - DEPARTMENT OF
INSURANCE**

Notice is hereby given in accordance with G.S. 150B-12 that the N.C. Department of Insurance intends to amend rule(s) cited as 11 NCAC 8 .0505, .0507 - .0508, .0602, .0605, .0706; and repeal rule(s) cited as 11 NCAC 8 .0501, .0509 - .0510, .0601, .0701.

The proposed effective date of this action is January 1, 1991.

The public hearing will be conducted at 10:00 a.m. on October 25, 1990 at the N.C. Department of Insurance, Qualifications Board, 410 N. Boylan Avenue, Raleigh, N.C. 27611.

Comment Procedures: Written comments may be sent to Grover Sawyer c/o Qualifications Board, P.O. Box 26387, Raleigh, N.C. 27611. Oral presentations may be made at the public hearing. Anyone having questions should call Grover Sawyer at (919) 733-3901 or Ellen Sprengel at (919) 733-4700.

**CHAPTER 8 - ENGINEERING AND BUILDING
CODES**

**SECTION .0500 - QUALIFICATION
BOARD-LIMITED CERTIFICATE**

.0501 LEGAL REQUIREMENT (REPEALED)

Statutory Authority G.S. 143-151.13.

.0505 APPLICATION: WHERE MADE AND FEE

The completed application shall be returned to the Board at P.O. Box 26387, Raleigh, North Carolina 27611. Each application shall be accompanied by payment of a ~~ten dollar (\$10.00)~~ twenty dollar (\$20.00) fee, either in cash or by a check made payable to the North Carolina Code Officials Qualification Board.

Statutory Authority G.S. 143-151.12(1); 143-151.16.

.0507 RENEWAL

To remain effective, a limited certificate must be renewed annually on or before the first day of July. Applications for renewal shall be made in the same manner as the original application for the certificate, on forms furnished by the ~~Division of Engineering and Building Codes in the Department of Insurance~~ Board. A ~~five dollar (\$5.00)~~ ten dollar (\$10.00) renewal fee shall accompany each such application. In the event

that an application is not received by July 1, an additional late renewal fee of two dollars (\$2.00) shall be charged.

Statutory Authority G.S. 143-151.12(1); 143-151.16.

**.0508 REQUIRED IN-SERVICE TRAINING
FOR RENEWAL**

No code enforcement official may have a limited certificate authorizing continuation in a position he held on June 13, 1977, renewed after July 1, 1981 unless he shall have submitted valid evidence that he has completed in-service training as prescribed by the Board.

No code enforcement official may have a limited certificate authorizing continuation in a position he held on an "applicable date" as specified in ~~Rule .0510~~ 11 NCAC 8 .0510 renewed beyond two years following such date, fire prevention inspectors beyond July 1, 1993, unless he shall have submitted valid evidence that he has completed in-service training as prescribed by the Board; said training shall be identical to the training required of applicants for standard certificates for the types and levels of code enforcement duties performed.

Statutory Authority G.S. 143-151.12(1); 143-151.13.

**.0509 RETURN OF CERTIFICATE WHEN
LEAVE EMPLOYMENT (REPEALED)**

Statutory Authority G.S. 143-151.15.

**.0510 CERTIFICATES FOR POSITIONS
HELD ON APPLICABLE DATES
(REPEALED)**

Statutory Authority G.S. 143-151.13.

**SECTION .0600 - QUALIFICATION
BOARD-PROBATIONARY CERTIFICATE**

.0601 LEGAL REQUIREMENT (REPEALED)

Statutory Authority G.S. 143-151.13.

**.0602 NATURE OF PROBATIONARY
CERTIFICATE**

A probationary certificate ~~will~~ may be issued, without examination, to any newly-employed or newly-promoted code enforcement official who lacks a standard certificate which covers his new position. A probationary certificate is issued for two years only ~~or until June 30, 1983, whichever is later~~ and may not be renewed. ~~It is expected that the~~ The official will take whatever measures

are necessary during such period to qualify for an appropriate standard certificate. A probationary certificate authorizes the official, during the effective period of the certificate, to hold the position of the type, level and location specified. The certificate ~~may~~ shall be conditioned upon the ~~official's~~ applicant's working under supervision sufficient to protect the public health and safety; or the applicant must have a minimum of two years of design, construction, or inspection experience working under a certified inspector, licensed engineer, architect, or contractor in each area of code enforcement for which the probationary certificate is issued; or the applicant must have successfully completed a probationary pre-qualification exam administered by the Board in each area of code enforcement for which the probationary certificate is issued.

Statutory Authority G.S. 143-151.12(1); 143-151.13(d).

.0605 APPLICATION: WHERE MADE AND FEE
The completed application shall be returned to the Board at P.O. Box 26387, Raleigh, North Carolina 27611. Each application shall be accompanied by payment of a ~~ten dollar (\$10.00)~~ twenty dollar (\$20.00) fee, either in cash or by a check made payable to the North Carolina Code Officials Qualification Board.

Statutory Authority G.S. 143-151.12(1); 143-151.16.

**SECTION .0700 - QUALIFICATION
BOARD-STANDARD CERTIFICATE**

.0701 LEGAL REQUIREMENT (REPEALED)

Statutory Authority G.S. 143-151.13.

**.0706 REQUIRED QUALIFICATIONS:
TYPES AND LEVELS**

(a) Qualification Levels

- (1) With respect to all types of code enforcement officials other than code administrator, those with Level I, Level II, and Level III certificates shall be qualified to inspect and approve only those types and sizes of buildings specified in the table.
- (2) Limitation on maximum size of buildings for Building, Electrical, Mechanical, and Plumbing inspectors, Levels I, II and III:

(See Sec. 404-412
of Volume I, North

Carolina State
Building Code)

ASSEMBLY	1 story 7,500 sf
BUSINESS	1 story 20,000 sf
EDUCATION	1 story 7,500 sf
HAZARDOUS	1 story 3,000 sf : (See Note)
INDUSTRIAL	1 story 20,000 sf

INSTITUTIONAL 1 story
7,500 sf

MERCANTILE 1 story
20,000 sf

OCCUPANCY
CLASSIFICATION LEVEL I

PROPOSED RULES

RESIDENTIAL	1 & 2 family dwellings 1 story residential 7,500 sf	3 stories 10,000 sf per floor	Unlimited
STORAGE	1 story 20,000 sf	1 story 60,000 sf per floor 4 stories 20,000 sf per floor	Unlimited
LEVEL II	LEVEL III	3 stories	Unlimited
1 story 20,000 sf	Unlimited	1 story 60,000 sf per floor 4 stories 20,000 sf per floor	Unlimited
1 story 60,000 sf 4 stories 20,000 sf per floor	Unlimited		
2 stories 20,000 sf per floor	Unlimited		
2 stories 20,000 sf per floor	Unlimited		
1 story 60,000 sf per floor 4 stories 20,000 sf per floor	Unlimited		

Note: *Electrical Inspector, Level I shall not be authorized to inspect wiring or equipment in hazardous ~~location~~ locations as defined by ~~Section 0500~~ Article 500 of the National Electrical Code with the exception of service stations and service pumps.

(3) Limitation on occupancy classifications of buildings for Fire Inspectors, Levels I, II and III:

CERTIFICATION LEVELS FOR FIRE INSPECTORS

LEVEL I:

OCCUPANCY:

Business
Small Assembly
Mercantile
Residential
Storage
Excluding Highrise *
No Plan Review

LEVEL II:

OCCUPANCY:

Everything in Level I
Large Assembly
Educational
Industrial
Storage

LEVEL III:

Plan Review of all
Occupancies in
Level II
Excluding Highrise *

OCCUPANCY:
Everything in Levels I
and II
Hazardous
Institutional
~~Industrial~~
Highrise
Plan Review of all
Occupancies
(Unlimited Occupancies)

* The term "excluding highrise" is listed because some of the acceptable occupancies for the levels could be located in a highrise building.

Statutory Authority G.S. 143-151.12(1);
143-151.13.

* * * * *

Notice is hereby given in accordance with G.S. 150B-12 that the N.C. Department of Insurance intends to adopt rule(s) cited as 11 NCAC 10 .1601 - .1604.

The proposed effective date of this action is January 1, 1991.

The public hearing will be conducted at 10:00 a.m. on October 15, 1990 at the Dobbs Building, Room 4085, 4th Floor Conference Rm., 430 N. Salisbury Street, Raleigh, N.C. 27611.

Comment Procedures: Written comments may be sent to Ronnie Chamberlain, P.O. Box 26387, Raleigh, N.C. 27611. Oral presentations may be made at the public hearing. Anyone having questions should call Ronnie Chamberlain at (919) 733-3368, or Ellen Sprenkel at (919) 733-4700.

CHAPTER 10 - FIRE AND CASUALTY
DIVISION

SECTION .1600 - PROSPECTIVE LOSS COSTS
FILINGS

.1601 PURPOSE; SCOPE; APPLICABILITY

(a) This Section specifies the system under which rating organizations and their participating insurers that elect to adopt a prospective loss cost system will operate. Under this system, rating

organizations shall not develop or file advisory final rates; but shall develop and file advisory prospective loss costs and supporting actuarial and statistical data. Each insurer must independently and individually determine and file the rates it will use. Rating organizations will continue to develop and file rules, relativities, and supplementary rating information on behalf of their participating insurers.

(b) 11 NCAC 10 .1603 applies when a rating organization files advisory prospective loss costs. 11 NCAC 10 .1604 applies when a rating organization files supplementary rating information. 11 NCAC 10 .1603 and 11 NCAC 10 .1604 both apply when a rating organization files both advisory prospective loss costs and supplementary rating information. Each of these submittals shall be treated separately because different procedures will apply.

(c) Nothing in this Section requires rating organizations to cease filing advisory rates or prevents their participating insurers from adopting such rates. Rating organizations that desire to file rates shall complete a rate filing questionnaire according to 11 NCAC 10 .1107.

(d) This Section does not apply to nonfleet private passenger motor vehicle, homeowners, farmowners, or dwelling fire insurance.

Statutory Authority G.S. 58-2-40; 58-36-15; 58-37-35; 58-40-30; 58-41-50; 58-45-45; 58-46-55.

.1602 DEFINITIONS

As used in this Section:

- (1) "Developed losses" means losses (including loss adjustment expenses) adjusted, using standard actuarial techniques, to eliminate the effect of differences between current payment or reserve estimates and those needed to provide actual ultimate loss (including loss adjustment expenses) payments.
- (2) "Expenses" means that portion of a rate attributable to acquisition, field supervision, and collection expenses; general expenses; and taxes, licenses, and fees.
- (3) "Loss cost multipliers" means provisions for expenses, profit, and variations in loss experience added by an individual insurer to prospective loss costs in order to produce final rates.
- (4) "Loss trending" means any procedure for projecting developed losses to the average date of loss for the period during which the policies are to be effective.
- (5) "Prospective loss costs" means that portion of a rate that does not include provisions for expenses (other than loss adjustment ex-

penses) or profit; and that is based on historical aggregate losses and loss adjustment expenses adjusted through development to their ultimate value and projected through trending to a future point in time.

- (6) "Rate" means the cost of insurance per exposure unit, whether expressed as a single number or as a prospective loss cost with loadings for expenses, profit, and variations in loss experience; prior to any application of individual risk variations based on loss or expense considerations. "Rate" does not include minimum premiums.
- (7) "Rating organization" includes a joint underwriting organization or a joint reinsurance organization.
- (8) "Supplementary rating information" includes any rating information other than rates by territory and by class; including but not limited to classification and territory definitions, various rating rules, increased limits factors, experience rating plans, and minimum premiums.

Statutory Authority G.S. 58-2-40; 58-36-15; 58-37-35; 58-40-30; 58-41-50; 58-45-45; 58-46-55.

.1603 RATE AND LOSS COSTS

(a) A rating organization may develop and file a reference filing with the Department, which filing shall contain the advisory prospective loss costs, the underlying loss data, and other supporting statistical and actuarial information for any calculations or assumptions underlying those loss costs.

(b) After a reference filing has been made with the Department and determined by the Commissioner to be proper, the rating organization will provide its participating insurers with a copy of the reference filing.

(c) A rating organization may print and distribute manuals of prospective loss costs. After an initial prospective loss costs reference filing has been made by a rating organization and has been determined by the Commissioner to be proper, that rating organization shall no longer develop or file any minimum premiums in this State.

(d) Each insurer must individually determine the final rates it will file and the effective date of any rate changes through an independent company decision-making process. Such rates shall be produced by adding expense and profit loadings and any loss cost modification to the prospective loss costs developed by the rating organization.

(e) If an insurer that is a member, subscriber, or service purchaser of a rating organization decides to use the prospective loss costs in a proper reference filing in support of its own filing, the insurer must submit a proper rate filing in accordance with 11 NCAC 10 .1107. In that filing, the insurer shall provide justification for the loss cost multipliers used in producing the final rates.

(f) If an insurer files a modification of the prospective loss costs in a proper reference filing based on its own anticipated experience, an independent filing is required. Supporting documentation shall be required for any upward or downward modifications of the prospective loss costs in the reference filing.

(g) An insurer may vary expense loads by individual classification, grouping, or subline of insurance. An insurer may use variable or fixed expense loadings or a combination of these to establish its expense loadings.

(h) If an insurer wishes to use a minimum premium of any type, a proper rate filing must be submitted to the Department.

(i) An insurer may file such other information that it deems to be relevant and shall provide such other information that is requested by the Department.

(j) Whenever a new reference filing is filed and determined to be proper:

- (1) If an insurer decides to use the prospective loss costs to revise its rates, the insurer must file with the Department a rate filing questionnaire according to 11 NCAC 10 .1107, including the effective date of the rates and copies of all new rate pages.
- (2) If an insurer decides not to use the revisions, the insurer is not required to make any filing with the Department.

Statutory Authority G.S. 58-2-40; 58-36-15; 58-37-35; 58-40-30; 58-41-50; 58-45-45; 58-46-55.

.1604 SUPPLEMENTARY RATING INFORMATION

(a) A rating organization may submit a proper rate filing to the Department containing a revision of rules, relativities, or other supplementary rating information, on behalf of those insurers that have authorized the rating organization to make such submittal on their behalves. A rating organization may print and distribute manuals of rules, relativities, and other supplementary rating information, excluding minimum premiums.

(b) When an insurer has authorized a rating organization to file on its behalf, and a new filing of rules, relativities, and other supplementary

rating information is filed and determined to be proper:

- (1) If the insurer decides to use the revisions and effective date as filed, the insurer is not required to make a filing with the Department.
- (2) If the insurer decides to use the revisions as filed but with a different effective date, the insurer must notify the Department 60 days before the rating organization's effective date or the insurer's own effective date, whichever date is earlier.
- (3) If the insurer decides to use the revisions with modifications, the insurer must file supporting data for the changes with the Department for review and specify the basis for the modifications. This must be done 60 days before the rating organization's effective date or the insurer's own effective date, whichever date is earlier.
- (4) If the insurer decides not to use the revisions, the insurer must notify the Department.

Statutory Authority G.S. 58-2-40; 58-36-15; 58-37-35; 58-40-30; 58-41-50; 58-45-45; 58-46-55.

Notice is hereby given in accordance with G.S. 150B-12 that the N.C. Department of Insurance intends to adopt rule(s) cited as 11 NCAC 12 .0834.

The proposed effective date of this action is February 1, 1991.

The public hearing will be conducted at 10:00 a.m. on October 23, 1990 at the 3rd Floor Hearing Room, Dobbs Building, 430 N. Salisbury Street, Raleigh, N. C. 27611.

Comment Procedures: Written comments may be sent to Laurie Saxton, P. O. Box 26387, Raleigh, N.C. 27611. Oral presentations may be made at the public hearing. Anyone having questions should call Laurie Saxton at (919) 733-5060, or Ellen K. Sprenkel at (919) 733-4700.

CHAPTER 12 - LIFE: ACCIDENT AND HEALTH DIVISION

SECTION .0800 - MEDICARE SUPPLEMENT INSURANCE

.0834 PERMITTED COMPENSATION ARRANGEMENTS

(a) As used in this Rule:

- (1) "Compensation" means consideration or remuneration of any kind relating to the sale or renewal of a policy, including but not limited to commissions, bonuses, gifts, prizes, or awards.
- (2) "Policy" includes a certificate.
- (3) "Representative" includes an agent, general agent, manager, broker, or other producer.

(b) A person may provide compensation to a representative for the sale of a policy only if the compensation for the first year or period is no more than two hundred percent of the compensation provided in the second year or period.

(c) The compensation provided in subsequent renewal years or periods must be the same as that provided in the second year or period and must provide for not less than four subsequent renewal years or periods.

(d) If a policy is replaced, no person shall provide and no representative shall receive compensation greater than that payable by the replacing insurer on renewal policies. This Paragraph does not apply if the benefits of the replacement policy are clearly and substantially greater than the benefits of the replaced policy.

(e) Each insurer shall establish marketing procedures that set forth a mechanism or formula for determining whether replacement policies contain benefits clearly and substantially greater than the benefits of replaced policies.

Statutory Authority G.S. 58-2-40; 58-54-15.

Notice is hereby given in accordance with G.S. 150B-12 that the N.C. Department of Insurance intends to adopt rule(s) cited as 11 NCAC 12 .0901 - .0917.

The proposed effective date of this action is January 1, 1991.

The public hearing will be conducted at 10:00 a.m. on October 16, 1990 at the Dobbs Building, 3rd Floor Conference Room, 430 N. Salisbury Street, Raleigh, N.C. 27611.

Comment Procedures: Written comments may be sent to Rodney Finger, P. O. Box 26387, Raleigh, N. C. 27611. Oral presentations may be made at the public hearing. Anyone having

questions should call Rodney Finger at (919) 733-5060, or Ellen Sprengel at (919) 733-4700.

SECTION .0900 - UTILIZATION REVIEW

.0901 PURPOSE

- (a) The purpose of this Section is to:
- (1) promote the delivery of appropriate health care in a cost effective manner;
 - (2) foster greater understanding, communication and coordination among health care providers, insureds, payers, and utilization review entities;
 - (3) improve communications and knowledge of health care benefits and services among all parties concerned before expenses are incurred;
 - (4) protect insureds, payers, and health care providers by ensuring that qualified persons perform utilization review and make informed decisions on the appropriateness of the health care setting or of the medical necessity of health care services;
 - (5) ensure that utilization review entities maintain confidentiality of medical records in accordance with applicable state and federal laws; and
 - (6) ensure that utilization review entities adhere to reasonable standards for conducting orderly and efficient utilization review processes.
- (b) In order to attain these ends, it is necessary to establish minimum standards for utilization review entities; establish minimum standards for utilization review plans used in reviews; require payers to do business only with entities that meet such standards; and require payers that perform review for their own health benefit plans to meet such standards.

Statutory Authority G.S. 58-50-60.

.0902 DEFINITIONS

As used in this Section:

- (1) "Criteria" means predetermined, measurable elements of health care against which an actual occurrence can be compared.
- (2) "Health benefit plan" means an insurance policy; a hospital, medical, or dental service plan contract; an HMO plan; a preferred provider arrangement; a self-insured workers' compensation plan; or a fully or partially self-insured single or multiple employer welfare arrangement; that provides benefits or services for health care.
- (3) "Health care provider" or "provider" includes any person who is licensed or otherwise registered or certified to engage in the

practice of, or otherwise performs duties associated with, any of the following categories: medicine, surgery, dentistry, pharmacy, optometry, obstetrics, osteopathy, podiatry, chiropractic, radiology, nursing, physiotherapy, pathology, anesthesiology, anesthesia, laboratory analysis, rendering assistance to a physician, dental hygiene, psychiatry, psychology, physical therapy, or chemical dependency treatment; or a health service facility as defined in G.S. 131E-176(9b).

- (4) "Insured" means any person eligible for health care benefits or services under a health benefit plan.
- (5) "License" means a payer's certificate of authority or registration.
- (6) "Noncertification" means a full or partial denial of certification of the appropriateness or medical necessity of a requested service.
- (7) "Payer" means any insurer or person subject to regulation and licensing under Articles 1 through 67 of Chapter 58 of the General Statutes, including preferred provider arrangements and third party administrators; a self-insured workers' compensation plan; or a fully or partially self-insured single or multiple employer welfare arrangement.
- (8) "Person" includes an individual, aggregation of individuals, partnership, corporation, or unincorporated association.
- (9) "Standards" means current, professionally developed statements of the range of acceptable variation from a norm or criteria.
- (10) "Utilization review" or "review" means a system for prospective or concurrent review of the necessity or appropriateness of health care resources and services given or proposed to be given to an insured or group of insureds; and includes:
 - (a) the review of the rendering of health care by providers for which provision of reimbursement is made under health benefit plans; and
 - (b) the evaluation of health care and health service facilities based on criteria defined in this Section.
- (11) "Utilization review entity" or "entity" means any person employed by or affiliated with a payer and performing utilization review for a payer; but does not include a single employer health benefit plan qualified under ERISA that performs review solely on the participants or beneficiaries of such plan.
- (12) "Utilization review plan" or "plan" means a written procedure for performing review.

Statutory Authority G.S. 58-50-60.

.0903 APPLICATION TO AND COMPLIANCE BY PAYERS

(a) No payer whose health benefit plan covers persons in North Carolina may contract for review to be performed on his behalf with an entity that does not meet the requirements and standards of this Section. No payer whose health benefit plan covers persons in North Carolina may perform review for his own health benefit plan unless he meets the requirements and standards of this Section.

(b) Payers that are subject to this Section must comply with this Section within 120 days after January 1, 1991.

(c) On or before April 1 of each year, every payer subject to this Section shall provide the Commissioner with a certification that the payer is in compliance with this Section.

(d) This Section does not apply to utilization review performed solely under contract with the federal government for review of patients eligible for services under Titles XVIII (Medicare) or XIX (Medicaid) of the federal Social Security Act; under the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); or under any other federal employee health benefit plan.

(e) The Commissioner may refuse to issue or renew and may suspend or revoke a payer's license, registration, or authority, if he determines that a payer or entity affiliated with a payer has failed or refused to comply with the provisions of this Section or any order issued pursuant to this Section.

Statutory Authority G.S. 58-50-60.

.0904 REQUIREMENTS FOR UTILIZATION REVIEW

In addition to other requirements prescribed by this Section, every agreement between a payer and an entity and every plan of a payer performing review for its own health benefit plans shall contain the following:

- (1) a provision for advance notice to insureds of any requirements for certification of the health care setting or preapproval of the necessity of health care service or any other prerequisite to approval of payment;
- (2) a provision for an appeals process in accordance with 11 NCAC 12 .0914;
- (3) policies and procedures that will ensure that a representative of the entity, authorized to approve the utilization review determination is available to insureds and providers in accordance with 11 NCAC 12 .0907;

- (4) policies and procedures to ensure that for all nonemergency health care, the entity shall communicate its decision on the requested review requirement no later than two business days after initial contact by the insured, his representative, or his provider; or if additional information is requested by the entity, no later than two business days after receipt by the entity of such information; and that if the entity fails to meet such deadline, the review requirement for the specific request shall be waived;
- (5) a provision for notification to providers and insureds of the review requirements;
- (6) usual total length of stay authorized for the health care service or treatment;
- (7) a provision for notification to providers and insureds that compliance with review requirements is not a guarantee of benefits or payment under the health benefit plan; and
- (8) policies and procedures designed to ensure confidentiality of insureds' medical records and personal information in accordance with 11 NCAC 12 .0911(d).

Statutory Authority G.S. 58-50-60.

.0905 UTILIZATION REVIEW PLAN

(a) Every payer subject to this Section shall, at the request of the Commissioner, make available to the Commissioner an onsite inspection of the plan that is used by an entity with which it contracts or that is used by the payer.

(b) Every plan shall contain:

- (1) specific standards and procedures to be used in review determinations;
- (2) a provision that review determinations of health care shall only be made in accordance with this Section;
- (3) assurances that the standards and criteria to be applied in review determinations are established with input from providers representing major areas of specialty and certified by the boards of the various American medical specialties. The entity shall provide the Commissioner with a list of such representatives and their major areas of specialty upon request;
- (4) that any noncertification shall be reviewed in accordance with 11 NCAC 12 .0914.

Statutory Authority G.S. 58-50-60.

.0906 MINIMUM STANDARDS FOR UTILIZATION REVIEW ENTITIES

(a) Each entity shall apply professionally developed norms of care, diagnosis, and treatment,

that were established in accordance with 11 NCAC 12 .0905(3).

(b) Any determination by an entity as to the appropriateness or necessity of an admission, service, or procedure shall be reviewed by a provider or determined in accordance with standards or guidelines approved by a provider.

(c) Each entity shall make arrangements to use the services of providers who are specialists in the various categories of health care on "per need" or "as needed" bases.

(d) Each entity shall have available the services of sufficient numbers of registered nurses, medical record technicians, or similarly qualified persons, supported by a provider, to carry out its review determinations.

(e) Before rendering a noncertification, each entity shall review the information provided to the entity in accordance with 11 NCAC 12 .0908.

(f) No provider shall review health care provided to an insured if he was directly responsible for providing such health care in or by an institution, organization, or agency, in which he or any member of his family has, directly or indirectly, a significant financial interest. For the purpose of this Rule, a health care provider's family includes only his spouse, other than a spouse who is legally separated from him under a decree of divorce or separate maintenance; children, including legally adopted children; grandchildren; parents; and grandparents. This Paragraph does not apply to HMOs.

Statutory Authority G.S. 58-50-60.

.0907 ACCESSIBILITY

An entity shall provide free telephone access to insureds and providers at least 40 hours per week during normal business hours. Payers using entities located outside of the eastern time zone must provide insureds advance written notification of the eastern time hours during which those entities are accessible; provided that such hours shall be no less than 40 hours per week. It is the responsibility of the entity to install and maintain an adequate telephone system and equipment. An adequate telephone system must include, among other features, the abilities to monitor downtime in the telephone system, to track lost calls, and to accept and record incoming calls outside of normal business hours or provide adequate instructions about when the information can be accepted. The Commissioner may determine, upon written request by the entity, that other telephone systems are adequate in special circumstances if the entity makes a written request for such determination and pays the ex-

penses incurred by the Commissioner in making the determination.

Statutory Authority G.S. 58-50-60.

.0908 STANDARD DATA ELEMENTS

(a) The information required by an entity, whether transmitted electronically, by telephone, by mail, or otherwise, shall routinely be limited to those data elements listed in Paragraph (b) of this Rule. Additional information shall only be required when special circumstances warrant. Additional information shall not be requested that is unnecessary, duplicative, or unduly burdensome; nor shall such additional information be requested solely for the purpose of delay.

(b) The Commissioner shall prescribe data elements that contain the information that may be elicited by entities from providers and insureds in performing review. The data elements shall comprise and cover specifics for the following general information:

- (1) patient information, including full name, address, date of birth, gender, social security or ID number, and name of payer per ID card;
- (2) insured information if different from patient, including full name, address, social security or ID number, relation to patient, employer, health benefit plan, group, or ID number, and other coverage;
- (3) attending provider information, including full name, address, telephone, degree and specialty, tax ID number, and provider, HMO or PPO number;
- (4) clinical information, including primary diagnosis and ICD DSM codes, secondary diagnoses, discipline diagnosis, procedure(s) or treatment(s), second opinion requirement if any, and second opinion waiver if any;
- (5) clinical information to support appropriateness and level of service requests, such as H and P, lab, or medical record documentation, and any discharge planning;
- (6) resources, including facility type, name, address, and telephone, any surgical assistant information, anesthesia if any, admission date, procedure date, and requested length of stay; and
- (7) continued stay if any, including date, entity contact, provider contact, additional days or visits requested, reasons for extension, diagnosis, treatment plan.

Statutory Authority G.S. 58-50-60.

.0909 MEDICAL CRITERIA

Utilization review decisions shall be made in accordance with accepted current medical criteria that are established in accordance with 11 NCAC 12 .0905(3), taking into account special circumstances of each case that may require a deviation from the norm stated in the medical criteria. Criteria must be objective, clinically valid, compatible with established principles of health care, and flexible enough to allow deviations from norms when justified on case-by-case bases.

Statutory Authority G.S. 58-50-60.

.0910 NONCERTIFICATION

Notification of a noncertification shall include the type of review performed, the clinical reason for noncertification, any optional length or type of treatment that the entity deems to be appropriate, and the opportunity for an appeal pursuant to 11 NCAC 12 .0914. No entity shall render a noncertification unless it has made a good faith attempt to obtain information from the provider in accordance with 11 NCAC 12 .0908.

Statutory Authority G.S. 58-50-60.

**.0911 EMERGENCIES; WAIVERS;
EXTENSIONS; CONFIDENTIALITY**

(a) For emergency health care, authorization may be requested by the insured, his representative, or his provider either within 48 hours of or by the end of the first business day following the rendering of the emergency health care, whichever is later.

(b) In cases in which an insured's medical condition renders him unable to comply with review requirements, such requirements shall be waived.

(c) An entity shall promptly review a request from the insured, his representative, or his provider for an extension of the original approved duration of health care or hospitalization. If the entity fails to confirm that termination of health care or hospitalization will occur on the original date authorized, the entity shall retrospectively review whether the extension of health care or hospitalization was medically appropriate.

(d) Each entity shall develop written procedures to protect the confidentiality of medical record information and personal information, as those terms are defined in G.S. 58-39-15.

Statutory Authority G.S. 58-50-60.

**.0912 EDUCATION OF INSURED ABOUT
REVIEW REQUIREMENTS**

Every payer that requires review shall institute a program of education to inform insureds about

the requirements of review, beginning on or before the date the review program is in effect. Every contract between an entity and a payer shall specify the party responsible for all educational programs, the content of such programs, and the frequency at which such programs shall be conducted. Records of educational programs shall be retained for a period of three years for inspection by the Commissioner.

Statutory Authority G.S. 58-50-60.

**.0913 IDENTIFICATION CARDS,
CERTIFICATES, AND BOOKLETS**

The requirement that utilization review must be performed shall be provided on every health benefit plan identification card, certificate, and benefit booklet. The insured must also receive utilization review information in either the certificate or benefit booklet that includes address, telephone number, hours of accessibility pursuant to 11 NCAC 12 .0907, and appeals procedures. The identification card must include the entity's name and telephone number and optional number or numbers.

Statutory Authority G.S. 58-50-60.

.0914 APPEALS OF NONCERTIFICATION

(a) Each entity shall establish an appeals committee to reconsider any noncertification that is appealed by an insured, his representative, or his provider. Except as provided in Paragraph (f) of this Rule, notification of the results of the appeal process shall be provided to the appellant no later than 30 days after the date the appeal is made, and shall be in writing if so requested.

(b) The appeals committee shall either:

(1) comprise at least one health care provider who is certified or licensed in the same health care category as the provider that renders or proposes to render health care to the insured or who is skilled in that health care category; or

(2) have access to and discuss the specific appeal with area providers who are certified or licensed in that health care category.

(c) Except as provided in Paragraph (f) of this Rule, a decision shall be communicated to the appellant with supporting medical reasons for the noncertification decision no later than five business days after the decision on the appeal. The decision shall be in writing if so requested.

(d) The entity shall provide an opportunity for the appellant to present additional evidence for consideration by the appeals committee. Before rendering a final decision, the committee shall review the pertinent medical records of the

insured's provider and the pertinent records of any facility in which health care is provided to the insured.

(c) In the appeals process, due consideration shall be given to the availability or nonavailability of optional health care services proposed by the entity and any hardship imposed by the optional health care on the patient and his immediate family.

(f) When an insured, his representative, or his provider requests an expedited appeal, the entity must make such appeal proceeding available within 72 hours after the request and make decisions no later than one business day after receipt by the entity of all necessary information. An expedited appeal may be requested only when the regular appeals process will cause a delay in the rendering of health care that would be detrimental to the health of the insured.

(g) The appeals process described in this Rule does not apply to any noncertification rendered solely on the basis that a health benefit plan does not provide benefits for the health care performed or being requested.

Statutory Authority G.S. 58-50-60.

.0915 RECORDS; EXAMINATIONS; TELEPHONE AUDITS

(a) Whenever the Commissioner deems it to be prudent for the benefit of insureds, providers, or payers, he or any person he designates may visit and examine the affairs of any entity to determine if the entity is in compliance with this Section or with any orders that are issued pursuant to this Section. The Commissioner may also conduct a telephone audit of an entity through a person designated by the Commissioner, through a telephone utility, or both.

(b) Every entity subject to this Section shall maintain or cause to be maintained, in writing and at a location to be specified to the Commissioner, records of review procedures; the health care qualifications of the entity's staff; the criteria used by the entity to make its decisions; a record of review complaints received; a record of the number and type of noncertifications; a record of the number and outcome of any appeals; the procedures to ensure confidentiality of medical records and personal information; and a list of clients. Records shall be retained or caused to be retained by the payer for a period of three years.

Statutory Authority G.S. 58-50-60.

.0916 PROHIBITED ACTS

(a) No entity shall authorize, allow, commit, offer, or undertake to offer any breach of confidentiality of an insured's medical records or personal information, including the disclosure or publication of individual medical records or any other confidential medical information.

(b) No payer shall reimburse any entity solely on the basis of:

- (1) amounts or expenditures saved or reduced by the entity;
- (2) promises by the entity to reduce health care expenditures by certain amounts or percentages; or
- (3) business plans or utilization plans targeting overall cost reductions by an entity.

Statutory Authority G.S. 58-50-60.

.0917 REPORT ON UTILIZATION REVIEW EXPERIENCE

On or before April 1 of each year, every payer subject to this Section shall file or cause to be filed a report with the Commissioner, which report covers review performed for or by the payer during the preceding calendar year and includes the following:

- (1) the number and type of reviews performed;
- (2) the results of the reviews and whether benefits were denied or reduced by the payer;
- (3) the number and results of any appeals under 11 NCAC 12 .0914;
- (4) any complaints filed in any court stating a cause of action arising out of the performance of review; and
- (5) a record of any complaints received about the performance of review.

Statutory Authority G.S. 58-50-60.

Notice is hereby given in accordance with G.S. 150B-12 that the N.C. Department of Insurance intends to adopt rule(s) cited as 11 NCAC 12 .1016.

The proposed effective date of this action is February 1, 1991.

The public hearing will be conducted at 10:00 a.m. on October 22, 1990 at the 3rd Floor Hearing Room, Dobbs Building, 430 N. Salisbury Street, Raleigh, N. C. 27611.

Comment Procedures: Written comments may be sent to Theresa Shackelford, P. O. Box 26387, Raleigh, N.C. 27611. Oral presentations may be

made at the public hearing. Anyone having questions should call Theresa Shackelford at (919) 733-5060, or Ellen K. Sprenkel at (919) 733-4700.

SECTION .1000 - LONG TERM CARE INSURANCE

.1016 PERMITTED COMPENSATION ARRANGEMENTS

(a) As used in this Rule:

- (1) "Compensation" means consideration or remuneration of any kind relating to the sale or renewal of a policy, including but not limited to commissions, bonuses, gifts, prizes, or awards.
- (2) "Policy" includes a certificate.
- (3) "Representative" includes an agent, general agent, manager, broker, or other producer.

(b) A person may provide compensation to a representative for the sale of a policy only if the compensation for the first year or period is no more than two hundred percent of the compensation provided in the second year or period.

(c) The compensation provided in subsequent renewal years or periods must be the same as that provided in the second year or period and must be provide for not less than four subsequent renewal years or periods.

(d) If a policy is replaced, no person shall provide and no representative shall receive compensation greater than that payable by the replacing insurer on renewal policies. This Paragraph does not apply if the benefits of the replacement policy are clearly and substantially greater than the benefits of the replaced policy.

(e) Each insurer shall establish marketing procedures that set forth a mechanism or formula for determining whether replacement policies contain benefits clearly and substantially greater than the benefits of replaced policies.

Statutory Authority: G.S. 58-2-40; 58-55-30.

TITLE 14A - DEPARTMENT OF CRIME CONTROL AND PUBLIC SAFETY

Notice is hereby given in accordance with G.S. 150B-12 that the Department of Crime Control and Public Safety, Division of State Highway Patrol intends to amend rule(s) cited as 14A NCAC 9H .0402, .0704.

The proposed effective date of this action is January 1, 1991.

The public hearing will be conducted at 10:00 a.m. on October 17, 1990 at the Library, Second Floor, Archdale Building, 512 N. Salisbury Street, Raleigh, NC 27611.

Comment Procedures: Any interested person may present comments relevant to the action proposed at the public hearing either in writing or oral form. Written statements not presented at the public hearing may be directed prior to the hearing to Wanda D. Goodson, Administrative Procedures Coordinator, First Floor, Archdale Building, 512 N. Salisbury Street, P.O. Box 27687, Raleigh, NC 27611-7687.

CHAPTER 9 - STATE HIGHWAY PATROL

SUBCHAPTER 9H - ENFORCEMENT REGULATIONS

SECTION .0400 - TRAFFIC ACCIDENT INVESTIGATION

.0402 ACCIDENT REPORT COPIES

~~(a) Except as authorized by the Patrol Commander, members shall not permit copying or reproducing of accident reports at district headquarters or other patrol installations but shall direct all requests to the traffic records section, division of motor vehicles, Department of Transportation. Traffic accident reports may be reproduced at district headquarters or other Patrol installations that have the requested report on file.~~

(b) Accident reports shall be under the control of the district sergeant and shall not be removed from the district office except by patrol members for official purposes. Reproduced copies may be provided upon request in accordance with Directive 31.

(c) Nothing in this Regulation shall prohibit members from using accident reports to release authorized information to the news media.

Statutory Authority: G.S. 20-184; 20-185; 20-187; 20-188; 20-166.1.

SECTION .0700 - USE OF PHYSICAL FORCE: FIREARMS

.0704 INVESTIGATION AND REPORTING OF FIREARMS INCIDENTS

(a) A member shall immediately report to his immediate supervisor every use of a firearm in the performance of his duty not related to training. The supervisor shall carefully examine all the facts and circumstances surrounding the incident and determine compliance with patrol rules.

directives, and procedures. A full written report of the incident and investigation shall be sent through channels to the Patrol Commander.

(b) A member involved in a shooting incident which is intentional or which results in injury or property damage shall be placed on leave but will be allowed to take annual or sick leave pending a preliminary investigation by his unit commander. This preliminary investigation shall be completed within 48 hours. an intentional shooting incident which results in personal injury or property damage shall immediately be relieved from normal duty and assigned administrative duties by the unit commander until completion of an investigation and an administrative review. The unit commander shall complete an investigation and submit a written report (within 48 hours if possible) through the chain of command to the Patrol Commander. A review and recommendation must be made by each level in the chain of command. If the preliminary investigation discloses any irregularities regarding state or federal law or patrol policy, the member shall be suspended as provided in Subchapter 9D, Regulation .0202 of this Chapter. If the investigation does not disclose any irregularities, the member shall return to duty and shall be credited for any annual leave taken or reimbursed for pay lost during the preliminary investigation. the member may be re-assigned to normal duty by the Patrol Commander unless circumstances dictate otherwise.

Statutory Authority G.S. 20-184; 20-185; 20-187; 20-188.

TITLE 15A - DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

Notice is hereby given in accordance with G.S. 150B-12 that the N. C. Marine Fisheries Commission intends to adopt rule(s) cited as 15A NCAC 3J .0104 and 3L .0202.

The proposed effective date of this action is January 1, 1991.

The public hearing will be conducted at 7:00 p.m. on October 18, 1990 at the Craven County Courthouse, 302 Broad St., New Bern, NC 28560. Business Session will be October 19, 1990, at 9:00 a.m. at the NCNB Building, 420 Fayetteville Street Mall, Raleigh, NC.

Comment Procedures: Comments and statements, both written and oral, may be presented at

the hearing. Written comments are encouraged and may be submitted to the Marine Fisheries Commission, PO Box 769, Morehead City, NC 28557. These written and oral comments must be received no later than 9:00 a.m., October 19, 1990.

CHAPTER 3 - MARINE FISHERIES

SUBCHAPTER 3J - NETS, POTS, DREDGES, AND OTHER FISHING DEVICES

SECTION .0100 - NET RULES, GENERAL

.0104 TRAWL NETS

(a) It is unlawful to use trawl nets for the taking of finfish in internal waters, except that it shall be permissible to take or possess finfish incidental to crab or shrimp trawling in accordance with the following limitations:

(1) It is unlawful to possess aboard a vessel while using a trawl in internal waters more than 500 pounds of finfish may be taken and possessed while engaged in crab trawling.

(2) The Fisheries Director may, by proclamation, close any area to trawling for specific time periods in order to secure compliance of this Rule.

(b) It is unlawful to use trawl nets:

(1) For the taking of oysters;

(2) In Albemarle Sound and its tributaries;

(3) In that area of Shackleford Banks as described in 15A NCAC 3R .0006.

(c) Minimum mesh sizes for shrimp and crab trawls are presented in 15A NCAC 3L .0103 and .0202.

Statutory Authority G.S. 113-134; 113-182; 113-221; 143B-289.4.

SUBCHAPTER 3L - SHRIMP, CRABS, AND LOBSTER

SECTION .0200 - CRABS

.0202 CRAB TRAWLING

(a) It is unlawful to take or possess aboard a vessel crabs taken by trawl in internal waters except in areas and during such times as the Fisheries Director may specify by proclamation.

(b) It is unlawful to use any crab trawl with a mesh length of less than four inches for taking hard crabs.

(c) It is unlawful to use trawls with a mesh length less than two inches or with a corkline exceeding 25 feet in length for taking soft or "peeler" crabs. The minimum corkline length shall not apply in Dare County.

(d) It is unlawful to take crabs with trawls between one hour after sunset on any Saturday and one hour before sunset on the following Sunday, except in the Atlantic Ocean.

Statutory Authority G.S. 113-134; 113-182; 113-221; 143B-289.4.

* * * * *

Notice is hereby given in accordance with G.S. 150B-12 that the N.C. Marine Fisheries Commission and N.C. Wildlife Resources Commission intends to adopt rule(s) cited as 15A NCAC 3Q .0107 - .0109 and .0202.

The proposed effective date of this action is January 1, 1991.

The public hearing will be conducted at 7:00 p.m. on October 17, 1990 at the Chowan County Courthouse, South Broad Street, Edenton, NC. Business Session will be October 19, 1990, at 9:00 a.m. at the NCNB Building, 420 Fayetteville Street Mall, Raleigh, NC.

Comment Procedures: Comments and statements, both written and oral, may be presented at the hearing. Written comments are encouraged and may be submitted to the Marine Fisheries Commission, PO Box 769, Morehead City, NC 28557. These written and oral comments must be received no later than 9:00 a.m., October 19, 1990.

SUBCHAPTER 3Q - JURISDICTION OF AGENCIES: CLASSIFICATION OF WATERS

SECTION .0100 - GENERAL REGULATIONS: JOINT

.0107 SPECIAL RULES: JOINT WATERS

In order to effectively manage all fisheries resources in joint waters and in order to confer enforcement powers on both fisheries enforcement officers and wildlife enforcement officers with respect to certain regulations, the Marine Fisheries Commission and the Wildlife Resources Commission deem it necessary to adopt special regulations for joint waters. Such regulations supersede any inconsistent regulations of the Marine Fisheries Commission or the Wildlife Resources Commission that would otherwise be applicable in joint waters under the provisions of 15A NCAC 3Q .0106:

(1) Striped bass

- (a) It is unlawful to possess any striped bass or striped bass hybrid taken by any means which is less than 16 inches long (total length).
 - (b) It is unlawful to possess more than three striped bass or striped bass hybrids taken by hook and line in any one day from joint waters.
 - (c) It is unlawful to engage in net fishing for striped bass or striped bass hybrids in joint waters except as authorized by duly adopted rules of the Marine Fisheries Commission.
 - (d) It is unlawful to possess striped bass or striped bass hybrids in the joint waters of Albemarle, Currituck, Roanoke, and Croatan Sounds and their tributaries, excluding the Roanoke River, except during seasons as authorized by duly adopted rules of the Marine Fisheries Commission.
 - (e) It is unlawful to possess striped bass or striped bass hybrids in the joint waters of the Roanoke River and its tributaries including Cashie, Middle and Eastmost Rivers, except during seasons as authorized by duly adopted rules of the Wildlife Resources Commission.
- (2) Lake Mattamuskeet
- (a) It is unlawful to set or attempt to set any gill net in Lake Mattamuskeet canals designated as joint waters.
 - (b) It is unlawful to use or attempt to use any trawl net or seines in Lake Mattamuskeet canals designated as joint waters.
- (3) Cape Fear River. It is unlawful to use or attempt to use any net or net stakes within 800 feet of the dam at Lock No. 1 on the Cape Fear River.

Statutory Authority G.S. 113-132; 113-134; 143B-289.4.

.0108 MANAGEMENT PLANS FOR STRIPED BASS IN JOINT WATERS

In order to effectively manage recreational hook and line harvest in joint waters of the Albemarle-Roanoke stock of striped bass, the Marine Fisheries Commission and the Wildlife Resources Commission deem it necessary to establish two management areas for the joint waters of the Albemarle Sound and the Roanoke River, along with their defined tributaries. The Wildlife Resources Commission shall have principal management responsibility for the stock when it is in the joint and inland fishing waters of the Roanoke River and its tributaries including Cashie, Middle, and Eastmost Rivers. The

Marine Fisheries Commission shall have principal management responsibility for the stock in the remaining waters of the Albemarle, Currituck, Roanoke and Croatan Sounds and their tributaries, including joint and inland waters. The annual quota for recreational harvest of the Albemarle-Roanoke striped bass stock shall be divided equally between the two management areas. Each Commission shall develop a management plan for recreational harvest within their respective management areas. The management plan shall:

- (1) Be consistent with the guidelines established in the Atlantic States Marine Fisheries Commission Plan for Striped Bass.
- (2) Allow for harvest throughout the year.
- (3) Limit harvest to a one fish per person per day creel limit in areas for which no data collection program is ongoing.

Statutory Authority G.S. 113-132; 113-134; 143B-289.4.

.0109 IMPLEMENTATION OF STRIPED BASS MANAGEMENT PLANS FOR RECREATIONAL FISHING

The Marine Fisheries and Wildlife Resources Commissions shall implement their respective striped bass management plans pursuant to their respective rule making powers. To preserve jurisdictional authority of each Commission while establishing a means to implement their management plans, the Commissions find it necessary to create a means through which management measures can be implemented by a single instrument in each management area.

- (1) The exclusive authority to open and close seasons and areas, whether inland or joint fishing waters in the Roanoke River and its tributaries, shall be vested in the Wildlife Resources Commission. The Wildlife Resources Commission shall initiate action to close the management area when 90 percent of the assigned quota has been taken. An instrument closing any management area in joint waters shall operate as and shall be a jointly issued instrument opening or closing seasons or areas to harvest in the Roanoke River management area.
- (2) In the Albemarle Sound management area, the exclusive authority to open and close seasons and areas, whether coastal or joint fishing waters shall be vested in the Marine Fisheries Commission. The Marine Fisheries Commission shall initiate action to close the management area when 90 percent of the assigned quota has been taken. In the Albemarle Sound management area admin-

istered by the Marine Fisheries Commission, an instrument or action by the Marine Fisheries Commission affecting the harvest in joint and coastal waters, excluding the Roanoke River management area, shall automatically be implemented and effective as a Wildlife Resources Commission action in the inland waters and tributaries to the waters affected.

Statutory Authority G.S. 113-132; 113-134; 113-182; 143B-289.4.

**SECTION .0200 - BOUNDARY LINES:
COASTAL-JOINT-INLAND FISHING WATERS**

.0202 DESCRIPTIVE BOUNDARIES FOR COASTAL-JOINT-INLAND WATERS

Descriptive boundaries for Coastal-Joint-Inland Waters referenced in 15A NCAC 3Q .0201 are as follows:

- (1) Beaufort County
 - Pamlico-Tar River -----Inland Waters
 - above, Coastal
 - Waters below
 - N and S RR
 - bridge at
 - Washington
 - All Manmade
 - tributaries, except Atlantic
 - Intracoastal Waterway -----J
 - Pungo River-----Inland Waters
 - above US 264
 - bridge at
 - Leechville, Joint
 - Waters below
 - US 264 bridge
 - at Leechville
 - to Smith Creek,
 - Coastal Waters
 - below Smith
 - Creek
 - Flax Pond Bay -----C
 - Upper Dowery Creek -----I
 - Lower Dowery Creek -----I
 - George Best Creek-----C
 - Toms Creek -----C
 - Pantego Creek-----I
 - Pungo Creek -----Inland Waters
 - above, Coastal
 - Waters below
 - NC 92 bridge
 - Vale Creek -----I
 - Scotts Creek -----I
 - Smith Creek -----I
 - Woodstock (Little) Creek -----I
 - Jordan Creek -----I
 - Satterwaite Creek -----I

PROPOSED RULES

Wright Creek	I
North Creek	J
St. Clair Creek	I
Mixons Creek	I
Bath Creek	I
Duck Creek	I
Mallards Creek	I
Upper Goose Creek	I
Broad Creek	I
Herring Run (Runyan Creek)	I
Chocowinity Bay	I
Calf Tree Creek	I
Hills Creek	I
Blounts Creek	I
Nevil Creek	I
Barris Creek	I
Durham Creek	I
Lees Creek	I
Hudies Gut	I
South Creek	Inland Waters
	above, Coastal
	Waters below
	Deephole Point
Tooleys Creek	I
Drinkwater Creek	I
Jacobs Creek	I
Jacks Creek	I
Whitehurst Creek	I
Little Creek	I
Short Creek	I
Long Creek	I
Bond Creek	I
Muddy Creek	I
Davis Creek	I
Strawhorn Creek	I
Lower Goose Creek	C
Lower Spring Creek	I
Peterson Creek	I
Snode Creek	I
Campbell Creek	Inland Waters
	above, Coastal
	Waters below
	Smith Creek
Smith Creek	I
Hunting Creek	I
(2) Bertie County	
Albemarle Sound	C
All Manmade Tributaries	C
Roanoke River	Coastal Waters
	below US 258
	bridge to mouth
Quinine	I
Wire Gut	I
Apple Tree Creek	I
Indian Creek	I
Coniott Creek	I
Conine Creek	C
Old Mill Creek	I

Cut Cypress Creek	I
Broad Creek	I
Thoroughfare	C
Cashie River	Inland Waters
	above Coastal
	Waters
	below San Souci
	ferry
Cashoke Creek	I
Moore's Creek	I
Broad Creek	I
Grinnel Creek	I
Middle River	C
Eastmost River	C
Mud Gut	I
Black Walnut Swamp	I
Salmon Creek	I
Chowan River	Coastal Waters
	from confluence
	to US 17 bridge
Barkers Creek	I
Willow Branch	I
Keel (Currituck) Creek	I

(3) Bladen County

Cape Fear River	Inland Waters
	above Lock and
	Dam No. 1 Joint
	Waters below
	Lock and Dam
	No. 1 to old US
	17-74-76 bridge
	at Wilmington

Natmore Creek	I
---------------	---

(4) Brunswick County

Calabash River and Tributaries	C
Saucepan Creek	C
Flat Marsh	C
Shallotte River	Inland Waters
	above, Coastal
	Waters below
	US-17-130

Mill Dam Branch	C
Squash Creek	C
Mill Pond	C
Charles Branch	Inland Waters
	above, Coastal
	Waters below
	NC 130 bridge

Grisset Swamp	C
Little Shallotte River	
and Tributaries	C

Lockwood Folly River	Inland Waters
	above, Coastal
	Waters below
	NC 211 bridge
	at Supply

Stanberry Creek	C
Pompeys Creek	C

Maple Creek-----C	-----Island Creek
Ruby's Creek-----C	Wading Gut -----I
Big Doe Creek -----C	Little Broad Creek-----I
Lennons Creek-----C	Broad Creek-----I
Mercers Mill Pond Creek -Inland Waters	Hunting Creek -----I
-----above, Coastal	Abel Creek-----I
-----Waters below	Back Landing Creek -----I
-----Mill	Public Creek-----I
Elizabeth River -----C	Cow Creek-----I
Ash Creek -----C	Great Creek-----I
Beaverdam Creek-----C	Indiantown Creek -----I
Dutchman Creek -----C	(6) Carteret County
Calf Gully Creek-----C	Neuse River -----C
Jumpin Run-----C	Adams Creek-----C
Fiddlers Creek-----C	Back (Black) Creek-----C
Cape Fear River-----Joint Waters	Cedar Creek -----C
-----below Lock and	Garbacon Creek -----C
-----Dam No. 1 to	South River -----Inland Waters
-----old US 17-74-76	-----above, Coastal
-----bridge at	-----Waters below
-----Wilmington	-----the Forks
-----Coastal Waters	Big Creek -----C
-----below old	Southwest Creek-----C
-----US 17-74-76	West Fork -----I
-----bridge at	East Fork -----I
-----Wilmington	Eastman Creek -----C
Carolina Power and Light	Browns Creek -----C
Intake Canal-----C	North River and Tributaries-----C
Walden Creek -----C	Panter Cat Creek -----C
Orton Creek -----I	Cypress Creek-----C
Lilliput Creek -----I	Newport River-----Inland Waters
Sandhill Creek -----I	-----above, Coastal
Town Creek -----I	-----Waters below
Mallory Creek-----I	-----the Narrows
Brunswick River-----J	Core Creek -----C
Alligator Creek-----I	Harlowe Creek -----C
Jackeys Creek -----I	Bogue Sound and Tributaries -----C
Sturgeon Creek-----I	White Oak River-----Inland Waters
Cartwheel Creek -----I	-----above, Coastal
Indian Creek -----I	-----Waters below
Hood Creek -----I	-----Grants Creek
Northwest Creek-----I	Pettiford Creek-----Inland Waters
(5) Camden County	-----above, Coastal
Albemarle Sound-----C	-----Waters below
All Manmade Tributaries -----C	-----NC 58 bridge
Pasquotank River -----Inland Waters	Little Hadnotts Creek-----I
-----above, Coastal	Hadnotts Creek-----Inland Waters
-----Waters below	-----above, Coastal
-----US 158 bridge	-----Waters below
-----at Elizabeth City	-----NC 58 bridge
Raymond Creek -----I	Neds Creek -----C
Portohonk Creek -----I	Hunter Creek-----I
Areneuse Creek -----I	(7) Chowan County
North River-----Inland Waters	Albemarle Sound-----C
-----above, Coastal	All Manmade Tributaries -----C
-----Waters below a	Yeopim River-----Inland Waters
-----line from Long	-----above, Coastal
-----Creek to Green	-----Waters below

PROPOSED RULES

-----Norcum Point	Duck Creek-----I
Queen Anne Creek-----I	Northwest Creek-----I
Pollock Swamp (Pembroke Creek)-----I	Upper Broad Creek-----Inland Waters
Chowan River-----Coastal Waters	-----above, Coastal
-----from confluence	-----Waters below
-----to US 17 bridge	-----the Tidelands
Rocky Hoek Creek-----I	-----EMC power lines
Dillard (Indian) Creek-----I	(10) Currituck County
Stumpy Creek-----I	Albemarle Sound-----C
Catherine (Warwick) Creek-----I	All Manmade Tributaries-----C
(8) Columbus County	North River-----Inland Waters
Cape Fear River-----J	-----above, Coastal
Livingston Creek-----I	-----Waters below a
Waymans Creek-----I	-----line from Long
(9) Craven County	-----Creek to Green
Neuse River-----Inland Waters	-----Island Creek
-----above Pitch	Duck Creek-----I
-----Kettle Creek	Barnett Creek-----I
-----Joint Waters	Lutz Creek-----I
-----below Pitch	Goose Pond-----I
-----Kettle Creek to	Deep Creek-----I
-----US 17 bridge	Narrow Ridges Creek-----I
-----at New Bern	Bump Landing Creek-----I
-----Coastal Waters	Taylor Bay-----C
-----below US 17	Intracoastal Waterway from
-----bridge at	Taylor Bay to
-----New Bern	Coinjock Bay-----C
Adams Creek-----C	Indiantown Creek-----I
Back Creek-----C	Currituck Sound-----C
Courts Creek-----I	All Manmade Tributaries-----C
Long Branch-----I	Coinjock Bay-----C
Clubfoot Creek-----C	Nelson (Nells) Creek-----I
Gulden Creek-----C	Hog Quarter Creek-----I
Mitchell Creek-----C	Parkers Creek-----I
Morton Mill Pond-----I	North Landing River-----C
Hancock Creek-----I	Northwest River-----I
Slocum Creek-----I	Gibbs Canal-----I
Scott Creek-----I	Tull Creek-----I
Trent River-----Inland Waters	West Landing-----I
-----above, Joint	(11) Dare County
-----Waters below	Alligator River-----Coastal Waters
-----Wilson's Creek	-----below Cherry
Brice Creek-----I	-----Ridge Landing
Wilson Creek-----I	Whipping Creek-----I
Jack Smith Creek-----I	Swan Creek-----I
Bachelor Creek-----I	Milltail Creek-----I
Dollys Gut-----I	Laurel Bay Lake (Creek)-----I
Greens Thoroughfare-----I	East Lake-----I
Greens Creek-----I	Albemarle Sound-----C
Turkey Quarter Creek-----I	All Manmade Tributaries-----C
Pitch Kettle Creek-----I	Kitty Hawk Bay-----C
Taylors Creek-----I	Peter Mashoes Creek-----I
Pine Tree Creek-----I	Tom Mann Creek-----I
Stumpy Creek-----I	Croatan Sound-----C
Swift Creek-----I	All Manmade Tributaries-----C
Reels Creek-----I	Spencer Creek-----I
Mill Creek-----I	Calahan Creek-----I

Roanoke Sound -----C
 Buzzard Bay-----C
 Pamlico Sound -----C
 Stumpy Point Bay-----C
 All Manmade Tributaries -----J
 Long Shoal River -----Inland Waters
 -----above, Coastal
 -----Waters below
 -----US 264 bridge
 All Manmade Tributaries -----J
 Pains Bay -----C
 Pains Creek-----Inland Waters
 -----above, Coastal
 -----Waters below
 -----US 264 bridge
 Deep Creek -----Inland Waters
 -----above, Coastal
 -----Waters below
 -----US 264 bridge
 Currituck Sound-----C
 All Manmade Tributaries -----C
 Martin Point Creek -----I
 (12) Gates County
 Chowan River -----Coastal Waters
 -----below US 17
 -----bridge
 Catherine (Warwick) Creek-----I
 Bennetts Creek-----I
 Beef Creek -----I
 Sarem Creek-----I
 Shingle (Island) Creek -----I
 Barnes Creek -----I
 Spikes Creek-----I
 Buckhorn Creek (Run Off Swamp)---I
 Mud Creek -----I
 Somerton Creek -----I
 (13) Halifax County
 Roanoke River -----Inland Waters
 -----above Coastal
 -----Waters below
 -----US 258 bridge
 Kehukee Swamp-----I
 Clarks Canal-----I
 (14) Hertford County
 Chowan River -----Coastal Waters
 -----below US 17
 -----bridge
 Keel (Currituck) Creek -----I
 Snake Creek -----I
 Swain Mill (Taylor Pond) Creek-----I
 Goose Creek -----I
 Wiccacon River-----I
 Hodges Creek -----I
 Catherine Creek-----I
 Harris (Hares) Mill Creek-----I
 Meherrin River -----C
 Potecasi Creek -----I
 Sallie Gut -----I

Mapleton Gut-----I
 Liverman Creek-----I
 Vaughan's Creek-----I
 Banks Creek -----I
 Toms Gut -----I
 Sudd Grass Creek -----I
 Forked Gut-----I
 Riddicksville Gut -----I
 Buckhorn Creek -----I
 Warrens Gut -----I
 (15) Hyde County
 Pamlico Sound -----C
 Pungo River-----Inland Waters
 -----above US 264
 -----bridge at
 -----Leechville, Joint
 -----Waters below
 -----US 264 bridge
 -----at Leechville
 -----to Smith Creek,
 -----Coastal Waters
 -----below Smith
 -----Creek
 Rutman Creek -----I
 Wilkerson Creek -----I
 Atlantic Intracoastal Waterway
 from Wilkerson Creek to
 Alligator River at
 Winn Bay -----J
 Horse Island Creek -----I
 Tarkiln Creek-----I
 Scranton Creek -----Inland Waters
 -----above, Joint
 -----Waters below
 -----US 264 bridge
 Smith Creek -----I
 Fishing Creek -----I
 Slades Creek-----C
 Fortesque Creek -----C
 Rose Bay -----C
 Neals Creek-----C
 Deep Creek -----C
 Reden Creek-----C
 Rose Bay Creek-----C
 Rose Bay Canal -----Inland Waters
 -----above, Joint
 -----Waters below
 -----SR 1305 bridge
 Swan Quarter Bay-----C
 Oyster Creek-----C
 Juniper Bay-----C
 Juniper Bay Creek-----J
 Juniper Bay Creek Canal-----I
 Lake Mattamuskeet -----I
 Outfall Canal-----Inland Waters
 -----above, Joint
 -----Waters below
 -----US 264 bridge

PROPOSED RULES

Lake Landing Canal ----Inland Waters	Northeast Cape Fear River--Inland Waters
-----above, Joint	-----above, Joint
-----Waters below	-----Waters below
-----US 264 bridge	-----NC 210 bridge
Waupopin Canal -----Inland Waters	Smiths Creek -----I
-----above, Joint	Ness Creek-----I
-----Waters below	Dock Creek-----I
-----SR 1311 bridge	Fishing Creek -----I
All other Manmade	Prince George Creek -----I
Tributaries to	Sturgeon Creek -----I
Lake Mattamuskeet -----I	Island Creek -----I
Middletown Creek-----C	(18) Northampton County
Long Shoal River -----Inland Waters	Roanoke River -----Inland Waters
-----above, Coastal	-----above US 258
-----Waters below	-----bridge Coastal
-----US 264 bridge	-----Waters below
All Manmade Tributaries -----J	-----US 258 bridge
Broad Creek -----C	Sandy Run (Norfleet Gut)-----I
Flag Creek -----I	Graveyard Gut -----I
Cumberland Creek -----I	(19) Onslow County
Alligator River-----Inland Waters	Beasleys (Barlow) Creek -----C
-----above Cherry	Kings Creek -----C
-----Ridge Landing,	Turkey Creek -----C
-----Coastal Waters	Mill Creek -----C
-----below Cherry	New River-----Inland Waters
-----Ridge Landing	-----above, Coastal
Swan Creek and Lake -----I	-----Waters below
Alligator Creek-----I	-----US 17 bridge at
(16) Martin County	-----Jacksonville
Roanoke River -----C	Wheeler Creek -----C
Prices Gut -----I	Everett Creek-----C
Rainbow Gut -----I	Stones Creek -----C
Conoho Creek -----I	Muddy Creek -----C
Sweetwater Creek-----I	Lewis Creek -----C
Peter Swamp -----I	Southwest Creek-----Inland Waters
Devils Gut -----C	-----above, Coastal
Upper Deadwater-----C	-----Waters below
Lower Deadwater-----C	-----Maple Hill
Gardner Creek -----I	----- (Maple) Landing
Roses Creek -----I	Brinson Creek-----I
Welch Creek -----I	Northeast Creek -----Inland Waters
(17) New Hanover County	-----above, Coastal
Cape Fear River-----Joint Waters	-----Waters below
-----below Lock and	-----railroad bridge
-----Dam No. 1 to	Wallace Creek-----Inland Waters
-----old US 17-74-76	-----above, Coastal
-----bridge at	-----Waters below
-----Wilmington Coastal	-----the first bridge
-----Waters below	-----upstream from
-----old US 17-74-76	-----the mouth
-----bridge at	Codels Creek -----I
-----Wilmington	French Creek-----I
Lords Creek -----I	Duck Creek-----I
Todds Creek -----I	Freeman (Browns) Creek -----C
Barnards Creek -----I	Bear Creek-----C
Greenfield Lake Outlet -----I	Queens Creek -----Inland Waters
Tommer Creek-----I	-----above, Coastal
Catfish Creek-----I	-----Waters below

PROPOSED RULES

-----Frazier's Landing	Chapel Creek-----Inland Waters
Parrotts Swamp-----C	-----above, Coastal
White Oak River-----Inland Waters	-----Waters below
-----above, Coastal	-----NC 304 bridge
-----Waters below	Raccoon Creek-----C
-----Grants Creek	Trent Creek-----Inland Waters
Stevens Creek-----C	-----above, Coastal
Holland Mill (Mill Pond) Creek-----C	-----Waters below
Webbs Creek-----Inland Waters	-----NC 55 bridge
-----above, Coastal	Thomas Creek-----I
-----Waters below	Masons Creek-----C
-----railroad bridge	Moore Creek-----C
Freemans Creek-----I	Rices Creek-----C
Calebs Creek-----I	Ball Creek-----C
Grant's Creek-----I	Cabin Creek-----C
(20) Pamlico County	Riggs Creek-----C
Pamlico River-----Inland Waters	Spring Creek-----C
-----above, Coastal	Long Creek-----C
-----Waters below	Neuse River-----Coastal Waters
-----R and S RR	-----below US 17
-----bridge at	-----bridge at New Bern
-----Washington	Swan Creek-----C
Lower Goose Creek-----C	Lower Broad Creek-----C
Dixons Creek-----C	Greens Creek-----C
Patons Creek-----C	Pittman Creek-----C
Wilson Creek-----C	Burton Creek-----C
Eastham Creek-----Inland Waters	Brown Creek-----C
-----above, Coastal	Spice Creek-----C
-----Waters below	Gideon Creek-----C
-----end of SR 1236	Tar Creek-----C
Upper Spring Creek-----C	Parris Creek-----C
Intracoastal Waterway from	Orchard Creek-----C
Upper Spring Creek	Pierce Creek-----C
to Gale Creek-----C	Whitaker Creek-----C
Oyster Creek-----C	Smith Creek-----J
Clark Creek-----C	Greens Creek-----J
Middle Prong-----C	Kershaw Creek-----J
James Creek-----C	Dawson Creek-----Inland Waters
Pamlico Sound-----C	-----above, Coastal
Porpoise Creek-----C	-----Waters below
Drum Creek-----C	-----end of SR 1350
Bay River-----Inland Waters	Tarkiln Creek-----I
-----above, Coastal	Gatlin Creek-----I
-----Waters below	Little Creek-----I
-----NC 55 bridge	Mill Creek-----I
-----at Bayboro	Beard Creek-----Inland Waters
Gale Creek-----Inland Waters	-----above, Coastal
-----above, Coastal	-----Waters below
-----Waters below	-----end of SR 1117
-----NC 304 bridge	Lower Duck Creek-----I
Chadwick Creek-----C	Goose Creek-----Inland Waters
Bear Creek-----C	-----above, Coastal
Vandemere Creek-----Inland Waters	-----Waters below end
-----above, Coastal	-----of SR 1110
-----Waters below	Upper Broad Creek-----Inland Waters
-----NC 304 bridge	-----above, Coastal
Long Creek-----C	-----Waters below
Smith Creek-----C	-----Tidelands FMC

-----power line
 (21) Pasquotank County
 Albemarle Sound-----C
 All Manmade Tributaries -----C
 Little River-----Inland Waters
 -----above, Coastal
 -----Waters below
 -----a line from
 -----Manston Creek
 -----to Davis Creek
 Symonds Creek -----I
 Manston Creek-----I
 Big Flatty Creek-----Inland Waters
 -----above, Coastal
 -----Waters below
 -----a line from
 -----Long Point
 -----to Folly Creek
 Marsh Landing-----I
 Folly Creek-----I
 Pasquotank River -----Inland Waters
 -----above, Coastal
 -----Waters below
 -----US 158 bridge
 -----at Elizabeth City
 Little Flatty Creek-----I
 New Begun Creek -----Inland Waters
 -----above, Coastal
 -----Waters below a
 -----line from the
 -----mouth of Paling
 -----Creek to the
 -----mouth of James
 -----Creek
 Paling Creek -----I
 James Creek -----I
 Charles Creek -----I
 (22) Pender County
 Cape Fear River-----J
 Thoroughfare-----I
 Black River-----Inland Waters
 -----above, Joint
 -----Waters below
 -----the point where
 -----the Thoroughfare
 -----joins the
 -----Black River
 Northeast Cape Fear River--Inland Waters
 -----above, Joint
 -----Waters below
 -----NC 210 bridge
 Cowpen Creek -----I
 Long Creek-----I
 Turkey Creek-----I
 Old Creek-----I
 Honey Creek -----I
 Harrisons Creek-----I
 Island Creek-----I

Topsail Sound and Tributaries-----C
 Beasleys (Barlow) Creek -----C
 (23) Perquimans County
 Albemarle Sound-----C
 All Manmade Tributaries -----C
 Yeopim River-----Inland Waters
 -----above, Coastal
 -----Waters below
 -----Noreum Point
 Yeopim Creek-----I
 Perquimans River -----Inland Waters
 -----above, Coastal
 -----Waters below old
 -----US 17 bridge
 -----at Hertford
 Walter's Creek-----I
 Mill Pond Creek-----I
 Suttons Creek -----I
 Jackson (Cove) Creek-----I
 Muddy Creek-----I
 Little River-----Inland Waters
 -----above, Coastal
 -----Waters below
 -----a line from
 -----Manston Creek
 -----to Davis Creek
 Deep Creek -----I
 Davis Creek-----I
 (24) Tyrrell County
 Albemarle Sound-----C
 All Manmade Tributaries -----C
 Scuppernong River-----Inland Waters
 -----above, Coastal
 -----Waters below
 -----First (Rider's)
 -----Creek
 First (Rider's) Creek -----I
 Furlough Creek -----I
 Alligator River-----Inland Waters
 -----above Coastal
 -----Waters below Cherry
 -----Ridge Landing
 Little Alligator River-----I
 Second Creek-----I
 Goose Creek-----I
 The Frying Pan-----C
 Gum Neck Landing Ditch -----I
 (25) Washington County
 Albemarle Sound-----C
 All Manmade Tributaries -----C
 Roanoke River -----Coastal Waters
 -----below US 258
 -----bridge
 Conaby Creek-----I
 Mackeys (Kendrick) Creek-----I
 Pleasant Grove Creek
 (Cherry Swamp)-----I
 Chapel Swamp Creek-----I

Bull Creek -----I
 Deep Creek -----I
 Banton (Maybell) Creek -----I
 Scuppernong River -----I

Statutory Authority G.S. 113-132; 113-134;
 143B-289.4.

* * * * *

Notice is hereby given in accordance with G.S. 150B-12 that the N.C. Wildlife Resources Commission intends to amend and adopt rule(s) cited as 15A NCAC 10C .0107, .0110 and .0111.

The proposed effective date of this action is January 1, 1991.

The public hearing will be conducted at 7:30 p.m. on October 17, 1990 at the Swain Auditorium, Edenton, North Carolina.

Comment Procedures: Interested persons may present their views either orally or in writing at the hearing. In addition, the record of hearing will be open for receipt of written comments from October 2, 1990 to November 1, 1990. Such written comments must be delivered or mailed to the N.C. Wildlife Resources Commission, 512 N. Salisbury Street, Raleigh, NC 27602-1188.

CHAPTER 10 - WILDLIFE RESOURCES AND WATER SAFETY

SUBCHAPTER 10C - INLAND FISHING REGULATIONS

.0107 SPECIAL REGULATIONS: JOINT WATERS

In order to effectively manage all fisheries resources in joint waters and in order to confer enforcement powers on both fisheries enforcement officers and wildlife enforcement officers with respect to certain regulations; the Marine Fisheries Commission and the Wildlife Resources Commission deem it necessary to adopt special regulations for joint waters. Such regulations supersede any inconsistent regulations of the Marine Fisheries Commission or the Wildlife Resources Commission that would otherwise be applicable in joint waters under the provisions of 15A NCAC 10C .0106:

(1) Striped Bass

- (a) It shall be unlawful to possess any striped bass or striped bass hybrid taken by any means which is less than 16 inches long (total length).

- (b) It shall be unlawful to possess more than three striped bass or their hybrids taken by hook and line in any one day from joint waters.
- (c) It shall be unlawful to engage in net fishing for striped bass or their hybrids in joint waters except as authorized by duly adopted regulations of the Marine Fisheries Commission.
- (d) It is unlawful to possess striped bass or striped bass hybrids in the joint waters of Albemarle, Currituck, Roanoke and Croatan Sounds and their tributaries, excluding the Roanoke River, except during seasons as authorized by duly adopted rules of the Marine Fisheries Commission.
- (e) It is unlawful to possess striped bass or striped bass hybrids in the joint waters of the Roanoke River and its tributaries, including Cashie, Middle and Eastmost Rivers, except during seasons as authorized by duly adopted rules of the Wildlife Resources Commission.

(2) Lake Mattamuskeet

- (a) It shall be unlawful to set or attempt to set any gill net in Lake Mattamuskeet canals designated as joint waters.
- (b) It shall be unlawful to use or attempt to use any trawl net or seines in Lake Mattamuskeet canals designated as joint waters.
- (3) Cape Fear River. It shall be unlawful to use or attempt to use any net or net stakes within 800 feet of the dam at Lock No. 1 on Cape Fear River.

Statutory Authority G.S. 113-132; 113-134;
 113-138; 113-292.

.0110 MANAGEMENT PLANS FOR STRIPED BASS IN JOINT WATERS

In order to effectively manage the recreational hook and line harvest in joint waters of the Albemarle-Roanoke stock of striped bass, the Marine Fisheries Commission and the Wildlife Resources Commission deem it necessary to establish two management areas for the joint waters of the Albemarle Sound and the Roanoke River, along with their defined tributaries. The Wildlife Resources Commission shall have principal management responsibility for the stock when it is in the joint and inland fishing waters of the Roanoke River and its tributaries, including Cashie, Middle and Eastmost Rivers. The Marine Fisheries Commission shall have principal management responsibility for the stock in the remaining waters of the Albemarle.

Currituck, Roanoke and Croatan Sounds and their tributaries, including joint and inland waters. The annual quota for recreational harvest of the Albemarle-Roanoke striped bass stock shall be divided equally between the two management areas. Each Commission shall develop a management plan for recreational harvest within their respective management areas. The management plans shall:

- (1) Be consistent with the guidelines established in the Atlantic States Marine Fisheries Commission Plan for Striped Bass.
- (2) Limit harvest to a one fish per person per day creel limit in areas for which no data collection program is ongoing.

Statutory Authority G.S. 113-132; 113-134; 113-138; 113-292.

.0111 IMPLEMENTATION OF STRIPED BASS MANAGEMENT PLAN FOR RECREATIONAL FISHING

The Marine Fisheries and Wildlife Resources Commissions shall implement their respective striped bass management plans for recreational fishing pursuant to their respective rule making powers. To preserve jurisdictional authority of each Commission while establishing a means to implement their management plans, the Commissions finds it necessary to create a means through which management measures can be implemented by a single instrument in each management area.

- (1) In the Roanoke River and tributaries, the exclusive authority to open and close seasons and areas, whether inland or joint fishing waters, shall be vested in the Wildlife Resources Commission. The Wildlife Resources Commission shall initiate action to close the management area when 90% of the assigned quota has been taken. An instrument closing any management area in joint waters shall operate as and shall be a jointly issued instrument opening or closing seasons areas to harvest in the Roanoke River management area.
- (2) In the Albemarle Sound management areas, the exclusive authority to open and close seasons and areas, whether coastal or joint fishing waters shall be vested in the Marine Fisheries Commission. The Marine Fisheries Commission shall initiate action to close the management area when 90% of the assigned quota has been taken. In the Albemarle Sound management area administered by the Marine Fisheries Commission, an instrument or action by the Marine Fisheries Commission affecting the harvest

in joint and coastal waters, excluding the Roanoke River Management area, shall automatically be implemented and effective as a Wildlife Resources Commission action in the inland waters and tributaries to the waters affected.

Statutory Authority G.S. 113-132; 113-134; 113-138; 113-292.

Notice is hereby given in accordance with G.S. 150B-12 that the Commission for Health Services and the Department of Environment, Health, and Natural Resources intends to amend rule(s) cited as 15A NCAC 13A .0009 - .0010, .0012; 13B .0101 - .0103, .0201 - .0203, .0301, .0401, .0503 - .0504, .0506, .0508, .1105, .1202, .1204; 15A NCAC 21B .0301 - .0306; adopt rule(s) cited as 15A NCAC 13B .0901 - .0905; 15A NCAC 18A .2801 - .2835.

The proposed effective date of this action is February 1, 1991.

The public hearing will be conducted at 10:00 a.m. on October 16, 1990 at the Ground Floor Hearing Room, Archdale Building, 512 North Salisbury Street, Raleigh, North Carolina.

Comment Procedures: Any person may request copies of the proposed rules by contacting John P. Barkley, DEHNR, P.O. Box 27687, Raleigh, NC 27611-7687, (919) 733-7247. Written comments on these rules may be sent to Mr. Barkley at the above address or submitted at the public hearing. If you desire to speak at the public hearing, notify Mr. Barkley at least 3 days prior to the public hearing. At the discretion of the Chairman, the public may also be allowed to comment on the rules at the Commission Meeting. Fiscal notes on applicable rules are available from Mr. Barkley.

CHAPTER 13 - SOLID WASTE MANAGEMENT

SUBCHAPTER 13A - HAZARDOUS WASTE MANAGEMENT

.0009 STANDARDS FOR OWNERS/ OPERATORS OF HWMF'S - PART 264

(t) 40 CFR 264.1030 through 264.1049 (Subpart AA), "Air Emission Standards for Process Vents", have been adopted by reference in accordance with G.S. 150B-14(c).

(u) 40 CFR 264.1050 through 264.1079 (Subpart BB), "Air Emission Standards for Equip-

ment Leaks", have been adopted by reference in accordance with G.S. 150B-14(c).

(v) (†) Appendices to 40 CFR Part 264 have been adopted by reference in accordance with G.S. 150B-14(c).

Statutory Authority G.S. 130A-294(c).

**.0010 INTERIM STATUS STANDARDS FOR
HWMFS - PART 265**

(r) 40 CFR 265.1030 through 265.1049 (Subpart AA), "Air Emission Standards for Process Vents", have been adopted by reference in accordance with G.S. 150B-14(c).

(s) 40 CFR 265.1050 through 265.1079 (Subpart BB), "Air Emission Standards for Equipment Leaks" have been adopted by reference in accordance with G.S. 150B-14(c).

(t) (†) Appendices to 40 CFR 265 have been adopted by reference in accordance with G.S. 150B-14(c).

Statutory Authority G.S. 130A-294(c).

**.0012 LAND DISPOSAL RESTRICTIONS -
PART 268**

(b) 40 CFR 268.30 through 268.34 268.35 (Subpart C), "Prohibitions on Land Disposal", have been adopted by reference in accordance with G.S. 150B-14(c).

Statutory Authority G.S. 130A-294(c).

**SUBCHAPTER 13B - SOLID WASTE
MANAGEMENT**

SECTION .0100 - GENERAL PROVISIONS

.0101 DEFINITIONS

The definitions in G.S. 130A-290 and the following definitions shall apply throughout this Subchapter:

(54) "Agricultural Waste" means waste materials produced from the raising of plants and animals, including animal manures, bedding, plant stalks, hulls, and vegetable matter.

(55) "Backyard Composting" means the on-site composting of yard waste from residential property by the owner or tenant for non-commercial use.

(56) "Compost" means decomposed, humus-like organic matter, free from pathogens, offensive odors, toxins or materials harmful at the point of end use. Compost is suitable for use as a soil conditioner with varying nutrient values.

(57) "Composting Pad" means a surface, whether soil or manufactured, where the

process of composting takes place, and where raw and finished materials are stored.

(58) "Compost Facility" means a solid waste facility which utilizes a controlled biological process of degrading non-hazardous solid waste. A facility may include materials processing and hauling equipment; structures to control drainage; and structures to collect and treat leachate; and storage areas for the incoming waste, the final products, and residual materials.

(59) "Composting" means the controlled decomposition of organic waste by naturally occurring bacteria, yielding a stable, humus-like, pathogen-free final product resulting in volume reduction of 30 - 75 percent.

(60) "Curing" means the final state of composting, after the majority of the readily metabolized material has been decomposed, in which the compost material stabilizes and dries.

(61) "Inorganic" means substances in which there are no carbon-to-carbon bonds; mineral matter.

(62) "Organic Waste" means waste composed of materials which contain carbon-to-carbon bonds and are biodegradable, including paper, wood, food wastes, yard wastes, and other similar materials.

(63) "Pathogens" means organisms that are capable of producing infection or diseases, often found in waste materials.

(64) "Silviculture Waste" means waste materials produced from the care and cultivation of forest trees, including bark and woodchips.

(65) "Windrow" means an elongated compost pile.

Statutory Authority G.S. 130A-294.

.0102 APPLICABILITY

These solid waste disposal management rules are for general application throughout the State of North Carolina unless otherwise specifically indicated by their context. Rules found in Section .0700 of this Subchapter apply to the Division's program for solid waste management and also to the Division's program for hazardous waste management. All other rules of this Subchapter apply to the Division's program for solid waste management but not to the Division's program for hazardous waste management. Other hazardous waste management program rules are found in 10 NCAC 10F. The official policy and purpose of the State of North Carolina in regard to solid waste control is set

forth in Article 9 of Chapter 130A of the North Carolina General Statutes.

Statutory Authority G.S. 130A-294.

.0103 GENERAL CONDITIONS

(c) Solid waste shall be disposed of at a solid waste disposal site in accordance with the Solid Waste Management Act and ~~RCRA~~ the Federal Act. Hazardous waste, lead acid batteries, liquid waste, including used oil, infectious waste, and any other wastes that may pose a threat to the environment or the public health, as determined by the Division, are prohibited from disposal at a solid waste disposal site.

(g) White Goods shall not be disposed at a solid waste disposal site after 1, January, 1991.

(h) By July 1, 1991, all solid waste management facilities owned and operated by or on behalf of a local government, except facilities which will receive no waste after July 1, 1992, shall install scales and weigh all solid wastes when it is received at the facility.

(i) By July 1, 1991, each local government operating a permitted solid waste management facility shall initiate a solid waste recycling program which shall be designed to achieve the goal of recycling at least 25 percent of the municipal solid waste stream by January 1, 1993, prior to final disposal or incineration at a solid waste disposal facility.

(j) After January 1, 1998, all active sanitary landfills (except demolition landfills) shall be equipped with liners, leachate collection systems and final cover systems.

Statutory Authority G.S. 130A-294.

SECTION .0200 - PERMITS FOR SOLID WASTE MANAGEMENT FACILITIES

.0201 PERMIT REQUIRED

(b) The permit shall have two parts, as follows:

(1) A permit to ~~operate~~ construct a solid waste management facility shall be issued by the Division after site and construction plans have been approved and it has been determined that the facility can be operated in accordance with the applicable rules set forth in this Subchapter and so as to provide reasonable protection to the environment and the public health. An applicant shall not clear or grade land or commence construction for a solid waste management facility until a construction permit has been issued.

(2) A permit to operate a solid waste management facility may not be issued unless

it has been determined that the facility has been constructed in accordance with the construction permit, that any pre-operative conditions of the construction permit have been met, and that the construction permit has been recorded, if applicable, in accordance with Rule .0204 of this Section.

Statutory Authority G.S. 130A-294.

.0202 PERMIT APPLICATION

(a) Application for permits required by Rule .0201 of this Subchapter should be forwarded to the Solid Waste Branch, Division of Health Services, P.O. Box 2091, Raleigh, N.C. 27602. Permit applications shall contain the following information:

- (1) Site and construction plans;
- (2) An approval letter from the unit of local government having zoning authority over the area where the facility is to be located stating that the proposed facility meets all of the requirements of the local zoning ordinance, or that the site is not zoned;
- (3) Detailed plans and specifications for solid waste management facilities (except demolition landfills) shall be prepared by a professional engineer. The plans shall bear an imprint of the registration seal of the engineer; and the geological study shall bear the seal of a licensed professional geologist, in accordance with N.C.G.S. Chapter 89E; ~~and~~
- (4) A permit for a solid waste disposal facility issued on or after February 1, 1991, shall be issued only upon receipt of plans for the establishment by February 1, 1991 of a recycling program within the county where the facility is to be located; and
- (5) ~~(4)~~ Any other information pertinent to the proposed facility.

Statutory Authority G.S. 130A-294.

.0203 PERMIT APPROVAL OR DENIAL

(e) When the Division denies a permit for a solid waste management facility, it shall state in writing the reason for such denial and shall also state its estimate of the changes in the applicant's proposed activities or plans which will be required in order that the applicant may obtain a permit. A denial shall be without prejudice to the person's right to a hearing or for filing a future request after revisions are made to meet objections specified as reasons for denial. Reasons for denial are:

- (1) Submission of incomplete information;

- (2) Failure to meet the requirements set forth in Sections .0300, .0400 and .0500 of this Subchapter applicable to the type of facility applied for; or
- (3) The past conduct by the applicant, as defined in G.S. 130A-309.06(b), which has resulted in repeated violations of solid waste management statutes, these Rules, or orders issued thereunder, or violations of permit conditions of a solid waste management facility located in this State;
or
- (4) ~~(3)~~ Any other reasons which would prevent the solid waste facility or site from being operated in accordance with Article 9, Chapter 130A of the General Statutes, these Rules, the Federal Act, or acceptable engineering or public health and environmental standards.

Statutory Authority G.S. 130A-294.

SECTION .0300 - TREATMENT AND PROCESSING FACILITIES

.0301 APPLICATION REQUIREMENTS

This Rule contains the information required for a permit application for each treatment and processing facility. A minimum of three sets of the following information shall be required in each application:

- (1) Site and operation plans;
- (2) An approval letter from the unit of local government having zoning authority over the area where the facility is to be located, and stating that the proposed facility meets all of the requirements of the local zoning ordinance, or that the site is not zoned; and
- (3) Any other information pertinent to the proposed facility.

Statutory Authority G.S. 130A-294.

SECTION .0400 - TRANSFER FACILITIES

.0401 APPLICATION REQUIREMENTS

This Rule contains the information required for a permit application for each transfer facility. A minimum of three sets of the following information shall be required in each application:

- (1) Site and operation plans;
- (2) An approval letter from the unit of local government having zoning authority over the area where the facility is to be located, and stating that the proposed facility meets all of the requirements of the local zoning ordinance, or that the site is not zoned; and
- (3) Any other information pertinent to the proposed facility.

Statutory Authority G.S. 130A-294.

SECTION .0500 - DISPOSAL SITES

.0503 SITING AND DESIGN REQUIREMENTS FOR DISPOSAL SITES

Disposal sites shall comply with the following requirements in order for a permit to be issued:

- (1) A site shall meet the following siting requirements:
 - (b) A site shall be located in consideration of the following:
 - (iii) A site shall not damage or destroy an archaeological or historical site;
- (2) A site shall meet the following design requirements:
 - (d) A site shall meet the following ground water requirements:
 - (i) ~~A site shall not contravene groundwater standards as established under 15 NCAC 2L.~~ 15 NCAC 2L is adopted by reference in accordance with Subsection "c" of N.C.G.S. 150B-14. Copies of 15 NCAC 2L may be obtained from and inspected at the Solid Waste Branch, Division of Health Services, P.O. Box 2091, Raleigh, N.C. 27602. New sanitary landfills and lateral expansions of existing landfills must be designed with liners, leachate collection systems, and final cover systems as necessary to comply with ground water standards as established under 15A NCAC 2L. 15A NCAC 2L is adopted by reference in accordance with G.S. 150B-14(c).

Statutory Authority G.S. 130A-294.

.0504 APPLICATION REQUIREMENTS FOR SANITARY LANDFILLS

This Rule contains the information required for a permit application for each sanitary landfill. It is recommended that the site application be submitted and acted upon prior to submitting the application for the construction plan. A minimum of four sets of plans will be required in each application.

Note that a permit for a sanitary landfill is based upon a particular stream of identified waste, as set forth in .0504 (g)(i) and (ii) of this Rule. Any substantial change in the population or area to be served, or in the type, quantity or source of waste will require a new permit and operation plan, including waste determination procedures where appropriate.

- (1) The following information is required for reviewing a site plan application for a proposed sanitary landfill:

- (e) Local government approvals:
 - (ii) A letter from the unit of government having zoning jurisdiction over the site which states that the proposal meets all of the requirements of the local zoning ordinance, or that the site is not zoned.
- (2) The following information is required for reviewing a construction plan application for a proposed sanitary landfill:
 - (c) A construction plan that provides:
 - (i) engineering design for liners, leachate collections systems;
 - (ii) ~~(i)~~ proposed final contours showing removal of surface water runoff; and
 - (iii) ~~(ii)~~ locations of slope drains or other drop structures.

Statutory Authority G.S. 130A-294.

.0506 APPLICATION REQUIREMENTS FOR DEMOLITION LANDFILLS

This Rule contains the information required for a permit application for each demolition landfill. It is recommended that the site application be submitted and acted upon prior to submitting the application for the operational plan. A minimum of four sets of plans will be required in each application.

- (1) The following is required for reviewing a site plan application for a proposed demolition landfill:
 - (b) An approval letter from the unit of local government having zoning authority over the area where the site is to be located stating that the site meets all of the requirements of the local zoning ordinance, or that the site is not zoned;

Statutory Authority G.S. 130A-294.

.0508 APPLICATION REQUIREMENTS FOR INCINERATORS

This Rule contains the information required for a permit application for each incinerator. A minimum of two sets of plans will be required for each application.

- (3) An approval letter from the unit of local government having zoning authority over the area where the facility is to be located and stating that the site meets all of the requirements of the local zoning ordinance, or that the site is not zoned; and

Statutory Authority G.S. 130A-294.

SECTION .0900 - YARD TRASH COMPOSTING FACILITIES

.0901 PROCEDURE FOR PERMIT

(a) All persons other than those listed in Rule .0902(2) are required to obtain a permit from the Division to accept, store, or compost yard trash. Application and operational requirements shall be in accordance with Rules .0903 and .0904 of this Section.

(b) The seal of a professional engineer is not required when submitting plans for a Yard Trash Composting permit. A minimum of three sets of plans shall be submitted with in each application.

Statutory Authority G.S. 130A-309.11.

.0902 APPLICABILITY FOR YARD TRASH COMPOSTING

As of January 1, 1993, disposal of yard trash in a sanitary landfill shall be prohibited; however, yard trash which has been separated may be accepted at a sanitary landfill where the facility provides and maintains a separate yard trash composting area.

- (1) Applicability. A permit is required for the construction and operation of composting facilities for yard trash which process more than 6,000 cubic yards of material per year. Yard trash may be composted with agricultural waste and silvicultural waste as defined in Rule .0101 of this Section. The Division does not regulate the composting of agricultural waste and silviculture waste, unless mixed with yard trash.
- (2) Activities not requiring a permit. A permit is not required for the following operations:
 - (a) Backyard Composting.
 - (b) Farming operations where the compost is produced from materials grown on the owners land and is re-used on the owner's land and not offered to the public.
 - (c) Facilities composting less than 6,000 cubic yards of material per year, meeting the following conditions:
 - (i) Notification of the Solid Waste Section on an annual basis as to:
 - (A) Facility location;
 - (B) Name of owner and operator;
 - (C) Address of owner and operator;
 - (D) Phone number of owner and operator;
 - (E) Type of waste received;
 - (F) Amount of waste received;
 - (G) Composting process to be used; and
 - (H) Intended distribution of the finished product.
 - (ii) Agreement to operate in accordance with operational requirements as set forth in Rule .0904 of this Section, except for .0904(7).

- (iii) Facility operates in accordance with all other state or local laws, ordinances, rules, regulations or orders.
- (d) Facilities storing or producing mulch from untreated wood waste which meet the following conditions:
 - (i) Facility is not located over closed-out disposal site;
 - (ii) No more than one acre of land is utilized for storage of mulch;
 - (iii) Access to fire equipment and fire-fighting services is provided; and
 - (iv) Safety measures are taken to prevent fires.

Statutory Authority G.S. 130A-309.11.

.0903 APPLICATION REQUIREMENTS FOR YARD TRASH COMPOSTING FACILITIES

(a) Siting for a yard trash composting facility shall meet the following standards:

- (1) A site located in a flood plain shall not restrict the flow of the 100-year flood;
- (2) A site shall be maintained and operated in a manner which will protect the assigned water quality standards of the surface waters and ground waters;
- (3) A 50-foot minimum buffer will be required between all property lines and compost pad or storage area;
- (4) A 200-foot minimum buffer will be required between compost pad or storage area and residences or dwellings;
- (5) A 200-foot minimum buffer will be required between streams and rivers and compost pad or storage area;
- (6) A 25-foot minimum distance will be required between compost areas and swales or berms;
- (7) Bottom elevation of compost pad and storage areas shall be a minimum of two feet above seasonal high water table;
- (8) A site shall comply with all of the requirements of the local zoning ordinance;
- (9) A site shall meet the requirements of the Sedimentation Pollution Control Law (15A NCAC 4);
- (10) Access to the site shall be controlled through the use of fences, gates, berms, natural barriers, or other means;
- (11) A site shall not be located within any wetland as defined in the Clean Water Act, Section 404(b).

Alternative buffers for an indoor facility may be approved on a case by case basis.

(b) The following information shall be required for reviewing an application for a yard trash composting facility:

- (1) An aerial photograph or map on a scale of at least one inch equals 400 ft. accurately showing the area within one-fourth mile of the proposed site's boundaries with the following specifically identified:
 - (A) Entire property owned or leased by the person proposing the facility;
 - (B) Land use and zoning;
 - (C) Location of all homes, industrial buildings, public or private utilities, and roads;
 - (D) Location of wells, watercourses, dry runs, and other applicable details regarding the general topography.
- (2) A site plan on a scale of at least one inch equals 200 feet showing proposed areas for:
 - (A) Receiving;
 - (B) Processing/staging;
 - (C) Production;
 - (D) Curing and storage;
 - (E) Access controls;
 - (F) Description of drainage characteristics identifying both site run-on and run-off, ditches, and run-off controls;
 - (G) Access road;
 - (H) Existing/Proposed contours (5' intervals).
- (3) A written report that contains the following:
 - (A) Anticipated type, source, and composition of waste to be received;
 - (B) Provisions to maintain a clean and orderly operation:
 - (i) Effective barrier to prevent unauthorized entry and dumping;
 - (ii) Signs posted with name of owner, operator, contact person and number in case of emergency and hours of operation;
 - (iii) Dust control measures;
 - (iv) Litter control measures;
 - (v) Fire protection and control measures; and
 - (vi) Odor control measures and practices;
 - (C) Designed capacity of the facility;
 - (D) Composting time duration, time from initiation of the composting process to completion and distribution;
 - (E) For static pile composting, typical windrow construction and aeration configurations;
 - (F) Method of aeration, including turning frequency or mechanical aeration equipment and aeration capacity;
 - (G) For in-vessel composting systems, a process flow diagram of the entire process,

including all major equipment and flow streams;

- (H) Personnel required and their responsibilities;
- (I) A description and an identification of the surface for the proposed site, area, and depth to seasonal high ground water;
- (J) A description of the composting pad;
- (K) A description of any monitoring that will occur involving the composting process or the site;
- (L) Sources of waste input.
- (4) An operational plan which contains the following:
 - (A) Explanation of daily operation and maintenance;
 - (B) Proposed equipment;
 - (C) Person responsible for operation;
 - (D) Control and inspection of incoming waste;
 - (E) Method of measuring incoming waste;
 - (F) Vehicle control and unloading;
 - (G) Method and sequence of processing the waste;
 - (H) Leachate and run-off control measures;
 - (I) Description of ultimate use for finished compost;
 - (J) Plan for back-up system if poor quality product produced or change in market conditions develop.

Statutory Authority G.S. 130A-309.11.

.0904 OPERATIONAL REQUIREMENTS FOR YARD TRASH COMPOSTING FACILITIES

Any person who maintains or operates a yard trash composting facility shall maintain and operate the site in accordance with the following practices, unless otherwise specified in the permit.

- (1) Plan and Permit Requirements:
 - (a) Construction plans and conditions of permit shall be followed.
 - (b) A copy of the permit, plans, and operational reports shall be available at all times.
 - (c) Facility shall be operated in a manner to control vectors.
 - (d) The amount of compost stored at the facility shall not exceed the designed storage capacity.
 - (e) Only yard trash and agricultural waste or silviculture waste may be accepted at the facility.
 - (f) If solid waste other than yard trash, agricultural waste silviculture waste, or waste approved by the Division is left at the facility, it shall be separated and stored in a

manner that prevents vector problems and shall be removed within seven days.

- (g) Particle size of larger trash items such as limbs, trees, and stumps shall be reduced to promote composting.
- (h) Yard trash must be removed from containers, unless the containers, bags, or another material has been approved by the Section.
- (i) Compost must be aerated to maintain elevated temperatures which will produce a pathogen free compost product.
- (j) Methods of composting, approved by the Division, which result in aerobic biochemical degradation of the organic material received shall be followed.
- (k) Windrow construction and turning frequency shall be sufficient to maintain aerobic conditions to produce a compost product in the desired time frame.
- (l) Compost shall receive final aeration upon completion of composting cycle to ensure stability before distribution.
- (m) Compost areas shall be located on soils with a coefficient of permeability no greater than 4×10^{-3} , unless otherwise approved by the Department.
- (n) Odors shall be controlled and minimized.
- (o) Static piles must be turned at least once during a 12-month interval.
- (p) Compost process shall be maintained at 55 degrees Celsius for 48 to 96 hours (dependent upon waste stream).
- (q) The resulting compost shall not reheat upon standing to greater than 45 degrees Celsius and shall have a moisture content between 35 and 60 percent.
- (r) Nitrogen bearing waste (grass clippings, etc.) shall be incorporated into piles within 48 hour of on-site arrival.
- (2) Drainage Control Requirements:
 - (a) Surface water shall be diverted from the operational area.
 - (b) Windrows shall be constructed perpendicular to slopes.
 - (c) The site be graded to prevent ponding in active composting areas.
- (3) Water Protection Requirements: Leachate shall be contained on site or properly treated using technology to filter prior to discharge. An NPDES permit may be required prior to discharge of leachate to surface waters.
- (4) Access and Security Requirements:
 - (a) The site shall be secured by means of gates, chains, berms, fences, or other security measures approved by the Division, to prevent unauthorized entry.

- (b) The access road to the site shall be of all-weather construction and maintained in good condition.
- (5) Sign Requirements:
 - (a) Signs shall provide information on owner, operator, contact person and number in case of emergency, and the hours during which the site is open for public use.
 - (b) Traffic signs or markers shall be provided as necessary to promote an orderly traffic pattern to and from the discharge area and to maintain efficient operating conditions.
 - (c) Signs shall be posted stating that only yard trash can be received at the site.
- (6) Safety Requirements:
 - (a) Open burning of solid waste shall be prohibited.
 - (b) Equipment shall be provided to control accidental fires or arrangements shall be made with the local fire protection agency to immediately provide fire-fighting services when needed.
 - (c) Space shall be provided between piles to allow access for vehicles, including fire equipment.
- (7) Monitoring and Reporting Requirements:
 - (a) Monitoring (including groundwater, surface water, waste components, soil, or plant tissue analyses) may be required based on a case by case evaluation to insure protection of the environment.
 - (b) An annual report must be submitted which includes the following information:
 - (i) Sources, type, quantity (by weight or volume) of waste received at the facility;
 - (ii) The turning frequency (if applicable) and the timing and amount of water addition (if applicable);
 - (iii) Sampling of temperature duration and changes during composting;
 - (iv) The quantity, by weight or volume, of compost produced;
 - (v) The quantity, by weight or volume, of compost removed from the facility;
 - (vi) A description of the end product and distribution or disposal.

Statutory Authority G.S. 130A-309.11.

.0905 COMPOST CLASSIFICATION AND DISTRIBUTION

- (a) Compost made from yard trash or yard trash and agricultural waste or yard trash and silviculture waste which contains no pathogenic organism, is free from offensive odor, and contains no sharp particles which would cause injury to persons handling the compost, shall have unrestricted distribution if directions are provided

with the compost product. The directions shall address moisture holding capacity, and nutrient content.

- (b) If the composting process contained animal manures, the applicant must register with the North Carolina Department of Agriculture, Fertilizer Section.

Statutory Authority G.S. 130A-309.11.

SECTION .1100 - SCRAP TIRE MANAGEMENT

.1105 PERMIT REQUIRED

- (a) No person, other than a person exempted by G.S. 130A-309.57(d), or this Section, shall establish, operate or maintain, or allow to be established, operated or maintained upon his land, a scrap tire collection site or scrap tire disposal site unless a permit for the site has been obtained from the Division.

- (b) Application for permits required by this Rule shall be forwarded to the Solid Waste Section, Solid Waste Management Division, P.O. Box 27687, Raleigh, North Carolina 27611.

- (c) A permit is issued to the permit applicant for a particular site and is non-transferrable.

- (d) Scrap tire collection sites exempt from permitting under G.S. 130A-309.57(d) and Paragraph (i) of this Rule are not subject to the storage requirements of Rule .1107 of this Section with the exception of Rule .1107(1) and (2)(c).

- (e) Trailers and roll-off containers used as scrap tire collection facilities are exempt from the requirements of Rule .1106(c) with the exception of Subparagraphs (3), (4), (8) and (10).

- (f) A permitted sanitary landfill, other than a demolition landfill, is deemed permitted as a scrap tire disposal site. Records shall be maintained in accordance with Rule .1108(c) of this Section.

- (g) A permitted sanitary landfill operated by a unit of local government is deemed permitted as a scrap tire collection site and may store up to 25,000 scrap tires for the purpose of comprising a marketable commodity.

- (h) Units of local government are not required to provide proof of financial responsibility.

- (i) Sites at which scrap tires are used for agriculture-related purposes are not subject to the scrap tire collection site permit requirement, provided the number of tires stored on-site does not exceed the number of tires which reasonably may be used for on-site agriculture-related purposes during a one-year period. Scrap tires shall be stored so as not to create a public health nuisance or fire hazard and in compliance with storage requirements of Rule .1107(1) and (2)(a)

through (c) of this Section. In an enforcement action, the burden of proof shall be upon the person claiming the agriculture-related use.

(j) A scrap tire collection site permit is not required for a tire manufacturing business at which scrap new tires are accumulated prior to disposal if fewer than 1,000 scrap tires are kept on the business premises.

Statutory Authority G.S. 130A-309.57.

SECTION .1200 - MEDICAL WASTE MANAGEMENT

.1202 GENERAL REQUIREMENTS FOR MEDICAL WASTE

(c) Blood and body fluids in individual containers of 20 ml or less, which are not stored in a secured area restricted to authorized personnel prior to off-site transportation, shall be packaged in a minimum of one 460 lb. burst strength polyethylene or equivalent bag and placed in a rigid fiberboard box or drum in a manner that prevents leakage of the contents, or alternatively, may be packaged in a container suitable for sharps. The integrity of the packaging shall be maintained prior to off-site transportation, accordance with the Regulated medical waste packaging requirements or in a container suitable for sharps.

Statutory Authority G.S. 130A-309.26.

.1204 REQUIREMENTS FOR GENERATORS OF REGULATED MEDICAL WASTE

(a) A person who ships Regulated medical waste from the generating facility for off-site treatment shall meet the following requirements:

- (1) Regulated medical waste shall be packaged in a minimum of one 460 lb. burst strength polyethylene or equivalent bag, and placed in a rigid fiberboard box or drum in a manner that prevents leakage of the contents. plastic bag placed in a rigid fiberboard box or drum in a manner that prevents leakage of the contents. The plastic bag shall be impervious to moisture and have a strength sufficient to preclude ripping, tearing or bursting the waste-filled bag under normal conditions of usage and handling. Each bag shall be constructed of material of sufficient single thickness strength to pass the 165-gram dropped dart impact resistance test as prescribed by Standard D 1709-75 of the American Society for Testing and Materials and certified by the bag manufacturer.

Statutory Authority G.S. 130A-309.26.

CHAPTER 18 - ENVIRONMENTAL HEALTH

SUBCHAPTER 18A - SANITATION

SECTION .2800 - SANITATION OF CHILD DAY CARE FACILITIES

.2801 DEFINITIONS

The following definitions shall apply throughout this Section:

- (1) "Adequate" means determined by the Department to be of sufficient size, volume, or technical specifications, to effectively accommodate and support the planned, current, or projected workloads for a specified operational area.
- (2) "Approved" means procedures and equipment determined by the Department to be in compliance with this Section. Equipment and utensils which meet and are installed in accordance with NSF or equivalent standards shall be considered as approved. The NSF standards are hereby adopted by reference in accordance with G.S. 150B-14(c).
- (3) "Communicable Condition" means the state of being infected with a communicable agent but without symptoms.
- (4) "Communicable Disease" means any disease that can be transmitted from one person to another directly, by contact with excrement, other body fluids, or discharges from the body; or indirectly, via substances or inanimate objects, such as contaminated drinking glasses, toys or water; or via vectors, such as flies, mosquitoes, ticks, or other insects.
- (5) "Department" or "DEHNR" means the N.C. Department of Environment, Health, and Natural Resources. The term also means the authorized representative of the Department.
- (6) "Eating and Cooking Utensils" means and includes any kitchenware, tableware, glassware, cutlery, utensils, containers, or other equipment with which food or drink comes in contact during storage, preparation, or serving.
- (7) "Environmental Health Specialist" means a person authorized to represent the Department.
- (8) "Food" means any raw, cooked, or processed edible substance, ice, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption.
- (9) "Hermetically Sealed" means a container designed and intended to be secure against the entry of microorganisms and to maintain

the commercial sterility of its contents after processing.

- (10) "Hygroscopic Food" means food which readily takes up and retains moisture, such as bean sprouts.
- (11) "Impervious" means that which will not allow entrance or passage, such as an airtight plastic container that will not allow the entrance of moisture or vermin.
- (12) "Potable Water" means water from an approved source which is suitable for drinking.
- (13) "Potentially Hazardous Food" means any food or ingredient, natural or synthetic, in a form capable of supporting the growth of infectious or toxigenic microorganisms, including *Clostridium botulinum*. This term includes raw or heat treated food of animal origin, raw seed sprouts, and treated foods of plant origin. The term does not include foods which have a pH level of 4.6 or below or a water activity (Aw) value of 0.85 or less.
- (14) "Putrescible Materials" means materials likely to rot or putrify, such as fruit, vegetables, meats, dairy products, etc.
- (15) "Sanitary Sewage System" means a complete system of sewage collection, treatment, and disposal and includes septic tank systems, connection to a public or community sewage system, sewage reuse or recycle systems, mechanical or biological treatment systems, or other such systems.
- (16) "Sanitize" means the approved bactericidal treatment by a process which provides enough accumulative heat or concentration of chemicals for enough time to reduce the bacterial count, including pathogens, to a safe level on utensils and equipment.
- (17) "Sewage" means the liquid and solid human body waste and liquid waste generated by water-using fixtures and appliances, including those associated with foodhandling. The term does not include industrial process wastewater or sewage that is combined with industrial process wastewater.
- (18) "Single-Service Articles" means tableware, including flatware and holloware, carry-out utensils and other items such as bags, containers, stirrers, straws, toothpicks, and wrappers which are designed, fabricated and intended by the manufacturer for one-time use.
- (19) "Single-Use Articles" means bulk food containers and utensils intended by manufacturer to be used once and discarded. The term includes items such as formed buckets, bread wrappers, pickle barrels, and No. 10 cans. The term does not include

"single-service articles" as defined in this Section.

Statutory Authority G.S. 110-91.

.2802 APPROVAL OF CONSTRUCTION AND RENOVATION PLANS

(a) Plans and specifications for new construction or modifications to any existing or proposed day care facility shall be submitted to the local health department for review and approval prior to beginning construction. Plans and specifications for "franchise" or "chain" facilities may also be submitted by the local health department to the Environmental Health Services Section, Division of Environmental Health, Department of Environment, Health, and Natural Resources, P.O. Box 27687, Raleigh, North Carolina 27611-7687. The initial inspection for new construction or the first inspection following modifications to existing facilities shall not be made by the Environmental Health Specialist unless these plans have been approved.

(b) Review of the plans by the local health department or the Environmental Health Services Section shall be based on the requirements of this Section.

(c) Construction and modifications shall comply with the approved plans.

Statutory Authority G.S. 110-91.

.2803 INSPECTIONS AND REPORTS

(a) Unannounced inspections of child day care facilities shall be made by an Environmental Health Specialist at least quarterly. An original and two copies of the Sanitation Standards Evaluation Form for Day Care Facilities shall be completed by the Environmental Health Specialist. The original shall be submitted to the Child Day Care Section by the Environmental Health Specialist. The facility operator and the Environmental Health Specialist shall each retain a copy.

(b) If conditions found at the facility at the time of any inspection are dangerous to the health of the children, the Environmental Health Specialist shall notify the Child Day Care Section within 24 hours by verbal contact. The original of the inspection report documenting the dangerous conditions shall be sent to the Child Day Care Section within two working days following the inspection.

(c) An Environmental Health Specialist may conduct an inspection of any child day care facility as frequently as necessary in order to ensure compliance with applicable sanitation standards.

Statutory Authority G.S. 110-91.

.2804 FOOD SUPPLIES

(a) Food shall be in good condition, free from spoilage, filth, or other contamination and shall be safe for human consumption. Food shall be obtained from sources that comply with all laws relating to food and food labeling. The use of food packaged in hermetically sealed containers that was not prepared in a commercial food processing establishment is prohibited.

(b) Milk products that are used shall be Grade "A" pasteurized fluid milk and fluid milk products or evaporated milk. The term "milk products" means those products as defined in 10 NCAC 10A .1207. Copies of 10 NCAC 10A .1207 may be obtained from the Department of Environment, Health, and Natural Resources, P.O. Box 27687, Raleigh, North Carolina 27611-7687. Unless prescribed by a physician, dry milk and dry milk products may be used only for cooking purposes, including cooked pudding desserts and flavored hot beverages.

(c) Fresh and frozen shucked shellfish (oysters, clams, or mussels) shall be packed in nonreturnable packages identified with the name and address of the original shell stock processor, shucker - packer, or repacker, and the interstate certification number issued according to law. Shell stock and shucked shellfish shall be kept in the container in which they were received until they are used. Each container of unshucked shell stock (oysters, clams, or mussels) shall be identified by an attached tag that states the name and address of the original shell stock processor, the kind and quantity of shell stock, and an interstate certification number issued by the State or foreign shellfish control agency.

(d) Raw eggs used in the production of milkshakes, ice cream, and other food products shall be thoroughly cooked unless a pasteurized egg product is used.

(e) Formula, mother's milk, and juice sent from home shall be fully prepared and identified for the appropriate child at the child's home. Formula and juice provided by the child day care facility shall be pre-packaged, ready-to-feed, fully prepared, and packaged single-use items. Further, formula and juice may be provided by the child day care facility as prescribed by the child's physician or instructed by parent or guardian. Bottles and other drinking utensils provided by the child day care facility shall be sanitized in accordance with this Section. All unused formula, mother's milk, and juice sent from home shall be discarded at the end of each day. Formula and juice, which require refrigeration, baby

food, after opening and recovering, and mother's milk shall be identified for the appropriate child and shall be refrigerated at 45°F or below. Commercially prepared baby foods shall be served from a serving dish rather than the food jar.

(f) Facilities receiving prepared, ready-to-eat meals from outside sources shall use only catered meals obtained from a food handling establishment permitted or inspected by the health department. During transportation, food shall meet the requirements of these Rules relating to food protection and storage.

(g) All bag lunches shall be refrigerated in accordance with this Section.

Statutory Authority G.S. 110-91.

.2805 FOOD PROTECTION

(a) Food shall be protected at all times from potential contamination, including dust, insects, rodents, unclean equipment and utensils, unnecessary handling, coughs and sneezes, flooding, drainage, and overhead leakage or overhead drippage from condensation. The temperature of potentially hazardous food shall be 45°F (7°C) or below, or 140°F (60°C) or above at all times, including field trips, during service, and as otherwise provided in these Rules.

(b) In the event of a fire, flood, power outage, or similar event that might result in the contamination of food, or that might prevent potentially hazardous food from being held at required temperatures, the person in charge shall immediately contact the local health department.

Statutory Authority G.S. 110-91.

.2806 FOOD STORAGE

(a) Food products shall be stored in approved, clean, tightly covered, storage containers once the original package is opened. Container covers shall be impervious and nonabsorbent.

(b) Foods not stored in the product container or package in which it was obtained, shall be stored in a tightly covered, approved food storage container identifying the food by common name.

(c) Food shall be stored above the floor in a manner that protects the food from splash and other contamination and that permits easy cleaning of the storage area.

(d) Food and containers of food shall not be stored under exposed or unprotected sewer lines or water lines, except for automatic fire protection sprinkler heads that may be required by law. Food shall not be stored in toilet or laundry rooms, hallways, or other areas where there is a potential for contamination.

(e) Food not subject to further washing or cooking before serving shall be stored in a manner that protects it from cross-contamination.

(f) Packaged food shall not be stored in contact with water or undrained ice. Wrapped sandwiches shall not be stored in direct contact with ice.

(g) Refrigerated storage:

- (1) Refrigeration equipment shall be provided in such number and of such capacity to assure the maintenance of potentially hazardous food at required temperatures during storage. Each refrigerator shall be provided with a numerically sealed indicating thermometer, accurate to $\pm 3^{\circ}\text{F}$, located to measure the air temperature in the warmest part of the refrigerator and located to be easily readable. Recording thermometers, accurate to $\pm 3^{\circ}\text{F}$, may be used in lieu of indicating thermometers;
- (2) Potentially hazardous food requiring refrigeration after preparation shall be rapidly cooled to an internal temperature of 45°F or below. Potentially hazardous foods of large volume or prepared in large quantities shall be rapidly cooled, utilizing such methods as shallow pans, agitation, quick chilling or water circulation external to the food containers. Potentially hazardous food to be transported cold shall be prechilled and held at a temperature of 45°F or below;
- (3) Ice used for cooling stored food and food containers shall not be used for human consumption.

(g) Hot storage:

- (1) Hot food storage equipment shall be provided in such number and of such capacity to assure the maintenance of food at the required temperature during storage. Each hot food unit shall be provided with a numerically sealed indicating thermometer, accurate to $\pm 3^{\circ}\text{F}$, located to measure the air temperature in the coolest part of the unit and located to be easily readable. Recording thermometers, accurate to $\pm 3^{\circ}\text{F}$, may be used in lieu of indicating thermometers. Where it is impractical to install thermometers on equipment such as steam tables, steam kettles, heat lamps, cal-rod units, or insulated food transport carriers, a product thermometer shall be available and used to check internal food temperature;
- (2) The internal temperature of potentially hazardous foods requiring hot storage shall be 140°F or above except during necessary periods of preparation and ser-

vice. Potentially hazardous food to be transported hot shall be held at a temperature of 140°F or above.

Statutory Authority G.S. 110-91.

.2807 FOOD PREPARATION

(a) Food shall be prepared with the least possible manual contact, with appropriate utensils, and on surfaces that have been cleaned, rinsed, and sanitized prior to use in order to prevent cross-contamination.

(b) Whenever there is a change in processing from raw to ready-to-eat foods, the new operation shall begin with food-contact surfaces and utensils which are clean and have been sanitized.

(c) Raw fruits and raw vegetables shall be thoroughly washed with potable water before being cooked or served.

(d) Potentially hazardous foods requiring cooking shall be cooked to heat all parts of the food to a temperature of at least 140°F , except that:

- (1) Poultry, poultry stuffings, stuffed meats and stuffings containing meat shall be cooked to heat all parts of the food to at least 165°F with no interruption of the cooking process;
- (2) Pork and any food containing pork shall be cooked to heat all parts of the food to at least 165°F with no interruption in the cooking process;
- (3) Rare roast beef shall be cooked to an internal temperature of at least 130°F with no interruption in the cooking process.

(e) Raw animal products cooked in a microwave oven shall be rotated during cooking to compensate for uneven heat distribution and shall be heated an additional 25°F (13.9°C) to compensate for shorter cooking times.

(f) Potentially hazardous foods that have been cooked and then refrigerated, shall be reheated rapidly to an internal temperature of 165°F or higher before being served or before being placed in a hot food storage unit. Steam tables, warmers, and similar hot food holding units are prohibited for the rapid reheating of potentially hazardous foods. Potentially hazardous foods reheated in a microwave oven shall be heated an additional 25°F (13.9°C).

(g) Metal stem-type numerically sealed indicating thermometers, accurate to $\pm 2^{\circ}\text{F}$, shall be provided and used to assure the attainment and maintenance of proper internal cooking, holding, or refrigeration temperatures of all potentially hazardous foods.

(h) Potentially hazardous foods shall be thawed:

- (1) In refrigerated units at a temperature not to exceed 45°F;
- (2) Under potable running water of a temperature of 70°F or below, with sufficient water velocity to agitate and float off loose food particles into the overflow;
- (3) In a microwave oven only when the food will be immediately transferred to conventional cooking equipment as part of a continuous cooking process or when the entire, uninterrupted cooking process takes place in the microwave oven; or
- (4) As part of the conventional cooking process.

Statutory Authority G.S. 110-91.

.2808 FOOD SERVICE

(a) Milk and milk products for drinking purposes may be served from a commercially filled container of not more than one gallon capacity or drawn from a commercially filled container stored in a mechanically refrigerated bulk milk dispenser.

(b) Ice, if purchased, shall be purchased from an approved source and kept clean. Ice shall be made, handled, transported, stored and dispensed in such a manner as to be protected against contamination. Ice shall be dispensed with scoops, tongs, or other ice-dispensing utensils or through automatic ice-dispensing equipment. Ice-dispensing utensils shall be stored on a clean surface or in the ice with the dispensing utensils handle extended out of the ice. Between uses, ice transfer receptacles shall be stored in a way that protects them from contamination. Ice storage bins shall be drained through an air gap.

(c) To avoid unnecessary manual contact with food, appropriate dispensing utensils or disposable plastic gloves shall be used by employees. Between uses during service, dispensing utensils shall be stored in the food with the dispensing utensil handle extended out of the food or stored clean and dry.

(d) Open jars of baby food shall be covered, dated, refrigerated, and used within 48 hours.

(e) Once served, portions of leftover food shall not be served again. However, packaged food, that is not potentially hazardous and has not been opened and is still in sound condition, may be re-served.

Statutory Authority G.S. 110-91.

.2809 FOOD SERVICE EQUIPMENT AND UTENSILS

(a) Material and Construction:

- (1) Materials used in the construction of utensils and equipment shall, under normal use conditions, be safe; durable; corrosion-resistant; nonabsorbent; of sufficient weight and thickness to permit cleaning and sanitizing by normal warewashing methods; finished to have a smooth, easily cleanable surface; and resistant to pitting, chipping, cracking, scratching, scoring, distortion, and decomposition;
 - (2) Solder shall be comprised of safe, corrosion-resistant materials;
 - (3) Wood and wicker shall not be used as food-contact surfaces, except hard maple or an equivalent nonabsorbent wood may be used for cutting boards, cutting blocks or bakers' tables;
 - (4) Galvanized metal shall not be used for utensils which have general utility or for utensils or food-contact equipment which contacts beverages or moist or hygroscopic food;
 - (5) Linens shall not be used as food-contact surfaces, except that clean linen may be used in contact with bread and rolls;
 - (6) Single-use and single-service articles shall be fabricated from safe and clean materials;
 - (7) Reuse of single-service articles is prohibited;
 - (8) Equipment, utensils, and single-service articles that impart odors, color or taste, or contribute to the contamination of food shall not be used.
- (b) Design and Fabrication:
- (1) Equipment and utensils shall be designed and fabricated to be durable and sufficiently strong to resist denting and buckling under normal-use conditions;
 - (2) Product thermometers and thermometer probes shall be of metal stem-type construction;
 - (3) Multi-use food-contact surfaces shall be smooth; free of breaks, open seams, cracks, chips, pits and similar imperfections; free of sharp internal angles, corners and crevices; finished to have smooth welds and joints; and accessible for cleaning and inspection without being disassembled, by disassembling without the use of tools or by easy disassembling with the use of only simple tools such as mallets, screw drivers or wrenches which are kept near the equipment;
 - (4) Water filters or any other water conditioning devices shall be designed to be disassembled to provide for periodic

cleaning or replacement of the active element;

- (5) Nonfood-contact surfaces shall be nonabsorbent, cleanable, and free of unnecessary ledges, projections, and crevices;
- (6) Interior surfaces of nonfood-contact equipment shall be designed and fabricated to allow easy cleaning and to facilitate maintenance operations;
- (7) Filters and other grease extracting equipment shall be readily accessible for filter replacement and cleaning.

Statutory Authority G.S. 110-91.

**.2810 SPECIFICATIONS FOR KITCHENS,
BASED ON NUMBER OF CHILDREN**

(a) Day Care Facilities Licensed for 6-24 Children:

- (1) Domestic kitchen equipment may be used. Kitchen equipment shall include at least a two-compartment sink, dishwasher, refrigeration equipment, and cooking equipment. In lieu of a dishwasher and two-compartment sink, a three-compartment sink may be used. Day care facilities using only single service articles shall provide at least a two-compartment sink;
- (2) A separate lavatory for handwashing is required in the kitchen. This handwashing lavatory shall be used only by foodservice personnel;
- (3) After each use, all multi-use tableware and food contact surfaces of equipment and utensils shall be washed and rinsed in a dishwasher or three-compartment sink. Sanitization shall then take place in the sink by immersion for at least two minutes in a clean solution containing:

- (A) At least 50 parts per million of available chlorine at a temperature of at least 75°F (24°C);
- (B) At least 12.5 parts per million of available iodine and having a pH not higher than 5.0 and at a temperature of at least 75°F (24°C); or

(C) At least 200 parts per million of quaternary ammonium products and having a temperature of at least 75°F (24°C), provided that the product is labeled to show that it is effective in water having a hardness value at least equal to that of the water being used.

(b) Day Care Facilities Licensed for 25 or More Children:

- (1) Kitchen equipment requirements shall include the following:

(A) Commercial kitchen equipment meeting NSF (National Sanitation Foundation) standards or equivalent shall be required in day care facilities licensed for 25 or more children;

(B) Kitchen equipment shall include at least a three compartment sink with drainboards, refrigeration equipment, and cooking equipment.

(2) A separate sink with drainboard for the effective washing of vegetables shall be provided when shown to be necessary.

(3) Day care facilities using single-service utensils and not preparing food other than simple snacks, shall provide at least a two-compartment sink with drainboards, refrigeration equipment, and a separate handsink.

(c) Equipment that was installed in a day care facility prior to the effective date of these Rules and that does not meet all the design and fabrication requirements of this Section shall be deemed acceptable if it is in good repair, capable of being maintained in a sanitary condition, and the food contact surfaces are nontoxic. Replacement equipment and new equipment acquired after the effective date of these Rules shall meet the requirements of this Section. Upon change of ownership, or the closing of the operation and the issuance of a new license, the day care facility shall comply with all the rules of this Section.

Statutory Authority G.S. 110-91.

**.2811 CLEANING AND SANITIZING OF
EQUIPMENT AND UTENSILS**

(a) Multi-use tableware, including highchair feeding trays, shall be washed, rinsed, and sanitized after each use.

(b) Food-contact surfaces of equipment and utensils shall be washed, rinsed, and sanitized:

- (1) Each time there is a change from raw to ready-to-eat foods;
- (2) Each time there is a change in processing between types of raw animal products such as beef, fish, lamb, pork, and poultry;
- (3) After any substantial interruption of operations in which contamination may have occurred;
- (4) Whenever necessitated by food temperature, room temperature, type of food, and food particle accumulation;
- (5) After final use each working day.

(c) Non-food contact surfaces of equipment shall be cleaned as often as is necessary to keep

the equipment free of accumulation of dust, dirt, food particles, and other debris.

Statutory Authority G.S. 110-91.

.2812 MANUAL CLEANING AND SANITIZING

(a) For manual washing, rinsing, and sanitizing of utensils and equipment, at least a three-compartment sink with drainboards shall be provided and used. Sink compartments shall be large enough to accommodate all foodservice utensils involved; and each compartment shall be supplied with hot and cold water.

(b) Drainboards of adequate size shall be provided for proper handling of soiled utensils prior to washing and cleaned utensils following sanitizing.

(c) Equipment and utensils shall be preflushed or prescraped and, when necessary, presoaked to remove gross food particles and soil.

(d) Except for fixed equipment and utensils too large to be cleaned in sink compartments, manual washing, rinsing, and sanitizing shall be conducted in the following sequence:

- (1) Sinks shall be cleaned prior to use.
 - (2) Equipment and utensils shall be thoroughly washed in the first compartment with a hot detergent solution that is kept clean.
 - (3) Equipment and utensils shall be rinsed free of detergent and abrasives with clean water in the second compartment.
 - (4) The food-contact surfaces of equipment and utensils shall be sanitized in the third compartment by:
 - (A) Immersion for at least one minute in clean, hot water at a temperature of at least 170°F; or
 - (B) Immersion for at least two minutes in a clean solution containing at least 50 parts per million of available chlorine at a temperature of at least 75°F (24°C); or
 - (C) Immersion for at least two minutes in a clean solution containing at least 12.5 parts per million of available iodine and having a pII not higher than 5.0 and at a temperature of at least 75°F (24°C); or
 - (D) Immersion for at least two minutes in a clean solution containing at least 200 parts per million of quaternary ammonium products and having a temperature of at least 75°F (24°C), provided that the product is labeled to show that it is effective in water having a hardness value at least equal to that of the water being used.
- (e) For utensils and equipment which are either too large or impractical to sanitize in a

dishwashing machine or dishwashing sink, a spray-on or wipe-on sanitizer shall be used. When spray-on or wipe-on sanitizers are used, the chemical strengths shall be twice those required for sanitizing multi-use eating and drinking utensils. Spray-on or wipe-on sanitizers shall be prepared daily and kept on hand for bactericidal treatment.

(f) When hot water is used for sanitizing, the following facilities shall be provided and used:

- (1) An integral heating device or fixture installed in, on, or under the sanitizing compartment of the sink capable of maintaining the water at a temperature of at least 170°F; and
 - (2) A numerically scaled indicating thermometer, accurate to $\pm 3^{\circ}\text{F}$, convenient to the sink for frequent checks of water temperature; and
 - (3) Dish baskets of such size and design to permit complete immersion of the tableware, kitchenware, and equipment in the hot water.
- (g) A suitable testing method or equipment shall be available, convenient, and regularly used to test chemical sanitizers to insure minimum prescribed strengths.

Statutory Authority G.S. 110-91.

.2813 MECHANICAL CLEANING AND SANITIZING

(a) If mechanical dishwashing equipment is used, such equipment shall be constructed and operated in accordance with National Sanitation Foundation Standards or equal except as noted in Rule .2810(1)(A).

(b) Machine or water line mounted numerically scaled indicating thermometers, accurate to $\pm 3^{\circ}\text{F}$, shall be provided to indicate the temperature of the water in each tank of the machine and the temperature of the final rinse water as it enters the manifold.

(c) Adequate space for the proper handling of soiled utensils prior to washing and of cleaned utensils following sanitization shall be so located and constructed as not to interfere with the proper use of dishwashing equipment.

(d) Equipment and utensils shall be flushed or scraped and, when necessary, soaked to remove gross food particles and soil prior to being washed in a dishwashing machine unless a pre-wash cycle is a part of the dishwashing machine operation. Equipment and utensils shall be placed in racks, trays, or baskets, or on conveyors, in a way that food-contact surfaces are exposed to the unobstructed application of

detergent wash and clean rinse waters and that permits free draining.

(e) Machines using chemicals for sanitization may be used provided that a suitable testing method or equipment shall be available, convenient, and regularly used to test chemical sanitizers to insure minimum prescribed strengths.

(f) All dishwashing machines shall be thoroughly cleaned at least once a day or more often when necessary to maintain them in a satisfactory operating condition.

(g) After sanitization, all equipment and utensils shall be air dried.

Statutory Authority G.S. 110-91.

.2814 FOOD SERVICE EQUIPMENT AND UTENSIL STORAGE

(a) Cleaned and sanitized equipment and utensils shall be handled in a way that protects them from contamination. Spoons, knives, and forks shall be touched only by their handles. Cups, glasses, bowls, plates, and similar items shall be handled without contact with inside surfaces or surfaces that contact the user's mouth.

(b) Cleaned and sanitized utensils and equipment shall be stored above the floor in a clean, dry location in a way that protects them from contamination and facilitates floor cleaning. The food-contact surfaces of fixed equipment shall also be protected from contamination. Equipment and utensils shall not be placed under exposed sewer lines or water lines, except for automatic fire protection sprinkler heads that may be required by law.

(c) Single-service utensils shall be purchased only in sanitary containers, shall be stored in a clean, dry container until used, and shall be handled in a sanitary manner.

Statutory Authority G.S. 110-91.

.2815 WATER SUPPLY

(a) Running water under pressure shall be provided in sufficient quantities to meet the needs of cooking, cleaning, drinking, toilets, and outside uses without producing water pressure lower than 20 psi.

(b) When a private water supply is used, it shall be located, constructed, maintained and operated in accordance with the Rules Governing the Protection of Private Water Supplies Section 1700 of North Carolina Administrative Code Title 10 Department of Human Resources Chapter 10 Health Services; Environmental Health Subchapter 10A. Samples of water shall be collected by the Environmental Health Specialist and submitted to a state certified labora-

tory for bacteriological analysis annually. Other tests of water quality, as indicated by possible sources of contamination, may be collected by the Environmental Health Specialist.

(c) No cross-connections with an unapproved water supply shall exist. If potential back-flow conditions exist, an approved back-flow prevention device shall be provided.

(d) Water heating equipment that is sufficient to meet the maximum expected requirements of the child day care facility shall be provided. Capacity and recovery rates of hot water heating equipment shall be based on number and size of sinks, capacity of dishwashing machines, capacity of laundering machines, diaper changing facilities, and other food service and cleaning needs. Hot and cold water under pressure shall be easily accessible to all rooms where food is processed or handled, rooms in which utensils or equipment are washed, and other areas where water is required for cleaning and sanitizing, including lavatories and diaper changing areas.

(e) Hot water heating equipment shall provide hot water at a minimum temperature of 130°F (54°C) at the point of use when hot water is not used for sanitizing. When hot water is used for sanitizing, a minimum temperature of 140°F (60°C) shall be provided at the point of use. However, hot water to those areas accessible to children, including lavatories serving diaper changing areas, shall be no less than 90°F and shall not exceed 110°F.

Statutory Authority G.S. 110-91.

.2816 DRINKING WATER FACILITIES

(a) Drinking fountains of an approved type or individual drinking utensils shall constitute approved drinking water facilities.

(b) Drinking fountains, if provided, shall be of sanitary angle-jet design properly regulated and kept clean. The pressure shall be regulated so that the individual's mouth does not come in contact with the nozzle and so that water does not splash on the floor.

(c) All multi-use utensils used for drinking purposes shall be easily cleanable and thoroughly cleaned and sanitized after each use. Disposable utensils used for drinking water shall be stored and handled so as not to become contaminated.

(d) Baby bottles shall be properly labeled identifying the appropriate child. Drinking water in baby bottles shall be stored and handled in such a manner as to be protected against contamination.

Statutory Authority G.S. 110-91.

.2817 TOILETS

(a) All toilet fixtures and toilet rooms shall be of a sufficient number and shall be located to comply with the requirements of these Rules. All toilet fixtures shall be easily cleanable, in good repair, and kept free of storage. Toilet fixtures shall be child-sized, or properly adapted adult toilets.

(b) Toilets shall be cleaned and sanitized as needed and at least on a daily basis. A solution of 100 ppm chlorine solution or other methods approved by the Environmental Health Specialist shall be used for sanitizing.

(c) If potty chairs are used, a spray rinse toilet or utility sink in addition to any handwash lavatories, shall be located in a toilet room for the purpose of cleaning potty chairs. After cleaning, potty chairs shall be sanitized with 100 ppm chlorine solution or by other methods approved by the Environmental Health Specialist.

(d) If cloth diapers are used, the diaper changing area shall be located in close proximity to a toilet room or flush-rimmed sink.

Statutory Authority G.S. 110-91.

.2818 LAVATORIES

(a) Lavatories shall be of sufficient size and number to comply with the appropriate handwashing requirements of these Rules, easily cleanable, in good repair, and kept free of storage. Lavatories shall be mounted at an appropriate height to accommodate the children, or otherwise made accessible.

(b) All lavatories shall be equipped with hot and cold running water through mixing faucets except that automatically mixing faucets or pre-mixing devices which provide water at the temperature specified in Rule .2815(e) of this Section may be provided.

(c) Lavatories shall be cleaned and sanitized as needed and at least on a daily basis. A solution of 100 ppm chlorine or other approved methods shall be used for sanitizing.

(d) Soap and disposable towels shall be provided at every handwash lavatory area.

(e) Separate lavatories shall be provided for use by staff in kitchens and other food preparation areas or dishwashing areas.

(f) Handwash signs shall be posted at each employee handwashing lavatory.

Statutory Authority G.S. 110-91.

.2819 DIAPERING AND DIAPER CHANGING FACILITIES

(a) Infants and toddlers shall be diapered at areas designated exclusively for diapering.

(b) Diapering surfaces shall be smooth, nonabsorbent, easily cleanable and of tight construction and shall be approved by the Environmental Health Specialist.

(c) Diapering surfaces shall be kept free of storage and shall be cleaned and sanitized after each changing. A solution of 100 ppm chlorine or equivalent methods approved by the Environmental Health Specialist shall be used for sanitizing. A suitable testing method or kit shall be available, convenient, and regularly used to insure compliance with the minimum prescribed strength. This sanitizer shall be made fresh daily and used from a labeled hand pump spray bottle.

(d) Each diaper changing area in a facility licensed for 13 or more children shall include a handwash lavatory for caregivers. For a facility licensed for less than 13 children, a handwash lavatory shall be conveniently located to diaper changing areas.

(e) The use of disposable latex gloves by caregivers during the diaper changing process is required if the worker has cuts or sores on hands or chapped hands. Gloves shall be discarded after use with each child.

(f) Caregivers shall not rinse soiled cloth diapers. Soiled cloth diapers shall be sent to a diaper service or placed in a tightly closed plastic bag or other container approved by the Environmental Health Specialist and sent daily to the child's home to be laundered.

(g) Pre-moistened towelettes or damp paper towels shall be used for cleaning children during the changing process. Soiled paper or towelettes shall be discarded after use with each child and shall be disposed of in a covered plastic-lined receptacle.

(h) Disposable diapers shall be placed in a cleanable, plastic lined, covered container and removed to an exterior garbage area on a frequent, regular basis.

(i) Caregivers shall wash hands vigorously for at least 15 seconds with soap and running tempered water after each diaper change at the lavatory designated for that purpose.

(j) The child's hands shall be washed after each diaper change.

(k) A sign instructing caregivers in proper methods of diaper changing, handwashing and area clean-up shall be posted at each diaper changing area.

Statutory Authority G.S. 110-91.

.2820 STORAGE

(a) Rooms or spaces shall be provided for the storage of equipment, furniture, toys, clothes, beds, cots, mats, and supplies and shall be kept

clean. Shelving or other storage, constructed in a manner to facilitate cleaning, shall be provided for orderly storage of supplies, including mats and toys.

(b) All corrosive agents, insecticides, rodenticides, herbicides, bleaches, detergents, polishes, items containing petroleum products, any product which is under pressure in an aerosol dispensing can, and any substance which may be hazardous to a child if ingested, inhaled, or handled shall be stored in a locked storage room or locked cabinet. Keys shall be kept out of the reach of a child.

(c) A properly mixed sanitizing solution approved by the Environmental Health Specialist that is kept in the infant and toddler diaper changing areas shall not be required to be stored in a locked storage room or locked cabinet. In these areas, this sanitizer shall be clearly labeled and shall not be accessible to infants and toddlers.

(d) Medications shall be stored in a separate locked cabinet or other locked container. Medications which require refrigeration shall be stored in a locked box or locked container in a designated area for such storage in a refrigerator which is not accessible to children.

(e) Individual cubicles, lockers, or coat hooks shall be provided for storage of coats, hats, or similar items. Coat hooks shall be spaced at least 12 inches apart. Individual toothbrushes or combs used by children shall be stored in a sanitary manner.

Statutory Authority G.S. 110-91.

.2821 BEDS, COTS, MATS, AND LINENS

(a) All beds, cribs, cots, and mats shall be in good repair, properly stored, cleaned regularly and sanitized between users.

(b) Individual cribs, portable cribs, or play pens used for sleeping shall be easily cleanable, of tight construction and equipped with a mattress made of waterproof, washable material at least two inches thick. The mattress shall fit snugly so that an adult can fit no more than two fingers between the mattress and the crib, portable crib or play pen.

(c) All beds, cots or mats shall be assigned and labeled for each individual child, and equipped with individual linens. All linen shall be kept clean and in good repair.

(d) Mats shall be of a waterproof, washable material at least two inches thick and shall be stored so that the floor side does not touch the sleeping side or by a method approved by the Environmental Health Specialist.

(e) Beds, cribs, cots, mats and playpens shall be placed at least 18 inches apart when in use.

(f) No double or multi-decked cribs, cots, or beds shall be used.

(g) Linen shall be stored with the individual mat or cot until laundered or stored individually for each child in a designated area if taken off the mats or cots. Linen shall be laundered a minimum of one time per week, or more often as needed. Linen used for more than one child shall be laundered between users. Linen used in infant rooms shall be changed and laundered as needed and at least on a daily basis. Linens shall be large enough to cover the sleeping surface.

Statutory Authority G.S. 110-91.

.2822 FURNITURE AND TOYS

(a) Furniture shall be of easily cleanable construction, and shall be kept clean and in good repair.

(b) Equipment and toys provided by the facility shall be of easily cleanable construction, and shall be kept clean and in good repair. In infant and toddler rooms, mouth-contact surfaces shall be sanitized at least daily and more frequently if necessary.

(c) Toys, furniture, cribs, or other items, having the presence of lead-based paint shall not be used.

Statutory Authority G.S. 110-91.

.2823 PERSONNEL

(a) Employees shall maintain a high degree of personal cleanliness and conform to hygienic practices while on duty. Employees shall keep their fingernails clean and trimmed. Fingernail polish shall not be worn by food service personnel.

(b) Employees shall wear clean outer clothing.

(c) Hair nets, caps, or other effective hair restraints shall be worn by employees engaged in the preparation of food.

(d) Tobacco use in any form is prohibited in the food preparation area, in any part of the day care facility accessible to the children, and in the playground area.

(e) Persons with a communicable disease or a communicable condition shall be excluded from situations in which transmission can be reasonably expected to occur, in accordance with Communicable Disease Control Measures (15A NCAC 19A .0200). Any person with boils, sores, burns, infected wounds or other potentially draining lesions on the face, neck, hands, lower arms or other exposed skin shall properly bandage affected area to eliminate exposure to

drainage. If exposure to drainage can not be eliminated or proper handwashing can not be maintained, then the employee shall be excluded from the facility while the condition exists.

(f) Volunteer personnel shall adhere to the same requirements in these Rules as employees.

Statutory Authority G.S. 110-91.

.2824 FLOORS

(a) Floors and floor coverings of all food preparation, food storage, utensil-washing areas, toilet rooms, and laundry areas shall be constructed of smooth durable material such as sealed concrete, terrazzo, ceramic tile, durable grades of linoleum or plastic, or tight wood impregnated with plastic. All floors shall be smooth and shall be kept clean and maintained in good repair.

(b) Carpeting used as a floor covering shall be of closely woven construction, properly installed, and easily cleanable, such as 100 percent Olefin fiber carpet and backing, and shall be kept clean and maintained in good repair. Carpeting is prohibited in food preparation, equipment, utensil-washing areas, food storage areas, laundry areas, and toilet rooms.

Statutory Authority G.S. 110-91.

.2825 WALLS AND CEILINGS

(a) The walls and ceilings, including doors and windows, of all rooms and areas shall be kept clean and in good repair. All walls shall be smooth, nonabsorbent, and easily cleanable.

(b) Ceilings in rooms in which food is stored, handled or prepared, utensil washing rooms, and toilet rooms shall be smooth, non-absorbent and easily cleanable.

(c) Any lead-based paint readily accessible to children, as defined in 15A NCAC 19I, shall be removed.

Statutory Authority G.S. 110-91.

.2826 LIGHTING AND THERMAL ENVIRONMENT

(a) All rooms and enclosed areas shall be well lighted by natural or artificial means. Lighting shall be capable of illumination to at least 50 foot candles at work surfaces. Light fixtures in all areas shall be kept clean and in good repair. Properly shielded bulbs or shatterproof bulbs shall be used in food preparation, storage, and serving areas and in all rooms used by children.

(b) All rooms used by children shall be heated, cooled, and ventilated to maintain a temperature between 65°F and 80°F. Ventilation may be in

the form of operable windows which are screened or by means of mechanical ventilation to the outside. Windows and window treatments shall be kept clean and in good repair. All ventilation equipment, including heating and cooling vents, fans, and all special ventilation equipment which is required for kitchens and toilet rooms, shall be kept clean and in good repair.

Statutory Authority G.S. 110-91.

.2827 COMMUNICABLE DISEASES AND CONDITIONS

(a) Any child who becomes ill at the facility and is suspected of having a communicable disease or communicable condition shall be separated from the other children until the child leaves the facility.

(b) Each facility shall include a designated area for a child who becomes ill. Such space shall be equipped with a bed or cot and a vomitous receptacle. All materials shall be sanitized after each use. Linens and disposables shall be changed after each use.

(c) If the area is not a separate room, it shall be separated from space used by other children by a partition, screen or other means approved by the Environmental Health Specialist. It shall be in close proximity to a toilet and lavatory, and where health and sanitation measures can be carried out without interrupting activities of other children and staff.

Statutory Authority G.S. 110-91.

.2828 HANDWASHING

(a) Employees shall be instructed that handwashing is the single most important line of defense in preventing the transmission of disease-causing organisms. Employees shall wash hands upon reporting for work; before handling food, feeding infants or children, handling clean utensils or equipment; after toileting, handling of body fluids (e.g. saliva, nasal secretions, vomitus, feces, urine, blood, secretions from sores, pustulant discharge); after diaper changing; and after handling soiled items such as garbage, mops, cloths, and clothing.

(b) Children shall wash hands after each visit to the toilet and before eating meals or snacks.

(c) Proper handwashing procedures shall include:

- (1) Using soap and tempered running water;
- (2) Rubbing hands vigorously with soap and tempered water for 15 seconds;
- (3) Washing all surfaces of the hands, to include the backs of hands, palms, wrists, under fingernails, and between fingers;

- (4) Rinsing well for 10 seconds;
- (5) Drying hands with a paper towel or mechanical dryer;
- (6) Turning off faucet with paper towel.

Statutory Authority G.S. 110-91.

.2829 LIQUID WASTES

All sewage shall be disposed of in an approved sanitary sewage system.

Statutory Authority G.S. 110-91.

.2830 SOLID WASTES

(a) Solid wastes containing food scraps or other putrescible materials shall, prior to disposal, be kept in durable, rust-resistant, non-absorbent, water-tight, rodent-proof, and easily-cleanable containers such as standard garbage cans which shall be covered with tight lids when filled or stored or not in continuous use. Refuse including scrap paper, cardboard boxes and similar items shall be stored in containers, rooms or designated areas approved by the Environmental Health Specialist.

(b) Facilities shall be provided for the washing and storage of all garbage cans and mops for day care facilities licensed for 13 or more children. Cleaning facilities shall include combination faucet, hot and cold running water, threaded nozzle, and curbed impervious pad sloped to drain in accordance with Rule .2829 of this Section. Other can cleaning facilities approved prior to the effective date of these Rules shall be deemed approved if in good repair and functioning properly. Can cleaning facilities replaced after the effective date of these Rules shall meet the requirements of this Section.

(c) Where containerized systems are used for garbage storage, facilities shall be provided for the cleaning of such systems.

(d) Solid wastes shall be disposed of with sufficient frequency and in such a manner as to prevent insect breeding and public health nuisances.

Statutory Authority G.S. 110-91.

.2831 ANIMAL AND VERMIN CONTROL: PREMISES

(a) Unrestrained animals, except those used in approved pet therapy programs, shall not be allowed in the day care facility, including the outdoor play area. Animals shall not be allowed in the food preparation areas. Animal cages shall be kept clean.

(b) Effective measures shall be taken to keep insects, rodents, and other vermin out of the

child day care facilities and to prevent their breeding or presence on the premises.

(c) All openings to the outer air shall be protected against the entrance of flying insects. For extermination of flying insects, only approved pyrethrin-based insecticides or a fly swatter shall be used in the food preparation areas. Products shall be used only in accordance with directions and cautions appearing on their labels. Insecticides shall not come in contact with raw or cooked food, utensils, or equipment used in food preparation and serving, or with any other food contact surface.

(d) Only those pesticides which have been properly registered with the appropriate federal regulatory agency and the North Carolina Department of Agriculture shall be used. Pesticides shall be used in accordance with the directions on the label and shall be stored in a locked storage room or cabinet separate from foods and medications.

Statutory Authority G.S. 110-91.

.2832 OUTDOOR AREAS

(a) The premises, including the outdoor play area, shall be kept clean, drained and free of litter and hazardous materials. Grass and other vegetation shall be maintained in a manner which does not encourage the harborage of vermin.

(b) All outdoor activity areas shall be kept clean. All debris, glass, dilapidated structures, and broken play equipment shall be removed. The play areas shall be free from unprotected wells, grease traps, cisterns, and utility equipment.

(c) For outdoor play equipment, the following shall apply:

- (1) Equipment finishes shall not include toxic paint or hazardous wood preservative treatment and shall be kept free of rust and corrosion;
- (2) The sandbox used in outdoor play shall be constructed to allow for proper drainage and shall be kept clean.

Statutory Authority G.S. 110-91.

.2833 SWIMMING AND WADING POOLS

(a) Swimming and wading pools shall be designed, constructed, operated and maintained in accordance with the N.C. Rules Governing Swimming Pools, 15A NCAC 18A .2500. Copies of these Rules may be obtained from the N.C. Department of Environment, Health, and Natural Resources, Environmental Health Division, P.O. Box 27687, Raleigh, N.C. 27611-7687.

(b) Unfiltered and nondisinfected containments of water shall not be utilized for water recreation activities. Swimming and wading pools shall be permanent structural features of the facility.

Statutory Authority G.S. 110-91.

.2834 COMPLIANCE

(a) The Environmental Health Specialist shall indicate on the Sanitations Standards Evaluation Form for Day Care Facilities whether the facility is superior, approved, provisional, or disapproved. The superior, approved, provisional, or disapproved status of a child day care facility is based on the facility's compliance with the standards for construction and operation found in this Section.

(b) The degree of the facility's compliance is indicated by the total demerit-point score which is shown on the Sanitation Standards Evaluation Form that the Environmental Health Specialist completes.

- (1) Prior to the issuance of an initial license, the facility shall comply with all items of this Section as determined by the Environmental Health Specialist;
- (2) A facility shall be classified as superior if the total demerit score is not more than 15 and no 6-demerit point item is violated;
- (3) A facility shall be classified as approved if the total demerit score is more than 15 and not more than 30, and no 6-demerit point item is violated;
- (4) A facility shall be classified as provisional if any 6-demerit point item is violated, or if the total demerit point score is more than 30 but not more than 45. This provisional period shall not exceed seven days unless construction or renovation is necessary to correct any violation, in which case the Environmental Health Specialist may allow a longer provisional period;
- (5) A facility shall be classified as disapproved if the demerit score is 46 or more or, if conditions which resulted in a provisional classification have not been corrected in the time period specified by the Environmental Health Specialist;
- (6) If the 7-day provisional status is extended, or upon reinspection additional demerits are found, or the facility is disapproved, the Child Day Care Section shall be notified immediately by forwarding a copy of the inspection report to the Child Day Care Section. The Environmental Health Specialist shall notify the Child Day Care Section in accordance with Rule .2803 of this Section.

Statutory Authority G.S. 110-91.

.2835 APPEALS PROCEDURE

Appeals concerning the interpretation and enforcement of the rules in this Section shall be made in accordance with G.S. 110 and G.S. 150B.

Statutory Authority G.S. 110-91.

CHAPTER 21 - HEALTH: PERSONAL HEALTH

SUBCHAPTER 21B - MATERNAL AND CHILD HEALTH

SECTION .0300 - RURAL OBSTETRICAL CARE INCENTIVE FUNDS

.0301 GENERAL

Rural Obstetrical Care Incentive Funds are administered by the Maternal ~~and~~ Child Health Branch. The funds are used to reimburse physicians and nurse-midwives for a portion of malpractice insurance premiums as an incentive to physicians and nurse-midwives to practice obstetrics in underserved counties.

Statutory Authority S. L. 1987, c. 1100, s. 39.3.

.0302 APPLICATION FOR FUNDS

(a) Local health departments in counties that are underserved with respect to obstetrical care may apply to the Maternal ~~and~~ Child Health Branch for rural obstetrical care incentive funds. A physician or a nurse-midwife may request a local health department to apply for the funds.

(b) A county is considered underserved with respect to obstetrical care if the county meets one or more of the following criteria, listed in order of priority:

- (1) there are no public or private prenatal services available within the county;
- (2) there is no public prenatal clinic available within a health department, hospital or primary care center that serves low income pregnant women within the county;
- (3) there is a public prenatal clinic, but no physician or nurse-midwife to staff the clinic or to provide physician back-up for physician extenders;
- (4) the county has inadequate obstetrical coverage, demonstrated by such factors as: a waiting list of 28 calendar days or more for an appointment at the public prenatal clinic; 50 percent or more of resident live-births occur outside the county; the five year infant mortality or premature birth rate is greater than the five year state rate;

the percentage of resident live births to women who received no prenatal care or inadequate prenatal care exceeds the state rate; 50 percent or less of physicians or nurse-midwives who practice obstetrics in the county ~~except~~ accept Medicaid recipients in their private practice; more than 15 percent of resident live births are to women who receive their prenatal care from public clinics; the percentage of resident live births to women who initiated prenatal care in the first trimester is lower than the state rate; or the percentage of resident live births to women who initiated prenatal care in the third trimester is greater than the state rate.

(c) The Maternal ~~and Child~~ Health Branch shall send a request for applications to local health departments that includes a deadline for receipt of applications.

(d) Local health departments that apply for rural obstetrical care incentive funds shall include in the application:

- (1) a coverage plan, developed in cooperation with eligible physicians, nurse-midwives, that addresses prenatal and delivery care for low income women in the county, and quality of care;
- (2) contracts with eligible physicians and nurse-midwives who agree to participate in the local health department's coverage plan and provide the services required by Rule .0906; the contracts may be contingent upon the availability of rural obstetrical care incentive funds; and
- (3) evidence that receipt of these funds will improve or rectify the problems with obstetrical coverage in the county.

Statutory Authority S.L. 1987, c. 1100, s. 39.3.

.0303 PHYSICIANS AND NURSE-MIDWIVES ELIGIBLE TO PARTICIPATE

(a) A physician or nurse-midwife is eligible to receive rural obstetrical care incentive funds if the physician or nurse-midwife:

- (1) is licensed to practice medicine or approved to practice midwifery in North Carolina; and
- (2) carries malpractice liability insurance that is not being totally or partially paid for the physician or nurse-midwife as an employee of the federal government or by an institution of higher learning or an affiliate of the institution.

(b) A physician or nurse-midwife does not have to reside in the underserved county to be eligible to participate.

Statutory Authority S. L. 1987, c. 1100, s. 39.3.

.0304 DISBURSEMENT OF FUNDS

(a) Subject to the availability of funds, the Maternal ~~and Child~~ Health Branch shall disburse rural obstetrical care incentive funds to local health departments that have submitted an approved application as follows:

- (1) first priority shall be given to those counties that meet the criteria in Rule .0902(b)(1), second priority shall be given to those counties that meet the criteria in Rule .0902(b)(2), third priority shall be given to those counties that meet the criteria in Rule .0902(b)(3), and fourth priority shall be given to those counties that meet one or more of the criteria in Rule .0902(b)(4);
- (2) the Maternal ~~and Child~~ Health Branch shall rank and disburse funds to underserved counties within each priority group according to the anticipated improvement in obstetrical coverage that will result from funding; and
- (3) Counties funded shall receive ongoing funding based upon a renewal application that has been reviewed and approved by the ~~Division of~~ Maternal ~~and Child~~ Health Branch.

(b) For each eligible physician with whom the local health department contracts, the department will be paid either the difference between the physician's premiums with obstetrical care coverage and without obstetrical care coverage, or six thousand five hundred dollars (\$6,500), whichever is less. Payment shall be based upon a maximum of one million/one million dollars (\$1,000,000/\$1,000,000) coverage. The local health department will then pay this amount to the physician to cover a portion of the physician's annual malpractice insurance premiums. The total payments to one physician cannot exceed the above amount.

(c) For each eligible nurse-midwife with whom the local health department contracts, the Department will be paid the nurse-midwife's premiums not to exceed three thousand dollars (\$3,000). The local health department will then pay this amount to the nurse-midwife to cover a portion of the nurse-midwife's annual malpractice insurance premiums. The total payments to one nurse-midwife cannot exceed the amount stated in this Paragraph.

(d) ~~(e)~~ No more than nineteen thousand five hundred dollars (\$19,500) may be disbursed to any underserved county.

(e) ~~(d)~~ No funds may be disbursed to a health department in the absence of a contract with an eligible physician or nurse-midwife.

Statutory Authority S.L. 1987, c. 1100, s. 39.3.

**.0305 PARTICIPATION REQUIREMENTS
FOR LOCAL HEALTH DEPARTMENTS**

A local health department that receives rural obstetrical care incentive funds shall:

- (1) maintain statistical and fiscal information required by the Maternal ~~and Child~~ Health Branch to document participation by eligible physicians or nurse-midwives under the contract; and
- (2) assure that physicians and nurse-midwives participate in the coverage plan for the duration of the contract period.

Statutory Authority S. L. 1987, c. 1100, s. 39.3.

**.0306 PARTICIPATION REQUIREMENTS
FOR PHYSICIANS AND NURSE
MIDWIVES**

(a) A participating physician or nurse-midwife shall:

- (1) provide prenatal care to low-income women by:
 - (A) staffing a public prenatal clinic ~~or providing (physicians may provide medical back-up for and supervision of physicians extenders providing services in a public prenatal clinic; clinic); or~~
 - (B) providing prenatal care in the physician's or nurse-midwife's office.
- (2) take part in an on-call arrangement for coverage of obstetrical care, including deliveries, for low income women who are residents of the underserved county;
- (3) not refuse to provide prenatal or delivery care for any patient based on economic status or ability to pay; and
- (4) participate in data collection efforts required by the Maternal ~~and Child~~ Health Branch.
- (5) agree to serve Medicaid recipients who request prenatal care. These services may be provided through the physician's or nurse-midwife's private practice, the local health department or other public clinic.

(b) No participating physician or nurse-midwife shall be required to assume management of the care of any obstetrical patient if the level of care required for that patient is beyond the professional competence of that physician or nurse-midwife.

(c) No participating physician or nurse-midwife shall be required to provide delivery services if

the underserved county does not have a facility for obstetrical delivery.

Statutory Authority S. L. 1987, c. 1100, s. 39.3.

**TITLE 21 - OCCUPATIONAL LICENSING
BOARD**

Notice is hereby given in accordance with G.S. 150B-12 that the Board of Medical Examiners of the State of North Carolina intends to adopt rule(s) cited as 21 NCAC 32N .0001 - .0005.

The proposed effective date of this action is March 1, 1991.

The public hearing will be conducted at 11:30 a.m. on October 16, 1990 at the NC Board of Medical Examiners, 1313 Navaho Drive, Raleigh, NC 27609.

Comment Procedures: Persons interested may present written or oral statements relevant to the actions proposed at a hearing to be held as indicated above. Written statements not presented at the hearing should be directed before October 1, 1990, to the following address: Administrative Procedures, NC Board of Medical Examiners, P.O. Box 26808, Raleigh, NC 27611-6808.

**CHAPTER 32 - BOARD OF MEDICAL
EXAMINERS**

**SUBCHAPTER 32N - FORMAL AND
INFORMAL PROCEEDINGS**

.0001 INITIATION OF FORMAL HEARINGS

Formal hearings shall be initiated pursuant to G.S. 90-14.1 or G.S. 90-14.2 and shall be conducted as provided in G.S. 90-14.4 through G.S. 90-14.7.

Statutory Authority G.S. 90-14.1; 90-14.2; 90-14.3; 90-14.4; 90-14.5; 90-14.6; 90-14.7; 150B-11(1); 150B-38(h);

.0002 CONTINUANCES

Any person summoned to appear before the Board at a formal hearing pursuant to G.S. 90-14.1 or G.S. 90-14.2 may seek to obtain a continuance of that hearing by filing with the Executive Secretary of the Board, as soon as the reason for continuance is known, a motion for continuance setting forth with specificity the reason the continuance is desired. Motions for continuances shall be ruled upon by the President and Executive Secretary of the Board or in

the absence of the President, by the Secretary and Executive Secretary. Continuances will be granted only upon a showing of good cause.

Statutory Authority G.S. 90-14.1; 90-14.2; 150B-11(1); 150B-38(h).

.0003 DISQUALIFICATION FOR PERSONAL BIAS

Any person summoned to appear before the Board at a formal hearing pursuant to G.S. 90-14.1 or G.S. 90-14.2 may challenge on the basis of personal bias or other reason for disqualification the fitness and competency of any member of the Board to hear and weigh evidence concerning that person. Challenges must be stated by way of motion accompanied by affidavit setting forth with specificity the grounds for such challenge and must be filed with the Executive Secretary of the Board on a timely basis. Nothing contained in this Rule shall prevent a person appearing before the Board at a formal hearing from making timely personal inquiry of members of the Board as to their knowledge of and personal bias concerning that person's case.

Statutory Authority G.S. 90-14.1; 90-14.2; 150B-11(1); 150B-38(h).

.0004 DISCOVERY

In any formal proceeding pursuant to G.S. 90-14.1 and G.S. 90-14.2, discovery may be obtained as provided in G.S. 150B-39 by either the Board or the person summoned to appear before the Board. Any request for discovery made by a person summoned to appear before the Board shall be filed with the Executive Secretary of the Board.

Statutory Authority G.S. 90-14.1; 90-14.2; 150B-11(1); 150B-38(h); 150B-39.

.0005 INFORMAL PROCEEDINGS

(a) In addition to formal hearings pursuant to G.S. 90-14.1 or G.S. 90-14.2, the Board may conduct certain informal proceedings in order to settle on an informal basis certain matters of dispute. A person practicing medicine pursuant to a license or other authority granted by the Board may be invited to attend a meeting with the Board or a committee of the Board on an informal basis to discuss such matters as the Board may advise in its communication to the person inviting him or her to attend such meeting. No public record of such proceeding shall be made nor shall any individual be placed under oath to give testimony. Matters discussed by a person

appearing informally before the Board may, however, be used against such person in a formal hearing if a formal hearing is subsequently initiated.

(b) As a result of such informal meeting, the Board may recommend that certain actions be taken by such person, may offer such person the opportunity to enter into a consent order, may institute a formal hearing concerning such person, or may take other action as the Board may deem appropriate in each case.

(c) Attendance at such an informal meeting is not required and is at the sole discretion of the person so invited. A person invited to attend an informal meeting shall be entitled to have counsel present at such meeting.

Statutory Authority G.S. 150B-11(1); 150B-38(h).

TITLE 26 - OFFICE OF ADMINISTRATIVE HEARINGS

Notice is hereby given in accordance with G.S. 150B-12 that the Office of Administrative Hearings intends to amend rule(s) cited as 26 NCAC 2A .0201 - .0203, .0205, .0301 - .0302, .0701.

The proposed effective date of this action is January 20, 1991.

The public hearing will be conducted at 9:30 a.m. on October 15, 1990 at the Assembly Room, Methodist Building, 1307 Glenwood Avenue, Raleigh, NC 27605.

Comment Procedures: Comments may be submitted in writing or in person at the public hearing or in writing prior to October 15, 1990, to Elaine R. Steinbeck, APA Coordinator, P.O. Drawer 11666, Raleigh, NC 27604.

CHAPTER 2 - RULES DIVISION

SUBCHAPTER 2A - NCAC

SECTION .0200 - GENERAL FILING REQUIREMENTS

.0201 ADOPTION OF RULES

(a) An adoption is a completely new rule with a new rule number.

(b) In order to be acceptable for filing with the Office of Administrative Hearings, ~~all~~ each adopted ~~rules~~ rule shall be accompanied by a completed typed Submission for Filing form.

(c) The original and one copy of the rule as adopted shall be filed in the Office of Administrative Hearings. The original shall be in the proper form required by Rule .0402 of this Subchapter.

(d) If the adopted rule differs in any way from the proposed rule published in the North Carolina Register, the original shall identify changes by striking through deleted portions and underlining added portions.

(e) If publication of the proposed rule in the North Carolina Register was not required, the filing shall be accomplished as set out in Paragraphs (a), (b) and (c) of this Rule.

Statutory Authority G.S. 150B-60.

.0202 AMENDMENTS TO RULES

(a) Deletion, addition or change to an existing rule is an amendment to the rule.

(b) In order to be acceptable for filing with the Office of Administrative Hearings, ~~all~~ each amended ~~rules~~ rule shall be accompanied by a completed typed Submission for Filing form.

(c) The original and one copy of the rule as amended shall be filed with the Office of Administrative Hearings. The original shall be in proper form as required by Rule .0402 of this Subchapter.

(d) If the amended rule has text added or deleted that differs from the proposed rule published in the North Carolina Register, those changes shall be highlighted on the copy of the original.

Statutory Authority G.S. 150B-60.

.0203 REPEAL OF RULES

(a) A repeal of a rule is the deletion of the entire text of a rule. When a rule is repealed, that rule number can not be used again. The number, catchline, and final history note will remain in the North Carolina Administrative Code permanently for publication and reference purposes.

(b) In order to be acceptable for filing with the Office of Administrative Hearings, a statement of a repeal of a rule shall be accompanied by a completed typed Submission of Filing form.

(c) The original and one copy of a statement of repeal shall be filed with the Office of Administrative Hearings. The original shall be in proper form as required by Rule .0402 of this Subchapter.

(d) The statement of a repealed rule should contain only an introductory statement, rule number, catchline, and history note. No text will remain within the rule.

Statutory Authority G.S. 150B-60.

.0205 SUBMISSION FOR FILING FORM

(a) ~~The~~ Each rule must be accompanied by a completed typed Submission for Filing form ~~certifies~~ certifying that the rule being filed has been officially adopted, amended, or repealed. All Submission for Filing forms shall be signed by the agency head or a subordinate officer or employee designated by the agency head in writing under G.S. 143B-10(a).

(b) ~~More than one rule may be listed on a single form if the same procedure (adoption, amendment, or repeal) is being done on several rules in the same chapter and the filing dates and effective dates are the same.~~

Statutory Authority G.S. 150B-60.

SECTION .0300 - TEMPORARY RULEMAKING

.0301 FILING TEMPORARY RULES:

ADOPTIONS: AMENDMENTS: REPEALS

In order to be acceptable for filing with the Office of Administrative Hearings, ~~all~~ each temporary ~~adoptions, amendments, or repeals of rules~~ rule shall be accompanied by a completed typed Submission for Filing form, the proper copies required by Rules .0201, .0202, or .0203 of this Subchapter, a Certification of the finding of need for the temporary rule, a Submission for Notice and filing that complies with the requirements of 26 NCAC 2B for publication in the North Carolina Register.

Statutory Authority G.S. 150B-13; 150B-60.

.0302 SUBMISSION FOR FILING FORM

Each temporary rule that is filed shall be accompanied by a completed typed Submission for Filing form. ~~provided that, more than one temporary rule may be included on the same form if they are filed to be effective on the same date and for the same period of time.~~

Statutory Authority G.S. 150B-60.

SECTION .0700 - ELECTRONIC FILINGS

.0701 RULES FILED THROUGH ATMS COMPUTER SYSTEM

(a) If any agency is connected to the State Computer Center, rules may be filed through the ATMS computer system.

(b) The agency shall also submit ~~the~~ a completed typed Submission for Filing form for each rule and an original copy of ~~rules~~ the rule filed, as required by this Subchapter. ~~The rules rule~~

shall be in the computer system in proper format upon filing.

(c) In using this process, the agency shall submit with the filing an Electronic Filing form. The Office of Administrative Hearings shall return a copy of the form notifying the contact

person of the transmittal date. At this time, the agency may delete the document from its storage.

Statutory Authority G.S. 150B-60.

The List of Rules Codified is a listing of rules that were filed to be effective in the month indicated.

*Rules filed for publication in the NCAC may not be identical to the proposed text published previously in the Register. Rules filed with changes are noted with ** Amended, ** Adopted. Please contact this office if you have any questions.*

Adopted rules filed by the Departments of Correction, Revenue and Transportation are published in this section. These departments are not subject to the provisions of G.S. 150B, Article 2 requiring publication in the N.C. Register of proposed rules.

Upon request from the adopting agency, the text of rules will be published in this section.

*Punctuation, typographical and technical changes to rules are incorporated into the List of Rules Codified and are noted as * Correction. These changes do not change the effective date of the rule.*

NORTH CAROLINA ADMINISTRATIVE CODE

LIST OF RULES CODIFIED

SEPTEMBER 1990

AGENCY			ACTION TAKEN
<u>DEPARTMENT OF AGRICULTURE</u>			
2	NCAC	10G .0304	* Correction
		48E .0101	Amended
		.0303	Amended
		.0401	Amended
		.0502	Amended
		.0601	Amended
<u>DEPARTMENT OF ECONOMIC AND COMMUNITY DEVELOPMENT</u>			
4	NCAC	II .0102	** Amended
		.0301	Amended
		.0303 - .0304	Adopted
		.0401	Amended
		.0405	Adopted
		.0701	Adopted
		3C .0101 - .0102	Amended
		.0104	Amended
		.0110 - .0111	Amended
		.0203 - .0204	Adopted
		.0301	Amended
		.0401	Amended
		.0403 - .0406	Amended
		.0902 - .0903	Amended
		.1001 - .1002	Amended
		.1501 - .1502	Amended
		3D .0301	Amended

7	.0504	Temp. Repealed
	.0506 - .0509	Expires 02-28-91
	.0510	Temp. Repealed
	.0511 - .0516	Expires 02-28-91
18	.0304	Temp. Amended
19L	.0103	Expires 02-28-91
	.0301 - .0302	Temp. Repealed
	.0401	Expires 02-28-91
	.0403	Temp. Amended
	.0407 - .0408	Expires 02-28-91
	.0502	Temp. Amended
	.0702	Expires 02-28-91
	.0901	Temp. Amended
	.0903	Expires 02-28-91
	.0905 - .0913	Temp. Amended
	.1002 - .1004	Expires 02-28-91
	.1012	Temp. Amended
	.1101	Expires 02-28-91
	.1103 - .1105	Temp. Amended
	.1203	Expires 02-28-91
	.1302	Temp. Amended
	.1401 - .1404	Expires 02-28-91
	.1501 - .1503	Temp. Amended
	.1505	Expires 02-03-91

DEPARTMENT OF CORRECTION

5	NCAC	2D .0502	Amended
		2F .0605	Amended

OFFICES OF GOVERNOR/LIEUTENANT GOVERNOR

9	NCAC	2B	Executive Order Number 123 Eff. July 24, 1990
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DEPARTMENT OF HUMAN RESOURCES

10	NCAC	3U	.2501 - .2502	Amended
			.2503	** Amended
			.2504	Amended
			.2505	** Amended
			.2506	Amended
			.2508 - .2509	Amended
			.2510	** Amended
			.2511	Adopted
		8C	.0301	Repealed
			.0401	Repealed
		8I	.0001 - .0003	Repealed
		10C	.0507 - .0508	Amended
			.0511 - .0512	Amended
			.0514	Amended
		10D	.1610	Repealed
		12	.0301	Repealed
		21A	.0101	Repealed

FINAL RULES

		.0102	Amended
		.0201 - .0203	Repealed
		.0302 - .0303	Repealed
		.0402 - .0406	Repealed
		.0501	Amended
		.0503 - .0505	Repealed
21B		.0106 - .0111	Repealed
		.0112	Amended
		.0113 - .0116	Repealed
		.0201 - .0204	Repealed
		.0411 - .0416	Repealed
		.0501 - .0502	Repealed
21C		.0001 - .0009	Repealed
		.0203	Repealed
		.0301 - .0303	Repealed
		.0401 - .0403	Repealed
21D		.0101 - .0103	Amended
		.0201 - .0202	Amended
		.0501 - .0502	Amended
23A		.0505	Amended
30		.0217	** Amended
42C		.2703	** Amended
42D		.1407	** Amended
42Z		.0101 - .0102	Repealed
		.0201 - .0204	Repealed
		.0301 - .0302	Repealed
		.0401 - .0405	Repealed
		.0501 - .0502	Adopted
		.0601 - .0604	Adopted
		.0701 - .0702	Adopted
		.0801 - .0805	Adopted
44B		.0301	** Amended
		.0303	** Amended
		.0508	** Amended
		.0512	Amended
		.0515	** Amended
44C		.1410	Amended
46A	TOC		* Correction
46H	.0107		* Correction
46H	.0300		* Correction
47B	.0404		* Correction
49B	.0308		Amended
49C	.0302		Amended
50B	.0311		Amended

DEPARTMENT OF INSURANCE

11	NCAC	8	.0706	* Correction
		12	.0834	Temp. Adopted
				Expires 02-13-91
			.1001 - .1015	** Adopted
			.1016	Temp. Adopted
				Expires 02-13-91

DEPARTMENT OF JUSTICE

12	NCAC	21	.0202 - .0203	Amended
			.0301	Amended
			.0401	Repealed

11 .0301

** Amended

DEPARTMENT OF LABOR

13 NCAC 7C .0101

Amended

DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

15A NCAC 2F .0103

* Correction

10C .0205

* Correction

.0501

** Adopted

10H .0301

** Amended

13B .0101

Amended

.0103

Amended

.0107

Repealed

.0202

Amended

.0501

Amended

.0503 - .0510

Amended

.0601

Amended

.0701 - .0702

Amended

.0704

Amended

.0707

Repealed

.0801

Repealed

.0804

Amended

.0810

Amended

13C .0101 - .0102

Amended

.0202

Amended

.0204 - .0205

Amended

16A .0101

Amended

.0102

* Correction

.0103 - .0104

Amended

.0105 - .0111

* Correction

.0201 - .0202

Amended

.0203

* Correction

.0204

Amended

.0205

* Correction

.0206

Amended

.0207 - .0208

* Correction

.0209

Amended

.0210

* Correction

.0301

Amended

.0304 - .0306

Amended

.0308 - .0309

Amended

.0310

Repealed

.0311

Amended

.0401 - .0404

Amended

.0407 - .0408

Amended

.0412

Amended

.0501 - .0502

Amended

.0505 - .0507

Amended

.0601

Amended

.0701

Amended

.0704

Amended

17A .0101 - .0103

Repealed

.0201 - .0205

Repealed

.0301 - .0305

Repealed

.0401 - .0402

Repealed

17B .0101 - .0103

Repealed

.0201 - .0206

Repealed

	.0301 - .0302	Repealed
17C	.0101 - .0104	Repealed
	.0201 - .0203	Repealed
17D	.0101 - .0102	Repealed
	.0201 - .0204	Repealed
18A	.0101 - .0107	Amended
	.0109 - .0110	Amended
	.0113 - .0114	Amended
	.0116 - .0118	Amended
	.0121	Amended
	.0126 - .0129	Amended
	.0132	Amended
	.0133	Repealed
	.0201 - .0203	Amended
	.0205 - .0207	Amended
	.0210	Amended
	.0215 - .0217	Amended
	.0219	Amended
	.0225	Amended
	.0227 - .0228	Amended
	.0230	Amended
	.0231	Repealed
	.0301	Amended
	.0303 - .0305	Amended
	.0413 - .0414	Amended
	.0504	Amended
	.0608	Amended
	.0613	Amended
	.0618	Amended
	.0704 - .0706	Amended
	.0901	Amended
	.0914	Amended
	.1001 - .1004	Amended
	.1007	Amended
	.1010 - .1014	Amended
	.1016 - .1018	Amended
	.1020 - .1021	Amended
	.1024 - .1028	Amended
	.1030	Repealed
	.1031	Amended
	.1301 - .1302	Amended
	.1303	Repealed
	.1304 - .1305	Amended
	.1309	Amended
	.1311 - .1317	Amended
	.1319 - .1324	Amended
	.1326	Repealed
	.1401 - .1403	Repealed
	.1407 - .1410	Amended
	.1415 - .1417	Amended
	.1419	Amended
	.1422	Amended
	.1426	Repealed
	.1501	Amended
	.1504 - .1505	Amended
	.1510 - .1518	Amended
	.1523	Amended
	.1525	Repealed
	.1601 - .1602	Amended

	.1604 - .1605	Amended
	.1611 - .1612	Amended
	.1614	Amended
	.1616 - .1621	Amended
	.1701 - .1719	Repealed
	.1720	Adopted
	.1801 - .1803	Amended
	.1805	Amended
	.1807 - .1808	Amended
	.1810 - .1814	Amended
	.1816	Repealed
	.1817	Amended
	.2201	Amended
	.2208	Amended
	.2217	Amended
	.2301 - .2303	Amended
	.2304 - .2305	Amended
	.2307	Amended
	.2401 - .2402	Amended
	.2405 - .2406	Amended
	.2408 - .2409	Amended
	.2412 - .2414	Amended
	.2417	Amended
18B	.0101 - .0102	Amended
	.0104 - .0107	Amended
	.0203 - .0204	Amended
	.0207 - .0209	Amended
	.0211	Amended
	.0302 - .0309	Amended
18C	.0101	Repealed
	.0102	Amended
	.0202 - .0203	Amended
	.0301 - .0302	Amended
	.0304 - .0305	Amended
	.0307	Amended
	.0402 - .0403	Amended
	.0405 - .0406	Amended
	.1101 - .1103	Amended
	.1105 - .1106	Amended
	.1201	Amended
	.1203 - .1204	Amended
	.1205 - .1206	Repealed
	.1208 - .1209	Amended
	.1211	Amended
	.1214	Amended
	.1301 - .1303	Amended
	.1401 - .1402	Amended
	.1404 - .1407	Amended
	.1409	Repealed
	.1501	Repealed
	.1503 - .1505	Amended
	.1509	Amended
	.1512 - .1513	Amended
	.1515 - .1516	Amended
	.1517	Repealed
	.1522	Amended
	.1527	Amended
	.1529	Amended
	.1532	Amended

FINAL RULES

18D	.0101	Repealed
	.0104	Repealed
	.0105	Amended
	.0203	Amended
	.0204	Repealed
	.0205	Amended
	.0301 - .0303	Amended
	.0306	Repealed
	.0402	Repealed
	.0403	Amended
	.0404	* Correction
	.0405	Amended
	.0501	Amended
	.0502 - .0507	Repealed
	.0508	Amended
	.0601	Amended
	.0602 - .0624	Repealed
19A	.0103	Amended
	.0601	Repealed
	.0603	Amended
19B	.0101	Amended
	.0202	Amended
	.0203 - .0204	Amended
	.0206	Amended
	.0208	Amended
	.0301 - .0304	Amended
	.0308 - .0309	Amended
	.0312	Repealed
	.0313	Amended
	.0401 - .0405	Amended
	.0407	Amended
	.0502	Amended
19C	.0101	Repealed
	.0102	Amended
	.0201 - .0203	Repealed
	.0205	Repealed
	.0301	Repealed
	.0302	Amended
	.0306	Amended
	.0402	Amended
	.0501 - .0503	Repealed
19D	.0101	Amended
	.0104 - .0105	Amended
	.0201	Amended
	.0203 - .0204	Amended
	.0407 - .0408	Amended
19E	.0001	Repealed
	.0002	Amended
	.0004 - .0005	Amended
	.0008	Amended
19F	.0101	Amended
	.0102	Repealed
	.0103 - .0105	Amended
	.0106 - .0107	Repealed
	.0201	Amended
	.0202	Repealed
	.0203	Amended
	.0204 - .0206	Repealed
	.0301 - .0304	Amended

FINAL RULES

	.0401 - .0402	Amended
	.0403	Repealed
19G	.0101 - .0103	Amended
	.0201	Repealed
19H	.0101	Amended
	.0103 - .0104	Amended
	.0202	Amended
	.0206 - .0207	Amended
	.0301 - .0302	Amended
	.0305	Amended
	.0310	Amended
	.0401 - .0402	Amended
	.0501	Amended
	.0503	Amended
	.0505	Amended
	.0702	Amended
	.0802	Amended
	.0905	Amended
	.1001	* Correction
	.1101 - .1102	Amended
	.1201 - .1202	Amended
	.1401	Repealed
20A	.0001 - .0002	Amended
	.0004 - .0006	Amended
20B	.0002	Amended
	.0006	Amended
20C	.0001 - .0002	Amended
20D	.0201 - .0202	Amended
	.0204	Amended
	.0208 - .0212	Amended
	.0214 - .0215	Amended
	.0217 - .0224	Amended
	.0227 - .0228	Amended
	.0230	Amended
21A	.0101	Repealed
	.0102 - .0107	Amended
	.0201 - .0203	Amended
	.0204 - .0206	Amended
	.0306	Amended
	.0401	Amended
	.0403 - .0404	Amended
	.0502 - .0506	Amended
	.0601 - .0604	Repealed
	.0701 - .0705	Repealed
	.0901 - .0905	Repealed
21B	.0101	Amended
	.0102	Repealed
	.0103	Amended
	.0106	Amended
	.0201	Amended
	.0203	Amended
21C	.0101	Amended
	.0102	Repealed
	.0103 - .0104	Amended
	.0206 - .0207	Amended
	.0301 - .0302	Amended
	.0305	Amended
	.0310	Amended
	.0401 - .0402	Amended

	.0601 - .0606	Repealed
	.0701 - .0705	Repealed
21D	.0801	Repealed
	.0901	Repealed
	.1002	Repealed
	.1101	Repealed
21E	.0305	Amended
	.0307	Amended
21F	.0102	Amended
	.0201	Amended
	.0205 - .0207	Amended
	.0304 - .0305	Amended
	.0401	Amended
	.0405 - .0408	Amended
	.0502	Amended
	.0504	Amended
	.0508	Amended
	.0601 - .0602	Amended
	.0604	Amended
	.0606	Amended
	.0704	Amended
	.1002 - .1003	Amended
	.1009	Amended
21G	.0101 - .0102	Amended
	.0104	Amended
	.0106	Repealed
	.0201 - .0202	Amended
	.0204	Amended
	.0301	Amended
	.0401 - .0405	Amended
	.0408 - .0409	Amended
	.0501	Repealed
	.0502 - .0505	Amended
	.0507 - .0509	Amended
21H	.0101	Repealed
	.0102 - .0103	Amended
	.0104	Repealed
	.0105 - .0106	Amended
	.0107 - .0108	Repealed
	.0109 - .0111	Amended
	.0112	Repealed
	.0114	Repealed
	.0117	Repealed
	.0201	Repealed
	.0202 - .0204	Amended
	.0208	Amended
	.0301	Amended
	.0302	Repealed
	.0304 - .0305	Amended
	.0308 - .0310	Amended
	.0312	Amended
23	.0101	Amended
	.0201	* Correction
	.0202	Amended
	.0203 - .0204	* Correction
	.0301	Amended
	.0302	Repealed
	.0304	* Correction
	.0306 - .0307	Amended

FINAL RULES

		.0309 - .0310	Amended
		.0401	Amended
25		.0101 - .0102	Amended
		.0202	Amended
		.0205	Amended
		.0207 - .0208	Amended
		.0214	Amended
		.0301 - .0302	Amended

DEPARTMENT OF PUBLIC EDUCATION

16	NCAC	6G .0202	Amended
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SECRETARY OF STATE

18	NCAC	6 .1104	Amended
		.1202	Amended
		.1206	** Amended
		.1208	Amended
		.1303 - .1304	Amended
		.1314	Amended
		.1316	Amended
		.1401	Amended
		.1509	Amended
		.1602	Amended
		.1607	Adopted
		.1701	Amended
		.1811	Amended

DEPARTMENT OF TRANSPORTATION

19A	NCAC	2D .0605	Amended
		.0607 - .0608	Amended
		.0624 - .0625	Amended
		.0628	Repealed
	2E	.0219	Amended
		.0221 - .0222	Amended
		.0424	Adopted
	3B	.0701 - .0716	Adopted
	3D	.0801	Amended
	3G	.0206	Amended
		.0209	Amended
	3I	.0202	Amended
		.0209	Amended
		.0401	Amended
		.0501	Amended

REAL ESTATE COMMISSION

21	NCAC	58D .0406	* Correction
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The Administrative Rules Review Commission (ARRC) objected to the following rules in accordance with G.S. 143B-30.2(c). State agencies are required to respond to ARRC as provided in G.S. 143B-30.2(d).

ECONOMIC AND COMMUNITY DEVELOPMENT

Banking Commission

- 4 NCAC 3C .0201 - Establishment of Branch and Limited Svcs Facilities
Agency Revised Rule ARRC Objection 7/19/90
Obj. Removed 8/16/90
- 4 NCAC 3C .0202 - Branch Closing
Agency Revised Rule ARRC Objection 7/19/90
Obj. Removed 8/16/90
- 4 NCAC 3C .0901 - Books and Record
Agency Revised Rule ARRC Objection 7/19/90
Obj. Removed 8/16/90
- 4 NCAC 3C .1301 - Annual Vacation
Agency Revised Rule ARRC Objection 7/19/90
Obj. Removed 8/16/90

Community Assistance

- 4 NCAC 19L .0501 - Definition
Agency Revised Rule ARRC Objection 7/19/90
Obj. Removed 8/16/90

Credit Union Division

- 4 NCAC 6C .0203 - Fields of Membership ARRC Objection 8/16/90

ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

Environmental Health

- 15A NCAC 18A .1814 - Disposal of Garbage and Trash: Premises
Agency Revised Rule ARRC Objection 6/21/90
Obj. Removed 7/19/90
- 15A NCAC 18A .2117 - Water Sanitation and Quality ARRC Objection 8/16/90
- 15A NCAC 18A .2609 - Refrigeration: Thawing; and Preparation of Food ARRC Objection 8/16/90
- 15A NCAC 18C .1529 - Point-of-Entry and Other Treatment Devices
Agency Revised Rule ARRC Objection 6/21/90
Obj. Removed 7/19/90

Environmental Management

- 15A NCAC 2H .1203 - Public Notice ARRC Objection 8/16/90

Health: Epidemiology

- 15A NCAC 19B .0202 - Granting Permits
Agency Revised Rule ARRC Objection 6/21/90
Obj. Removed 7/19/90
- 15A NCAC 19D .0407 - Medical Eligibility
Agency Revised Rule ARRC Objection 6/21/90
Obj. Removed 7/19/90
- 15A NCAC 19D .0408 - Medical Eligibility/Licensed Nursing Home Svcs
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Obj. Removed 7/19/90

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15A NCAC 3N .0001 - Scope and Purpose

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15A NCAC 3O .0203 - Shellfish Lease Application Processing

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11 NCAC 6A .0702 - Prelicensing Education Schools

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21 NCAC 46 .1503 - *Experience in Pharmacy*

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7/19/90

Clincher Motion Passed

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18 NCAC 4 .0101 - *Location and Hours*

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18 NCAC 4 .0102 - *Administration and Functions*

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18 NCAC 4 .0205 - *Overpayment*

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18 NCAC 4 .0206 - *Documents Not Specifically Provided For*

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18 NCAC 4 .0306 - *Articles of Incorporation - Nonprofit Corporations*

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18 NCAC 4 .0307 - *Application For Reservation of Corporate Name*

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18 NCAC 4 .0308 - *Registered Office and Registered Agent*

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18 NCAC 4 .0311 - *Art of Merger/Share Exch /G.S. 55-11-07/55A-42.1*

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18 NCAC 4 .0312 - *Appl For Cert of Authority/Foreign Prof Corporation*

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18 NCAC 4 .0503 - *Deceptively Similar and Distinguishable Names*

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18 NCAC 4 .0504 - *Filing Fictitious/Assumed Name/Foreign Corporation*

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No Response Received From Agency

7/19/90

Response Received From Agency

Obj. Removed 8/16/90

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18 NCAC 6 .1210 - *Securities Exchgs/Auto Quotation Sys Approve/Admin*

ARRC Objection 6/21/90

No Response Received From Agency

7/19/90

Response Received From Agency

Obj. Removed 8/16/90

This Section of the Register lists the recent decisions issued by the North Carolina Supreme Court, Court of Appeals, Superior Court (when available), and the Office of Administrative Hearings which invalidate a rule in the North Carolina Administrative Code.

10 NCAC 3R .0317(g) - WITHDRAWAL OF A CERTIFICATE

Robert Roosevelt Reilly, Jr., Administrative Law Judge with the Office of Administrative Hearings, declared Rule 10 NCAC 3R .0317(g) void as applied in *Dawn Health Care, a North Carolina General Partnership, Petitioner v. Department of Human Resources, Certificate of Need Section, Respondent* (90 DHR 0296).

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.

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- AO - Administrative Order
- AG - Attorney General's Opinions
- C - Correction
- FR - Final Rule
- GS - General Statute
- JO - Judicial Orders or Decision
- M - Miscellaneous
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