The NORTH CAROLINA REGISTER

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Volume 9 • Issue 16 • Pages 1242 - 1339

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NORTH CAROLINA REGISTER

The *North Carolina Register* is published twice a month 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 notices of public hearings filed under G.S. 150B-21.2 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. Individual issues may be purchased for eight dollars ($8.00).

Requests for subscription to the North Carolina Register should be directed to the Office of Administrative Hearings, P. O. Drawer 27447, Raleigh, N. C. 27611-7447.

ADOPTION, AMENDMENT, AND REPEAL OF RULES

The following is a generalized statement of the procedures to be followed for an agency to adopt, amend, or repeal a rule. For the specific statutory authority, please consult Article 2A of Chapter 150B of the General Statutes.

Any 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 (or instructions on how a member of the public may request a hearing); a statement of procedure for public comments; the text of the proposed rule or the statement of subject matter; the reason for the proposed action; a reference to the statutory authority for the action and the proposed effective date.

Unless a specific statute provides otherwise, at least 15 days must elapse following publication of the notice in the *North Carolina Register* before the agency may conduct the public hearing and at least 30 days must elapse before the agency can take action on the proposed rule. An agency may not adopt a rule that differs substantially from the proposed form published as part of the public notice, until the adopted version has been published in the *North Carolina Register* for an additional 30 day comment period.

When final action is taken, the promulgating agency must file the rule with the Rules Review Commission (RRC). After approval by RRC, the adopted rule is filed with the Office of Administrative Hearings (OAH).

A rule or amended rule generally becomes effective 5 business days after the rule is filed with the Office of Administrative Hearings for publication in the North Carolina Administrative Code (NCAC).

Proposed action on rules may be withdrawn by the promulgating agency at any time before final action is taken by the agency or before filing with OAH for publication in the NCAC.

TEMPORARY RULES

Under certain emergency conditions, agencies may issue te rary rules. Within 24 hours of submission to OAH, the Codifi Rules must review the agency's written statement of findings of for the temporary rule pursuant to the provisions in G.S. 150B-21 the Codifier determines that the findings meet the criteria in 150B-21.1, the rule is entered into the NCAC. If the Co determines that the findings do not meet the criteria, the rule is retu to the agency. The agency may supplement its findings and resu the temporary rule for an additional review or the agency may res that it will remain with its initial position. The Codifier, thereafter enter the rule into the NCAC. A temporary rule becomes effe either when the Codifier of Rules enters the rule in the Code or o sixth business day after the agency resubmits the rule without ch The temporary rule is in effect for the period specified in the rule o days, whichever is less. An agency adopting a temporary rule begin rule-making procedures on the permanent rule at the same the temporary rule is filed with the Codifier.

NORTH CAROLINA ADMINISTRATIVE COD

The North Carolina Administrative Code (NCAC) is a compil and index of the administrative rules of 25 state agencies an occupational licensing boards. The NCAC comprises approxim 15,000 letter size, single spaced pages of material of which app mately 35% is changed annually. Compilation and publication NCAC is mandated by G.S. 150B-21.18.

The Code is divided into Titles and Chapters. Each state age assigned a separate title which is further broken down by cha 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 o dollars and 50 cents ($2.50) for 10 pages or less, plus fi cents ($0.15) per each additional page.

(2) The full publication consists of 53 volumes, totali excess of 15,000 pages. It is supplemented monthly replacement pages. A one year subscription to th publication including supplements can be purchase seven hundred and fifty dollars ($750.00). Individua umes may also be purchased with supplement service newal subscriptions for supplements to the initial publi are available.

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

CITATION TO THE NORTH CAROLINA REGISTER

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

FOR INFORMATION CONTACT: Office of Administrative Hearings, ATTN: Rules Division, P.O. Drawer 27447, Raleigh, North Carolina 27611-7447, (919) 733-2678.

NORTH CAROLINA REGISTER

Office of Administrative Hearings
P. O. Drawer 27447
Raleigh, North Carolina 27611-7447
(919) 733-2678

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NORTH CAROLINA REGISTER
Publication Schedule
(November 1994 - September 1995)

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9:16	11/15/94	10/24/94	10/31/94	11/30/94	12/15/94	12/20/94	02/01/95
9:17	12/01/94	11/07/94	11/15/94	12/16/94	01/03/95	01/20/95	03/01/95
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10:1	04/03/95	03/13/95	03/20/95	04/18/95	05/03/95	05/22/95	07/01/95
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This table is published as a public service, and the computation of time periods are not to be deemed binding or controlling. Time is computed according to 26 NCAC 2B .0103 and the Rules of Civil Procedure, Rule 6.

* *An agency must accept comments for at least 30 days after the proposed text is published or until the date of any public hearing, whichever is longer. See G.S. 150B-21.2(f) for adoption procedures.*
** *The "Earliest Effective Date" is computed assuming that the agency follows the publication schedule above, that the Rules Review Commission approves the rule at the next calendar month meeting after submission, and that RRC delivers the rule to the Codifier of Rules five (5) business days before the 1st day of the next calendar month.*

Revised 10/94

EXECUTIVE ORDER NO. 64
AMENDING EXECUTIVE ORDER NUMBER 32 CONCERNING THE GOVERNOR'S ADVISORY COMMISSION ON MILITARY AFFAIRS

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

Section 4 of Executive Order Number 32 is hereby amended to read:

Section 4. Administration.

Support staff for the Commission shall be provided by the Office of the Governor. Members shall serve without compensation, but may receive reimbursement, contingent upon the availability of funds, for travel and subsistence in accordance with N.C.G.S. 138-5, 138-6, and 120-3.1.

This Executive Order shall be effective immediately.

Done in Raleigh, North Carolina, this the 20th day of October, 1994.

EXECUTIVE ORDER NO. 65
AMENDING THE LOCAL GOVERNMENT PARTNERSHIP COUNCIL

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

Section 1 of Executive Order Number 21 is hereby amended to read:

Section 1. Establishment and Members.

There is hereby established the North Carolina Local Government Partnership Council ("Council") consisting of 25 members. The Council shall be composed as follows:

(a) three members representing county governments selected by the Governor from a list of qualified persons submitted by the North Carolina Association of County Commissioners;

(b) three members representing municipal governments selected by the Governor from a list of qualified persons submitted by the North Carolina League of Municipalities;

(c) four at-large members appointed by the Governor;

(d) two members of the North Carolina Senate appointed by the President Pro Tempore of the Senate;

(e) two members of the North Carolina House of Representatives appointed by the Speaker of the House;

(f) the Secretary of the Department of Environment, Health, and Natural Resources or his designee;

(g) the Secretary of the Department of Transportation or his designee;

(h) the Secretary of the Department of Human Resources or his designee;

(i) the Lieutenant Governor or his designee;

(j) the Secretary of the Department of Revenue or her designee;

(k) the State Treasurer or his designee;

(l) the State Auditor or his designee; and

(m) the Secretary of State or his designee.

The Executive Director of the North Carolina Association of County Commissioners and the Executive Director of the North Carolina League of Municipalities are invited to serve, and the Governor's Director of Intergovernmental Relations shall serve, as ex-officio members of the Council.

This Order shall become effective immediately.

Done in the Capital City of Raleigh, North Carolina, this the 20th day of October, 1994.

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

U.S. Department of Justice

Civil Rights Division

DLP:GS:FHD:lrj
DJ 166-012-3
94-3411

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

October 18, 1994

George A. Weaver, Esq.
Lee, Reece & Weaver
P. O. Box 2047
Wilson, North Carolina 27894-2047

Dear Mr. Weaver:

This refers to three polling place changes (Toisnot, Wilson I, and Taylor precincts) for Wilson 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 August 19, 1994.

The Attorney General does not interpose any objection to the specified changes. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

By:

John K. Tanner
Acting Chief, Voting Section

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

CHAPTER 3 - MARINE FISHERIES

Notice is hereby given that the Marine Fisheries Commission will conduct a Business Session on December 2-3, 1994, at the Smithfield-Selma Chamber of Commerce, Industrial Parkway, Smithfield, North Carolina. Notice of this meeting was previously published in 9:11 NCR, 9:13 NCR, and 9:14 NCR. Only the location of the meeting has changed; the date and time will remain the same.

TITLE 2 - DEPARTMENT OF AGRICULTURE

Notice is hereby given in accordance with G.S. 150B-21.2 that the Genetic Engineering Review Board intends to amend rule cited as 2 NCAC 48E .0302.

The proposed effective date of this action is February 1, 1995.

The public hearing will be conducted at 10:00 a.m. on December 19, 1994 at the Rollins Animal Disease Diagnostic Laboratory, Conference Room - Room #154, 2101 Blue Ridge Blvd., Raleigh, NC 27607.

Reason for Proposed Action: To expand the list of activities permitted without the issuance of an individual permit.

Comment Procedures: Interested persons may present statements either orally or in writing at the public hearing or in writing prior to the hearing by mail addressed to W. A. Dickerson, Plant Pest Administrator, Plant Industry Division, N.C. Department of Agriculture, P.O. Box 27647, Raleigh, NC 27611. Further information on the proposed rule may be obtained by contacting Mr. Dickerson at the above address or calling (919) 733-6930.

Editor's Note: Subparagraph (a)(5) of this Rule was published in 9:3 NCR 127-128, May 2, 1994, to become effective January 1, 1995.

CHAPTER 48 - PLANT INDUSTRY

SUBCHAPTER 48E - GENETICALLY ENGINEERED ORGANISMS

SECTION .0300 - TYPES OF PERMITS: PERMIT APPLICATIONS: PUBLIC NOTICE: PUBLIC HEARING: ISSUANCE OF PERMITS: MODIFICATION, SUSPENSION, REVOCATION OF PERMITS

.0302 GENERAL PERMITS

(a) The following classes of activities are hereby permitted by general permits and no permit application shall be required:

(1) Releases of genetically engineered organisms between July 1, 1990 and December 31, 1990, which are otherwise in compliance with state and federal law;

(2) Releases resulting wholly from activities performed inside contained facilities;

(3) Releases of genetically engineered organisms from fermentation processes and associated recovery and purification processes where the processes or products of those processes are regulated under the Food, Drug, and Cosmetic Act, 21 U.S.C. 301 et seq., Toxic Substances Control Act, 15 U.S.C. 2601 et seq., or Virus-Serum-Toxin Act, 21 U.S.C. 151 et seq.;

(4) Releases or commercial uses of drugs or devices containing genetically engineered organisms and intended for prophylactic, therapeutic or diagnostic use in humans where such releases or uses are regulated under the Food, Drug, and Cosmetic Act, 21 U.S.C. 301 et seq., or the Public Health Service Act, 42 U.S.C. 262, 263;

(5) Releases or commercial uses of those genetically engineered plants determined to be of nonregulated status under provisions of 7 CFR Part 340 (§340.6) by the Director, Biotechnology, Biologics, and Environmental Protection; Animal and Plant Health Inspection Service; United States Department of Agriculture as of August 1, 1994.;

(6) Releases or commercial uses of those genetically engineered plants determined to be of nonregulated status under provisions of 7 CFR Part 340 (§340.6) by the Director, Biotechnology, Biologics, and Environmental Protection; Animal and Plant Health Inspection Service; United States Department of Agriculture,

(A) provided that the North Carolina Department of Agriculture mails a copy of the Federal Register notice announcing that the Animal and Plant Health Inspection Service has received a "Petition for Determination of Nonregulated Status" submitted according to 7 CFR Part 340 (§340.6) to any person who has filed a written reques

to be notified of actions taken by the Board within ten business days after receipt of the Federal Register notice except for those petitions pending as of August 1, 1994; and

(B) provided that a copy of the "Petition for Determination of Nonregulated Status" submitted to the Animal and Plant Health Inspection Service according to 7 CFR Part 340 (§340.6) is on file and available for inspection at the North Carolina Department of Agriculture, Plant Industry Division, 216 West Jones Street, Raleigh, North Carolina no later than ten business days after receipt of the Federal Register notice announcing receipt of the petition by the Animal Plant Health Inspection Service that initiates the 60 day federal comment period on the petition; and

(C) provided that the Board does not object to the determination of nonregulated status;

(7) Releases of genetically engineered plants where the genetically engineered plants meet all of the following eligibility requirements, the release is done in compliance with all of the following performance standards, and all federal requirements pertaining to notification are met:

(A) Eligibility requirements:

(i) The genetically engineered plant is one of the following plant species:

(I) corn (Zea mays L.);

(II) cotton (Gossypium hirsutum L.);

(III) potato (Solanum tubersom L.);

(IV) soybean (Glycine max [L.] Merr.);

(V) tobacco (Nicotiana tabacum L.);

(VI) tomato (Lycopersicon esculentum L.).

(ii) The introduced genetic material is "stably integrated" in the plant genome, as defined in 7 CFR Part 340 (§340.1).

(iii) The function of the introduced genetic material is known and its expression in the regulated article does not result in plant disease.

(iv) The introduced genetic material does not:

(I) Cause the production of an infectious entity, or

(II) Encode substances that are known or likely to be toxic to non-target organisms known or likely to feed or live on the plant species, or

(III) Encode products intended for pharmaceutical use.

(v) To ensure the introduced genetic sequences do not pose a significant risk of the creation of any new plant virus, they must be:

(I) Noncoding regulatory sequences of known function, or

(II) Sense or antisense genetic constructs derived from viral coat protein genes from plant viruses that are prevalent and endemic in the area where the introduction will occur and that infect plants of the same host species, or

(III) Antisense genetic constructs derived from noncapsid viral genes from plant viruses that are prevalent and endemic in the area where the introduction will occur and that infect plants of the same host species.

(vi) The plant has not been modified to contain the following genetic material from animal or human pathogens:

(I) Any nucleic acid sequence derived from an animal or human virus, or

(II) Coding sequences whose products are known or likely causal agents of disease in animals or humans.

(B) Performance standards:

(i) The genetically engineered plants must be planted in such a way that they are not inadvertently mixed with nonregulated plant materials of any species which are not part of the release.

(ii) The genetically engineered plants and plant parts must be maintained in such a way that the

identity of all material is known while it is in use, and the plant parts must be contained or devitalized when no longer in use.

(iii) There must be no viable vector agent associated with the genetically engineered plant.

(iv) The release must be conducted such that:

(I) The genetically engineered plant will not persist in the environment, and

(II) No offspring can be produced that could persist in the environment.

(v) Upon termination of the release:

(I) No viable material shall remain which is likely to volunteer in subsequent seasons, or

(II) Volunteers shall be managed to prevent persistence in the environment.

(b) In accordance with the Administrative Procedure Act, the Commissioner may suspend any activities being conducted under a general permit for failure to comply with the Genetically Engineered Organisms Act or any rules of this Subchapter, or if the Commissioner deems it necessary to protect agriculture, public health or the environment from potential adverse effects of a release or commercial use. Any such suspension shall be reviewed by the Board within 30 days. The Commissioner shall state in writing the reasons for such action.

(c) Public notice of any proposed rule regarding the establishment of general permits shall be given in accordance with G.S. 150B-21.2 and by:

(1) mailing a copy of the proposed general permit to any person who has filed a written request to be so notified;

(2) publishing notice of the proposed general permit at least once in newspapers having general circulation throughout the State.

Statutory Authority G.S. 106-770.

TITLE 10 - DEPARTMENT OF HUMAN RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that DHR - Division of Medical Assistance intends to repeal rule cited as 10 NCAC 26B .0119.

The proposed effective date of this action is February 1, 1995.

Instructions on How to Demand a Public Hearing (must be requested in writing within 15 days of notice): A demand for a public hearing must be made in writing and mailed to:

APA Coordinator
Division of Medical Assistance
1985 Umstead Drive
Raleigh, NC 27603

Reason for Proposed Action: This rule should have been repealed when 10 NCAC 26M was adopted, effective August 3, 1992. Now this rule is in conflict with 10 NCAC 26M.

Comment Procedures: Written comments concerning this repeal must be submitted by December 15, 1994 to: *APA Coordinator*
Division of Medical Assistance
1985 Umstead Drive
Raleigh, NC 27603

CHAPTER 26 MEDICAL ASSISTANCE

SUBCHAPTER 26B - MEDICAL ASSISTANCE PROVIDED

SECTION .0100 - GENERAL

.0119 HEALTH MAINTENANCE ORGANIZATIONS AND PREPAID HEALTH PLANS

~~(a) The Division of Medical Assistance will cover services provided by Health Maintenance Organizations and Prepaid Health Plans to Medicaid recipients who are eligible to enroll. Health Maintenance Organizations must be federally qualified or meet the state definition of a Health Maintenance Organization as specified in G.S. 57B. Prepaid Health Plans must comply with federal regulations.~~

~~(b) Health Maintenance Organizations and Prepaid Health Plans which provide services to Medicaid enrollees must have a contract with the Division of Medical Assistance.~~

~~(c) Medicaid enrollees of Health Maintenance Organizations and Prepaid Health Plans are limited to individuals who are eligible to receive AFDC payments.~~

Statutory Authority G.S. 108A-25(b); 108A-54; S.L. 1985, c.749, s.86; 42 C.F.R. Part 434.

* * * * * * * * * * * * * * * * * * *

Notice is hereby given in accordance with G.S. 150B-21.2 that DHR - Division of Medical Assistance intends to adopt rules cited as 10 NCAC 26H .0210 - .0222, with changes from the proposed text noticed in the Register, Volume 9, Issue 8, pages 513 - 525.

The proposed effective date of this action is February 1, 1995.

Reason for Proposed Action: These rules have been substantially changed as a result of public comment. These rules establish the Diagnostic Related Grouping Hospital Inpatient Reimbursement Plan.

Comment Procedures: Written comments concerning these proposed adoptions must be submitted by December 15, 1994 to:

APA Coordinator
Division of Medical Assistance
1985 Umstead Drive
Raleigh, NC 27603

Editor's Note: An agency may not adopt a rule that differs substantially from the text of a proposed rule published in the Register, unless the agency publishes the text of the proposed different rule and accepts comments on the new text for at least 30 days after the publication of the new text.

CHAPTER 26 - MEDICAL ASSISTANCE

SUBCHAPTER 26H - REIMBURSEMENT PLANS

SECTION .0200 - HOSPITAL INPATIENT REIMBURSEMENT PLAN

.0210 REIMBURSEMENT PRINCIPLES

Effective for discharges occurring on or after January 1, 1995 acute care general hospital inpatient services shall be reimbursed using a Diagnosis Related Groups (DRG) system, except as noted in Rule .0212 of this Section.

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

.0211 DRG RATE SETTING METHODOLOGY

(a) Diagnosis Related Groups is a system of classification for hospital inpatient services. For each hospital admission, a single DRG category is assigned based on the patient's diagnoses, age, procedures performed, length of stay, and discharge status. For claims with dates of services prior to January 1, 1995 payments shall be based on the reimbursement per diem in effect prior to January 1, 1995. However, for claims related to services where the admission was prior to January 1, 1995 and the discharge was after December 31, 1994, then the greater of the total per diem for services rendered prior to January 1, 1995, or the appropriate DRG payment shall be made.

(b) The Division of Medical Assistance (Division) uses the DRG assignment logic of the Medicare Grouper to assign individual claims to a DRG category. Medicare revises the Grouper each year in October. The Division shall install the most recent version of the Medicare Grouper implemented by Medicare.

The initial DRG in Version 12 of the Medicare Grouper, related to the care of premature neonates and other newborns numbered 385 through 391, are replaced with the following classifications:

385	Neonate, died or transferred, length of stay less than 3 days.
801	Birthweight less than 1,000 grams
802	Birthweight 1,000 - 1,499 grams
803	Birthweight 1,500 - 1,999 grams
804	Birthweight >=2,000 grams, with Respiratory Distress Syndrome
805	Birthweight >= 2,000 grams, premature with major problems
810	Neonate with low birthweight diagnosis, age greater than 28 days at admission
389	Birthweight >= 2,000 grams, full term with major problems
390	Birthweight >= 2,000 grams,

full term with other problems or premature without major problems

391 Birthweight >= 2,000 grams, full term without complicating diagnoses

(c) DRG relative weights are a measure of the relative resources required in the treatment of the average case falling within a particular DRG category. The average DRG weight for a group of services, such as all discharges from a particular hospital or all North Carolina Medicaid discharges, is known as the Case Mix Index (CMI) for that group.

The Division establishes relative weights for each utilized DRG based on a recent data set of historical claims submitted for Medicaid recipients. Charges on each historical claim are converted to estimated costs by applying the cost conversion factors from each hospital's submitted Medicare cost report to each billed line item. Cost estimates are standardized by removing direct and indirect medical education costs at the appropriate rates for each hospital.

Relative weights are calculated as the ratio of the average cost in each DRG to the overall average cost for all DRGs combined. Prior to calculating these averages, low statistical outlier claims are removed from the data set, and the costs of claims identified as high statistical outliers are capped at the statistical outlier threshold. The Division of Medical Assistance employs criteria for the identification of statistical outliers which are expected to result in the highest number of DRGs with statistically stable weights.

The Division of Medical Assistance employs a statistically valid methodology to determine whether there are a sufficient number of recent claims to establish a stable weight for each DRG. For DRGs lacking sufficient volume, the Division sets relative weights using DRG weights generated from the North Carolina Medical Data Base Commission's discharge abstract file covering all inpatient services delivered in North Carolina hospitals. For DRGs in which there are an insufficient number of discharges in the Medical Data Base Commission data set, the Division sets relative weights based upon the published DRG weights for the Medicare program.

Relative weights will be recalculated whenever a new version of the DRG Grouper is installed by the Division of Medical Assistance. When relative weights are recalculated, the overall average CMI will be kept constant.

(d) The Division of Medical Assistance establishes a unit value for each hospital which represents the DRG payment rate for a DRG with a relative weight of one. This rate is established as follows:

(1) Using the methodology described in Paragraph (c) of this Rule, the Division estimates the cost less direct and indirect medical education expense on claims for discharges occurring during calendar year 1993, using cost reports for hospital fiscal years ending during that period or the most recent cost report available. All cost estimates are adjusted to a common 1994 fiscal year and inflated to the 1995 rate year. The average cost per discharge for each provider is calculated.

(2) Using the DRG weights to be effective on January 1, 1995, a CMI is calculated for each hospital for the same population of claims used to develop the cost per discharge amount in Subparagraph (d)(1) of this Rule. Each hospital's average cost per discharge is divided by its CMI to get the cost per discharge for a service with a DRG weight of one.

(3) The amount calculated in Subparagraph (d)(2) of this Rule is reduced by 7.2% to account for outlier payments.

(4) Hospitals are ranked in order of increasing CMI adjusted cost per discharge. The DRG Unit Value for hospitals at or below the 45th percentile in this ranking is set using 75% of the hospital's own adjusted cost per discharge and 25% of the cost per discharge of the hospital at the 45th percentile. The DRG Unit Value for hospitals ranked above the 45th percentile is set at the cost per discharge of the 45th percentile hospital.

(5) The hospital unit values calculated in Subparagraph (d)(4) of this Rule shall be updated annually by the National Hospital Market Basket Index and the most recent actual and projected cost data available from the North Carolina Office of State Budget and Management.

(e) Reimbursement for capital expense is included in the DRG hospital rate described in Paragraph (d) of this Rule.

(f) Hospitals operating Medicare approved

graduate medical education programs shall receive a DRG payment rate adjustment which reflects the reasonable direct and indirect costs of operating those programs.

(1) The Division defines reasonable direct medical education costs consistent with the base year cost per resident methodology described in 42 CFR 413.86. The ratio of the aggregate approved amount for graduate medical education costs at 42 CFR 413.86 (d) (1) to total reimbursable costs (per Medicare principles) is the North Carolina Medicaid direct medical education factor. The direct medical education factor is based on information supplied in the 1993 cost reports updated annually based on statistics contained in cost reports filed during the previous year.

(2) The North Carolina Medicaid indirect medical education factor is computed by the following formula:

$$1.89 \{ \{ 1 + R \}^{0.405} - 1 \}$$

where R equals the number of approved full time equivalent residents divided by the number of staffed beds, not including nursery beds. The indirect medical education factor will be updated annually based on statistics contained in cost reports filed during the previous year.

(3) Hospitals operating an approved graduate medical education program shall have their DRG unit values increased by the sum of the direct and indirect medical education factors.

(g) Cost outlier payments are an additional payment made at the time a claim is processed for exceptionally costly services. These payments are subject to retrospective review by the Division of Medical Assistance. Cost Outlier payments may be reduced if the associated cost is found to be unreasonable based on the preponderance of evidence of a case by case review.

(1) A cost outlier threshold is established for each DRG at the time DRG relative weights are calculated, using the same information used to establish those relative weights. The cost threshold is the greater of twenty-five thousand dollars ($25,000) or mean cost for the DRG plus 1.96 standard deviations.

(2) Charges for non-covered services and services not reimbursed under the inpatient DRG methodology (such as professional fees) are deducted from total billed charges. The remaining billed charges are converted to cost using a hospital specific cost to charge ratio. The cost to charge ratio excludes medical education costs.

(3) If the net cost for the claim exceeds the cost outlier threshold, a cost outlier payment is made at 75% of the costs above the threshold.

(h) Day outlier payments are an additional payment made for exceptionally long lengths of stay on services provided to children under six at disproportionate share hospitals and children under age one at non-disproportionate share hospitals. These payments are subject to retrospective review by the Division of Medical Assistance. Day outlier payments maybe reduced if the associated cost is found to be unreasonable based on the preponderance of evidence of a case by case review.

(1) A day outlier threshold is established for each DRG at the time DRG relative weights are calculated, using the same information used to establish the relative weights. The day outlier threshold is the greater of 30 days or the arithmetical average length of stay for the DRG plus 1.96 standard deviations.

(2) A day outlier per diem payment may be made for covered days in excess of the day outlier threshold at 75% of the hospital's payment rate for the DRG rate divided by the DRG average length stay.

(i) Services which qualify for both cost outlier and day outlier payments under this rule shall receive the greater of the cost outlier or day outlier payment.

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

.0212 EXCEPTIONS TO DRG REIMBURSEMENT

(a) Covered psychiatric and rehabilitation inpatient services provided in either specialty hospitals, Medicare recognized distinct part units (DPU), or other beds in general acute care hospitals shall be reimbursed on a per diem methodology.

(1) For the purposes of this Section, psychiatric inpatient services are defined as admissions where the primary reason for admission would result in the assignment of DRGs in the range 424 through 432 and 436 through 437.

For the purposes of this Section, rehabilitation inpatient services are defined as admissions where the primary reason for admissions would result in the assignment of DRG 462. All services provided by specialty rehabilitation hospitals are presumed to come under this definition.

(2) When a patient has a medically appropriate transfer from a medical or surgical bed to a psychiatric or rehabilitative distinct part unit within the same hospital, the admission to the distinct part unit shall be recognized as a separate service which is eligible for reimbursement under the per diem methodology. Transfers occurring in general hospitals from acute care services to non-DPU psychiatric or rehabilitation services are not eligible for reimbursement under this Section. The entire hospital stay in these instances shall be reimbursed under the DRG methodology.

(3) The per diem rate for psychiatric services is established at the lesser of the actual cost trended to the rate year or the calculated median rate of all hospitals providing psychiatric services as derived from the most recent as filed cost reports.

(4) Hospitals that do not routinely provide psychiatric services shall have their rate set at the median rate.

(5) The per diem rate for rehabilitation services is established at the lesser of the actual cost trended to the rate year or the calculated median rate of all hospitals providing rehabilitation services as derived from the most recent filed cost reports.

(6) Rates established under Paragraph (a) of this Rule are adjusted for inflation consistent with the methodology under Rule .0211 Subparagraph (d)(5) of this Section.

(b) To assure compliance with the separate upper payment limit for State-operated facilities, the hospitals operated by the Department of Human Resources and all the primary affiliated teaching hospitals for the University of North Carolina Medical Schools will be reimbursed their reasonable costs in accordance with the provisions of the Medicare Provider Reimbursement Manual. The Division shall utilize the DRG methodology to make interim payments to providers covered under this Paragraph, setting the hospital unit value at a level which can best be expected to approximate reasonable cost. Interim payments made under the DRG methodology to these providers shall be retrospectively settled to reasonable cost.

(c) When the Norplant contraceptive is inserted during an inpatient stay the current Medicaid fee schedule amount for the Norplant kit will be paid in addition to DRG reimbursement. The additional payment for Norplant will not be paid when a cost outlier or day outlier increment is applied to the base DRG payment.

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

.0213 DISPROPORTIONATE SHARE HOSPITALS

(a) Hospitals that serve a disproportionate share of low-income patients and have a Medicaid inpatient utilization rate of not less than one percent are eligible to receive rate adjustments. The cost report data and financial information that is required in order to qualify as a disproportionate share hospital effective April 1, 1991 is based on the fiscal year ending in 1989 for each hospital, as submitted to the Division of Medical Assistance on or before April 1, 1991. The cost report data and financial information to qualify as a disproportionate share hospital effective July 1, 1991 is based on the fiscal year ending in 1990 for each hospital, as submitted to the Division of Medical Assistance on or before September 1, 1991. In subsequent years, qualifications effective July 1 of any particular year are based on each hospital's fiscal year ending in the preceding calendar year. The patient days, costs, revenues, or charges related to nursing facility services, swing-bed services, home health services, outpatient services, or any other service that is not a hospital inpatient service cannot be used to qualify for disproportionate share status. A hospital is deemed to be a disproportionate share hospital if:

(1) The hospital has at least two obstetricians with staff privileges at the hospital who have agreed to provide obstetric services to individuals eligible for Medicaid. In the case of a hospital located in a rural area, the term obstetrician includes any physician with staff privileges at the hospital to perform non-emergency obstetric services as of December 21, 1987 or to a hospital that predominantly serves individuals under 18 years of age; and

(2) The hospital's Medicaid inpatient utilization rate, defined as the percentage resulting from dividing Medicaid patient days by total patient days, is at least one standard deviation above the mean Medicaid inpatient utilization rate for all hospitals that receive Medicaid payments in the state; or

(3) The hospital's low income utilization rate exceeds 25 percent. The low-income utilization rate is the sum of:

(A) The ratio of the sum of Medicaid inpatient revenues plus cash subsidies received from the State and local governments, divided by the hospital's total patient revenues; and

(B) The ratio of the hospital's gross inpatient charges for charity care less the cash subsidies for inpatient care received from the State and local governments divided by the hospital's total inpatient charges; or

(4) The sum of the hospital's Medicaid revenues, bad debts allowance net of recoveries, and charity care exceeds 20 percent of gross patient revenues; or

(5) The hospital, in ranking of hospitals in the State, from most to least in number of Medicaid patient days provided, is among the top group that accounts for 50% of the total Medicaid patient days provided by all hospitals in the State; or

(6) Psychiatric Hospitals operated by the North Carolina Department of Human Resources, Division of Mental Health, Developmental Disabilities, Substance Abuse Services (DMH/DD/SAS) and UNC Hospitals operated by the University of North Carolina.

(b) The rate adjustment for a disproportionate share hospital is 2.5 percent plus one fourth of one percent for each percentage point that a hospital's Medicaid inpatient utilization rate exceeds one standard deviation of the mean Medicaid inpatient utilization rate in the State. The rate adjustment is applied to a hospital's payment rate exclusive of any previous disproportionate share adjustments.

(c) Effective July 1, 1994, hospitals eligible under Subparagraph (a)(6) of this Rule will be eligible for disproportionate share payments, in addition to other payments made under the North Carolina Medicaid Hospital reimbursement methodology, from a disproportionate share pool under the circumstances specified below:

(1) An eligible hospital will receive a monthly disproportionate share payment based on the monthly bed days of services to low income persons of each hospital divided by the total monthly bed days of services to low income persons of all hospitals items allocated funds.

(2) This payment shall be in addition to the disproportionate share payments made in accordance with Subparagraphs (a)(1) through (5) of this Rule. However, DMH/DD/SAS operated hospitals are not required to qualify under the requirements of Subparagraphs (a)(1) through (5) of this Rule.

(3) The amount of allocated funds shall be determined by the Director of the Division of Medical Assistance, but not to exceed the quarterly grant award of funds (plus appropriate non-federal match) earmarked for disproportionate share hospital payments less payments made under Subparagraphs (a)(1) through (5) divided by three.

In Subparagraph (c)(1) of this Rule, bed days of services to low income persons is defined as the number of bed days provided to individuals that have been determined by the hospital as patients that do not possess the financial resources to pay portions or all charges associated with care provided.

Low income persons include those persons that have been determined eligible for medical assistance. The count of bed days used to determine payment is based upon the month immediately prior to the month that payments are made.

Disproportionate share payments to hospitals are limited in accordance with The Social Security Act as amended, Title XIX section 1923 (g), limit on amount of payment to hospitals.

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

.0214 OUT OF STATE HOSPITALS

(a) Except as noted in Paragraph (c) of this Rule, the Division of Medical Assistance shall reimburse out-of-state hospitals using the DRG methodology. The DRG hospital unit value for all out-of-state hospitals shall be equal to the unit value of the 45th percentile North Carolina hospital. Out-of-state providers are eligible to receive cost and day outlier payments, but not direct medical education payment adjustments.

(b) Hospitals that are certified for indirect medical education by Medicare may apply for an indirect medical education adjustment to its North Carolina rate.

(c) Hospitals certified as disproportionate share hospitals by the Medicaid agency in their home state may apply for a disproportionate share adjustment to their North Carolina Medicaid rate. The North Carolina disproportionate share hospital rate adjustment shall be the hospital's home state DSH adjustment, not to exceed 5%.

(d) The Division of Medical Assistance may enter into contractual relationships with certain hospitals providing highly specialized inpatient services, in which case reimbursement for inpatient services shall be based on contractual terms, not to exceed fair and reasonable cost.

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

.0215 SPECIAL SITUATION

(a) In order to be eligible for inpatient hospital reimbursement under Section .0200 of this Subchapter, a patient must be admitted as an inpatient and stay past midnight in an inpatient bed. The only exceptions to this requirement are those admitted inpatients who die or are transferred to another acute care hospital on the day of admission. Hospital admissions prior to 72 hours after a previous inpatient hospital discharge are subject to review by the Division of Medical Assistance.

Services for patients admitted and discharged on the same day and who are discharged to home or to a non-acute care facility must be billed as outpatient services. In addition patients who are admitted to observations status do not qualify as inpatients, even when they stay past midnight. Patients in observation status for more than 30 hours must either be discharged or converted to inpatient status.

(b) Outpatient services provided to patients within the 24 hour period prior to an inpatient admission in the same hospital shall be bundled with the inpatient billing.

(c) When a patient is transferred between hospitals, the discharging hospital shall receive a pro-rated payment equal to the normal DRG payment multiplied by the patient's actual length of stay divided by the geometric mean length of stay for the DRG. When the patient's actual length of stay equals or exceeds the geometric mean length of stay for the DRG, the transferring hospital receives full DRG payment. Transfers are eligible for cost outlier payments. The final discharging hospital shall receive the full DRG payment.

(d) Days for authorized skilled nursing for intermediate care level for service rendered in an acute care hospital shall be reimbursed at a rate equal to the average rate for all such Medicaid days based on the rates in effect for the long term care plan year beginning each October 1.

Days for lower than acute level of care for ventilator dependent patients in swing-bed hospitals or that have been down-graded through the utilization review process may be paid for up to 180 days at a lower level ventilator-dependent rate if the hospital is unable to place the patient in a lower level facility. An extension maybe granted if in the opinion of the Division of Medical Assistance the condition of the patient prevents acceptance of the patient. A single all inclusive prospective per diem rate is paid, equal to the average rate paid to nursing facilities for ventilator-dependent services. The hospital must actively seek placement of the patient in an appropriate facility.

(e) The Division of Medical Assistance may make a retrospective review of any transfers to a lower level of care prior to the expiration of the average length of stay for the applicable DRG. The Division of Medical Assistance may adjust the DRG payment if the transfer is deemed to be inappropriate, based on the preponderance of evidence of a case by case review.

(f) In state-operated hospitals, the appropriate lower level of care rates equal to the average rate paid to state operated nursing facilities, are paid for skilled care and intermediate care patients awaiting placement in a nursing facility bed.

(g) For an inpatient hospital stay where the patient is Medicaid eligible for only part of the stay, then the Medicaid program shall pay the DRG payment less the patient's liability.

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

.0216 COST REPORTING AND AUDITS

Annual cost report shall be filed with the Medicare Intermediary, Blue Cross and Blue Shield of North Carolina in accordance with all standards, principles, and time schedules required by the Common Medicare/Medicaid Audits.

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

.0217 ADMINISTRATIVE

RECONSIDERATION REVIEWS

Reconsideration reviews of rate determinations shall be processed in accordance with the provisions of 10 NCAC 26K. Requests for reconsideration reviews shall be submitted to the Division of Medical Assistance within 60 days after rate notification, unless unexpected conditions causing intense financial hardship arise, in which case a reconsideration review may be considered at any time.

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

.0218 BILLING STANDARDS

(a) Providers shall use codes from the International Classification of Diseased, 9th Revision, Clinical Modification (ICD-9-CM) to report diagnoses and procedures. Providers shall use the codes which are in effect at the time of discharge. The reporting of ICD-9-CM diagnosis and procedure codes shall follow national coding guidelines promulgated by the Health Care Financing Administration.

(b) Providers shall generally bill only after discharge. However, interim billings may be submitted on or after 60 days after an admission and on or after every 60 days thereafter.

(c) The discharge claim is required for Medicaid payment. The purpose of this Rule is to assure a discharge status claim is filed for each Medicaid stay.

(1) An interim billing must be followed by a successive interim billing or discharge (final) billing within 180 days of the date of services on the most recent claim. When an interim claim is not followed by an additional interim or discharge (final) claim within 180 days of the "to date of services" on the most recent paid claim, all payments made for all claims for the stay will be recouped.

(2) After a recoupment is made according to this Rule, a subsequent "admit through discharge" or interim claim for payment will be considered for normal processing and payment unless the timely filing requirements of 10 NCAC 26D .0012 are exceeded.

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

.0219 PAYMENT OF MEDICARE PART A DEDUCTIBLES

For payment of Medicare Part A deductibles, the Division of Medical Assistance shall pay the Medicaid DRG payment less the amount paid by Medicare.

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

.0220 PAYMENT ASSURANCES

The state shall pay each hospital the amount determined for inpatient services provided by the hospital according to the standards and methods set forth in this Rule. In all circumstances involving third party payment, Medicaid shall be the payor of last resort.

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

.0221 PROVIDER PARTICIPATION

Payments made according to the standards and methods described in this plan are designed to enlist the participation of a majority of hospitals in the program so that eligible persons can receive medical care services included in the State Plan at least to the extent these services are available to the general public.

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

.0222 PAYMENT IN FULL

Participation in the program shall be limited to hospitals who accept the amount paid in accordance with this plan as payment in full for services rendered to Medicaid recipients.

These changes to the payment for general hospital inpatient services reimbursement plan will become effective when:

> The Health Care Financing Administration, U.S. Department of Health and Human Services, approves amendment submitted to HCFA by the Director of the Division of Medical Assistance on or about January 1, 1995 as #MA 94-33, wherein the Director proposes amendments of the State Plan to amend payment for general hospital inpatient services.

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

TITLE 11 - DEPARTMENT OF INSURANCE

Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. Department of Insurance intends to amend rules cited as 11 NCAC 12 .1502 - .1504.

The proposed effective date of this action is February 1, 1995.

The public hearing will be conducted at 10:00 a.m. on December 1, 1994 at the Dobbs Building, 430 N. Salisbury Street, 3rd Floor Hearing Room, Raleigh, N.C. 27611.

Reason for Proposed Action: To make technical corrections.

Comment Procedures: Written comments may be sent to Rodney Finger at 430 N. Salisbury Street, Raleigh, N.C. 27611. Oral presentations may be made at the public hearing. Anyone having questions should call Rodney Finger at (919) 733-5060.

CHAPTER 12 - LIFE AND HEALTH DIVISION

SECTION .1500 - UNIFORM CLAIM FORMS

.1502 REQUIREMENTS FOR USE OF HCFA FORM 1450 (UB92)

(a) Effective January 1, 1995, the HCFA Form 1450 (UB92) shall be the standard claim form for all manual billing by institutional health care providers, and the HCFA Form 1450 shall be accepted by all payors conducting business in this State.

(b) Effective January 1, 1995, with implementation to be complete no later than April 1, 1995, the following additional information and placement location shall be required for the HCFA Form 1450 (UB92):

~~(1) The payor's Federal Employer Identification Number (FEIN) shall be located as the last data element in form locator 50 (lines A, B, C). This element shall be preceded by a "/" if additional information is recorded in this form locator. Only codes identified for use in that field as available from the Department shall be used.~~

(1) ~~(2)~~The provider tax I.D. number shall be located in form locator 5.

(2) ~~(3)~~The ethnic origin code shall be located in form locator 24-30 (Condition Codes), using Code ~~Z0-Z9~~ X1-X5 (see definitions as defined in the State Uniform Billing Manual) to translate the ethnic origin codes.

(c) Effective October 1, 1995, the cause of injury code shall be located in form locator 77. This code shall be required on all HCFA Form 1450 (UB92) claims generated by institutional health care providers for claims of inpatients and of patients treated in emergency rooms or trauma centers; and where the diagnosis includes an injury diagnosis, which means a diagnostic code in the range or 800-999 as defined in the ICD-9 coding manual. Coding of the cause of injury shall be in accordance with national standards created in the Guidelines of Cooperating Parties, a national coding standards setting group. The absence of this code may not be used to deny the payment of a claim.

(d) Payors may require institutional health care providers to use only the following coding systems for the filing of claims for health care services:

(1) ICD-9-CM Codes to report all diagnoses, reasons for encounters and procedures - based upon code level changes made effective October 1 of each year or other effective date designated by the HCFA.

(2) HCPCS Level 1 and 2 Codes - based upon code level changes made effective October 1 of each year or other effective date designated by the HCFA.

(3) CPT-4 Codes based upon code level changes made effective January 1 of each year or other effective date designated by the HCFA.

(e) When there is no applicable HCPCS Level 1 or Level 2 Code or modifier, the payor may establish its own code or modifier. A complete list of all codes and modifiers established by payors must be published by and available upon request from payors by January 1, 1995.

Statutory Authority G.S. 58-2-40; 58-3-171.

.1503 REQUIREMENTS FOR USE OF HCFA FORM 1500

(a) Effective January 1, 1995, the HCFA Form 1500 shall be the standard claim form for all

manual individual health care provider billing, and the HCFA Form 1500 shall be accepted by all payors conducting business in this State.

(b) Effective January 1, 1995, with implementation to be complete no later than April 1, 1995, the following additional information and placement location shall be required for the HCFA Form 1500:

~~(1) The payor's Federal Employer Identification Number (FEIN) shall be located as the last data element in form locator 11c. This element shall be preceded by a "/" if additional information is recorded in this form locator. Only codes identified for use in field 11c as available from the Department shall be used.~~

(1) ~~(2)~~The provider tax I.D. number shall be located in form locator 25.

(2) ~~(3)~~The ethnic origin code shall be located in form locator 1a as the subsequent set of numbers in that form locator; the first set of numbers being the insured's I.D. number. Codes ~~Z0-Z9~~ X1-X5 (see definitions as defined in the State Uniform Billing Manual), to translate the ethnic origin codes, shall be used to designate the ethnic origin and preceded by the symbol "/".

(c) Payors may require individual health care providers to use only the following coding system for the filing of claims for health care services:

(1) ICD-9-CM Codes to report all diagnoses, reasons for encounters and procedures - based upon code level changes made effective October 1 of each year or other effective date designated by the HCFA.

(2) HCPCS Level 1 and 2 Codes - based upon code level changes made effective October 1 of each year or other effective date designated by the HCFA.

(3) CPT-4 Codes based upon code level changes made effective January 1 of each year or other effective date designated by the HCFA.

(d) When there is no applicable HCPCS Level 1 or Level 2 Code or modifier, the payor may establish its own code or modifier. A complete list of all codes and modifiers established by payors must be published by and available upon request from payors by January 1, 1995.

(e) Type of service codes may not be used after December 31, 1995.

(f) Place of service codes and descriptions shall be recognized by all payors processing claims for services rendered in North Carolina on and after January 1, 1996.

(g) Both HCFA physician and specialty codes and North Carolina Board of Medical Examiners specialty definitions shall be recognized by payors processing claims for services rendered in North Carolina on and after January 1, 1996.

(h) A Uniform Billing Manual, similar to the concept used by the SUBC for HCFA Form 1450 (UB92), shall be developed to set forth HCFA Form 1500 standards by August 1, 1995. The SUBC, along with the North Carolina Medical Society, may develop and recommend a Uniform Billing Manual to the Commissioner by August 1, 1995. This manual may include standards established by the National Uniform Billing Committee as reflected in its ANSI 837 Guide to be released in February of 1995.

Statutory Authority G.S. 58-2-40; 58-3-171.

.1504 REQUIREMENTS FOR USE OF THE CURRENT ADA DENTAL CLAIM FORM

(a) Effective January 1, 1995, with implementation to be complete no later than April 1, 1995, Dentists shall use the current ADA Dental Claim Form and instructions for all manual claims filing with payors.

~~(1) The payor's Federal Employer Identification Number (FEIN) shall be located as the last data element in form locator 10. This element will be preceded by a "/" if additional information is recorded in this form locator. Only codes identified for use in that field as available from the Department shall be used.~~

(1) ~~(2)~~The provider tax I.D. number shall be located in form locator 18.

(2) ~~(3)~~The ethnic origin code shall be located in form locator 31 using Code ~~Z0-Z9~~ X1-X5 (see definitions as defined in the State Uniform Billing Manual), to translate the ethnic origin codes, and shall be the first entry on the first line of that form locator, and it shall be followed by the symbol "/".

(b) A Uniform Billing Manual, similar to the concept used by the SUBC for the HCFA Form 1450 (UB92), shall be developed to set standards for the current ADA Dental Claim Form by August 1, 1995. The North Carolina Dental Society may develop and recommend a Uniform Billing Manual to the Commissioner on or before August 1, 1995.

Statutory Authority G.S. 58-2-40; 58-3-171.

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Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. Department of Insurance intends to adopt rules cited as 11 NCAC 16 .0701 - .0705.

The proposed effective date of this action is February 1, 1995.

The public hearing will be conducted at 10:00 a.m. on December 1, 1994 at the Dobbs Building, 430 N. Salisbury Street, 3rd Floor Hearing Room, Raleigh, N.C. 27611.

Reason for Proposed Action: Assure that HMO's are properly reserving.

Comment Procedures: Written comments may be sent to Walter James at 430 N. Salisbury Street, Raleigh, N.C. 27611. Oral presentations may be made at the public hearing. Anyone having questions should call Walter James at (919) 733-3284.

CHAPTER 16 - ACTUARIAL SERVICES DIVISION

SECTION .0700 - HEALTH MAINTENANCE ORGANIZATION CLAIM RESERVE DATA REQUIREMENTS

.0701 DEFINITIONS

As used in this Section:

(1) "Claim reserves" means reserves or liabilities held for claims incurred on or before the valuation date, but unpaid as of the valuation date. Claim reserves include both reported and unreported claims. Claim reserves are established for both accrued and unaccrued benefits.

(2) "Valuation date" means the date, i.e. March 31, June 30, September 30, or December 31, at which reserves are estimated.

Statutory Authority G.S. 57-2-40; 58-67-135(b).

.0702 CLAIMS

(a) When an HMO has been informed that a claim has been incurred, if the date reported is on or before the valuation date, the claim is considered as a reported claim.

(b) When an HMO has not been informed, on or before the valuation date, concerning a claim that has been incurred on or before the valuation date, the claim is considered as an unreported claim.

(c) The date on which a claim is determined to be a liability of an HMO is the incurred date. For example: The charges for inpatient hospital and physician visits in hospitals would be assigned an incurred date equal to the date of admission; outpatient hospital charges would be assigned an incurred date equal to the date of service; and surgical expenses would be assigned an incurred date equal to the date of the surgery.

Statutory Authority G.S. 57-2-40; 58-67-135(b).

.0703 CLAIM RESERVE FILING REQUIREMENTS

(a) Quarterly claim reserve data filings shall be made by all HMOs:

(1) Commencing at the beginning of their second full calendar year of operations and ending at the beginning of their fourth full calendar year of operations. Quarterly filings shall be sent to the Actuarial Services Division within 45 days after the end of each quarterly valuation; and

(2) If either of the following conditions is satisfied:

(A) If for the most recent quarterly valuation the net worth less the contingency reserve is less than the statutory minimum as stated in G.S. 58-67-110(c) or G.S. 58-67-110(d); or

(B) If for the most recent annual valuation (current year) the following is satisfied: (i) is equal to or greater than one hundred and 10 percent (110%) of (ii), where,

(i) Total claims paid during the year and incurred in the prior year and claims unpaid at December 31, of the current year on claims incurred in prior years.

(ii) Estimated liability of unpaid claims at December 31, of the previous year.

(b) Provided that Subparagraph (a)(2) of this Rule is not satisfied, annual filings shall be made by all HMOs commencing at the beginning of their fourth full calendar year of operations. Annual filings shall be sent to the Actuarial Services

Division within 90 days after the end of each annual valuation.

Statutory Authority G.S. 57-2-40; 58-67-135(b).

.0704 CLAIM RESERVE DATA AND FORMAT REQUIREMENTS

(a) The data requirements in Paragraph (b) of this Rule shall be recorded for the following types of claims:

(1) Inpatient Claims;
(2) Physician Claims;
(3) Referral Claims; and
(4) Other.

(b) For the most recent 36-month period immediately preceding and including the valuation date, the following "monthly" historical data shall be recorded by the month in which the claim or payment was incurred and by the following:

(1) Cumulative number of claims reported through the 36-month period;
(2) Cumulative number of claims paid through the 36-month period;
(3) Cumulative dollar amount of claims paid through the 36-month period; and
(4) Cumulative dollar amount of claims incurred through the 36-month period.

(c) The following monthly historical data shall be recorded for the most recent 36-month period immediately preceding and including the valuation date:

(1) Earned premiums by calendar month;
(2) Total number of enrollees at the beginning and end of each month;
(3) Data on claim amounts greater than or equal to twenty-five thousand dollars ($25,000); and
(4) Data on refunds.

(d) Schedule H, Section II - Analysis of Unpaid Claims, updated as of the current valuation date.

(e) All data in this Rule shall be recorded on a 3.5" diskette containing a LOTUS worksheet named CLM_RES.WK3 or CLM_RES.WK1; which can be obtained from the Actuarial Services Division.

(f) A hard copy of the LOTUS worksheet shall accompany the filing.

Statutory Authority G.S. 57-2-40; 58-67-135(b).

.0705 CLAIM RESERVE METHODOLOGY AND ACTUARIAL CERTIFICATION

(a) A written description of the claim reserve methodology and a numerical verification of the claim reserves submitted in 11 NCAC 16 .0704(d) shall be included with each filing.

(b) Each annual filing shall contain an actuarial certification signed by a qualified actuary stating that the actuary has examined the claim reserves listed in Schedule - H, Section II, and affirms that these claim reserves are calculated in accordance with generally accepted actuarial principles and practices and in the actuary's opinion are adequate.

(c) As used in this Rule, "qualified actuary" means an individual who is an Associate or Fellow of the Society of Actuaries or a Member of the American Academy of Actuaries and who has at least five years of substantive experience in claim reserving for HMOs.

Statutory Authority G.S. 57-2-40; 58-67-135(b).

TITLE 13 - DEPARTMENT OF LABOR

***Notice** is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Department of Labor/Division of Occupational Safety & Health intends to amend rule cited as 13 NCAC 07F .0201.*

***The** proposed effective date of this action is February 1, 1995.*

***The** public hearing will be conducted at 10:00 a.m. on December 7, 1994 at the Division of Occupational Safety & Health, 319 Chapanoke Road, Suite 105, Raleigh, NC 27603.*

***Reason** for Proposed Action: To incorporate the Bloodborne Pathogens standard into the Occupational Safety and Health Standards for Construction.*

Comment Procedures: Persons wanting to present oral testimony at the public hearing should provide a written statement of the proposed testimony to the Division three (3) business days prior to the hearing. Written comments will be accepted until December 15, 1994. Direct all correspondence to Jill F. Cramer, NCDOL/OSHA, 319 Chapanoke Road, Suite 105, Raleigh, NC 27603-3432.

This Rule affects the expenditures or revenues of local funds. A fiscal note was submitted to the Fiscal Research Division on October 21, 1994, OSBM on October 21, 1994, N.C. League of Municipalities on October 21, 1994, and N.C. Association of County Commissioners on October 21, 1994.

CHAPTER 7 - OSHA

SUBCHAPTER 7F - STANDARDS

SECTION .0200 - CONSTRUCTION STANDARDS

.0201 CONSTRUCTION

(a) The provisions for the Occupational Safety and Health Standards for Construction, Title 29 of the Code of Federal Regulations Part 1926, are incorporated by reference except as follows:

(1) Subpart C -- General Safety and Health Provisions -- Personal protective equipment, §1926.28(a) is amended to read as follows: "(a) The employer is responsible for requiring the wearing of appropriate personal protective equipment in all operations where there is an exposure to hazardous conditions or where this part indicates the need for using such equipment to reduce the hazards to the employees."

(2) Subpart D -- Occupational Health and Environmental Controls -- incorporation by reference of modified final rule for 29 CFR 1926.59, Hazard Communication, including Appendices A through E, published in 59 FR (February 9, 1994) pages 6170 - 6184 except that 1926.59(b)(6)(ii) is amended to read:

"(ii) Any hazardous substance as such term is defined by the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 U.S.C. 9601 *et seq*), when regulated as a hazardous waste under that Act by the Environmental Protection Agency;"

(3) Subpart Z -- Toxic and Hazardous Substances -- incorporation of the existing standard for Bloodborne Pathogens, 29 CFR 1910.1030, excluding subparagraph (e) *HIV and HBV Research Laboratories and Production Facilities*, into the Safety & Health Regulations for Construction at 29 CFR 1926.1030. Final rule as published in 56 FR (December 6, 1991) pages 64175 - 64182, including Appendix A -- *Hepatitis B Vaccine Declination (Mandatory)* -- with corrections as published in 57 FR (July 1, 1992) page 29206, and with the following revision to the definition of *Occupational Exposure* under subsection (b) *Definitions*:

"Occupational Exposure means reasonably anticipated skin, eye, mucous membrane, or parenteral contact with blood or other potentially infectious materials that may result from the performance of collateral first aid duties by an employee in the areas of construction, alteration, and/or repair, including painting and decorating."

(b) The parts of the Code of Federal Regulations incorporated by reference in this Subchapter shall not automatically include any subsequent amendments thereto, except as follows:

(1) Incorporation of existing General Industry Standards (Part 1910) applicable to construction work into the Safety & Health Regulations for Construction (Part 1926). Final rule as published in 58 FR (June 30, 1993) pages 35076-35311 and ~~adopted by the North Carolina Department of Labor on November 1, 1993~~ effective on December 1, 1993; correction to Appendix D to §1926.1147 as published in 58 FR (July 28, 1993) page 40468 and ~~adopted by the North Carolina Department of Labor~~ effective on December 31, 1993.

Subpart C -- General Safety and Health Provisions,

1926.33 Access to employee exposure and medical records.

1926.34 Means of egress.

1926.35 Employee emergency action plans.

Subpart D -- Occupational Health and Environmental Control,

1926.64 Process safety management of highly hazardous chemicals.
1926.65 Hazardous waste operations and emergency response.
1926.66 Criteria for design and construction for spray booths.
Subpart E -- Personal Protective Equipment and Life Saving Equipment,
1926.95 Criteria for personal protective equipment.
1926.96 Occupational foot protection.
1926.97 Protective clothing for fire brigades.
1926.98 Respiratory protection for fire brigades.
Subpart F -- Fire Protection and Prevention,
Fixed Fire Suppression Equipment
1926.156 Fire extinguishing systems, general.
1926.157 Fire extinguishing systems, gaseous agent.
Other Fire Protection Systems
1926.158 Fire detection systems.
1926.159 Employee alarm systems.
Subpart I -- Tools - Hand and Power,
1926.306 Air receivers.
1926.307 Mechanical power-transmission apparatus.
Subpart L -- Scaffolding,
1926.453 Manually propelled mobile ladder stands and scaffolds (towers).
Subpart Y -- Commercial Diving Operations,
General
1926.1071 Scope and application.
1926.1072 Definitions.
Personnel Requirements
1926.1076 Qualifications of dive team.
General Operations Procedures
1926.1080 Safe practices manual.
1926.1081 Pre-dive procedures.
1926.1082 Procedures during dive.
1926.1083 Post-dive procedures
Specific Operations Procedures
1926.1084 SCUBA diving
1926.1085 Surface-supplied air diving
1926.1086 Mixed-gas diving.
1926.1087 Liveboating.
Equipment Procedures and Requirements
1926.1090 Equipment.
Recordkeeping
1926.1091 Recordkeeping requirements.
1926.1092 Effective date.
Appendix A to Subpart Y - *Examples of Conditions Which May Restrict or Limit Exposure to Hyperbaric Conditions*.
Appendix B to Subpart Y - *Guidelines for Scientific Diving*.
Subpart Z -- Toxic and Hazardous Substances
1926.1100-1926.1101 [Reserved].
1926.1102 Coal tar pitch volatiles; interpretation of term.
1926.1103 4-Nitrobiphenyl.
1926.1104 alpha-Naphthylamine.
1926.1105 [Reserved].
1926.1106 Methyl chloromethyl ether.
1926.1107 3,3'-Dichlorobenzidine [and its salts].
1926.1108 bis-Chloromethyl ether.
1926.1109 beta-Naphthylamine.
1926.1110 Benzidine.

1926.1111 4-Aminodiphenyl.
1926.1112 Ethyleneimine.
1926.1113 beta-Propiolactone.
1926.1114 2-Acetylaminofluorene.
1926.1115 4-Dimethylaminoazobenzene.
1926.1116 N-Nitrosodimethylamine.
1926.1117 Vinyl chloride.
1926.1118 Inorganic arsenic.
1926.1128 Benzene.
1926.1129 Coke emissions.
1926.1144 1,2-dibromo-3-chloropropane.
1926.1145 Acrylonitrile.
1926.1147 Ethylene oxide.
1926.1148 Formaldehyde.

Appendix A to Part 1926. Designations for General Industry Standards Incorporated Into Body of Construction Standards;

(2) Subpart D -- Occupational Health and Environmental Controls:

(A) Revision of Authority Citation for Subpart D of Part 1926 published in 59 FR (July 19, 1994) pages 36699 - 36700 and effective on November 1, 1994.

(B) Addition of 1926.61 "Retention of DOT markings, placards, and labels," published in 59 FR (July 19, 1994) pages 36699 - 36700 and effective on November 1, 1994.

(C) 29 CFR 1926.62, Lead in Construction. Interim final rule and appendices A through D as published in 58 FR (May 4, 1993) pages 26627-26649 and ~~adopted by the North Carolina Department of Labor on September 6, 1993~~ effective on October 4, 1993.

(D) Typographical and technical corrections at 1926.63, Cadmium, published in 58 FR (April 23, 1993) pages 21778 - 21780 and 21787 and ~~adopted by the North Carolina Department of Labor~~ effective on September 24, 1993; corrections are to final rule for Occupational Exposure to Cadmium as originally published in 57 FR 42101 (September 14, 1992).

(E) Technical amendments to the existing Appendix B and addition of non-mandatory Appendix E to 1926.65, *Hazardous Waste Operations and Emergency Response* as published in 59 FR (August 22, 1994) pages 43270 - 43280 and effective on November 1, 1994.

(3) Subpart Z -- Toxic and Hazardous Substances -- correction to 29 CFR 1926 by adding text and redesignation for *Cadmium* as published in 59 FR (January 3, 1994) page 215 and ~~adopted by the North Carolina Department of Labor~~ effective on April 15, 1994.

(c) Copies of the applicable Code of Federal Regulations sections referred to in this Subchapter are available for public inspection at the North Carolina Department of Labor, Division of Occupational Safety and Health. A single copy may be obtained from the Division at a cost of ten dollars and sixty cents ($10.60) (inclusive of tax); each additional copy will be the same price.

Statutory Authority G.S. 95-131; 150B-21.6.

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

Notice is hereby given in accordance with G.S. 150B-21.2 that the Environmental Management Commission intends to adopt rules cited as 15A NCAC 2D .0105, .1401 - .1415, .1501 - .1504, 1601 - 1603; 15A NCAC 2Q .0801 - .0807; amend 15A NCAC 2D .1201 - .1206 and .1209.

The proposed effective date of this action is April 1, 1995.

The public hearings will be conducted on:

December 5, 1994
7:00 p.m.
Charlotte/Mecklenburg Government Center
Room 118
600 East 4th Street
Charlotte, North Carolina

December 15, 1994
7:00 p.m.
Archdale Building
Ground Floor Hearing Room

512 N. Salisbury Street
Raleigh, North Carolina

Reason for Proposed Action:
***15A NCAC 2D .0105** - Mailing List, to establish a mailing list as required under the General Statutes and to charge a fee to cover the costs of copying and mailing;*
***15A NCAC 2D .1201, .1202, .1203, .1204, .1205, .1206, and .1209** - to adopt federal regulations for sewage sludge incinerators contained in 40 CFR Part 503, Subpart E;*
***15A NCAC 2D .1501, .1502, .1503, and .1504** - to adopt federally mandated requirements for Transportation Conformity;*
***15A NCAC 2D .1601, .1602, and .1603** - to adopt federally mandated requirements for General Conformity.*
***15A NCAC 2D .1401 through .1415** - to adopt reasonably available control technology (RACT) for nitrogen oxides (NOx) for ozone nonattainment areas; and*
***15A NCAC 2Q .0801 through .0807** - to define potential emissions for various types of sources.*

Comment Procedures: All persons interested in these matters are invited to attend the public hearings. Any person desiring to comment for more than three minutes is requested to submit a written statement for inclusion in the record of proceedings at the public hearing. The hearing record will remain open until January 16, 1995, to receive additional written statements.
Comments should be sent to and additional information concerning the hearing or the proposals may be obtained by contacting:

Mr. Thomas C. Allen
Division of Environmental Management
P.O Box 29535
Raleigh, North Carolina 27626-0535
(919) 733-1489 (phone)
(919) 733-1812 (fax)

Fiscal Note: Rule 15A NCAC 2D .0105 affects the expenditures or revenues of local funds. A fiscal note was submitted to the Fiscal Research Division on May 25, 1994, OSBM on July 25, 1994, N.C. League of Municipalities on May 25, 1994, and N.C. Association of County Commissioners on May 25, 1994.

CHAPTER 2 - ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 2D - AIR POLLUTION CONTROL REQUIREMENTS

SECTION .0100 - DEFINITION AND REFERENCES

.0105 MAILING LIST

(a) The Air Quality Section shall develop and maintain a mailing list of persons who have requested notification of rule-making as required by 150B-21.2(b). Such persons shall receive a copy of the complete notice as filed with the Office of Administrative Hearings.

(b) Any person requesting to be on a mailing list established under Paragraph (a) of this Rule shall submit a written request to the Air Quality Section, P.O. Box 29535, Raleigh, North Carolina, 27626. Payment of fees required under this Section may be by check or money order in the amount of thirty dollars ($30.00) made payable to the Department of Environment, Health, and Natural Resources. Payment shall be submitted with each request and received by June 1 of each year. The fee covers from July 1 to June 30 of the following year.

Statutory Authority G.S. 143-215.3(a)(1); 150B-21.2(b).

SECTION .1200 - CONTROL OF EMISSIONS FROM INCINERATORS

.1201 PURPOSE AND SCOPE

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

(b) The rules in this Section apply to all types of incinerators as defined by 15A NCAC 2D .0101(19), including incinerators with heat recovery and industrial incinerators. The rules in this Section do not apply to afterburners, flares, fume incinerators, and other similar devices used to reduce the emissions of air pollutants from processes, whose emissions shall be regulated as process emissions.

(c) This Section does not apply to any boilers or industrial furnaces that burn waste as a fuel.

(d) This Section does not apply to incinerators used to dispose of dead animals or poultry that meet the following requirements:

(1) The incinerator is located on a farm and is owned and operated by the farm owner or by the farm operator;

(2) The incinerator is used solely to dispose of animals or poultry originating on the

farm where the incinerator is located;

(3) The incinerator is not charged at a rate that exceeds its design capacity; and

(4) The incinerator complies with Rule .0521 (visible emissions) and .0522 (odorous emissions) of this Subchapter.

(e) If the incinerator is used solely to cremate pets or if the emissions of all toxic air pollutants from an incinerator and associated waste handling and storage are less than the levels listed in 15A NCAC 2H .0610(h), the incinerator shall be exempt from Rules .1205(f) through (l) ~~(i)~~, and .1206 of this Section. Sewage sludge incinerators and sludge incinerators are not eligible for exemption under this Paragraph.

(f) If an incinerator can be defined as being more than one type of incinerator, then the following order shall be used to determine the standards and requirements to apply: hazardous waste incinerators, sewage sludge incinerators, sludge incinerators, medical waste incinerators, municipal solid waste incinerators, crematory incinerators, and other incinerators.

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

.1202 DEFINITIONS

~~(a)~~ For the purposes of this Section, the following definitions apply:

(1) "Control efficiency" means the mass of a pollutant in the waste fed to an incinerator minus the mass of that pollutant in the exit gas from the incinerator stack divided by the mass of the pollutant in the waste fed to the incinerator.

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

(3) ~~(2)~~"Construction and demolition waste" means wood, paper, and other combustible waste resulting from construction and demolition projects except for hazardous waste and asphaltic material.

(4) ~~(3)~~"Hazardous waste incinerator" means an incinerator regulated under 15A NCAC 13A .0001 through .0014, 40 CFR 264.340 to 264.351, Subpart O, or 265.340 to 265.352, Subpart O.

(5) ~~(4)~~"Medical waste incinerator" means any incinerator regulated under Section 15A NCAC 13B .1207(3).

(6) ~~(5)~~"Municipal solid waste incinerator" means an incinerator as defined at 40 CFR 60.51a that burns municipal-type solid waste of which at least 95 percent by weight is generated off-site and that has a capacity of at least one ton per hour, except that boilers shall not be considered part of this definition.

(7) ~~(6)~~"Municipal-type solid waste" means solid waste defined at 40 CFR 60.51a.

(8) "POTW" means a publicly owned treatment works as defined in 40 CFR 501.2.

(9) "Sewage sludge incinerator" means any incinerator regulated under 40 CFR Part 503, Subpart E.

(10) ~~(7)~~"Sludge incinerator" means any incinerator regulated under Paragraph (a)(4) of Rule .0525 of this Subchapter but not under 40 CFR Part 503, Subpart E.

(11) "Total hydrocarbons" means the organic compounds in the stack exit gas from a sewage sludge incinerator measured using a flame ionization detection instrument referenced to propane.

~~(b) The version of the Code of Federal Regulations incorporated in this Rule is that of February 15, 1991, and does not include any subsequent amendments or editions to the referenced material.~~

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

.1203 TEST METHODS AND PROCEDURES

(a) The test methods and procedures described in Rule .0501 of this Subchapter and in 40 CFR Part 60 Appendix A and 40 CFR Part 61 Appendix B shall be used to determine compliance with emission rates. The test method for determining metals emissions from stationary combustion sources, commonly called Method 5 (interim), published by the U.S. Environmental Protection Agency on August 28, 1989, shall be used to determine emission rates for metals. Method 5 (interim) shall be used to sample for chromium(VI), and SW 846 Method 0013 ~~NIOSH Method 7600~~ shall be used for the analysis. A copy of Method 5 (interim) and SW 846 Method 0013 ~~NIOSH Method 7600~~ may be obtained from the North Carolina Division of Environmental Management.

(b) The Director may require the owner or operator to test his incinerator to demonstrate compliance with the emission standards in Rule .1205 of this Section.

(c) For the emission standards in Rule .1205(b)(1), (b)(2), (f), and (g) of this Section,

compliance shall be determined by averaging emissions over a one-hour period.

~~(d) The Code of Federal Regulations and NIOSH method in this Rule are adopted by reference in accordance with G.S. 150B-14(c).~~

(d) The owner or operator of a sewage sludge incinerator shall perform testing to determine pollutant control efficiencies of any pollution control equipment and obtain information on operational parameters, including combustion temperature, to be placed in an air quality permit.

(e) Referenced document SW-846 "Test Methods for Evaluating Solid Waste", Third Edition, cited by this Rule is hereby incorporated by reference and does not include subsequent amendments or editions. A copy of this document is available for inspection at the North Carolina Division of Environmental Management Library located at 512 North Salisbury Street, Raleigh, NC 27603. Copies of this document may be obtained through the US Government Printing Office, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954, or by calling (202) 783-3238. The cost of this document is three hundred nineteen dollars ($319.00).

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

.1204 REPORTING AND RECORDKEEPING

(a) The reporting and recordkeeping requirements of Rule .1105 of this Subchapter shall apply to all incinerators in addition to any reporting and recordkeeping requirements that may be contained in any other rules.

(b) The owner or operator of an incinerator shall maintain and operate a continuous temperature measuring and recording device for the primary chamber and, where there is a secondary chamber, for the secondary chamber. The owner or operator of an incinerator that has installed air pollution abatement equipment to reduce emissions of hydrogen chloride shall install, operate, and maintain continuous monitoring equipment to measure pH for wet scrubber systems and rate of alkaline injection for dry scrubber systems. The Director shall require the owner or operator of an incinerator with a permitted charge rate of 750 pounds per hour or more to install, operate, and maintain continuous monitors for oxygen or for carbon monoxide or both as he deems appropriate. The Director may require the owner or operator of an incinerator with a permitted charge rate of less than 750 pounds per hour to install, operate, and maintain monitors for oxygen or for carbon monoxide or both as he deems appropriate.

(c) In addition to the requirements of Paragraphs (a) and (b) of this Rule, the owner or operator of a sewage sludge incinerator shall:

(1) install, operate, and maintain, for each incinerator, continuous emission monitors to determine the following:

(A) total hydrocarbon concentration of the incinerator stack exit gas in accordance with 40 CFR 503.45(a) unless the requirements for continuously monitoring carbon monoxide as provided in 40 CFR 503.40(c) are satisfied;

(B) oxygen concentration of the incinerator stack exit gas; and

(C) moisture content of the incinerator stack exit gas;

(2) monitor the concentrations of beryllium and mercury from the sludge fed to the incinerator at least as frequently as required under Rule .0525 of this Subchapter but in no case less than once per year;

(3) monitor the concentrations of arsenic, cadmium, chromium, lead, and nickel in the sewage sludge fed to the incinerator at least as frequently as required under 40 CFR 503.46(a)(2) and (3);

(4) maintain records of all material required under Rule .1203 and .1204 of this Section in accordance with 40 CFR 503.47; and

(5) for class I sludge management facilities (as defined in 40 CFR 503.9), POTWs (as defined in 40 CFR 501.2) with a design flow rate equal to or greater than one million gallons per day, and POTWs that serve a population of 10,000 people or greater, submit the information recorded in Subparagraph (c)(4) of this Rule to the Director on or before February 19 of each year.

(d) ~~(c)~~All monitoring devices and systems required by this Rule shall be subject to a quality assurance program approved by the Director. Such quality assurance program shall include procedures and frequencies for calibration, standards traceability, operational checks, maintenance, auditing, data validation, and a schedule for implementing the quality assurance program.

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

215.107(a)(4),(5).

.1205 EMISSION STANDARDS

(a) The emission standards in this Rule apply to all incinerators except where Rule .0524 or .0525 of this Subchapter applies except that Paragraphs (i)(2) and (4) of this Rule shall control in any event.

(b) Particulate matter. Hazardous waste incinerators shall comply with Subparagraph (3) of this Paragraph. Conical incinerators covered by Rule .0523 of this Subchapter shall comply with that Rule instead of this Paragraph. All other incinerators shall comply with one of the following emission standards for particulate matter:

(1) The emission of particulate matter from any stack or chimney of an incinerator shall not exceed:

Refuse Charge In Lb/Hour	Allowable Emission Rate For Particulate Matter In Lb/Hour
0 to 100	0.2
200	0.4
500	1.0
1,000	2.0
2,000 and Above	4.0

For a refuse charge between any two consecutive rates stated in the preceding table, the allowable emissions rate for particulate matter shall be calculated by the equation E=0.002P. E=allowable emission rate for particulate matter in lb/hour. P=refuse charge in lb/hour.

(2) Instead of meeting the standards in Paragraph (b)(1) of this ~~Regulation~~ Rule, the owner or operator of an incinerator may choose to limit particulate emissions from the incinerator to 0.08 grains per dry standard cubic foot corrected to 12 percent carbon dioxide. In order to choose this option, the owner or operator of the incinerator shall demonstrate that the particulate ambient air quality standards will not be violated. To correct to 12 percent carbon dioxide, the measured concentration of particulate matter is multiplied by 12 and divided by the measured percent carbon dioxide.

(3) Hazardous waste incinerators shall meet the particulate matter requirements of 40 CFR 264.343(c).

(c) Sulfur dioxide. Incinerators shall comply with Rule .0516 of this Subchapter.

(d) Visible emissions. Incinerators shall comply with Rule .0521 of this Subchapter.

(e) Odorous emissions. Incinerators shall comply with Rule .0522 of this Subchapter.

(f) Hydrogen chloride. Except for hazardous waste incinerators, emissions of hydrogen chloride from an incinerator shall not exceed four pounds per hour unless it is reduced by at least 90 percent by weight or to no more than 50 parts per million by volume corrected to seven percent oxygen (dry basis). Hazardous waste incinerators shall meet the hydrogen chloride emissions requirements of 40 CFR 264.343(b).

(g) Mercury emissions. Mercury emissions from sludge incinerators and sewage sludge incinerators are regulated under 15A NCAC 2D .0525(a)(4) ~~of this Subchapter~~. Emissions of mercury and mercury compounds from the stack or chimney of a municipal solid waste incinerator shall not exceed 0.29 pounds per hour. Emissions of mercury and mercury compounds from the stack or chimney of a hazardous waste incinerator, medical waste incinerator, and any other type incinerator shall not exceed 0.032 pounds per hour.

(h) Beryllium Emissions. Beryllium emissions from sludge incinerators and sewage sludge incinerators shall comply with 15A NCAC 2D .0525(a)(2).

(i) Lead Emissions. The daily concentration of lead in sewage sludge fed to a sewage sludge incinerator shall meet the requirements specified in 40 CFR 503.43(c).

(j) Other Metal Emissions. The daily concentration of arsenic, cadmium, chromium, and nickel in sewage sludge fed to a sewage sludge incinerator shall meet the requirements specified in 40 CFR 503.43(d).

(k) ~~(h)~~The owner or operator of an incinerator shall demonstrate compliance with Section .1100 of this Subchapter in accordance with 15A NCAC 2H .0610.

(l) ~~(i)~~Ambient standards.

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

(A) arsenic and compounds 2.3×10^{-7}

(B) beryllium and compounds 4.1×10^{-6}

(C) cadmium and compounds $5.5x10^{-6}$
(D) chromium (VI) and compounds $8.3x10^{-8}$

(2) When Subparagraph (1) of this Paragraph and either Rule .0524 or .0525 of this Subchapter regulate the same pollutant, the more restrictive provision for each pollutant shall apply, notwithstanding provisions of Rule .0524 or .0525 of this Subchapter to the contrary.

(3) The owner or operator of a facility with incinerators shall demonstrate compliance with the ambient standards in Parts (1)(A) through (D) of this Paragraph by following the procedures set out in Rule .1106 of this Subchapter. Modeling demonstrations shall comply with the requirements of Rule .0533 of this Subchapter.

(4) The emission rates computed or used under Subparagraph (3) of this Paragraph that demonstrate compliance with the ambient standards under Subparagraph (1) of this Paragraph shall be placed in the permit for the facility with incinerators as their allowable emission limits unless Rule .0524 or .0525 of this Subchapter requires more restrictive rates.

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

.1206 OPERATIONAL STANDARDS

(a) The operational standards in this Rule do not apply to incinerators where operational standards in Rule .0524 or .0525 of this Subchapter apply.

(b) Hazardous waste incinerators. Hazardous waste incinerators shall comply with 15A NCAC 13A .0001 through .0014, which are administered and enforced by the Division of Solid Waste Management.

(c) Medical waste incinerators. Medical waste incinerators shall meet the following requirements:

(1) The primary chamber temperature shall be at least 1200°F.

(2) The secondary chamber temperature shall be at least 1800°F.

(3) Gases generated by the combustion shall be subjected to a minimum temperature of 1800°F for a period of not less than one second.

Medical waste incinerators shall comply with 15A NCAC 13B .1207(3) and any other pertinent parts of 15A NCAC 13B .1200, which are administered and enforced by the Division of Solid Waste Management.

(d) Municipal solid waste incinerators. Municipal solid waste incinerators shall meet the following requirements:

(1) The concentration of carbon monoxide at the combustor outlet shall not exceed the concentration in Table 1 of Paragraph (a) of 40 CFR 60.36a. The incinerator technology named in this table is defined under 40 CFR 60.51a.

(2) The temperature of the exhaust gas entering the particulate matter control device shall not exceed 450°F.

(3) Gases generated by the combustion shall be subjected to a minimum temperature of 1800°F for a period of not less than one second.

(e) Sludge incinerators. The combustion temperature in a sludge incinerator shall not be ~~greater than 1650°F or~~ less than 1200°F. The maximum oxygen content of the exit gas from a sludge incinerator stack shall be:

(1) 12 percent (dry basis) for a multiple hearth ~~sewage~~ sludge incinerator,

(2) seven percent (dry basis) for a fluidized bed ~~sewage~~ sludge incinerator,

(3) nine percent (dry basis) for an electric ~~sewage~~ sludge incinerator, and

(4) 12 percent (dry basis) for a rotary kiln ~~sewage~~ sludge incinerator.

(f) Sewage sludge incinerators.

(1) The maximum combustion temperature for a sewage sludge incinerator shall be placed in the permit and based on information obtained during the performance test of the sewage sludge incinerator to determine pollutant control efficiencies.

(2) The values for the operational parameters for the sewage sludge incinerator air pollution control device(s) shall be placed in the permit and be based on information obtained during the performance test of the sewage sludge incinerator to determine pollutant control efficiencies.

(3) The monthly average concentration for total hydrocarbons, or carbon monoxide as provide in 40 CFR 503.40(c), in the exit gas from a sewage sludge incinerator stack, corrected to zero percent moisture and seven percent oxygen as specified in 40 CFR 503.44,

shall not exceed 100 parts per million on a volumetric basis using the continuous emission monitor required in Subparagraph .1204(c)(1).

(g) ~~(f)~~Crematory incinerators. Gases generated by the combustion shall be subjected to a minimum temperature of 1600°F for a period of not less than one second.

(h) ~~(g)~~Other incinerators. All incinerators not covered under Paragraphs (a) through ~~(f)~~ (g) of this Rule shall meet the following requirement: Gases generated by the combustion shall be subjected to a minimum temperature of 1800°F for a period of not less than one second. The temperature of 1800°F shall be maintained at least 55 minutes out of each 60-minute period, but at no time shall the temperature go below 1600°F.

(i) ~~(h)~~Except during start-up where the procedure has been approved in accordance with Rule .0535(g) of this Subchapter, waste material shall not be loaded into any incinerators covered under Paragraphs (c), (d), ~~(f)~~ (g), or ~~(g)~~ (h) when the temperature is below the minimum required temperature. Start-up procedures may be determined on a case-by-case basis in accordance with Rule .0535(g) of this Subchapter. Incinerators covered under Paragraphs (c), (d), ~~(f)~~ (g), and ~~(g)~~ (h) shall have automatic auxiliary burners that are capable of maintaining the required minimum temperature in the secondary chamber excluding the heat content of the wastes.

~~(i) The version of the Code of Federal Regulations incorporated in this Rule is that of February 15, 1991, and does not include any subsequent amendments or additions to the referenced material.~~

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

.1209 COMPLIANCE SCHEDULES

(a) The owner or operator of an incinerator subject to Paragraphs (f), (g), ~~(h)~~ (k) or ~~(i)~~ (l) of Rule .1205 of this Section or subject to Paragraphs (d) through ~~(g)~~ (h) of Rule .1206 of this Section except medical waste incinerators and hazardous waste incinerators that:

(1) begins construction after September 30, 1991, shall be in compliance with Rule .1205 of this Section and Paragraphs (d) through ~~(h)~~ (i) of Rule .1206 of this Section before beginning operation.

(2) begins construction or is in operation before October 1, 1991, shall adhere to the following increments of progress and schedules:

(A) Documentation that the incinerator meets the requirements of Paragraphs (f), (g), ~~(h)~~ (k), and ~~(i)~~ (l) of Rule .1205 of this Section and Paragraphs (d) through ~~(h)~~ (i) of Rule .1206 of this Section or an air permit application including final plans and a compliance schedule shall be submitted before:

(i) April 1, 1992, for incinerators at plant sites with an incinerator capacity of 1000 pounds per hour or more;

(ii) October 1, 1992, for incinerators at plant sites with an incinerator capacity of less than 1000 pounds per hour but 400 pounds per hour or more;

(iii) April 1, 1993, for incinerators at plant sites with an incinerator capacity of less than 400 pounds per hour but 200 pounds per hour or more;

(iv) October 1, 1993, for plant sites with an incinerator capacity of less than 200 pounds per hour.

(B) The compliance schedule shall contain the following increments of progress:

(i) a date by which contracts for the emission control system or process equipment shall be awarded or orders shall be issued for purchase of component parts;

(ii) a date by which on-site construction or installation of the emission control or process equipment shall begin;

(iii) a date by which on-site construction or installation of the emission control or process equipment shall be completed; and

(iv) a date by which final compliance shall be achieved.

(C) The final compliance date under Paragraph (a)(2)(B) of this Rule shall not be later than:

(i) April 1, 1994, for incinerators at plant sites with an incinerator capacity of 1000 pounds per hour or more;

(ii) October 1, 1994, for incinerators at plant sites with an incinerator capacity of less than 1000 pounds per hour but 400 pounds per hour

or more;

(iii) April 1, 1995, for incinerators at plant sites with an incinerator capacity of less than 400 pounds per hour but 200 pounds per hour or more;

(iv) October 1, 1995, for incinerators at plant sites with an incinerator capacity of less than 200 pounds per hour.

(b) The owner or operator of a medical waste incinerator that:

(1) begins construction after September 30, 1991, shall be in compliance with Rule .1205 of this Section and Paragraphs (c) and ~~(h)~~ (i) of Rule .1206 of this Section before beginning operation;

(2) begins construction or is in operation before October 1, 1991, shall adhere to the following increments of progress and schedules:

(A) Documentation that the incinerator meets the requirements of Paragraphs (f), (g), ~~(h)~~ (k), and ~~(i)~~ (l) of Rule .1205 of this Section and Paragraph (c) of Rule .1206 of this Section or an air permit application including final plans and a compliance schedule shall be submitted following the schedule set out in Paragraph (a)(2)(A) of this Rule;

(B) The compliance schedule shall contain the same increments of progress as required by Paragraph (a)(2)(B) of this Rule;

(C) Final compliance shall be achieved no later than January 1, 1995.

(c) The owner or operator of a hazardous waste incinerator that:

(1) begins construction after September 30, 1991, shall be in compliance with Rule .1205 of this Section before beginning operation;

(2) begins construction or is in operation before October 1, 1991, shall adhere to the following increments of progress and schedules:

(A) Documentation that the incinerator meets the requirements of Rule .1205 of this Section or documentation that a permit application has been filed with the Division of Solid Waste Management to make necessary modifications to bring the incinerator into compliance with Rule .1205 of this Section and a compliance schedule shall be submitted before April 1, 1992;

(B) The compliance schedule shall contain the date by which a permit application shall be submitted to the Division of Environmental Management and the increments of progress required by Paragraph (a)(2)(B) of this Rule;

(C) Final compliance shall be achieved within two years after receipt of a permit from the Division of Solid Waste Management, but before October 1, 1995.

(d) The owner or operator of a sewage sludge incinerator shall:

(1) be in compliance with Rule .1205 and .1206 of this Section before beginning operation. When compliance with the standards requires the construction of new pollution control facilities, compliance with the standards shall be achieved as expeditiously as practicable, but in no case later than February 19, 1995.

(2) comply with the monitoring and recordkeeping requirements for total hydrocarbons in the exit gas from a sewage sludge incinerator before beginning operation or February 19, 1995, if compliance with the operational standard for total hydrocarbons in this Section requires construction of new pollution control facilities.

(3) submit a permit application to certify compliance with this Section by August 1 1995.

(e) ~~(d)~~The owner or operator shall certify to the Director within days after the deadline, for each increment of progress, whether the required increment of progress has been met.

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

SECTION .1400 - NITROGEN OXIDES

.1401 DEFINITIONS

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

(1) "Acid rain program" means the federal program for the reduction of acid rain including 40 CFR Parts 72, 75, 76, and 77.

(2) "Averaging set of sources" means all the stationary sources included in an emissions averaging plan in accordance to Rule .1410 of this Section.

(3) "Averaging source" means a stationary source that is included in an emissions averaging plan in accordance to Rule .1410 of this Section except during start-up and shut-down.

(4) "Emergency generator" means a stationary internal combustion engine used to generate electricity only during the loss of primary power at the facility that is beyond the control of the owner or operator of the facility.

(5) "Excess emissions" means an emission rate that exceeds the applicable RACT limitation or standard, except during startup and shutdown operations.

(6) "Lean-burn internal combustion engine" means a spark ignition internal combustion engine originally designed and manufactured to operate with an exhaust oxygen concentration greater than one percent.

(7) "NO_x" means nitrogen oxides.

(8) "Potential emissions" means the quantity of NO_x which would be emitted at the maximum capacity of a stationary source to emit NO_x under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit NO_x shall be treated as a part of its design if the limitation is federally enforceable. Such physical or operational limitations include air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed.

(9) "RACT limitation" means the numerical NO_x emission limitation established in accordance with this Section to satisfy the requirements for RACT.

(10) "RACT standard" means the method, other than the establishment of a RACT limitation, established in accordance with this Section to satisfy the requirements for RACT.

(11) "Reasonable assurance" means a demonstration to the Director that a method, procedure, or technique is possible and practical for a source or facility under the expected operating conditions.

(12) "Reasonably Available Control Technology" or "RACT" means the lowest emission limitation for NO_x that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility.

(13) "Reasonable effort" means the proper installation of technology approved by the Director to be capable of meeting the requirements for RACT and the optimization of such technology, in accordance to the manufacturer's recommendations or other guidance approved by the Director, for a period of not less than six months, in an effort to meet the applicable RACT limitation for a source.

(14) "Rich-burn internal combustion engine" means a spark ignition internal combustion engine originally designed and manufactured to operate with an exhaust oxygen concentration less than or equal to one percent.

(15) "Shutdown" means the cessation of operation of a source or emission control equipment.

(16) "Startup" means the setting in operation of a source or emission control equipment.

(17) "Stationary internal combustion engine" means an internal combustion engine that is not self propelled; however, it may be mounted on a vehicle for portability.

(18) "Utility boiler" means a steam generating unit that is used for the generation of electricity for commercial use.

Statutory Authority G.S. 143-215.3(a)(1).

.1402 APPLICABILITY

(a) With the exceptions stated in Paragraph (c) of this Rule, this Section shall apply, in accordance with Rule .1403 of this Section, to all sources of nitrogen oxides located in any of the following areas, and in that area only, when the Director notices in the North Carolina Register that the area is in violation of the ambient air quality standard for ozone:

(1) Charlotte/Gastonia, consisting of Mecklenburg and Gaston Counties;

(2) Greensboro/Winston-Salem/High Point, consisting of Davidson, Forsyth, and Guilford Counties and the part of Davie County bounded by the Yadkin River, Dutchmans Creek, North Carolina Highway 801, Fulton Creek and back to Yadkin River to the extent needed as

determined through photochemical grid modeling; or

(3) Raleigh/Durham, consisting of Durham and Wake Counties and Dutchville Township in Granville County to the extent needed as determined through photochemical grid modeling.

At least one week before the scheduled publication date of the North Carolina Register containing the Director's notice of violation, the Director shall send written notification to all permitted facilities within the area of violation that are, or may be, subject to the requirements of this Section as a result of the violation. Violations of the ambient air quality standard for ozone shall be determined in accordance with 40 CFR 50.9.

(b) This Section does not apply to:

(1) any sources not required to obtain an air permit under 15A NCAC 2Q .0102;

(2) any incinerator, or thermal or catalytic oxidizer used primarily for the control of air pollution;

(3) emergency generators;

(4) facilities with a federally enforceable potential to emit nitrogen oxides of:

(A) less than 100 tons per year; and

(B) less than 560 pounds per calendar day from April 1 through October 31.

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

.1403 COMPLIANCE SCHEDULES

(a) This Rule applies to all sources covered by Paragraph (a) or (b) of Rule .1402 of this Section.

(b) The owner or operator of a source subject to this Rule because of the applicability of Paragraph (a) or (b) of Rule .1402 of this Section, shall adhere to the following increments of progress and schedules:

(1) If compliance with this Section is to be achieved through a demonstration to certify compliance without source modification:

(A) The owner or operator shall notify the Director in writing within six months after the Director's notice in the North Carolina Register that the source is in compliance with the applicable RACT limitation or RACT standard;

(B) The owner or operator shall perform any required testing within 12 months after the Director's notice in the North Carolina Register to demonstrate compliance with the applicable RACT limitation in accordance with Rule .1404 of this Section; and

(C) The owner or operator shall implement any required recordkeeping and reporting requirements within 12 months after the Director's notice in the North Carolina Register to demonstrate compliance with the applicable RACT standard in accordance with Rule .1404 of this Section.

(2) If compliance with this Section is to be achieved through the installation of combustion modification technology or other source modification:

(A) The owner or operator shall submit a permit application and a compliance schedule within six months after the Director's notice in the North Carolina Register.

(B) The compliance schedule shall contain the following increments of progress:

(i) a date by which contracts for installation of the modification shall be awarded or orders shall be issued for purchase of component parts;

(ii) a date by which installation of the modification shall begin;

(iii) a date by which installation of the modification shall be completed; and

(iv) if the source is subject to a RACT limitation, a date by which compliance testing shall be completed.

(C) Final compliance shall be achieved within three years after the Director's notice in the North Carolina Register unless the owner or operator of the source petitions the Director for an alternative RACT limitation in accordance with Rule .1412 of this Section. If such a petition is made, final compliance shall be achieved within four years after the Director's notice in the North Carolina Register.

(3) If compliance with this Section is to be achieved through the implementation of an emissions averaging plan as provided for in Rule .1410 of this Section:

(A) The owner or operator shall abide by the applicable requirements of

Subparagraphs (b)(1) and (b)(2) of this Rule for certification or modification of each source to be included under the averaging plan;

(B) The owner or operator shall submit a plan to implement an emissions averaging plan in accordance with Rule .1410 of this Section within six months after the Director's notice in the North Carolina Register;

(C) Final compliance shall be achieved within one year after the Director's notice in the North Carolina Register unless implementation of the emissions averaging plan requires the modification of one or more of the averaging sources. If modification of one or more of the averaging sources is required, final compliance shall be achieved within three years;

(4) If compliance with this Section is to be achieved through the implementation of seasonal fuel switching program as provided for in Rule .1411 of this Section:

(A) The owner or operator shall make all necessary modifications in accordance with Subparagraph (b)(2) of this Rule.

(B) The owner or operator shall include a plan for complying with the requirements of Rule .1411 of this Section with the permit application required under Part (A) of this Subparagraph.

(C) Final compliance shall be achieved within three years after the Director's notice in the North Carolina Register.

(c) The owner or operator shall certify to the Director, within five days after the deadline for each increment of progress in Paragraph (b) of this Rule, whether the required increment of progress has been met.

(d) With such exception as the Director may allow, the owner or operator of any source subject to this Rule shall continue to comply with any applicable requirements for the control of nitrogen oxides until such time as the source complies with applicable rules in this Section or until the final compliance date set forth in this Rule, which ever comes first. The Director may allow the following exceptions:

(1) testing of combustion control modifications; or

(2) adding or testing equipment or methods for the application of RACT.

(e) The owner or operator of any new source of nitrogen oxides not in existence or under construction as of the date the Director notices in the North Carolina Register in accordance with Paragraph (a) or (b) of Rule .1402 of this Section, shall comply with all applicable rules in this Section upon start-up of the source.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.68; 143-215.107(a)(5).

.1404 RECORDKEEPING: REPORTING: MONITORING:

(a) The owner or operator of any source subject to the requirements of this Section shall maintain all records necessary for determining compliance with all applicable RACT limitations and standards of this Section for at least five years after.

(b) When requested by the Director, the owner or operator of any source subject to the requirements of this Section shall submit to the Director any information necessary to determine the compliance status of an affected source.

(c) Within 30 days of becoming aware of an occurrence of excess emissions from a source subject to the requirements of this Section, the owner or operator shall notify the Director and provide the following information:

(1) the name and location of the facility;

(2) the source that caused the excess emissions;

(3) the time and date the excess emissions were discovered;

(4) the cause and duration of the excess emissions;

(5) for sources subject to a RACT limitation, the estimated rate of emissions and the data and calculations used to determine the magnitude of the excess emissions; and

(6) the corrective actions and schedule proposed to correct the conditions causing the excess emissions.

(d) When required, the owner or operator of a source subject to the requirements of this Section shall operate and maintain a continuous emission monitoring system in accordance with 40 CFR, Part 60, Appendix F.

(e) Data from continuous emissions monitoring systems shall be available for at least 95 percent of the time the source is operated for the applicable averaging period.

(f) When compliance with a RACT limitation established for a source subject to the requirements of this Section is determined using a continuous

emissions monitoring system, the following averaging times shall apply:

(1) 24 hour rolling average computed and recorded each hour from April 1 through October 31; and

(2) 30 day rolling average computed and recorded each day at all other times.

(g) When compliance with a RACT limitation established for a source subject to the requirements of this Section is not determined using a continuous emissions monitoring system, compliance shall be determined using source testing in accordance with 40 CFR, Part 60, Appendix A, or any equivalent test method, approved by the Director. Where source testing is used to determine compliance with a RACT limitation established in accordance with this Section, testing shall be conducted at least annually in accordance with Rule .1415 of this Section.

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

.1405 CIRCUMVENTION

(a) An owner or operator subject to this Section shall not build, erect install or use any article, machine, equipment, process, or method the use of which conceals an emission which would otherwise constitute a violation of an applicable rule.

(b) Paragraph (a) of this Rule includes the use of gaseous diluent to achieve compliance and the piecemeal carrying out of an operation to avoid coverage by a rule that applies only to operations larger than a specified size.

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

.1406 UTILITY BOILERS

(a) The owner or operator of an utility boiler shall apply RACT according to Paragraph (b) of this Rule unless the owner or operator chooses the option of:

(1) emissions averaging under Rule .1410 of this Section, or

(2) seasonal fuel switching under Rule .1411 of this Section.

(b) Emissions of NO_x from an utility boiler shall not exceed the following RACT limitations for NO_x:

MAXIMUM ALLOWABLE NO_x EMISSION RATES FOR UTILITY BOILERS (POUNDS PER MILLION BTU)

	Firing Method	
Fuel/Boiler Type	Tangential	Wall
Coal (Dry Bottom)	0.45	0.50
Oil and/or Gas	0.20	0.30

(c) If necessary, the owner or operator shall install combustion modification technology, or other NO_x control technology approved by the Director, in order to comply with the applicable RACT limitation set forth in Paragraph (b) of this Rule. If, after reasonable effort as defined in Rule .1401 of this Section, the emissions from a utility boiler are greater than the applicable RACT limitation, or the requirements of this Rule is not RACT for the particular utility boiler, the owner or operator may petition the Director for an alternative RACT limitation or standard in accordance with Rule .1412 of this Section.

(d) Compliance with the RACT limitation established for a utility boiler shall be determined using a continuous emissions monitoring system.

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

.1407 NON-UTILITY BOILERS AND PROCESS HEATERS

(a) The owner or operator of a non-utility boiler or process heater subject to the requirements of this Section as determined by Rule .1402 of this Section with a maximum heat input rate of less than or equal to 50 million Btu per hour shall apply RACT through an annual tune up performed in accordance with Rule .1414 of this Section. The owner or operator of a non-utility boiler or process heater subject to the requirements of this Paragraph shall maintain records of all tune ups performed for each source in accordance with Rule .1404 of this Section.

(b) The owner or operator of a non-utility boiler or process heater with a maximum heat input rate less than or equal to 250 million Btu per hour but greater than 50 million Btu per hour shall apply RACT by either:

(1) installation of combustion modification technology or other NO_x control technology approved by the Director and maintenance, including annual tune-ups and recordkeeping; or

(2) demonstration through annual source testing to the satisfaction of the Director that the source complies with the applicable RACT limitation listed in Subparagraph (c) of this Rule.

(c) Unless the owner or operator chooses the option of:

(1) emissions averaging under Rule .1410 of this Section, or

(2) seasonal fuel switching under Rule .1411 of this Section,

emissions of NO_x from a non-utility boiler or process heater with a maximum heat input rate greater than 250 million Btu per hour shall not exceed the following RACT limitations:

MAXIMUM ALLOWABLE NO_x EMISSION RATES FOR NON-UTILITY BOILERS (POUNDS PER MILLION BTU)

	Firing Method		
Fuel/Boiler Type	Tangential	Wall	Stoker or Other
Coal (Wet Bottom)	1.0	1.0	N/A
Coal (Dry Bottom)	0.45	0.50	0.40
Wood or Refuse	0.20	0.30	0.20
Oil and/or Gas	0.20	0.30	0.20

If necessary, the owner or operator shall install combustion modification technology, or other NO_x control technology approved by the Director, in an effort to comply with the applicable RACT limitation set forth in this Paragraph. If, after reasonable effort as defined in Rule .1401 of this Section, the emissions from a non-utility boiler or process heater are greater than the applicable RACT limitation, or the requirements of this Rule is not RACT for the particular non-utility boiler or process heater, the owner or operator may petition the Director for an alternative RACT limitation or standard in accordance with Rule .1412 of this Section.

(d) Compliance with the RACT limitation established for a non-utility boiler or process heater shall be determined:

(1) using a continuous emissions monitoring system for non-utility boilers or process heaters with a maximum heat input rate greater than 250 million Btu per hour; or

(2) using annual source testing in accordance with Rule .1415 of this Section for non-utility boilers or process heaters with a maximum heat input rate less than or equal to 250 million Btu per hour that elect to satisfy RACT through Subparagraph (b)(2) of this Rule.

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

.1408 STATIONARY GAS TURBINES

(a) The owner or operator of a stationary gas turbine with a heat input rate greater than 100 million Btu/hr and subject to the requirements of this Section as determined by Rule .1402 of this Section shall apply RACT according to Paragraph (b) of this Rule unless the owner or operator chooses the option emissions averaging under Rule .1410 of this Section.

(b) Emissions of NO_x from a stationary gas turbine shall not exceed 75 ppm by volume corrected to 15 percent oxygen for gas-fired turbines and 95 ppm by volume corrected to 15 percent oxygen for oil-fired turbines.

(c) If necessary, the owner or operator shall install combustion modification technology, or other NO_x control technology approved by the Director, in order to comply with the applicable RACT limitation set forth in this Paragraph. If, after reasonable effort as defined in Rule .1401 of this Section, the emissions from a stationary gas turbine are greater than the applicable RACT limitation, or the requirements of this Rule is not RACT for the particular stationary gas turbine, the owner or operator may petition the Director for an alternative RACT limitation or standard in accordance with Rule .1412 of this Section.

(d) Compliance with the RACT limitation established for a stationary gas turbine shall be determined:

(1) using a continuous emissions monitoring system, or NO_x emission estimation protocol as allowed under the 40 CFR Part 75 Appendix E for compliance with the Acid Rain Program where Administrator is replace by Director and the correlation for NO_x emission rate is performed for the NO_x concentration at 15 percent oxygen, for stationary gas turbines with a maximum heat input rate greater than 250 million Btu per hour; or

(2) using annual source testing in accordance with Rule .1415 of this Section for stationary gas turbines with a maximum heat input rate less than or equal to 250 million Btu per hour.

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

.1409 STATIONARY INTERNAL COMBUSTION ENGINES

(a) The owner or operator of a stationary internal combustion engine having a rated capacity of 650 horsepower or more and subject to the requirements of this Section as determined by Rule .1402 of this Section shall apply RACT in accordance with Paragraph (b) of this Rule.

(b) Emissions of NO_x from a stationary internal combustion engine shall not exceed the following RACT limitations:

MAXIMUM ALLOWABLE NO_x EMISSION RATES FOR STATIONARY INTERNAL COMBUSTION ENGINES (GRAMS PER HORSEPOWER HOUR)

Engine Type	Fuel Type	Limitation
Rich-burn	Gaseous	2.5
Lean-burn	Gaseous	2.5
Compression Ignition	Liquid	8.0

(c) If necessary, the owner or operator shall install NO_x control technology approved by the Director in order to comply with the applicable RACT limitation set forth in Paragraph (b) of this Rule. If, after reasonable effort as defined in Rule .1401 of this Section, the emissions from a stationary internal combustion engine are greater than the applicable RACT limitation, or the requirements of this Rule is not RACT for the particular stationary internal combustion engine, the owner or operator shall petition the Director for an alternative RACT limitation or standard in accordance with Rule .1412 of this Section.

(d) Compliance with the RACT limitation established for a stationary internal combustion engine shall be determined using annual source testing.

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

.1410 EMISSIONS AVERAGING

(a) With the exceptions in Paragraph (c) of this Rule, the owner or operator of a facility with two or more sources with comparable stack height subject to the requirements of this Section as determined by Rule .1402 of this Section may elect to apply RACT through the implementation of an emissions averaging plan in accordance with Paragraph (b) of this Rule, provided the total NO_x emissions from the averaged set of sources based on the total heat input are equal to or less than the NO_x emissions that would have occurred if each source complied with the applicable RACT limitation.

(b) To request approval of an emissions averaging plan to comply with the requirements of this Section, the owner or operator of a facility shall submit a written request to the Director including the following information:

(1) the name and location of the facility;

(2) information identifying each source to be included under the averaging plan;

(3) the maximum heat input rate for each source;

(4) the fuel or fuels combusted in each source;

(5) the maximum allowable NO_x emission rate proposed for each averaging source;

(6) a demonstration that the averaging set of sources, operating together at the maximum daily heat input rate, will be less than or equal to the NO_x emissions if each source complied with the applicable RACT limitation;

(7) an operation plan to provide reasonable assurance that the averaging set of sources will satisfy Subparagraph (5) of this Paragraph when the set is not operated at the maximum daily heat input rate; and

(8) the method to be used to determine the actual NO_x emissions from each source.

(c) Sources that have obtained an alternative RACT limitation as provided by Rule .1412 of this Section or that apply RACT through seasonal fuel switching as provided by Rule .1411 of this Section are not eligible to participate in an emissions averaging plan under this Rule.

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

.1411 SEASONAL FUEL SWITCHING

(a) The owner or operator of a utility or non-utility coal-fired boiler subject to the requirements of this Section as determined by Rule .1402 of this Section may elect to apply RACT through the seasonal combustion of natural gas in accordance with Paragraph (b) of this Rule. This option is not available to a boiler that used natural gas as its primary fuel in 1990 or has used natural gas as its primary fuel during any year since 1990. Compliance with this Section in accordance with this Rule does not remove or reduce any applicable requirement of the Acid Rain Program.

(b) To comply with the requirements of this Section through the seasonal combustion of natural

gas, the owner or operator shall submit to the Director the following information:

(1) the name and location of the facility;

(2) information identifying the source to use seasonal combustion of natural gas for compliance;

(3) the maximum heat input rate for each source;

(4) a demonstration that the source will comply the applicable RACT limitation for the combustion of coal from April 1 through October 31;

(5) a written statement from the natural gas supplier providing reasonable assurance that the fuel will be available from April 1 through October 31.

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

.1412 PETITION FOR ALTERNATIVE LIMITATIONS

(a) If the owner or operator of a source subject to the requirements of this Section as determined by Rule .1402 of this Section:

(1) cannot achieve compliance with the applicable RACT limitation after the installation and optimization of combustion modification technology or other NO_x control technology approved by the Director to satisfy the requirements for RACT, or the requirements of this Section is not RACT for the particular source; and

(2) cannot provide reasonable assurance for overall compliance at a facility through the implementation of an emissions averaging plan as provided for in Rule .1410 of this Section;

the owner or operator may petition the Director for an alternative RACT limitation in accordance with Paragraph (b) of this Rule.

(b) To petition the Director for an alternative RACT limitation, the owner or operator of the source shall submit:

(1) the name and location of the facility;

(2) information identifying the source for which an alternative RACT limitation is being requested;

(3) the maximum heat input rate for the source;

(4) the fuel or fuels combusted in the source;

(5) the maximum allowable NO_x emission rate proposed for the source;

(6) a demonstration that the source has satisfied the requirements to apply for an alternative RACT limitation under Paragraph (a) of this Rule; and

(7) a demonstration that the proposed alternative RACT limitation satisfies the requirements for RACT.

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

.1413 SOURCES NOT LISTED IN THIS SECTION

(a) The owner or operator of any source of nitrogen oxides that is not listed in this Section but is subject to the requirements of this Section as determined in Rule .1402 of this Section shall apply RACT in accordance with Paragraph (b) of this Rule.

(b) To submit a proposal to apply a RACT limitation or standard to a source of nitrogen oxides that is not listed in this Section, the owner or operator of the source shall submit:

(1) the name and location of the facility;

(2) information identifying the source for which a RACT limitation or standard is being proposed;

(3) a demonstration that shows the proposed RACT limitation or standard satisfies the requirements for RACT; and

(4) a proposal for demonstrating compliance with the proposed RACT limitation or standard.

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

.1414 TUNE-UP REQUIREMENTS

(a) When a tune-up to a combustion process is required for compliance with this Section, the owner or operator shall:

(1) inspect each burner and clean or replace any component of the burner as necessary to improve boiler efficiency;

(2) inspect the flame pattern and make any adjustments to the burner, or burners, necessary to optimize the flame pattern to minimize total emissions of NO_x and carbon monoxide;

(3) inspect the combustion control system to ensure that the air-to fuel ratio is correctly calibrated and operating properly;

(4) inspect any other component of the

boiler and make adjustments or repairs as necessary to improve boiler efficiency; and

(5) adjust the air-to-fuel ratio to minimize excess air and maximize boiler efficiency.

The owner or operator shall perform the tune-up in accordance with a unit specific protocol approved by the Director before the tune-up is performed.

(b) The owner or operator shall maintain records of tune-ups performed to comply with this Section in accordance with Rule .1404 of this Section. The following information shall be included for each source:

(1) the date and time the tune-up started and ended;

(2) the person responsible for performing the tune-up;

(3) the checklist for inspection of the burner, flame pattern, combustion control system, and all other components of the boiler identified in the protocol, noting any repairs or replacements made;

(4) the oxygen or carbon dioxide concentration of the stack gas, the carbon monoxide concentration of the stack gas or smoke spot number, stack gas temperature, and any additional information necessary to specify the operating conditions of the boiler after each adjustment for minimizing excess air; and

(5) any other information requested by the Director as a condition of approval of a RACT standard.

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

.1415 TEST METHODS AND PROCEDURES

(a) Method 7E at 40 CFR Part 60, Appendix A or other equivalent method approved by Director shall be used when source testing is used to demonstrate compliance with a RACT limitation established in accordance with this Section.

(b) When compliance with a RACT limitation established in accordance with this Section is determined using source testing, such testing shall be conducted in accordance with this Rule. The owner or operator of a source subject to the requirements of this Section shall demonstrate compliance when the Director requests such demonstration. The Director shall explain to the owner or operator the basis for requesting a demonstration of compliance and shall allow reasonable time for testing to be performed.

(c) The owner or operator shall notify the Director and obtain the Director's approval at least 21 days before beginning a test to demonstrate compliance with this Section so that the Director may observe the test. The notification required by this Paragraph shall include:

(1) a statement of the purpose of the proposed test;

(2) the location and a description of the facility where the test is to take place;

(3) the proposed test method and a description of the test procedures, equipment, and sampling points; and

(4) a schedule setting forth the dates that:

(A) the test will be conducted and data collected;

(B) the final test report will be submitted.

(d) The final test report shall be submitted to the Director no later than 45 days after the test data has been collected.

(e) The owner or operator shall be responsible for all costs associated with any tests required to demonstrate compliance with this Section.

(f) The owner or operator shall maintain records of tests performed to demonstrate compliance with this Section in accordance with Rule .1404 of this Section.

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

SECTION .1500 - TRANSPORTATION CONFORMITY

.1501 PURPOSE, SCOPE AND APPLICABILITY

(a) The purpose of this Section is to assure the conformity of transportation plans, programs, and projects that are developed, funded, or approved by the United States Department of Transportation and by metropolitan planning organizations or other recipients of funds under Title 23 U.S.C. or the Federal Transit Act (49 U.S.C. 1601 et seq.) or State or Local only sources of funds with all plans required of areas designated as nonattainment or maintenance under 40 CFR 81.334 and listed in Paragraph (b) or (c) of this Rule.

(b) This Section applies to the emissions of volatile organic compounds and nitrogen oxides in the following areas:

(1) Davidson County,

(2) Durham County,

(3) Forsyth County,
(4) Gaston County,
(5) Guilford County,
(6) Mecklenburg County,
(7) Wake County,
(8) Dutchville Township in Granville County, and
(9) that part of Davie County bounded by the Yadkin River, Dutchmans Creek, North Carolina Highway 801, Fulton Creek, and back to the Yadkin River.

(c) This Section applies to the emissions of carbon monoxide in the following areas:
(1) Durham County,
(2) Forsyth County,
(3) Mecklenburg County, and
(4) Wake County.

(d) The Section applies, in the areas identified in Paragraph (b) or (c) of this Rule for the pollutants identified in Paragraph (b) or (c) of this Rule, to the adoption, acceptance, approval, or support of transportation plans, transportation improvement programs, and FHWA/FTA projects for which conformity determinations are required under 40 CFR 51.394 and all other State or locally funded only transportation projects with such exceptions as allowed by 40 CFR 51.394(c), 51.460, or 51.462.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10).

.1502 DEFINITIONS

For the purposes of this Section, the definitions contained in 40 CFR 51.392 and the following definitions apply:

(1) "Consultation" means that one party confers with another identified party, provides all information necessary to that party needed for meaningful input, and considers and responds to the views of that party in a timely, substantive written manner prior to any final decision. At least two weeks shall be allowed to submit comments during consultation (except for notification of federal agencies and actions specified in 40 CFR 51.402 that only require notification) and such comments and written responses shall be made part of the final document.

(2) "State or local project" means any highway or transit project which is proposed to receive only funding assistance (receives no federal funding) or approval through the State or any local transportation program.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10).

.1503 TRANSPORTATION CONFORMITY DETERMINATION

(a) Conformity analyses, determinations, and redeterminations for transportation plans, transportation improvement programs, FHWA/FTA projects, and State or local projects shall be made according to the requirements of 40 CFR 51.400 and shall comply with the applicable requirements of 40 CFR 51.456 and 51.458. For the purposes of this Rule State or local projects shall be subject to the same requirements under 40 CFR Part 51 as FHWA/FTA projects.

(b) Before making a conformity determination, the metropolitan planning organizations, local transportation departments, North Carolina Department of Transportation, United States Department of Transportation, the Division of Environmental Management, local air pollution control agencies, and United States Environmental Protection Agency shall consult with each other on matters described in 40 CFR 51.402(c). Consultation shall begin as early as possible in the development of the emissions analysis used to support a conformity determination. The agency that performs the emissions analysis shall make the analysis available to the Division of Environmental Management and the general public for comments; at least two weeks shall be allowed for review and comment on the emissions analysis. The agency that performs the emissions analysis shall address all comments received and these comments and responses thereto shall be included in the final document. In the event that the Division of Environmental Management disagrees with the resolution of its comments, the conflict may be escalated to the Governor within 14 days and shall be resolved in accordance with 40 CFR 51.402(d). The 14-day appeal period shall begin when the North Carolina Department of Transportation or the metropolitan planning organization notifies the Director in writing of the resolution of the comments. Any consultation undertaken after the conformity determination is made shall include the Division of Environmental Management.

(c) The agency that performs the conformity analysis shall notify the Division of Environmental Management of:

(1) any changes in planning or analysis assumptions (including land use and vehicle miles traveled (VMT)

forecasts), and

(2) any revisions to transportation plans or transportation improvement plans that add, delete, or change projects that require a new emissions analysis (including design scope and dates).

The agency that performs the conformity analysis shall allow the Division of Environmental Management at least two weeks to review and comment on the proposed change. Comments made by the Division of Environmental Management and responses thereto made by the agency shall become part of the final planning document.

(d) Transportation plans shall satisfy the requirements of 40 CFR 51.404. Transportation plans and transportation improvement programs shall satisfy the fiscal constraints specified in 40 CFR 51.408. Transportation plans, programs, and FHWA/FTA projects shall satisfy the applicable requirements of 40 CFR 51.410 through 51.448.

(e) No recipient of federal funds designated under Title 23 U.S.C. or the Federal Transit Act shall adopt or approve, nor any other person construct, a regionally significant highway or transit project, regardless of funding source, unless there is a currently conforming transportation plan and transportation improvement program consistent with the requirements of 40 CFR 51.420 and the project conforms with the applicable implementation plan consistent with the requirements of 40 CFR 51.450.

(f) The degree of specificity required in a transportation plan and the specific travel network assumed for air quality modeling shall not preclude the consideration of alternatives in the National Environmental Policy Act of 1969 process, in accordance with 40 CFR 51.406.

(g) When assisting or approving any action with air quality-related consequence, the Federal Highway Administration and the Federal Transit Administration of the Department of Transportation shall give priority to the implementation of those transportation portions of an applicable implementation plan prepared to attain and maintain the national ambient air quality standards. This priority shall be consistent with statutory requirements for allocation of funds among states or other jurisdictions.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10).

.1504 DETERMINING TRANSPORTATION-RELATED EMISSIONS

(a) The procedures in 40 CFR 51.452 shall be used to determine regional transportation-related emissions.

(b) The procedures in 40 CFR 51.454 shall be used to determine localized carbon monoxide concentrations (hot-spot analysis).

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10).

SECTION .1600 - GENERAL CONFORMITY

.1601 PURPOSE, SCOPE AND APPLICABILITY

(a) The purpose of this Section is to assure that a federal action conforms with all plans required of areas designated as nonattainment or maintenance under 40 CFR 81.334 and listed in Paragraph (b) or (c) of this Rule. No department, agency, or instrumentality of the Federal Government shall engage in, support in any way or provide financial assistance for, license or permit, or approve any activity which does not conform to these maintenance plans.

(b) This Section applies to the emissions of volatile organic compounds and nitrogen oxides in the following areas:

(1) Davidson County,
(2) Durham County,
(3) Forsyth County,
(4) Gaston County,
(5) Guilford County,
(6) Mecklenburg County,
(7) Wake County,
(8) Dutchville Township in Granville County, and
(9) that part of Davie County bounded by the Yadkin River, Dutchmans Creek, North Carolina Highway 801, Fulton Creek, and back to the Yadkin River.

(c) This Section applies to the emissions of carbon monoxide in the following areas:

(1) Durham County,
(2) Forsyth County,
(3) Mecklenburg County, and
(4) Wake County.

(d) The Section applies, in the areas identified in Paragraph (b) or (c) of this Rule for the pollutants identified in Paragraph (b) or (c) of this Rule, to federal actions not covered by Section .1500 of this Subchapter.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10).

.1602 DEFINITIONS

For the purposes of this Section, the definitions contained in 40 CFR 51.852 apply.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10).

.1603 GENERAL CONFORMITY DETERMINATION

(a) A federal agency shall make a determination that a federal action conforms with the maintenance plans for the areas identified in Rule .1601 of this Section in accordance with the requirements of this Section before the action is taken with the exceptions specified in 40 CFR 51.850(c). A conformity determination is required for each pollutant where the total of direct and indirect emissions caused by a federal action would equal or exceed 100 tons per year of carbon monoxide, nitrogen oxides, or volatile organic compounds, with the exceptions specified in 40 CFR 51.853(c), (d), or (e). The Division of Environmental Management shall provide technical assistance for the analysis necessary to determine the conformity of the federal action.

(b) Notwithstanding any other requirements of this Section, actions specified by individual federal agencies that have met the requirements of 40 CFR 51.853(g) and (h) are presumed to conform, except as provided in 40 CFR 51.853(j). Where 40 CFR 51.853(j) is applicable, the requirements of 40 CFR 51.853(j) shall apply.

(c) Any federal department, agency, or instrumentality of the federal government taking an action subject to this Section shall comply with the requirements of 40 CFR 51.854 through 51.859. Any measures that are intended to mitigate air quality impacts shall comply with the requirements of 40 CFR 51.860.

(d) Notwithstanding any other requirement of this Section, when the total direct and indirect emissions of any pollutant from a federal action does not equal or exceed the rates specified in 40 CFR 51.853(b), but represents 10 percent or more of the maintenance area's total emissions of that pollutant, the action is defined as a regionally significant action and the requirements of 40 CFR 51.850 and 51.855 through 51.860 shall apply for the federal action.

(e) Notwithstanding any provision of this Section, a determination that an action is in conformance with the applicable maintenance plan does not exempt the action from any other requirement of the applicable maintenance plan, the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.), or the federal Clean Air Act.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10).

SUBCHAPTER 2Q - AIR QUALITY PERMIT PROCEDURES

SECTION .0800 - POTENTIAL EMISSIONS

.0801 PURPOSE AND SCOPE

(a) The purpose of this Section is to define categories of facilities that are exempted from needing a permit under Section .0500 of this Subchapter by defining their potential emissions to be less than:

(1) 100 tons per year of each regulated air pollutant;

(2) 10 tons per year of each hazardous air pollutant; and

(3) 25 tons per year of all hazardous air pollutants combined.

(b) A source cannot rely on emission limits or caps contained in this Section to justify violation of any rate-based emission limits or other applicable requirements.

(c) Although a facility is exempted, by complying with this Section, from the permitting procedures contained in Section .0500 of this Subchapter, it may still need a permit under Section .0300 of this Subchapter unless it is exempted from needing a permit by Rule .0102 of this Subchapter.

Statutory Authority G.S. 143-215.3(a); 143-215.107(a)(10); 143-215.108.

.0802 GASOLINE SERVICE STATIONS AND DISPENSING FACILITIES

(a) For the purpose of this Rule the following definitions apply:

(1) "Gasoline dispensing facility" means any site where gasoline is dispensed to motor vehicle gasoline tanks from stationary storage tanks.

(2) "Gasoline service station" means any gasoline dispensing facility where gasoline is sold to the motoring public from stationary storage tanks.

(b) This Rule only applies to gasoline service stations and gasoline dispensing facilities that are in compliance with 15A NCAC 2D .0928.

(c) Potential emissions for gasoline service

stations and gasoline dispensing facilities shall be determined using actual gasoline throughput.

(d) Any gasoline service station or gasoline dispensing facility that has an annual throughput, on a calendar month rolling average basis, of less than 15,000,000 gallons shall be exempted from the requirements of Section .0500 of this Subchapter.

(e) The owner or operator of any gasoline service station or gasoline dispensing facility exempted by this Rule from Section .0500 of this Subchapter shall submit a report containing the information described in Paragraph (f) of this Rule if:

(1) annual throughput exceeds 10,000,000 gallons, by the end of the month following the month that throughput exceeds 10,000,000 gallons and every 12 months thereafter;

(2) annual throughput exceeds 13,000,000 gallons, by the end of the month that throughput exceeds 13,000,0000 gallons and every six months thereafter; or

(3) annual throughput exceeds 15,000,000 gallons, by the end of the month that throughput exceeds 15,000,000 gallons and shall submit a permit application pursuant to the procedures in Section .0500 of this Subchapter.

(f) The report required under Paragraph (e) of this Rule shall include:

(1) the name and location of the gasoline service station or gasoline dispensing facility;

(2) the annual throughput of gasoline for each of the 12 periods ending on each month since the previous report was submitted, including monthly gasoline throughput for each month required to calculate the annual gasoline throughput for each 12-month period; and

(3) the signature of the appropriate official as identified in Rule .0304(j) of this Subchapter certifying as to the truth and accuracy of the report.

(g) The owner or operator of any gasoline service station or gasoline dispensing facility exempted by this Rule from Section .0500 of this Subchapter shall provide documentation of annual throughput to the Director upon request. The owner or operator of any gasoline service station or gasoline dispensing facility exempted by this Rule from Section .0500 of this Subchapter shall retain records to document annual throughput for all 12-month periods during the previous three years.

Statutory Authority G.S. 143-215.3(a); 143-215.107(a)(10); 143-215.108.

.0803 COATING, SOLVENT CLEANING, GRAPHIC ARTS OPERATIONS

(a) For the purposes of this Rule, the following definitions apply:

(1) "Coating operation" means a process in which paints, enamels, lacquers, varnishes, inks, dyes, and other similar materials are applied to wood, paper, metal, plastic, textiles, or other types of substrates.

(2) "Solvent cleaning operation" means the use of solvents containing volatile organic compounds to clean soils from metal, plastic, or other types of surfaces.

(3) "Graphic arts operation" means the application of inks to form words, designs, or pictures to a substrate, usually by a series of application rolls each with only partial coverage and usually using letterpress, offset lithography, rotogravure, or flexographic process.

(b) To be covered under this Rule, the owner or operator of the facility shall request in writing to the Director that potential emissions from the facility be determined by this Rule.

(c) Potential emissions for a coating operation, solvent cleaning operation, or graphic arts operation shall be determined using actual emissions without accounting for any air pollution control devices to reduce emissions of volatile organic compounds from the coating operation, solvent cleaning operation or graphic arts operation. All volatile organic compounds and hazardous air pollutants that are also volatile organic compounds are assumed to evaporate and be emitted into the atmosphere at the source.

(d) This Rule applies to any facility whose potential emissions, including actual emissions for coating operations, solvent cleaning operations, and graphic arts operations, are less than:

(1) 100 tons per year of volatile organic compounds;

(2) 10 tons per year of each hazardous air pollutant; and

(3) 25 tons per year of all hazardous air pollutants combined;

provided the owner or operator of the facility complies with Paragraphs (f) through (i) of this

Rule, as appropriate, and provided the owner or operator of the facility requests to be covered under this Rule in accordance with Paragraph (b) of this Rule.

(e) This Rule does not apply to coating operations, solvent clean operations, or graphic arts operations that are exempted from needing a permit under Rule .0102 of this Subchapter.

(f) The owner or operator of a facility whose potential emissions:

(1) of volatile organic compounds are less than 100 tons per year but equal to or more than 75 tons per year;

(2) of each hazardous air pollutant is less than 10 tons per year but equal to or more than 7.5 tons per year; and

(3) of all hazardous air pollutants combined are less than 25 tons per year but equal to or more than 18 tons per year;

shall maintain records and submit reports as described in Paragraph (g) of this Rule.

(g) For facilities covered under Paragraph (f) of this Rule, the owner or operator shall:

(1) maintain monthly consumption records of each material used containing volatile organic compounds as follows:

(A) quantity of volatile organic compound in pounds per gallon of each material used,

(B) pounds of volatile organic compounds of each material used per month and pounds of volatile organic compounds of each material used during the 12-month period ending on that month,

(C) quantity of each hazardous air pollutant in pounds per gallon of each material used,

(D) pounds of each hazardous air pollutant of each material used per month and pounds of each hazardous air pollutant of each material used during the 12-month period ending on that month,

(E) quantity of all hazardous air pollutants in pounds per gallon of each material used, and

(F) pounds of all hazardous air pollutants of each material used per month and pounds of all hazardous air pollutants of each material used during the 12-month period ending on that month;

(2) submit to the Director each quarter, or more frequently if required by a permit condition, a report summarizing emissions of volatile organic compounds and hazardous air pollutants containing the following:

(A) pounds volatile organic compounds used:

(i) for each month during the quarter, and

(ii) for each 12-month period ending on each month during the quarter;

(B) greatest quantity in pounds of an individual hazardous air pollutant used:

(i) for each month during the quarter, and

(ii) for each 12-month period ending on each month during the quarter;

(C) pounds of all hazardous air pollutants used:

(i) for each month during the quarter, and

(ii) for each 12-month period ending on each month during the quarter;

(3) maintain purchase orders and invoices of materials containing volatile organic compounds, which shall be made available to the Director upon request to confirm the general accuracy of the reports filed under this Paragraph regarding materials usage;

(4) retain purchase orders and invoices for a period of at least three years;

(5) report to the Director when a requirement of this Rule is exceeded within one week of occurrence; and

(6) certify all submittals as to the truth, completeness, and accuracy of all information recorded and reported over the signature of the appropriate official as identified in Rule .0304(j) of this Subchapter.

(h) The owner or operator of a facility whose potential emissions:

(1) of volatile organic compounds are less than 75 tons per year,

(2) of each hazardous air pollutants is less than 7.5 tons per year, and

(3) of all hazardous air pollutants combined are less than 18 tons per year,

shall maintain records and submit reports as described in Paragraph (i) of this Rule.

(i) For facilities covered under Paragraph (h) of this Rule, the owner or operator shall:

(1) submit to the Director by February 15th of each year, or more frequently if required by a permit condition, a report summarizing emissions of volatile organic compounds and hazardous air

pollutants containing the following:

(A) pounds volatile organic compounds used during the previous calendar year,

(B) pounds of the highest individual hazardous air pollutant used during the previous year, and

(C) pounds of all hazardous air pollutant used during the previous year;

(2) maintain purchase orders and invoices of materials containing volatile organic compounds, which shall be made available to the Director upon request to confirm the general accuracy of the reports filed under this Paragraph regarding materials usage;

(3) retain purchase orders and invoices for a period of at least three years;

(4) report to the Director any exceedance of a requirement of this Rule within one week of occurrence; and

(5) certify all submittals as to the truth, completeness, and accuracy of all information recorded and reported over the signature of the appropriate official as identified in Rule .0304(j) of this Subchapter.

(j) Copies of all records required to be maintained under Paragraphs (g) or (i) shall be maintained at the facility and shall be available for inspection by personnel of the Division on demand.

(k) The Director shall maintain a list of facilities covered under this Rule.

Statutory Authority G.S. 143-215.3(a); 143-215.107(a)(10); 143-215.108.

.0804 DRY CLEANING FACILITIES

(a) For the purpose of this Rule, the following definitions apply:

(1) "Dry cleaning facility" means an establishment with one or more dry cleaning systems as defined under 40 CFR 63.321.

(2) "Perchloroethylene consumption" means the total volume of perchloroethylene purchased based upon purchase receipts or other reliable measures.

(b) Potential emissions for dry cleaning facilities shall be determined using perchloroethylene consumption.

(c) Any dry cleaning facility that has a yearly perchloroethylene consumption as determined under 40 CFR 63.323(d) of less than 10 tons shall be exempted from the requirements of Section .0500 of this Subchapter.

(d) The owner or operator of a dry cleaning facility shall report perchloroethylene consumption in accordance with 40 CFR 63.324.

Statutory Authority G.S. 143-215.3(a); 143-215.107(a)(10); 143-215.108.

.0805 GRAIN ELEVATORS

(a) This Rule applies to grain elevators that only receive grain directly from the farm between May and November, inclusively, and receives grain at no other time and that only clean, dry, grind, or store grain before it is transported elsewhere.

(b) This Rule shall not apply to facilities that process grain beyond cleaning, drying, or grinding.

(c) Potential emissions for grain elevators shall be determined using actual tons of grain received or shipped, whichever is greater.

(d) Any grain elevator that receives or ships less than 21,000 tons of grain per year shall be exempted from the requirements of Section .0500 of this Subchapter.

(e) The owner or operator of any grain elevator exempted by this Rule from Section .0500 of this Subchapter shall submit, by December 1 of each year, a report containing the following information:

(1) the name and location of the grain elevator;

(2) the tons of grain received and shipped during that season; and

(3) the signature of the appropriate official as identified in Rule .0304(j) of this Subchapter certifying as to the truth and accuracy of the report.

(f) The owner or operator of any grain elevator exempted by this Rule from Section .0500 of this Subchapter shall provide documentation of annual tons of grain received or shipped to the Director upon request. The owner or operator of a grain elevator exempted by this Rule from Section .0500 of this Subchapter shall retain records to document annual tons of grain received or shipped for each of the previous three years.

Statutory Authority G.S. 143-215.3(a); 143-215.107(a)(10); 143-215.108.

.0806 COTTON GINS

(a) This Rule applies to cotton gins that only gin cotton between September and January, inclusively. The Director may extend this time

period beyond the end of January if the Commissioner of Agriculture certifies to the Director that the cotton ginning season has been delayed because of adverse weather.

(b) Potential emissions for cotton gins shall be determined using actual number of 500-pound bales of cotton produced.

(c) Any cotton gin that gins less than 62,400 bales of cotton per year shall be exempted from the requirements of Section .0500 of this Subchapter.

(d) The owner or operator of any cotton gin exempted by this Rule from Section .0500 of this Subchapter shall submit, by March 1 of each year, a report containing the following information:

(1) the name and location of the cotton gin;

(2) the number of bales of cotton produced during that season; and

(3) the signature of the appropriate official as identified in Rule .0304(j) of this Subchapter certifying as to the truth and accuracy of the report.

(e) The owner or operator of any cotton gin exempted by this Rule from Section .0500 of this Subchapter shall provide documentation of number of bales produced to the Director upon request. The owner or operator of a cotton gin exempted by this Rule from Section .0500 of this Subchapter shall retain records to document number of bales of cotton produced for each of the previous three years.

Statutory Authority G.S. 143-215.3(a); 143-215.107(a)(10); 143-215.108.

.0807 EMERGENCY GENERATORS

(a) This Rule applies to facilities whose only source requiring a permit is one or more emergency generators.

(b) For the purposes of this Rule, "emergency generator" means an internal combustion engine used to generate electricity only during the loss of primary power at the facility that is beyond the control of the owner or operator of the facility.

(c) For the purposes of this Rule, potential emissions for emergency generators shall be determined using actual fuel consumption.

(d) Any facilities whose emergency generators consume less than:

(1) 322,000 gallons per year of diesel fuel for diesel-powered generators,

(2) 62,500,000 cubic feet per year of natural gas for natural gas-powered generators,

(3) 1,440,000 gallons per year of liquified petroleum gas for liquified petroleum gas-powered generators, and

(4) 50,800 gallons per year of gasoline for gasoline-powered generators,

shall be exempted from the requirements of Section .0500 of this Subchapter.

(e) The owner or operator of any emergency generator exempted by this Rule from Section .0500 of this Subchapter shall submit, by February 15th of each year a report containing the following information:

(1) the name and location of facility;

(2) the types and quantity of fuel consumed by emergency generators; and

(3) the signature of the appropriate official as identified in Rule .0304(j) of this Subchapter certifying as to the truth and accuracy of the report.

(f) The owner or operator of any facility exempted by this Rule from Section .0500 of this Subchapter shall provide documentation of types and quantities of fuel consumed to the Director upon request. The owner or operator of a facility exempted by this Rule from Section .0500 of this Subchapter shall retain records to document types and quantities of fuels consumed for each of the previous three years.

Statutory Authority G.S. 143-215.3(a); 143-215.107(a)(10); 143-215.108.

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***Notice** is hereby given in accordance with G.S. 150B-21.2 that the EHNR - Coastal Management intends to amend rule cited as 15A NCAC 7H .0406.*

The proposed effective date of this action is April 1, 1995.

The public hearing will be conducted at 7:00 p.m. on December 6, 1994 at the Elizabeth City Council Chambers, A. P. Midgett Municipal Building, 302 East Colonial Avenue, Elizabeth City, NC.

***Reason for Proposed Action:** This action is in response to a petition received from the City of Elizabeth City to repeal 15A NCAC 7H .0406(c)(2) since it is no longer necessary to protect potable water supply.*

Comment Procedures: All persons interested in this matter are invited to attend the public hearing. The Coastal Resources Commission will receive mailed written comments postmarked no later than December 15, 1994. Any person desiring to present lengthy comments is requested to submit a written statement for inclusion in the record of proceedings at the public hearing. Additional information concerning the hearing or the proposal may be obtained by contacting David Griffin, Division of Coastal Management, Elizabeth City Office, 1367 U.S. 17 South, Elizabeth City, NC, 27909, (919) 264-3901.

CHAPTER 7 - COASTAL MANAGEMENT

SUBCHAPTER 7H - STATE GUIDELINES FOR AREAS OF ENVIRONMENTAL CONCERN

SECTION .0400 - PUBLIC WATER SUPPLIES

.0406 PUBLIC WATER SUPPLY WELL FIELDS

(a) Description. These are areas of well-drained sands that extend downward from the surface into the shallow ground water table which supplies the public with potable water. These surficial well fields are confined to a readily definable geographic area as identified by the North Carolina Department of Environment, Health, and Natural Resources with assistance and support from affected local governments.

(b) Use Standards. Development within these AEC's shall be consistent with the following minimum standards:

(1) No ground absorption sewage disposal or subsurface pollution injection systems shall be placed within the designated AEC boundary except to replace systems existing as of July 24, 1987;

(2) Development shall not significantly limit the quality or quantity of the public water supply or the amount of rechargeable water;

(3) The development shall not cause salt water intrusion or result in the discharge of toxic ~~and/or~~ or soluble contaminants into standing or groundwater; and

(4) Groundwater absorption sewage treatment systems may also be used within the AEC boundary if each of the following provisions are met:

(A) the system is serving development on a lot that was platted of record as of July 24, 1987;

(B) there is no other economically viable method of waste treatment for the permittable development of such lot;

(C) there is no space outside the boundaries of the AEC on the lot upon which the treatment system could be located; and

(D) the Division of Environmental Health, Department of Environment, Health, and Natural Resources, prior to the CAMA permit decision, reviews and approves the proposed system as complying with existing guidelines.

(c) Designated public water supply well ~~fields~~ field. The CRC has designated the following as a public water supply well ~~fields~~ field which shall be subject to the use standards as set out in Paragraph (b) of this Rule:

~~(1)~~ Cape Hatteras Well Field. The Cape Hatteras Water Association is supplied with raw water from a well field located south of N.C. 12 on Hatteras Island between Frisco and Buxton. The area of environmental concern is bounded by a line located 1,000 feet from the centerlines of three tracts. The first tract is identified as "well field" on maps entitled "Cape Hatteras Wellfield Area of Environmental Concern" approved by the Coastal Resources Commission on July 24, 1987, and extends approximately 12,000 feet west from Water Association Road. The second tract is conterminous with the first tract, is identified as "future well field" on said maps and extends approximately 8,000 feet to the east of Water Association Road. The third tract is identified as "future well field" on said maps and extends approximately 6,200 feet along the National Park Service boundary east of Water Association Road. The aquifer beneath the tracts serves as the sole source of drinking water for the communities of Avon, Buxton, Frisco, and Hatteras as well as the national seashore recreation area. The wetlands, swales, and surface waters adjacent to the well field provide a

large source of recharge and are a potential vehicle for contaminants. Due to these facts contamination of the water supply could have an adverse effect on people other than the local residents of Hatteras Island. Water-borne disease organisms could be easily transported to other areas of the state or the east coast by tourists who are attracted to the area daily.

~~(2) Elizabeth City Well Field. The Department of Environment, Health, and Natural Resources proposed the well field at Elizabeth City in Pasquotank County as an area of environmental concern. The City of Elizabeth City is supplied with raw water from a shallow well field in the southeastern section of the Dismal Swamp at the end of SR 1309 approximately one-half mile west of the corporate limits of Elizabeth City. The well field begins at SR 1306 and extends west into the Dismal Swamp. The area to be designated is bounded to the south by the Southern Railway until it intersects SR 1144, to the east by SR 1306, 1309, and 1333, and to the north and west by the Dismal Swamp. The well field consists of approximately 250 well points piped by vacuum systems which deliver the water to storage basins. The shallow wells deliver about two gpm each. In addition, there are four deep wells in the field with capacities of about 400 gpm each. Total capacity of the field is approximately 1.5 MGD. The swamp is the source of recharge.~~

Statutory Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b)(3)a.; 113A-124.

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Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Wildlife Resources Commission intends to amend rule cited as 15A NCAC 10B .0115.

The proposed effective date of this action is February 1, 1995.

The public hearing will be conducted at 10:00 a.m. on November 30, 1994 at the Archdale Building, 3rd Floor Conference Room, 512 N. Salisbury Street, Raleigh, NC 27604-1188.

Reason for Proposed Action: To delete portions of Hyde County from provisions of prohibition against shining lights on deer.

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 November 15, 1994 through December 15, 1994. Such written comments must be delivered or mailed to the N.C. Wildlife Resources Commission, 512 Salisbury Street, Raleigh, NC 37604-1188.

CHAPTER 10 - WILDLIFE RESOURCES AND WATER SAFETY

SUBCHAPTER 10B -HUNTING AND TRAPPING

SECTION .0100 -GENERAL REGULATIONS

.0115 SHINING LIGHTS IN DEER AREAS

(a) It having been found upon sufficient evidence that certain areas frequented by deer are subject to substantial unlawful night deer hunting, or that residents in such areas have been greatly inconvenienced by persons shining lights on deer, or both, the shining of lights on deer in such areas is limited by Paragraphs (b) and (c) of this Rule, subject to the exceptions contained in Paragraph (d) of this Rule.

(b) No person shall, between the hours of 11:00 p.m. and one-half hour before sunrise, intentionally shine a light upon a deer or intentionally sweep a light in search of deer in the indicated portions of the following counties:

(1) Beaufort -- entire county;
(2) Bladen -- entire county;
(3) Brunswick -- entire county;
(4) Camden -- entire county;
(5) Chowan -- entire county;
(6) Currituck -- entire county;
(7) Duplin -- entire county;
(8) Franklin -- entire county;
(9) Gates -- entire county;
(10) Greene -- entire county;

(11) Hertford -- entire county;
(12) Hoke -- entire county;
(13) Hyde -- entire county, except that part of the county described in Paragraph (c) of this Rule;
(14) Jones -- entire county;
(15) Lenoir -- entire county;
(16) Martin -- entire county;
(17) Nash -- entire county;
(18) Pamlico -- entire county;
(19) Pasquotank -- entire county;
(20) Pender -- entire county;
(21) Perquimans -- entire county;
(22) Pitt -- entire county;
(23) Richmond -- entire county;
(24) Sampson -- entire county;
(25) Tyrrell -- entire county;
(26) Vance -- entire county;
(27) Wake -- entire county;
(28) Warren -- entire county;
(29) Washington -- entire county;
(30) Wayne -- entire county.

(c) No person shall, between the hours of one-half hour after sunset and one-half hour before sunrise, intentionally shine a light upon a deer or intentionally sweep a light in search of deer in the indicated portions of the following counties:

(1) Alamance -- entire county;
(2) Alexander -- entire county;
(3) Alleghany -- entire county;
(4) Anson -- entire county;
(5) Ashe -- entire county;
(6) Avery -- that portion south and east of Highway 221;
(7) Buncombe County -- entire county;
(8) Burke -- entire county;
(9) Cabarrus -- entire county;
(10) Caswell -- entire county;
(11) Catawba -- entire county;
(12) Chatham -- entire county;
(13) Clay -- entire county;
(14) Cleveland -- entire county;
(15) Cumberland -- entire county;
(16) Davidson -- entire county;
(17) Davie -- entire county;
(18) Durham -- entire county;
(19) Edgecombe -- entire county;
(20) Forsyth County -- entire county;
(21) Gaston -- entire county;
(22) Granville -- entire county;
(23) Guilford -- entire county;
(24) Halifax -- entire county;
(25) Harnett -- entire county;
(26) Henderson -- entire county;
~~(27) Hyde -- that part bounded on the north by a line running parallel with and 1000 yards in a northward direction from that part of SR 1304 that leads from Hodges' Fork to Rose Bay, on the east by the Mattamuskeet National Wildlife Refuge boundary, on the southeast by US 264, and on the west and southwest by a line running parallel with and 1000 yards in a west or southwest direction from the centerline of SR 1304;~~
(27) ~~(28)~~Iredell -- entire county;
(28) ~~(29)~~Johnston -- entire county;
(29) ~~(30)~~Lee -- entire county;
(30) ~~(31)~~Lincoln -- entire county;
(31) ~~(32)~~Macon -- entire county;
(32) ~~(33)~~McDowell -- entire county;
(33) ~~(34)~~Mecklenburg -- entire county;
(34) ~~(35)~~Mitchell -- entire county;
(35) ~~(36)~~Montgomery -- entire county;
(36) ~~(37)~~Northampton -- entire county;
(37) ~~(38)~~Orange County -- entire county;
(38) ~~(39)~~Person -- entire county;
(39) ~~(40)~~Polk -- entire county;
(40) ~~(41)~~Randolph -- entire county;
(41) ~~(42)~~Robeson County -- entire county;
(42) ~~(43)~~Rockingham -- entire county;
(43) ~~(44)~~Rowan -- entire county;
(44) ~~(45)~~Rutherford -- entire county;
(45) ~~(46)~~Stanly -- entire county;
(46) ~~(47)~~Stokes -- entire county;
(47) ~~(48)~~Surry -- entire county;
(48) ~~(49)~~Transylvania -- entire county;
(49) ~~(50)~~Union -- entire county;
(50) ~~(51)~~Watauga -- entire county;
(51) ~~(52)~~Yancey -- entire county.

(d) Paragraphs (b) and (c) of this Rule shall not be construed to prevent:

(1) the lawful hunting of raccoon or opossum during open season with artificial lights designed or commonly used in taking raccoon and opossum at night;
(2) the necessary shining of lights by landholders on their own lands;
(3) the shining of lights necessary to normal travel by motor vehicles on roads or highways; or
(4) the use of lights by campers and others who are legitimately in such areas for other reasons and who are not attempting to attract or to immobilize deer by the use of lights.

Statutory Authority G.S. 113-134; 113-291.1; S.L. 1981, c. 410; S.L. 1981 (Second Session 1982), c.

1180.

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Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. Department of Environment, Health, and Natural Resources - Division of Solid Waste Management intends to adopt rules cited as 15A NCAC 13B .1801 - .1812.

The proposed effective date of this action is July 1, 1995.

The public hearings will be conducted at the following dates, times and locations:

December 5, 1994
10:00 a.m.
Carol Belk Building
(Allied Health Building)
1st Floor Rm. 110
Corner of Greenville Blvd.
and Charles Blvd.
Greenville, NC

December 8, 1994
7:00 p.m.
First Floor Conference Room
Interchange Building
59 Woodfin Place
Asheville, NC

December 9, 1994
10:00 a.m.
First Floor Conference Room
Interchange Building
59 Woodfin Place
Asheville, NC

December 12, 1994
10:00 a.m.
Ground Floor Hearing Room
Archdale Building
512 North Salisbury Street
Raleigh, NC

December 12, 1994
7:00 p.m.
Ground Floor Hearing Room
Archdale Building
512 North Salisbury Street
Raleigh, NC

Reason for Proposed Action: These rules are necessary to implement the provisions of G.S. 130A-309.04(e) and (f), G.S. 130A-309.09A(b) and G.S. 130A-294. The purpose of these rules is to enable local government compliance with the laws cited above, which requires local governments to submit comprehensive solid waste management plans to the Division of Solid Waste Management for approval.
Additionally, these rules will require the submission of waste reduction reports by operators of private permitted industrial landfills, require the operational compliance and submission of compliance reports by private permitted municipal solid waste facility operators, and require the operational compliance of municipal solid waste generators and haulers.

Comment Procedures: Any person requiring information may contact Brad R. Rutledge, Division of Solid Waste Management, Solid Waste Section, Post Office Box 27687, Raleigh, NC 27611-7687, Telephone (919) 733-0692. Written comments must be submitted to the above address no later than January 3, 1995. Notice of an oral presentation may be given to the above address at least 3 days prior to the public hearing.

These Rules affect the expenditures or revenues of local funds. A fiscal note was submitted to the Fiscal Research Division on October 6, 1994, OSBM on October 6, 1994, N.C. League of Municipalities on October 6, 1994, and N.C. Association of County Commissioners on October 6, 1994.

CHAPTER 13 - SOLID WASTE MANAGEMENT

SUBCHAPTER 13B - SOLID WASTE MANAGEMENT

SECTION .1800 - REQUIREMENTS FOR LOCAL GOVERNMENT COMPREHENSIVE SOLID WASTE MANAGEMENT PLANS, AND THE OPERATIONAL COMPLIANCE OF MUNICIPAL SOLID WASTE GENERATORS AND HAULERS, OPERATORS OF PERMITTED MUNICIPAL SOLID WASTE FACILITIES, AND OPERATORS OF PRIVATE PERMITTED INDUSTRIAL LANDFILLS

.1801 PURPOSE, SCOPE AND APPLICABILITY

(a) Purpose. The purpose of this Section is to implement provisions of the North Carolina Solid Waste Management Act pertaining to management and planning for the reduction of nonhazardous solid waste. In addition to establishing requirements for local government planning, this Section establishes requirements for solid waste management generators and haulers, operators of permitted municipal solid waste facilities and operators of private permitted industrial landfills.

(b) Scope. This Section establishes the criteria by which the Division will approve comprehensive solid waste management plans submitted by units of local government in accordance with G.S. 130A-309.04(e) and (f) and G.S. 130A-309.09A(b). This Section will also establish reporting, information and operation requirements for municipal solid waste haulers, operators of permitted municipal solid waste facilities, operators of private permitted industrial landfills, information and operation requirements for municipal solid waste generators in accordance with G.S. 130A-294(a) and (b) and G.S. 130A-309.09D.

(c) Applicability. The requirements of this Section apply to units of local government, municipal solid waste generators and haulers, operators of permitted municipal solid waste management facilities and operators of private permitted industrial facilities in North Carolina.

Statutory Authority G.S. 130A-294; 130A-309.04; 130A-309.09A; 130A-309.29.

.1802 DEFINITIONS

The definitions in 15A NCAC 13B .0101 and the definitions in G.S. 130A-290 shall apply throughout this Section unless a term is defined differently in this Rule, in which case the definition given in this Rule shall apply. Additional definitions appear in the specific rules to which they apply.

(1) "Baseline year" means the year beginning July 1, 1991 and ending June 30, 1992, or an earlier year approved by the Division consistent with the requirements of G.S. 130A-309.04(c2).

(2) "Compliance report" means the report to be submitted to the Division annually by permitted municipal solid waste facilities in accordance with G.S. 130A-309.09D(b).

(3) "Comprehensive solid waste management plan," or, within the context of this Section, "plan," means the plan designed to cover a 10 year period for management and reduction of solid waste which is prepared by a unit or units of local government pursuant to G.S. 130A-309.09A(b) and 130A-309.04(e) and in accordance with the Rules .1803 and .1804 of this Section.

(4) "Lead agency" means the unit of local government responsible for the development of a comprehensive solid waste management plan on behalf of a planning unit, and for forming an advisory committee for the planning unit.

(5) "Local contact" means the chief administrative official of a lead agency or his or her designee, who acts as liaison between the advisory committee, the Division and the planning unit.

(6) "Planning Unit" means a local government or aggregate of local governments that agree to cooperate in the development and implementation of a comprehensive solid waste management plan in accordance with the requirements of this Section. A regional solid waste management authority may serve as a planning unit for purposes of this Section.

(7) "Regional planning unit" means a planning unit that consists of at least two counties.

(8) "Regional solid waste management authority" means an organization of local governments that have authority pursuant to G.S. 153A, Article 22, to manage solid waste on a regional basis.

(9) "Solid waste planning unit advisory committee" means the committee established by a planning unit in accordance with Paragraph (f) of Rule .1803 of this Section to advise the planning unit on the development and implementation of a comprehensive solid waste management plan.

(10) "Unit of local government" means, within the context of this Section, a county, incorporated municipality or regional solid waste management authority.

(11) "Waste management and reduction report" means the report prepared by the owner or operator of a private permitted industrial disposal facility pursuant to Rule .1810 of this Section.

Statutory Authority G.S. 130A-294; 130A-309.29.

.1803 REQUIREMENTS OF LOCAL GOVERNMENT

(a) County planning responsibility. Each county shall develop, submit and implement a comprehensive solid waste management plan in cooperation with the incorporated municipalities within its borders or with any other units of local government within the State in accordance with G.S. 130A-309.04(e) and G.S. 130A-309.09A(b) and the requirements of this Section. Each county has responsibility for forming a planning unit. Each county shall contact and shall document its contact of each incorporated municipality in that county for the purpose of determining which intend to participate with the county as a planning unit. If in the course of forming the planning unit, the county delegates lead agency responsibility to another unit of local government, the documentation of contacts of the incorporated municipalities within the county shall be made available to the lead agency for inclusion in the "Notice of Intent to Plan" document described in Paragraph (g) of this Rule. Each county shall consider and investigate to the extent practicable and economically feasible, the possibility of forming or joining with a regional planning unit and shall document the investigation and conclusions for inclusion in the format of the plan as described in Part (b)(6)(F) of Rule .1804 of this Section.

(b) Municipal planning responsibility. A municipality that is participating in a county's comprehensive solid waste management plan may, with the approval of the county, assume responsibility for preparation and submittal of planning documents and assume the responsibilities of lead agency as described in this Section. Any incorporated municipality that does not participate in a county comprehensive solid waste management plan or in a comprehensive solid waste management plan with any other unit of local government shall prepare its own in accordance with G.S. 130A-309.04(f) and this Section. Each incorporated municipality shall consider and investigate to the extent practicable and economically feasible, the possibility of forming or joining with a regional planning unit.

(c) Regional solid waste management authority responsibility. A regional solid waste management authority may constitute a planning unit if that unit is composed exclusively of the authority's member governments. Such a regional solid waste management authority planning unit may satisfy the requirements of this Section by use of the powers granted the authority in its charter for the direction of solid waste management. However, units of local government within a planning unit that consists of a regional solid waste management authority and any unit of local government that is not a member of the authority shall not be considered a regional solid waste management authority planning unit for purposes of this Section and may not use powers granted to the authority to satisfy the requirements of this Section.

(d) Lead agency.

(1) Each county shall assume lead agency status in accordance with the requirements of this Section, however, a county may delegate lead agency authority to an incorporated municipality in that county if that municipality agrees by memorandum of understanding with the county to assume lead agency responsibilities.

(2) Where two or more counties wish to form, the lead agency shall be determined by a memorandum of understanding between the counties.

(3) Where two or more incorporated municipalities wish to form a planning unit, the lead agency shall be determined by a memorandum of understanding between the municipalities.

(4) Where units of local government wish to form a regional planning unit consisting of both counties and municipalities, lead agency status shall be determined by memorandum of understanding between all the participating units of local government.

(5) Where a regional solid waste management authority has formed a planning unit exclusively of its member governments, the authority shall act as its own lead agency.

(e) Local contact. The chief administrative official of the unit of local government that acts as lead agency shall perform or designate a person to perform the functions of the local contact. The functions of the local contact are as follows:

(1) To act as liaison between the advisory committee, the planning unit and the Division;

(2) To submit correspondence and documents required by this Section to the Division on behalf of the planning unit; and

(3) To supervise the drafting and development of the comprehensive solid

waste management plan on behalf of the planning unit.

(f) Solid waste planning unit advisory committee composition.

(1) The chief administrative officer for the lead agency of the planning unit shall serve as chair or name the person to serve as chair of the solid waste planning advisory committee.

(2) The chief administrative officer for each unit of local government participating in a planning unit shall name a representative to that solid waste planning unit advisory committee in accordance with Part (f)(4)(A) of this Paragraph by submitting that name to the chief administrative officer for the lead agency of the planning unit.

(3) The chief administrative officer for the lead agency of the planning unit shall name persons to serve on the solid waste planning unit advisory committee in accordance with Part (f)(4)(B) of this Paragraph.

(4) At a minimum, each solid waste planning unit advisory committee shall include:

(A) A representative chosen by the chief administrative officer of each unit of local government participating in the plan; and

(B) A representative chosen by the chief administrative officer of the lead agency for the planning unit from each of the following categories:

(i) Business or industry;

(ii) Civic or community organization;

(iii) Environmental or conservation organization; and

(iv) Private solid waste management enterprise.

(5) A unit of local government that is participating in a comprehensive solid waste management plan with one or more other local governments may choose to be represented on the solid waste planning unit advisory committee by designating a representative of another participating unit of local government, provided that this designation be submitted in writing to the Division and signed by the chief administrative official for the designating unit of local government.

(6) Where no representative from the planning unit is available to fill one or more minimum category requirements in accordance with Subparagraph (4) of this Paragraph, the planning unit shall submit an alternative list of solid waste planning unit advisory committee nominees and their qualifications to the Division for approval.

(g) Notice of Intent to Plan. Each local government or group of local governments intending to submit a comprehensive solid waste management plan shall submit a Notice of Intent to Plan to the Division by October 1, 1995. The Notice of Intent to Plan document shall be submitted to the Division by the local contact of the planning unit and signed by the chief administrative official for each unit of local government that intends to be part of the planning unit and shall include:

(1) Identification of each unit of local government participating in the development of the planning unit's comprehensive solid waste management plan;

(2) A statement that names each incorporated municipality within each county participating in the planning unit and that indicates that each was contacted for the purpose of determining whether that incorporated municipality would join the planning unit;

(3) If the submitting entity is a regional solid waste management authority, a statement that names each unit of local government participating in the planning unit formed by the authority and indicates that each has been notified that the authority is developing a comprehensive solid waste management plan;

(4) Identification of the local contact for the planning unit;

(5) The name of each member of the solid waste planning unit advisory committee and demonstration of compliance with Subparagraph (f)(4) of this Rule;

(6) A statement acknowledging that each signatory understands that if a unit of local government withdraws from a planning unit, the withdrawing unit of local government must submit its own comprehensive solid waste management plan in accordance with the requirements of this Section; and

(7) A description of a public participation strategy for the planning unit that includes public meetings and public hearings.

(h) Plan progress report. The planning unit shall submit a plan progress report to the Division by January 1, 1996. The plan progress report shall include:

(1) An updated list of the solid waste planning unit advisory committee members and their compliance with Subparagraph (f)(4) of this Rule;

(2) A description of activities taken to date by the planning unit for the development of the plan;

(3) A schedule, including completion dates, for future steps in the plan development process; and

(4) An update of the planning unit's public participation strategy, including a statement that the plan progress report is available for public review and that timely public notice of its availability has been issued.

(i) Draft plan submittal.

(1) Each planning unit shall submit by July 1, 1996, a draft plan, in triplicate, to the Division's local regional solid waste section office for Division approval. Where the geographic area of the planning unit is located within the boundaries of more than one regional office, the Division shall determine which regional solid office shall have responsibility for review of the draft plan.

(2) The draft plan for each planning unit shall be submitted under a cover letter signed by the chief administrative officer of the lead agency identifying the participating units of local government.

(j) Public review of draft plan.

(1) Each county shall make available for public review a copy of the draft plan for the planning unit in which that county is participating.

(2) Where the lead agency for a planning unit is a municipality, a copy of the draft plan for that planning unit shall be kept and made available for public review at a location deemed appropriate by that municipality.

(3) Each unit of local government that is required by this Paragraph to make a copy of the draft plan available for public review shall publish notice of the location of the draft plan in a local newspaper.

Statutory Authority G.S. 130A-294; 130A-309.04; 130A-309.09A; 130A-309.29.

.1804 DRAFT PLAN FORMAT

(a) Comprehensive solid waste management plans shall be prefaced by an executive summary and note the source of all statistical data.

(b) Part I of each plan shall be entitled "Background Information" and shall contain:

(1) The name of each unit of local government participating in the planning unit.

(2) A brief description of the geography of the area within the planning unit.

(3) A brief description of the current solid waste management staff within the planning unit.

(4) A brief description of the population distribution for the current year in both incorporated and unincorporated areas of the planning unit, including significant seasonal fluctuations if applicable.

(5) Identification of the advisory committee members, including which part of the community or which unit of local government each member represents, in accordance with Subparagraph (f)(4) of Rule .1803 of this Section.

(6) A description of the planning process, including the following:

(A) Identification of the person(s) responsible for drafting the plan;

(B) The date and time each advisory committee meeting was held;

(C) The date, time and location of public hearings;

(D) Any actions taken by the planning unit as a result of the public hearings;

(E) The method by which the public was given notice of and the opportunity to review a copy of the draft plan;

(F) A brief description of the consideration given to using a regional planning approach and the development of comprehensive regional solid waste management plan.

(c) Part II of each plan shall be entitled "Waste Disposal, Composition and Projections" and shall

include the following information:

(1) The tonnage of residential, of non-residential, and of construction and demolition waste disposed for the current fiscal year.

(2) The percentage of the total waste disposed represented by each of the waste streams listed in Subparagraph (1) of this Paragraph.

(3) An estimate of the tonnages for the individual materials composing residential waste. State the percentage represented by each of these materials of the total residential waste disposed. At a minimum, the list of materials shall be equivalent to those established in the State solid waste management plan.

(4) An estimate of the individual materials composing non-residential waste. The estimate shall be based on one of the following:

(A) A list of solid waste generators, materials and tons of materials of non-residential waste that account for a minimum of 50 percent of non-residential waste disposed; or

(B) The results of a local waste composition study that identifies specific non-residential materials which at a minimum compose at least 50 percent of the non-residential waste stream and determines the tonnages disposed of each of those materials.

(5) The baseline year from which the planning unit is calculating the waste reduction goal.

(6) The baseline year population and disposal tonnage for the planning unit.

(7) The current year population and disposal tonnage for the planning unit.

(8) Projected population and projected disposal tonnage for the state's waste reduction goal year (Fiscal Year 2000-01). Projected disposal tonnage shall be calculated by multiplying the baseline per capita disposal rate by the projected population for the goal year.

(9) The projected population and projected disposal tonnage for the 10th year of the plan. Projected disposal tonnage shall be calculated by multiplying the baseline per capita disposal rate by the projected population for the 10th year.

(10) The current year per capita disposal rate for the planning unit, which shall be derived by dividing the current disposal tonnage by the current population.

(11) The goal year target per capita disposal rate for the planning unit, which shall be derived by multiplying the baseline year per capita number by .6 (or 60 percent).

(12) The target disposal tonnage for the goal year that shows a 40 percent reduction in the total waste stream. The target disposal tonnage shall be calculated by multiplying the projected population for the goal year by the target per capita disposal rate.

(13) The tonnage that must be reduced to meet the goal by Fiscal Year 2000-01, which shall be calculated by subtracting the target disposal tonnage from the projected disposal tonnage for the goal year.

(d) Part III of each plan shall be entitled "Description and Assessment of the Current Solid Waste Management Program." Part III shall consist of 18 sections.

(1) Section "A" shall be entitled "Disposal and Transfer of Solid Waste" and shall contain:

(A) A description of the planning unit's current arrangements for disposal and transfer of solid waste. The description shall address, if applicable, types of disposal facilities and areas of service, permitted capacity and anticipated life of each disposal facility, tipping fees; transportation and destination of wastes and materials that are banned or restricted from landfill disposal.

(B) A description of solid waste disposal and transfer operations that occur within the planning unit, but that are not managed by the local governments within the planning unit. The description shall address, if applicable, the type of disposal facility and area of that facility's service, the permitted capacity and anticipated life of each transfer and disposal facility, the tipping fees at each facility, the method of transportation and destination of wastes from each transfer station, and

the handling and disposal of restricted materials.

(C) An assessment of the planning unit's current arrangements for disposal and transfer of solid waste. The assessment shall include an evaluation of the suitability and cost-effectiveness of existing contracts, options for alte native arrangements and identification of needs.

(D) An assessment of the current arrangements for disposal and transfer of solid waste that are not managed by local governments within the planning unit, but which affect, or have the potential to affect, solid waste management planning by the planning unit.

(2) Section "B" shall be entitled "Collection of Solid Waste" and shall contain:

(A) A description of the current public and private waste collection system(s) in the planning unit, whether or not under contract by the local government. These shall include:

(i) Residential, non-residential and construction and demolition waste streams collected;

(ii) Identification of the entities or enterprises that collect the wastes;

(iii) Tonnage for each waste stream collected;

(iv) Disposal destination for each waste stream;

(v) Tonnage delivered to each destination by each entity that collects waste;

(vi) A description of the arrangements and methods for collection of wastes; and

(vii) Any ordinances or other mechanisms for local government to franchise solid waste management facilities.

(B) An assessment of the current waste collection system(s) in the planning unit. The assessment shall include an evaluation of the suitability and cost-effectiveness of existing contracts or agreements, options for alternative arrangements, and an identification of needs.

(3) Section "C" shall be entitled "Source Reduction" and shall contain:

(A) A description of current efforts, including policies, ordinances and programs by or in cooperation with the planning unit to encourage source reduction; and

(B) An assessment of current source reduction efforts by or in cooperation with the planning unit. The assessment shall include an evaluation of the suitability and cost-effectiveness of existing contracts or agreements, options for alternative arrangements, and an identification of needs.

(4) Section "D" shall be entitled "Recycling" and shall contain:

(A) A description of current efforts, including marketing efforts, policies, ordinances, and programs by or in cooperation with the planning unit to recycle residential materials.

(B) A chart that, for each residential waste material identified in the residential waste section of Part II of this plan includes:

(i) The tons of each residential waste material disposed by the planning unit in the current year, and the sum total of these tonnages;

(ii) The tons of each residential waste material recycled by the planning unit in the current year, and the sum total of these tonnages;

(iii) Tons of each residential waste material managed, which shall be derived by adding tons disposed to tons recycled;

(iv) The percentage of each material recycled. The percentage of each material recycled shall be derived by dividing the tons recycled by the tons managed; and

(v) The identification of processors or markets available to the planning unit for the handling of residential recyclable materials.

(C) A description of current efforts, including marketing efforts, policies, ordinances and programs by or in cooperation with the planning unit for recycling non-residential materials.

(D) An assessment of the current recycling efforts by or in cooperation with the planning unit. The assessment shall include:

(i) An evaluation of the suitability

and cost-effectiveness of existing contracts or agreements, options for alternative arrangements and identification of needs;

(ii) The identification of potential recycling processors or markets for currently unmarketed materials; and

(iii) The identification of materials for which currently there are no processors or markets.

(5) Section "E" shall be entitled "Reuse" and shall contain:

(A) A description of current efforts, including policies, ordinances and programs by or in cooperation with the planning unit for encouraging reuse of materials that would otherwise be discarded.

(B) An assessment of current efforts by or in cooperation with the planning unit for reuse of materials that would otherwise be discarded. The assessment shall include an evaluation of the suitability and cost-effectiveness of existing contracts or agreements, options for alternative arrangements and an identification of needs.

(6) Section "F" shall be entitled "Composting or Mulching" and shall contain:

(A) A description of current efforts, including marketing efforts, policies, ordinances and programs by or in cooperation with the planning unit to compost organic materials and mulch yard wastes.

(B) An assessment of current efforts by or in cooperation with the planning unit to compost organic materials or mulch yard waste. The assessment shall include an evaluation of the suitability and cost-effectiveness of existing contracts or agreements; an estimation of the amounts of waste being composted or mulched; options for alternative arrangements and an identification of needs.

(7) Section "G" shall be entitled "Community Education" and shall contain:

(A) A description of current efforts, including policies and programs by or in cooperation with the planning unit to educate the community or communities within the planning unit about reducing, recycling, reusing, composting, mulching and disposing solid waste materials.

(B) An assessment of current efforts by or in cooperation with the planning unit to educate the community or communities within the planning unit about reducing, recycling, reusing, composting, mulching and disposing solid waste.

The assessment shall include arrangements, if any, with public or private entities, options for alternative arrangements, and identification of needs.

(8) Section "H" shall be entitled "School Education" and shall contain:

(A) A description of current efforts, including policies and programs by or in cooperation with the planning unit, about reducing, recycling, reusing, composting, mulching and disposing solid waste that target school systems within the planning unit.

(B) An assessment of current efforts by or in cooperation with the planning unit about reducing, recycling, reusing, composting, mulching and disposing waste that target school systems within the planning unit. The assessment shall include arrangements, if any, with public or private entities, options for alternative arrangements and identification of needs.

(9) Section "I" shall be entitled "Special Wastes: Tires" and shall contain:

(A) A description of current efforts, including marketing efforts, ordinances, policies and programs by or in cooperation with the planning unit for collection, recycling or reuse of scrap tires, the production of tire-derived fuel, or other management of scrap tires and of current programs or arrangements for addressing nuisance scrap tire site problems; and

(B) An assessment of current programs efforts by or in cooperation with the planning unit for collection, recycling or reuse of scrap tires, the production of tire-derived fuel or other management of scrap tires. The

assessment shall include an estimation of the amount of scrap tires managed, options for alternative arrangements and an identification of needs.

(10) Section "J" shall be entitled "Special Wastes: White Goods" and shall contain:

(A) A description of current efforts, including marketing efforts, ordinances, policies and programs by or in cooperation with the planning unit for collection, recycling, reuse or other management of white goods; and

(B) An assessment of current programs or arrangements by or in cooperation with the planning unit for collection, recycling, reuse, or other management of white goods. The assessment shall include an estimation of the amount of white goods managed, options for alternative arrangements and an identification of needs.

(11) Section "K" shall be entitled "Special Wastes: Lead-Acid Batteries" and shall contain:

(A) A description of current efforts, including marketing efforts, ordinances, policies and programs by or in cooperation with the planning unit, for collection, recycling, reuse or other management of lead-acid batteries; and

(B) An assessment of current efforts by or in cooperation with the planning unit for collection, recycling, reuse or other management of lead-acid batteries. The assessment shall include an estimation of the amount of lead-acid batteries managed, options for alternative arrangements and an identification of needs.

(12) Section "L" shall be entitled "Special Wastes: Used Oil" and shall contain:

(A) A description of current efforts, including marketing efforts, ordinances, policies and programs by or in cooperation with the planning unit for collection, recycling or other management of used oil; and

(B) An assessment of current efforts by or in cooperation with the planning unit for collection, recycling or other management of used oil. The assessment shall include an estimation of the amount of used oil managed, options for alternative arrangements and an identification of needs.

(13) Section "M" shall be entitled "Special Wastes: Household Hazardous Waste" and shall contain:

(A) A description of current efforts, including ordinances, policies and programs by or in cooperation with the planning unit for reduction, collection, recycling, reuse, reduction of toxicity and other management of household hazardous waste; and

(B) An assessment of current efforts by or in cooperation with the planning unit for collection, recycling, reuse or other management of household hazardous waste. The assessment shall include an estimation of the amount of household hazardous waste managed, options for alternative arrangements and an identification of needs.

(14) Section "N" shall be entitled "Illegal Disposal Prevention" and shall contain:

(A) A description of illegal disposal problems within the planning unit and of current efforts, including ordinances, policies and programs by or in cooperation with the planning unit for preventing illegal disposal; and

(B) An assessment of current efforts by or in cooperation with the planning unit for addressing the prevention of illegal disposal, options for alternative arrangements and an identification of needs.

(15) Section "O" shall be entitled "Litter Management" and shall contain:

(A) A description of the litter problem within the planning unit and of current efforts, including ordinances, policies and programs by or in cooperation with the planning unit for management of litter; and

(B) An assessment of current programs or arrangements by or in cooperation with the planning unit for management of litter, options for alternative arrangements and an identification of needs.

(16) Section "P" shall be entitled "Recycled Product Procurement" and shall contain:

(A) A description of current efforts,

including ordinances, policies by or in cooperation with the planning unit that encourage public or private entities to buy products made with recycled and recyclable materials; and

(B) An assessment of current efforts by or in cooperation with the planning unit that encourage procurement of products made with recycled and recyclable materials and an identification of needs.

(17) Section "Q" shall be entitled "Summary of Waste Management Programs" and shall contain a checklist of waste management programs within the planning unit and which waste streams are targeted by these programs.

(18) Section "R" shall be entitled "Current Solid Waste Financing" and shall contain:

(A) A statement of the current individual solid waste budgets of each local government in the planning unit;

(B) The percentage of each solid waste budget that is derived from tipping fees, general fund or property tax, household charges, volume or weight-based fees, sale of recyclables, grants, diversion credit, tax reimbursements, and other applicable funding sources; and

(C) An assessment of current financing methods and an identification of options and needs.

(e) Part IV of the plan shall be entitled "Future Solid Waste Management Program" and shall include:

(1) An introductory paragraph explaining the planning unit's method of addressing the State's hierarchy of solid waste management methods established in G.S. 130A-309.04(a). This explanation shall discuss:

(A) Factors, including environmental, which were considered as part of the decision-making process in choosing various methods; and

(B) Why the methods chosen work in the best interests of the citizens represented by the local governments participating in the planning unit.

(2) This Section shall address components described in Subparagraphs (d)(1) through (16) of this Rule (Sections "A" through "P" of Part III), including needs identified by the assessments of each, and shall contain:

(A) A description and a brief explanation of the purpose(s) for new programs or improvements to existing programs for each component;

(B) An identification of waste streams addressed by the new or improved programs; and

(C) With regard to Subparagraphs (d)(1) and (2) of this Rule (sections "A" and "B" of Part III of the plan), a 10 year projection of how disposal, collection and transfer of solid waste is to be managed within the planning unit.

(3) A section shall be entitled "Summary of Future Solid Waste Management Programs" and shall contain a checklist of the planning unit's future solid waste management program and an identification of which waste streams are targeted by the programs.

(4) A section shall be entitled "Future Solid Waste Financing" and shall contain options for financing planned or proposed new programs or program improvements.

(f) Part V of the plan shall be entitled "Implementation" and shall provide a schedule for implementing programs described in Subparagraphs (d)(1) through (16) of this Rule (sections "A" through "P" of Part III). This section shall include:

(1) Specific actions that will be taken or programs that will be implemented in the current year and the following two years of the planning period;

(2) Actions or programs that are planned for the remaining eight years of the 10 year period of the plan; and

(3) Cost projections for each proposed program.

(g) Part VI of the plan shall be entitled "Meeting the Goal" and shall include:

(1) For the residential waste stream:

(A) The projected amount, in tons, of residential waste reduction for Fiscal Year 2000-01; and the percent this amount represents of the total projected waste disposal for Fiscal Year 2000-01 that was established by the calculation method provided in Subparagraph (c)(8) of this Rule.

(B) Methods of reduction, and for each method:

(i) Targeted materials;
(ii) Expected reduction in tons; and
(iii) The percent of the total projected waste disposal for Fiscal Year 2000-01 that the method is expected to achieve.

(2) For the non-residential waste stream:
(A) The projected amount, in tons, of non-residential waste reduction for Fiscal Year 2000-01; and the percent this amount represents of the total projected waste disposal for Fiscal Year 2000-01 that was established by the calculation method provided in Subparagraph (c)(8) of this Rule.
(B) Methods of reduction, and for each method:
(i) Targeted materials;
(ii) Expected reduction in tons; and
(iii) The percent of the projected waste disposal for Fiscal Year 2000-01 that the method is expected to achieve.

(3) For the construction and demolition stream:
(A) The projected amount, in tons, of construction and demolition waste reduction for Fiscal Year 2000-01; and the percent this amount represents of the projected waste disposal for Fiscal Year 2000-01 that was established by the calculation method provided in Subparagraph (c)(8) of this Rule.
(B) Methods of reduction, and for each method:
(i) Targeted materials;
(ii) Expected reduction in tons; and
(iii) The percent of the projected waste disposal for Fiscal Year 2000-01 that the method is expected to achieve.

(4) The total tonnage to be diverted from disposal in order to meet the 40 percent State waste reduction goal in Fiscal Year 2000-01, based on the amounts projected in the information required by Subparagraphs (g)(1), (2) and (3) of this Paragraph.

(5) Approximate waste reduction in tons per year, stating baseline year, current year and each year through Fiscal Year 2000-01.

Statutory Authority G.S. 130A-294, 130A-309.04; 130A-309.09A; 130A-309.29.

.1805 REVIEW, REVISION AND TENTATIVE APPROVAL OF LOCAL GOVERNMENT PLANS

(a) The Division shall review all draft plans for compliance with the requirements of this Section.

(b) A draft plan that is tentatively approved by the Divisionis eligible for adoption by the submitting planning unit.

(c) A draft plan that does not meet the requirements of this Section will be returned with written comments concerning the deficiencies. The plan must be revised and resubmitted to the division within the time period provided in the written comments. The time allowed for resubmittance may not exceed 90 days.

(d) Every local government in a planning unit that submits a revised plan that fails to meet the requirements of this Section is considered out of compliance with this Section. A planning unit that has submitted a revised plan that fails to receive Division approval shall continue to revise and resubmit its plan until the Division approves that plan.

Statutory Authority G.S. 130A-294; 130A-309.04; 130A-309.09A; 130A-309.29.

.1806 ADOPTION AND FINAL APPROVAL OF LOCAL GOVERNMENT PLANS

(a) Plan adoption. Prior to receiving final approval by the Division, each unit of local government within the planning unit must adopt by formal resolution the plan submitted by that planning unit. If, within 60 days of receiving pre-approval from the Division, each unit of local government that has not taken the necessary action to adopt the plan will be considered as having not submitted by the plan required by G.S. 130A-309.04(e) and G.S. 130A-309.09A(b). A regional solid waste management authority that has formed a planning unit exclusively of its member governments may adopt the plan on behalf of its member units of local government without obtaining formal resolutions from each member.

(b) Two copies of the adopted plan for each planning unit shall be sent to the Division within 30 days of its formal adoption by the participating units of local government. Certified copies of the formal resolutions of adoption by each participating unit of local government shall be included in the appendices of each final copy of the adopted plan to be sent to the Division.

(c) The Division renders final approval of a plan upon receipt of a formal resolution of adoption of the pre-approved plan from every unit of local government in the planning unit.

Statutory Authority G.S. 130A-294; 130A-309.04; 130A-309.09A; 130A-309.29.

.1807 PLAN UPDATE

(a) Each planning unit shall submit an update of its plan to the Division by July 1, 1998 and every even numbered year thereafter for Division approval.

(b) The plan update shall include:

(1) Changes in population and population projections;

(2) Changes in waste stream compositions that affect reduction programs, strategy or projections;

(3) Changes in waste stream generators that affect reduction programs, strategy or projections;

(4) Changes in waste stream generation that affect reduction programs, strategy or projections;

(5) Changes in waste reduction calculations;

(6) Changes in use of solid waste disposal facilities;

(7) Additions or deletions of current or planned programs;

(8) Specific actions or programs to be implemented over the next two years of the plan;

(9) Major obstacles to the implementation of the comprehensive solid waste management program;

(10) Changes in scheduling of planned comprehensive solid waste management programs;

(11) Changes in expected waste reduction by residential, non-residential, and construction and demolition streams;

(12) An updated list of the advisory committee membership;

(13) The addition or withdrawal of local governments to or from a planning unit;

(14) Updated projections for waste disposed in the current year, goal year, fifth year and 10th year of the plan, along with the data to support those projections;

(15) Updated projections on the anticipated life of the landfill(s) receiving waste from the planning unit;

(16) An evaluation of progress toward achievement of the goals and policies of the programs proposed in the existing plan;

(17) A discussion of the effect the update will have on the existing plan;

(18) Information required by new state statutes or rules adopted since the original plan was approved; and

(19) A description of the public participation in the development of the plan update, including a description of how the advisory committee was used.

Statutory Authority G.S. 130A-294; 130A-309.04; 130A-309.09A; 130A-309.29.

.1808 REQUIREMENTS OF MUNICIPAL SOLID WASTE GENERATORS AND HAULERS

(a) Generators and transporters that dispose or cause to be disposed solid waste outside the planning unit where it was generated, shall do so in a manner consistent with the comprehensive solid waste management plan of the planning unit where the waste was generated.

(b) Non-residential municipal solid waste generators shall provide the following information to the local contact for the planning unit of the generator's location upon request by the local contact for use in development of the unit's comprehensive solid waste management plan:

(1) A list of disposal facilities used by the generators;

(2) An estimate of solid waste materials to be disposed at the disposal facilities; and

(3) Approximate tonnages of each solid waste material bound for disposal.

(c) Municipal solid waste haulers shall provide the following information to the local contact(s) for the planning unit(s) that hauler serves upon request by the local contact for use in the development of comprehensive solid waste management plans:

(1) Disposal facilities used by the haulers for solid waste generated within the planning unit;

(2) An estimate of what solid waste materials generated within the planning unit are to be transported to the disposal facilities; and

(3) Approximate tonnages, according to waste stream, of solid waste materials generated within the planning unit to be transported for disposal.

(d) Municipal solid waste haulers shall provide

the following information to the Division by August 1, 1996 and by every August 1 thereafter, covering the period from July 1 to June 30 of each year:

(1) Disposal facilities used by the haulers for solid waste generated within the planning unit;

(2) An estimate of what solid waste materials generated within the planing unit are to be transported for disposal at the disposal facilities; and

(3) Approximate tonnages, according to waste stream, of solid waste materials generated within the planning unit to be transported for disposal.

(e) Haulers that transport the following materials exclusively shall be exempt from the reporting requirements of this Rule:

(1) Tires; and

(2) Regulated medical waste.

Statutory Authority G.S. 130A-294; 130A-309.29.

.1809 REQUIREMENTS FOR OPERATORS OF PERMITTED MUNICIPAL SOLID WASTE MANAGEMENT FACILITIES

(a) Operators of permitted municipal solid waste facilities, excluding privately owned industrial landfills and land clearing and inert debris landfills shall operate in a manner consistent with the approved comprehensive solid waste management plans for each planning unit from which they receive waste.

(b) Permitted municipal solid waste management facilities shall provide the following information upon request to the local contact for each of the planning units of the areas they serve for use in the development of comprehensive solid waste management plans:

(1) A description of any processing treatment applied to waste by the facility; and

(2) The anticipated operational life or remaining capacity in tons of that facility.

(c) Operators of public permitted municipal solid waste management facilities that receive waste from more than one planning unit and operators of private permitted municipal solid waste management facilities, excluding private permitted industrial landfills and land clearing and inert debris landfills, shall submit compliance reports by August 1, 1996 and by every August 1 thereafter to the Division and to local governments being served by the facilities demonstrating that they are operating consistent with the comprehensive solid waste management plans of the planning units they serve. These compliance reports shall:

(1) List the planning area(s) in North Carolina from which the facility received solid waste during the concluding fiscal year;

(2) For each solid waste stream handled at the facility, state how the solid waste is being managed consistent with the approved comprehensive solid waste management plans applicable to the solid waste handled by that facility; and

(3) These reports shall be reviewed for approval by the Division.

(d) Facilities subject to Paragraph (b) of this Rule that do not receive approval on compliance reports submitted to the Division shall revise compliance practices to meet the requirements of this Section.

(e) The operator of a permitted municipal solid waste management facility that services an area that does not have an approved plan is not required to submit a compliance report for that service area.

Statutory Authority G.S. 130A-294; 130A-309.09D; 130A-309.29.

.1810 REQUIREMENTS FOR OPERATORS OF PRIVATE PERMITTED INDUSTRIAL LANDFILLS

(a) A private industry owning and operating its own permitted disposal facility for its own waste shall develop and implement waste management methods to be applied for a 10 year period and which are designed to meet the state goal for waste reduction and hierarchy of management.

(b) A private industry owning and operating its own permitted disposal facility exclusively for its own waste shall submit a waste management and reduction report by July 1, 1996 for approval by the Division.

(c) The waste reduction and management report submitted to the Division by a private permitted industrial disposal facility shall include:

(1) Name of facility;

(2) Permit number and permit expiration date;

(3) Annual tonnages or volume of waste(s) by material received at the facility and projected tonnages or volume for each of the following 10 years;

(4) Expected number of years of capacity of the facility at current disposal rates;

(5) Description of waste materials managed

or disposed at the facility;

(6) Waste reduction options for waste(s) received or generated;

(7) Management methods that will be applied to waste(s) received over a 10 year period and dates for implementation of each method designed to meet the state goal for waste reduction and hierarchy of solid waste management;

(8) The industrial facility's proposal for a method of tracking waste reduction that incorporates production rates within its operation. Waste disposed per employee is an approved method for tracking waste reduction; and

(9) A description of the facility's compliance with 15A NCAC 13B .0103(i), which requires all active sanitary landfills be equipped with liners, final cover systems and leachate collection systems by January 1, 1998.

(d) The waste reduction and management report shall be updated and submitted to the Division for approval every two years beginning July 1, 1998.

Statutory Authority G.S. 130A-294; 130A-309.09D; 130A-309.29.

.1811 REPORT RECORDS

Semi-annual reports of activities describing plan implementation shall be prepared by each planning unit and by each private permitted industrial disposal facility and made available for inspection by Division personnel. Reports kept by planning units shall be kept at the chief administrative office of the lead agency for each planning unit or at the office of the local contact for the planning unit. Reports kept by a private permitted industrial disposal facility shall be kept at that facility. Alternative locations for report record maintenance must be approved by the Division.

Statutory Authority G.S. 130A-294; 130A-309.04; 130A-309.09A; 130A-309.29.

.1812 COMPLIANCE

(a) Compliance with the requirements of this Section by local government; municipal solid waste generators and haulers; operators of permitted municipal solid waste facilities; and operators of private permitted industrial landfills shall be measured by reports required by this Section, by inspections and by other means available to the Division.

(b) Local governments shall be responsible for enforcing the provisions of the approved comprehensive solid waste management plans of their respective planning units when violations occur within their jurisdictions.

(c) The Division may consider a petition for a municipal solid waste to be excluded from the calculation of waste to be reduced if the petitioner demonstrates to the Division's satisfaction that waste managed or generated by the petitioner is a result of one or more of the following efforts to reduce a public health or environmental hazard:

(1) A superfund or other state or federal directed clean-up;

(2) Disposal resulting from a natural disaster declared by federal or state government;

(3) Asbestos disposal;

(4) Lead-based product disposal; and

(5) Other waste disposal categories deemed appropriate by the Division.

Statutory Authority G.S. 130A-294; 130A-309.04; 130A-309.09A; 130A-309.29.

TITLE 19A - DEPARTMENT OF TRANSPORTATION

***Notice** is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Department of Transportation intends to adopt rules cited as 19A NCAC 02E .1001 - .1009.*

***The** proposed effective date of this action is March 1, 1995.*

***Instructions** on How to Demand a Public Hearing (must be requested in writing within 15 days of notice): A demand for a public hearing must be made in writing and mailed to Emily Lee, N.C. DOT, P.O. Box 25201, Raleigh, NC 27611. The demand must be received within 15 days of this Notice.*

***Reason** for Proposed Action: The N.C. General Assembly recognized the Scenic Byways Program in 1993 and directed N.C. DOT to adopt rules to manage the program. The proposed rules clearly define the processes for designation and removal of scenic byways within our present highway system.*

***Comment** Procedures: Any interested person may*

submit written comments on the proposed rules by mailing the comments to Emily Lee, N.C. DOT, P.O. Box 25201, Raleigh, NC, 27611, within 30 days after the proposed rules are published or until the date of any public hearing held on the proposed rules, whichever is longer.

CHAPTER 2 - DIVISION OF HIGHWAYS

SUBCHAPTER 2E - MISCELLANEOUS OPERATIONS

SECTION .1000 - SCENIC BYWAYS

.1001 DEFINITIONS

This Section establishes the Department's rules for the administration, designation and removal of the North Carolina Scenic Byways Program. For purposes of this Section, the following definitions shall apply:

(1) "Board" means North Carolina Board of Transportation;

(2) "Byway" means a scenic highway;

(3) "Designate" means a process for approving a road or a system of roads to the state system of Scenic Byways;

(4) "D.O.H." means Division of Highways of the Department of Transportation;

(5) "Merit" means applications with all facts substantiated and considered suitable for further consideration;

(6) "N.C.D.O.T./Department" means North Carolina Department of Transportation;

(7) "Program" means the Scenic Byways Program and its associated administrative tasks;

(8) "Promote" means to foster and encourage the advancement of the Scenic Byways Program;

(9) "Removal" means the process of removing a Byway or a section of a byway from the state system of Scenic Byways;

(10) "Report" means a summary of information prepared by the Roadside Environmental Unit;

(11) "Roadside Environmental Unit" means a unit of the Department of Transportation;

(12) "Scenic Byway/Highway" means a defined road or system of roads, designated by the Board of Transportation, having distinct natural, cultural, historical, and aesthetic qualities;

(13) "Scenic Byway/Highway Management Plan" means strategic goals specifically outlined to preserve or enhance the scenic integrity along a state highway or state byway;

(14) "Scenic Value" means a measurement of the aesthetic quality of an area determined through a visual inventory conducted by the Roadside Environmental Unit; and

(15) "T.I.P." means the Transportation Improvement Program.

Statutory Authority G.S. 136-18(5); 136-122 through 125; 136-129.2; 143B-348.

.1002 PURPOSE

(a) The Scenic Byway/Highway system shall be established to provide the public with the opportunity to travel on a system of roads featuring the aesthetic and cultural qualities of the State within the existing highway system.

(b) The Scenic Byway/Highway program is intended to identify not create scenic byways/highways.

(c) The program and rules prescribed to preserve the byways and to sustain the integrity and safety of the scenic byway/highway system shall be incorporated into N.C.D.O.T. planning and maintenance operations.

(d) All lawfully erected outdoor advertising signs adjacent to a Scenic Byway/Highway designated as a part of the interstate or federal-aid primary highway system as of June 1, 1991, or any highway which is or becomes a part of the National Highway System shall become nonconforming signs and shall be allowed to remain until such time as funds become available for purchase.

(e) The implementation of the system provides an alternative for safe travel, encourages tourism and economic growth, and promotes the scenic, cultural, recreational, and historic attributes along the highway system.

Statutory Authority G.S. 136-18(5); 136-122 through 136-125; 136-129.2; 143B-348.

.1003 ADMINISTRATION OF PROGRAM

(a) The responsibilities and execution of duties of implementing and carrying out the goals of the Scenic Byway/Highway program are vested in the Division of Highways (DOH) of the NCDOT. The DOH is authorized:

(1) to plan, design, and develop the Scenic Byway/Highway System and Program;

(2) to develop and make recommendations, including routes to be designated or

removed, to the Board of Transportation on the organization and operation of the Scenic Byway/Highway Program;

(3) to support the protection of historical, cultural, natural and aesthetic resources in areas adjacent to the highway.

(b) Other administrative duties which shall be conducted by the Department are:

(1) to compose and provide application forms for proposed Scenic Byway/Highway locations and for removal of Scenic Byway/Highway locations from the system;

(2) to coordinate and manage Scenic Byway/Highway system signing;

(3) to annually review and file a report by February 1 each year with the Secretary of Transportation on the existing Scenic Byways/Highways in the system and those highways offered for both designation and removal in the system;

(4) to oversee interaction between the Department of Transportation and public/private entities interested in the development or management of the State Byway/Highway system;

(5) to develop and make available to the public interpretive information about the Scenic Byways and Highways.

Statutory Authority G.S. 136-18(5); 136-122 through 136-125; 136-129.2; 143B-348.

.1004 DESIGNATION CRITERIA

(a) The following criteria shall be required for a route to be included in the Scenic Byway/Highway system:

(1) highway design which preserves and protects the natural beauty or scenery of the area;

(2) location on an existing highway or roadway having legal public access;

(3) minimum consecutive length of one mile;

(4) adequate land area to accommodate safe enjoyment of scenic attractions;

(5) evidence of strong local support for the designation established by the proponent of the designation, which includes but is not limited to petitions, letters, and newspaper articles;

(6) significant natural or aesthetic features visible from and adjacent to the roadway. Such features include but are not limited to agricultural lands, vistas of marshes, shorelines, forests, and other areas of dense vegetation or notable geographic characteristics;

(7) intrinsic resources such as historical, cultural, or recreational resources in the area.

(b) The NCDOT shall determine that development of the designated area shall not detract from the scenic natural character and visual quality of the route. The Department shall ensure the route is compatible with recreational, aesthetic, and environmental management needs of the area.

(c) Designation of a highway as a Scenic Byway/Highway shall not significantly interfere with the operation or maintenance of existing public utility lines and facilities.

(d) Designation of a highway as a Scenic Byway/Highway shall not be construed to require any modification in local land use regulations or restrictions, require any change in commercial or agricultural activities, or affect future highway rehabilitation, development, or the need to maintain or improve the roads.

(e) Preference shall be given to a Scenic Byway/Highway with existing protected areas such as national forests or federal or state park land near or adjacent to the proposed route.

Statutory Authority G.S. 136-18(5); 136-122 through 136-125; 136-129.2; 143B-348.

.1005 DESIGNATION PROCESS

The process for designation as a Scenic Byway shall be as follows:

(1) A non-profit organization, which includes but shall not be limited to a county commission or the governing body of any municipality, may submit an application to the Roadside Environmental Unit of the Department of Transportation with proper Scenic Byway/Highway identification on the envelope;

(2) Roadside Environmental Unit shall review the application and prepare a written report, which includes findings on the designation criteria set in 19A NCAC 02E .1004 and a recommendation on whether the proposal should be adopted or rejected;

(3) Proposed routes deemed to have merit based on criteria in 19A NCAC 02E .1004 shall be submitted by the DOH staff to the Board of Transportation for approval or denial;

(4) At the request of any interested party, a public hearing shall be held to consider any proposal recommended for approval. All interested parties shall be given the opportunity to provide comments and submit evidence in support or in opposition to the designation at the hearing;

(5) If a hearing is requested a legal notice shall be placed in at least one newspaper in the municipality nearest the proposed Scenic Byway/Highway and in three successive issues. The notice shall contain the date, time, and location of the hearing and a summary of the proposed designation. Proponents of the Byway/Highway shall be responsible for the cost of the legal notice. In addition to the hearing, written comments shall be accepted by the Roadside Environmental Unit for 30 days from the publication of the hearing notice. In lieu of a hearing, written comments may be submitted and shall be accepted for 90 days from the date of application. A request for public hearing shall be made within 60 days from the receipt of the application. The hearing shall be held no sooner than 14 days following the last day of the legal notice and no later than 30 days following the last day of the legal notice;

(6) The Department shall notify the proponent in writing of the Board of Transportation's approval or denial of the proposal;

(7) The Board may designate any route or section of a route at anytime so long as the Board meets the criteria in 19A NCAC 02E .1004.

Statutory Authority G.S. 136-18(5); 136-122 through 136-125; 136-129.2; 143B-348.

.1006 APPLICATION FOR DESIGNATION

(a) The following items shall be included for a Scenic Byway application, but is not limited to such items, to be considered:

(1) The proponent's name, address, telephone number, and name, address, and telephone number of the organization represented if applicable;

(2) A written description of the section of highway to be designated including historical, cultural, natural or aesthetic significance;

(3) Photographic slides of the area indicating historical, cultural, natural, or aesthetic significance;

(4) County maps with proposed route marked clearly;

(5) Copies of zoning ordinances applicable to the route or a written list of existing land-use areas for unzoned areas;

(6) Documentation of notice given to local governments adjacent to proposed route;

(7) For unzoned areas, a written list of commercial or industrial activities adjacent to or within 800 feet of the pavement of the proposed route; and

(8) An optional Scenic Byway Management Plan may be submitted with an application.

(b) All applications shall be received by the Roadside Environmental Unit, N.C. DOT, PO Box 2520, Raleigh, NC 27611, no later than August 31 of each year. Incomplete applications shall not be accepted and will be returned to the proponent.

(c) Application and all application materials shall become the property of the North Carolina Department of Transportation.

Statutory Authority G.S. 136-18(5); 136-122 through 136-125; 136-129.2; 143B-348.

.1007 REMOVAL PROCESS

(a) A route or section of a route may be removed if its character has changed such that it meets the criteria for removal as specified in G.S. 136-18(31) and taking into consideration that it no longer meets the criteria as set out in 19A NCAC 02E .1004.

(b) The process of removal shall be as follows:

(1) A non-profit organization, which includes but shall not be limited to a county commission or the governing body of any municipality, may submit an application for removal to the Roadside Environmental Unit of the Department of Transportation with proper Scenic Byway/Highway identification label on the envelope;

(2) The Roadside Environmental Unit shall review application, prepare a report incorporating a study of the scenic value of the submitted route or section of route and submit proposals deemed to have merit as specified in 19A NCAC 02E .1004 to the Board of Transportation;

(3) At the request of any interested party, a public hearing shall be held to consider any proposal recommended for removal. All interested parties shall be given the opportunity to provide comments and submit evidence in support or in opposition to the removal at the hearing;

(4) If a hearing is requested a legal notice shall be placed in at least one newspaper in the municipality nearest the route or section of a route proposed for removal and in three successive issues. The notice shall contain the date, time, and location of the hearing and a summary of the removal proposal. Proponents of the removal shall be responsible for the cost of the legal notice. In addition to the hearing, written comments shall be accepted by the Roadside Environmental Unit for 30 days from the publication of the hearing notice. In lieu of a hearing, written comments may be submitted and shall be accepted for 90 days from the date of application. A request for public hearing shall be made within 60 days from the receipt of the application. The hearing shall be held no sooner than 14 days following the last day of the legal notice and no later than 30 days following the last day of the legal notice;

(5) The Board of Transportation shall approve or deny application; and

(6) The Department shall notify the applicant of approval or denial.

(c) The Board may remove any route or section of a route from the Scenic Byway System at anytime so long as the Board meets the criteria outlined in 19A NCAC 02E .1004(a).

Statutory Authority G.S. 136-18(5); 136-122 through 136-125; 136-129.2; 143B-348.

.1008 REMOVAL APPLICATION

(a) The following shall be included in a Scenic Byway removal application, but is not limited to such items, to be considered.

(1) Characteristic which has changed such that it no longer meets criteria for designation;

(2) Documentation of current zoning, ordinances, and other land-use controls;

(3) Documentation of public notification of removal to relative parties and legal notice of public notification;

(4) Written route or section of route description, including elements supporting the proposal to remove;

(5) Written applicant information including name, address, and telephone number;

(6) Photographic slides of characteristics supporting proposal to remove;

(7) County maps with route or section of route marked.

(b) Application must be received by the Roadside Environmental Unit, N.C.D.O.T., P.O. Box 25201, Raleigh, NC 27611 at least six months prior to the annual Board meeting set aside for Scenic Byway review. Incomplete applications shall not be accepted and will be returned to the proponent.

(c) All applications and application materials shall become property of the North Carolina Department of Transportation.

Statutory Authority G.S. 136-18(5); 136-122 through 136-125; 136-129.2; 143B-348.

.1009 BOARD OF TRANSPORTATION EVALUATION

(a) The Board of Transportation shall annually evaluate the Scenic Byway/Highway Program at its March meeting.

(b) The review and evaluation shall include, but not be limited to, the following:

(1) An examination of funding for the program;

(2) A determination of suitability of those proposed routes for designation and removal. A request for further information on the proposed route may be made by the Board. The suitability of the route shall be decided at a later date.

(c) The annual meeting date, place, and time shall be determined by the Board of Transportation and shall be consistent within each calendar year and with the annual Transportation Improvement Program (TIP) public hearings.

(d) The Board of Transportation retains the authority to designate or remove a route or a section of a route from the Scenic Byway/Highway system at any time. Prior to making its decision, the DOH shall prepare a recommendation to the Board.

Statutory Authority G.S. 136-18(5); 136-122 through 136-125; 136-129.2; 143B-348.

TITLE 23 - DEPARTMENT OF COMMUNITY COLLEGES

Notice is hereby given in accordance with G.S. 150B-21.2 that NC Department of Community Colleges intends to adopt rule cited as 23 NCAC 2E .0604.

The proposed effective date of this action is February 1, 1995.

The public hearing will be conducted at 10:30 a.m. on December 15, 1994 at Room 179 - Caswell Bldg., 200 W. Jones St., Raleigh, NC 27603-1379.

Reason for Proposed Action: Pursuant to Chapter 769, Part 18, Sec. 18, of the 1993-94 Session Laws, the General Assembly has required the State Board of Community Colleges to develop a regional approach for program approval for new programs offered by the community colleges.

Comment Procedures: Interested persons may present statements either orally or in writing at the public hearing; or by mail on or before December 15, 1994, addressed to: Ms. Elizabeth Jones, Department of Community Colleges, 200 W. Jones Street, Raleigh, NC 27603-1379.

*Editor's Note: **This Rule was filed as a temporary adoption effective October 31, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner.***

CHAPTER 2 - COMMUNITY COLLEGES

SUBCHAPTER 2E - EDUCATIONAL PROGRAMS

SECTION .0600 - VOCATIONAL CURRICULUM

.0604 CONSORTIUM

(a) Two or more colleges may enter into a written consortium agreement to expand approved technical and vocational curriculums to other colleges. The consortium agreement shall:

(1) Specify the curriculum program(s) to be shared;

(2) Define the plan for sharing the curriculum program(s);

(3) Certify that appropriate and adequate resources are available at each participating college;

(4) Certify that the curriculum program(s) meets the standards of the appropriate accrediting agency;

(5) Be signed by the president and approved by the board of trustees of each participating college; and

(6) Be approved by the System President.

(b) Any technical or vocational curriculum shared by a consortium shall be approved by the State Board to be offered by one or more of the colleges participating in the consortium. The college offering the consortium program shall earn the FTE and grant the award.

Statutory Authority G.S. 115D-5; S.L. 1993, 2nd session, c. 769, p. 18, s. 18.

The List of Rules Codified is a listing of rules that were filed with OAH in the month indicated.

Key:

Citation	=	*Title, Chapter, Subchapter and Rule(s)*
AD	=	*Adopt*
AM	=	*Amend*
RP	=	*Repeal*
With Chgs	=	*Final text differs from proposed text*
Corr	=	*Typographical errors or changes that requires no rulemaking*
Eff. Date	=	*Date rule becomes effective*
Temp. Expires	=	*Rule was filed as a temporary rule and expires on this date or 180 days*

NORTH CAROLINA ADMINISTRATIVE CODE

OCTOBER 94

TITLE	DEPARTMENT
2	Agriculture
4	Commerce
5	Correction
10	Human Resources
11	Insurance
13	Labor
15A	Environment, Health, and Natural Resources
17	Revenue
18	Secretary of State
21	Occupational Licensing Boards
	34 - Mortuary Science
	50 - Plumbing and Heating Contractors
	62 - Sanitarian Examiners

Citation				AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
2	NCAC	48C	.0008							EXPIRED
4	NCAC	2T	.0103	✓			✓		11/01/94	
5	NCAC	2B	.0101			✓			11/15/94	180 DAYS
			.0106			✓			11/15/94	180 DAYS
			.0108			✓			11/15/94	180 DAYS
			.0109 - .0114	✓					11/15/94	180 DAYS
10	NCAC	1O	.0001	✓					11/01/94	
			.0002	✓			✓		11/01/94	
			.0003 - .0005	✓					11/01/94	
		35F	.0306		✓				11/01/94	
		41F	.0706	✓					11/01/94	
			.0812	✓					11/01/94	

Citation				AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
10	NCAC	43L	.0201		✓				11/01/94	
		45H	.0202		✓				11/01/94	
		50B	.0311		✓		✓		11/01/94	
			.0403		✓		✓		11/01/94	
11	NCAC	15	.0001 - .0002		✓		✓		11/01/94	
			.0004 - .0005		✓		✓		11/01/94	
			.0008 - .0010		✓		✓		11/01/94	
			.0012		✓		✓		11/01/94	
13	NCAC	7F	.0101					✓		
			.0101		✓				11/01/94	
15A	NCAC	2D	.1301 - .1302		✓		✓		11/01/94	
			.1304		✓		✓		11/01/94	
		2H	.0901 - .0902		✓				11/01/94	
			.0903 - .0904		✓		✓		11/01/94	
			.0905 - .0906		✓				11/01/94	
			.0907 - .0908		✓		✓		11/01/94	
			.0909 - .0910		✓				11/01/94	
			.0912		✓				11/01/94	
			.0914 - .0915		✓				11/01/94	
			.0916 - .0917		✓		✓		11/01/94	
			.0918 - .0921	✓					11/01/94	
		2L	.0202		✓		✓		11/01/94	
		5B	.0013	✓					11/01/94	
		12K	.0101 - .0111	✓					11/01/94	180 DAYS
17	NCAC	1C	.0503 - .0504		✓				11/01/94	
			.0506 - .0507		✓				11/01/94	
			.0509		✓				11/01/94	
		6B	.0104		✓				11/01/94	
			.0107		✓				11/01/94	
			.0116		✓				11/01/94	
			.0118		✓				11/01/94	
			.0606		✓				11/01/94	
			.3521		✓				11/01/94	

Citation	AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
17 NCAC 6C .0110		✓				11/01/94	
7B .3911		✓				11/01/94	
18 NCAC 8 .0101		✓				11/01/94	
.0102		✓		✓		11/01/94	
.0103 - .0104		✓				11/01/94	
.0105	✓			✓		11/01/94	
.0201 - .0209			✓			11/01/94	
.0402		✓		✓		11/01/94	
.0501		✓				11/01/94	
.0601		✓		✓		11/01/94	
.0602		✓				11/01/94	
.0603		✓		✓		11/01/94	
.0701		✓		✓		11/01/94	
.0801		✓				11/01/94	
.0803		✓				11/01/94	
.0903		✓		✓		11/01/94	
.1002 - .1003		✓		✓		11/01/94	
.1101		✓				11/01/94	
.1209		✓		✓		11/01/94	
21 NCAC 34A .0126		✓				11/01/94	
34B .0108			✓			11/01/94	
.0125			✓			11/01/94	
.0212	✓					11/01/94	
.0308		✓				11/01/94	
.0401		✓				11/01/94	
.0405		✓				11/01/94	
.0509			✓			11/01/94	
.0609			✓			11/01/94	
34D .0303		✓				11/01/94	
50 .0407 - .0408		✓				11/01/94	
.0412		✓		✓		11/01/94	
.1102		✓				11/01/94	
.1104		✓				11/01/94	

Citation	AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
21 NCAC 62 .0103 - .0104		✓				11/01/94	
.0201 - .0204		✓		✓		11/01/94	
.0205		✓				11/01/94	
.0208		✓		✓		11/01/94	
.0301 - .0302		✓		✓		11/01/94	
.0305		✓				11/01/94	
.0306		✓		✓		11/01/94	
.0307 - .0308		✓				11/01/94	
.0310		✓				11/01/94	
.0314		✓		✓		11/01/94	
.0315 - .0317		✓				11/01/94	
.0319		✓				11/01/94	
.0402 - .0403		✓		✓		11/01/94	
.0405		✓		✓		11/01/94	
.0407 - .0408		✓				11/01/94	
.0411		✓				11/01/94	
.0412			✓			11/01/94	
.0414	✓					11/01/94	

The Rules Review Commission (RRC) objected to the following rules in accordance with G.S. 150B-21.9(a). State agencies are required to respond to RRC as provided in G.S. 150B-21.12(a).

COMMERCE

Alcoholic Beverage Control Commission

4 NCAC 2T .0103 - Beer Franchise Law; "Brand" Defined	*RRC Objection*	*09/15/94*
Agency Revised Rule	*Obj. Removed*	*10/20/94*

ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

Environmental Management

15A NCAC 2H .0907 - Program Approval Procedures: Revision and Withdrawal	*RRC Objection*	*10/20/94*
Agency Revised Rule	*Obj. Removed*	*10/20/94*
15A NCAC 2H .0908 - Reporting/Record Keeping Req for POTWS/Industrial Users	*RRC Objection*	*10/20/94*
Agency Revised Rule	*Obj. Removed*	*10/20/94*
15A NCAC 2H .0916 - Permits	*RRC Objection*	*10/20/94*
Agency Revised Rule	*Obj. Removed*	*10/20/94*

Mining: Mineral Resources

15A NCAC 5B .0013 - Response Deadline to Department's Request(s)	*RRC Objection*	*09/15/94*
Rule Returned to Agency	*Obj. Cont'd*	*10/20/94*
Agency Filed Rule for Codification Over RRC Objection	***Eff.***	***11/01/94***

Wildlife Resources and Water Safety

15A NCAC 10I .0001 - Definitions and Procedures	*RRC Objection*	*08/18/94*
Rule Returned to Agency	*Obj. Cont'd*	*09/15/94*
Agency Filed Rule for Codification Over RRC Objection	***Eff.***	***10/01/94***

HUMAN RESOURCES

Departmental Rules

10 NCAC 1O .0002 - Complaints	*RRC Objection*	*10/20/94*
Agency Revised Rule	*Obj. Removed*	*10/20/94*

Medical Assistance

10 NCAC 50B .0403 - Reserve	*RRC Objection*	*10/20/94*
Agency Revised Rule	*Obj. Removed*	*10/20/94*

INSURANCE

Medical Database Commission

11 NCAC 15 .0002 - Definitions	*RRC Objection*	*10/20/94*
Agency Revised Rule	*Obj. Removed*	*10/20/94*

11 NCAC 15 .0004 - Uniform Billing Form	*RRC Objection*	*10/20/94*
Agency Revised Rule	*Obj. Removed*	*10/20/94*
11 NCAC 15 .0005 - Description of Data to be Submitted	*RRC Objection*	*10/20/94*
Agency Revised Rule	*Obj. Removed*	*10/20/94*
11 NCAC 15 .0006 - Data Submission	*RRC Objection*	*10/20/94*
Agency Revised Rule	*Obj. Cont'd*	*10/20/94*
11 NCAC 15 .0007 - Provider Verification	*RRC Objection*	*10/20/94*
Agency Revised Rule	*Obj. Cont'd*	*10/20/94*
11 NCAC 15 .0008 - Compliance; Penalties for Noncompliance	*RRC Objection*	*10/20/94*
Agency Revised Rule	*Obj. Removed*	*10/20/94*
11 NCAC 15 .0009 - Data Accessibility	*RRC Objection*	*10/20/94*
Agency Revised Rule	*Obj. Removed*	*10/20/94*

LICENSING BOARDS AND COMMISSIONS

Board of Mortuary Science

21 NCAC 34B .0108 - Trainee Pocket Certificate	*RRC Objection*	*10/20/94*
Agency Repealed Rule	*Obj. Removed*	*10/20/94*
21 NCAC 34B .0125 - Mortuary Science Student Permit Card	*RRC Objection*	*10/20/94*
Agency Repealed Rule	*Obj. Removed*	*10/20/94*
21 NCAC 34B .0509 - Courtesy Card Form	*RRC Objection*	*10/20/94*
Agency Repealed Rule	*Obj. Removed*	*10/20/94*
21 NCAC 34B .0609 - Funeral Establishment Permit Form	*RRC Objection*	*10/20/94*
Agency Repealed Rule	*Obj. Removed*	*10/20/94*

Board of Examiners of Plumbing, Heating and Fire Sprinkler Contractors

21 NCAC 50 .1102 - License Fees	*RRC Objection*	*10/20/94*
Agency Revised Rule	*Obj. Removed*	*10/20/94*

Board of Sanitarian Examiners

21 NCAC 62 .0201 - Petitions	*RRC Objection*	*10/20/94*
Agency Revised Rule	*Obj. Removed*	*10/20/94*
21 NCAC 62 .0203 - Hearings	*RRC Objection*	*10/20/94*
Agency Revised Rule	*Obj. Removed*	*10/20/94*

REVENUE

Individual Income Tax Division

17 NCAC 6B .0118 - Electronic Filing of Individual Income Tax Returns	*RRC Objection*	*10/20/94*
Agency Revised Rule	*Obj. Removed*	*10/20/94*

SECRETARY OF STATE

Land Records Management Division

18 NCAC 8 .0101 - Purpose	*RRC Objection*	*10/20/94*
Agency Revised Rule	*Obj. Removed*	*10/20/94*
18 NCAC 8 .0105 - Definitions of Terms	*RRC Objection*	*10/20/94*
Agency Revised Rule	*Obj. Removed*	*10/20/94*
18 NCAC 8 .0402 - Qualifications	*RRC Objection*	*10/20/94*
Agency Revised Rule	*Obj. Removed*	*10/20/94*

18 NCAC 8 .0903 - Withdrawal of Grant Offer	*RRC Objection*	*10/20/94*
Agency Revised Rule	*Obj. Removed*	*10/20/94*
18 NCAC 8 .1002 - Inspection of Project	*RRC Objection*	*10/20/94*
Agency Revised Rule	*Obj. Removed*	*10/20/94*
18 NCAC 8 .1003 - Audit of Projects	*RRC Objection*	*10/20/94*
Agency Revised Rule	*Obj. Removed*	*10/20/94*
18 NCAC 8 .1209 - Courses of Instruction for Recertification	*RRC Objection*	*10/20/94*
Agency Revised Rule	*Obj. Removed*	*10/20/94*

This Section contains the full text of some of the more significant Administrative Law Judge decisions along with an index to all recent contested cases decisions which are filed under North Carolina's Administrative Procedure Act. Copies of the decisions listed in the index and not published are available upon request for a minimal charge by contacting the Office of Administrative Hearings, (919) 733-2698.

AGENCY	CASE NUMBER	ALJ	DATE OF DECISION	PUBLISHED DECISION REGISTER CITATION
ADMINISTRATION				
North Carolina Council for Women				
Family Violence Prevention Services v. N.C. Council for Women	94 DOA 0242	West	04/13/94	
ALCOHOLIC BEVERAGE CONTROL COMMISSION				
Jerry Lee McGowan v. Alcoholic Beverage Control Comm.	93 ABC 0363	Morrison	08/23/94	
Alcoholic Beverage Control Comm. v. Entertainment Group, Inc.	93 ABC 0719	Gray	03/02/94	
Alcoholic Beverage Control Comm. v. Daehae Chang	93 ABC 0775	Morrison	09/21/94	
Rayvon Stewart v. Alcoholic Beverage Control Commission	93 ABC 0793	Nesnow	04/11/94	
Alcoholic Beverage Control Comm. v. Branchland, Inc.	93 ABC 0892	Morgan	06/03/94	
Alcoholic Beverage Control Comm. v. Peggy Sutton Walters	93 ABC 0906	Mann	03/18/94	
Russell Bernard Speller d/b/a Cat's Disco v. Alcoholic Bev Ctl Comm.	93 ABC 0937	Morrison	03/07/94	
Alcoholic Beverage Control Comm. v. Branchland, Inc.	93 ABC 0993	Morgan	06/03/94	
Edward Ogunjobi, Club Piccadilli v. Alcoholic Beverage Control Comm.	93 ABC 1024	West	03/03/94	
Robert Kovalaske, Nick Pikoulas, Joseph Marshburn, Evangelos Pikoulas, d/b/a Our Mom's BBQ v. Alcoholic Beverage Control Commission	93 ABC 1029	Gray	03/04/94	
Christine George Williams v. Alcoholic Beverage Control Comm.	93 ABC 1057	Becton	04/21/94	
Lynn Ann Garfagna v. Alcoholic Beverage Control Commission	93 ABC 1481	Gray	07/19/94	
Alcoholic Beverage Control Comm. v. Raleigh Limits, Inc.	93 ABC 1485	Mann	03/11/94	
Alcoholic Beverage Control Comm. v. COLAP Enterprises, Inc.	94 ABC 0060	Nesnow	06/07/94	
Alcoholic Beverage Control Comm. v. Mitch's Tavern, Inc.	94 ABC 0064	Gray	07/26/94	
Alcoholic Beverage Control Comm. v. Ms. Lucy Jarrell Powell	94 ABC 0070	Morgan	06/06/94	
Alcoholic Beverage Control Comm. v. Richard Wayne Barrow	94 ABC 0079	Gray	10/14/94	
Alcoholic Beverage Control Comm. v. Daphne Ann Harrell	94 ABC 0115	Nesnow	07/18/94	
Mr. & Mrs. Josh Bullock Jr. v. Alcoholic Beverage Control Comm.	94 ABC 0124	Morgan	06/06/94	
Jerome Crawford v. Alcoholic Beverage Control Commission	94 ABC 0125	Morgan	06/06/94	
Lawrence Mungin v. Alcoholic Beverage Control Commission	94 ABC 0149	Chess	08/08/94	
Willie Poole Jr. v. Alcoholic Beverage Control Commission	94 ABC 0232	Chess	09/02/94	
Alonza Mitchell v. Alcoholic Beverage Control Commission	94 ABC 0257	Morrison	07/28/94	9:11 NCR 870
Roy Dale Cagle v. Alcoholic Beverage Control Commission	94 ABC 0260	West	07/13/94	
Christopher C. Gause, James A Jinwright v. Alcoholic Bev. Ctl. Comm.	94 ABC 0532	Gray	09/27/94	
Rajaddin Abdelaziz v. Alcoholic Beverage Control Commission	94 ABC 0600	Chess	09/22/94	
COMMERCE				
Savings Institutions Division				
James E. Byers, et al v. Savings Institutions	93 COM 1622	Chess	03/01/94	
CORRECTION				
Division of Prisons				
Gene Strader v. Department of Correction	94 DOC 0252	Morrison	03/21/94	
CRIME CONTROL AND PUBLIC SAFETY				
Joseph Guernsey & Parents, Robert Guernsey & Dolores Guernsey v. Pitt County Hospital Eastern Radiologists	94 CPS 0413	Gray	07/11/94	

AGENCY	CASE NUMBER	ALJ	DATE OF DECISION	PUBLISHED DECISION REGISTER CITATION
Crime Victims Compensation Commission				
Mae H. McMillan v. Crime Victims Compensation Commission	92 CPS 1328	Morgan	08/11/94	
James Hugh Baynes v. Crime Victims Compensation Commission	93 CPS 0801	West	03/28/94	9:2 NCR 114
Ross T. Bond v. Victims Compensation Commission	93 CPS 1104	West	04/21/94	
James A. Canady v. Crime Victims Compensation Commission	93 CPS 1108	Gray	03/28/94	
Virginia Roof v. Department of Crime Control & Public Safety	93 CPS 1347	Nesnow	03/24/94	
Karen C. Tilghman v. Crime Victims Compensation Commission	93 CPS 1608	Reilly	05/17/94	9:6 NCR 407
Rosemary Taylor v. Crime Victims Compensation Commission	93 CPS 1626	Nesnow	05/25/94	
Violet E. Kline v. Crime Victims Compensation Commission	93 CPS 1670	Morgan	06/13/94	
James Benton v. Crime Victims Compensation Commission	94 CPS 0034	Chess	06/14/94	
Percy Clark v. Crime Victims Compensation Commission	94 CPS 0127	Reilly	04/19/94	
J. Richard Spencer v. Crime Victims Compensation Commission	94 CPS 0157	Chess	06/14/94	
Albert H. Walker v. Crime Victims Compensation Commission	94 CPS 0229	Reilly	08/11/94	
Barbara Henderson v. Crime Victims Compensation Commission	94 CPS 0259	Morrison	04/07/94	
Shirley Handsome v. Crime Victims Compensation Commission	94 CPS 0286	Gray	04/28/94	
Georgeann Young v. Crime Victims Compensation Commission	94 CPS 0292	Reilly	04/18/94	
Lawrence L. Tyson v. Crime Victims Compensation Commission	94 CPS 0368	Gray	04/26/94	
Ada Battle v. Crime Victims Compensation Commission	94 CPS 0414	Reilly	08/23/94	
Lyman L. Chapman v. Crime Victims Compensation Commission	94 CPS 0415	Chess	06/02/94	
Douglas and Virginia Wilson v. Crime Victims Compensation Comm.	94 CPS 0417	Reilly	06/07/94	
Blanche J. Taylor v. Willism Hooks Jr., Crime Victims Comp. Comm.	94 CPS 0464	Mann	10/28/94	
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STATE OF NORTH CAROLINA	IN THE OFFICE OF ADMINISTRATIVE HEARINGS
COUNTY OF WARREN	94 EDC 0653
WAYNE HOGWOOD, Petitioners, v. NORTH CAROLINA DEPARTMENT OF PUBLIC INSTRUCTION, Respondent,	RECOMMENDED DECISION

This contested case was heard by Administrative Law Judge, Thomas R. West, on September 7, 1994, in Raleigh, North Carolina.

No witnesses were presented. Instead, the contested case was presented on the basis of:

1. "Stipulation of Facts" filed on August 19, 1994, consisting of ten (10) stipulations;

2. "Memorandum in Support of Petitioner's Motion for Directed Verdict" filed September 7, 1994; and

3. "Memorandum of Law" filed by Respondent on September 7, 1994.

APPEARANCES

For Petitioner:
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For Respondent:
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STIPULATED FACTS

The facts, stipulated by the parties, are as follows:

1. Wayne Hogwood is the holder of teaching certificate No. 139-46-7104 issued by the State Board of Education. Mr. Hogwood is certified in the areas of elementary education, middle grade social studies, emotionally handicapped and provisionally certified in the areas of preschool handicapped, mentally handicapped and learning disabled.

2. Wayne Hogwood was employed as a probationary teacher in the Warren County School System for the 1991-92, 1992-93 and 1993-94 school years. He taught special education students all three years.

3. On March 22, 1994, the Charlotte Observer newspaper ran an article on teachers who had been convicted of crimes. The article included a piece on Wayne Hogwood, stating that in 1981 he had been convicted of assaulting his then girlfriend with a deadly weapon, inflicting serious injury.

4. In 1980, in Nash County Superior Court case 80-CRS-10431, Mr. Hogwood was charged with assault with a deadly weapon with intent to kill inflicting serious injury for shooting his then girlfriend with a .38 caliber pistol. Mr. Hogwood was convicted of assault with a deadly weapon, inflicting serious injury, in 1981.

5. Mr. Hogwood has not misrepresented any information about his conviction to the Warren County School System, nor to DPI (Department of Public Instruction). The Warren County School System did not ask Mr. Hogwood if he had been convicted of a crime when he was initially employed. The only time DPI requested Mr. Hogwood to disclose prior convictions was in 1978 when he was initially certified. Mr. Hogwood disclosed his conviction of assault with a deadly weapon to the Warren County School System for the first time in March 1994 when the article appeared in the Charlotte Observer. DPI did not know about Mr. Hogwood's conviction until the newspaper article appeared in the Charlotte Observer.

6. The last week of March, 1994, Mr. Hogwood tendered his resignation from the Warren County School System, effective the end of the 1993-94 school year. He continued teaching until the end of such school year.

7. Mr. Hogwood's past teaching performance in the Warren County School System has been satisfactory and is not an issue in this administrative hearing.

8. As a result of the Charlotte Observer article, DPI looked into this matter and confirmed that Mr. Hogwood had been convicted of assault with a deadly weapon, inflicting serious injury, in 1981. A true and accurate copy of the Judgment and Commitment entered in Nash County Superior Court evidencing Mr. Hogwood's 1981 felony conviction is attached hereto as Exhibit A.

9. DPI seeks to revoke Mr. Hogwood's certificate because of his conviction and/or the conduct upon which the conviction was based.

10. The only issue before the Office of Administrative Hearings is whether the 1981 conviction for assault with a deadly weapon inflicting serious injury constitutes a ground for revocation under 16 NCAC 6C .0312(a)(3) and (8).

CONCLUSIONS OF LAW

Based upon a careful review of the stipulated facts, the Administrative Law Judge reaches the following conclusions of law:

16 NCAC 6C .0312(a)(3) of the North Carolina Administrative Code states:

> The SBE (State Board of Education) may deny an application for certification or may suspend or revoke a certificate issued by the Department only for the following reasons: . . . (3) conviction or entry of a plea of no contest, as an adult, of a crime if there is a reasonable and adverse relationship between the underlying crime and the continuing ability of the person to perform any of his/her professional functions in an effective manner; . . .

16 NCAC 6C .0312(a)(3) (emphasis added). DPI and the Superintendent of Public Instruction are agents of the SBE for purposes of this case.

The administrative code requires the SBE to satisfy a two-part test before it may revoke a teacher's license based on the conviction of a crime. First, the SBE must establish that the teacher has, as an adult, been convicted (or has pled no contest) to a crime. Second, the SBE must establish that the crime bears an adverse relationship to the teacher's continuing ability to perform his/her job effectively. Thus, the crime itself does not constitute the sole basis for revocation; there must be additional information which indicates that there was an adverse impact on the teacher's ability to teach.

16 NCAC 6C .0312(a)(8) is not applicable in this case. This subsection authorizes the SBE to revoke a teacher's certificate for "any other illegal, unethical, or lascivious conduct. . . ." This subsection is a catch-all provision which is intended to address conduct not otherwise covered by one of the preceding seven subsections; thus, it is subsumed by subsection (a)(3).

Applying section .0312(a)(3), the factfinder must determine if there are facts which indicate that a teacher's conviction impacts on his/her continuing ability to teach. In reviewing the Board's decision to dismiss a career teacher, the North Carolina Supreme Court held in Faulkner v. New Bern-Craven Bd. of Educ. that the reviewing court must apply the "whole record" test and consider all testimony presented to the board. Faulkner v. New Bern-Craven Bd. of Educ., 311 N.C. 42, 316 S.E.2d 281 (1984), citing Thompson v. Wake Co. Bd. of Educ., 292 N.C. 406, 233 S.E.2d 538 (1977). In Thompson, the Supreme Court held that the "whole record" test requires the court to consider both the evidence which justifies the Board's result and that which contradicts it. Thompson, 292 N.C. at 410, 233 S.E.2d at 541. In applying the "whole record" test in this case, the undersigned may only consider the ten facts stipulated above.

Respondent cites Burrow v. Randolph Co. Bd. of Educ. for the proposition that allowing a teacher to teach who has been convicted of a crime could lead impressionable children to believe that such acts are proper. The Burrow court applied the "whole record" test in determining whether the instructor should have her license revoked, and in reviewing all information presented, the Court held that there were facts sufficient for the Board to revoke the plaintiff's certificate. The court held that the totality of facts showed a reasonable and adverse relationship between the crime and plaintiff's continuing ability to perform effectively as a teacher. Burrow v. Randolph Co. Bd. of Educ., 61 N.C. App. 619, 628, 301 S.E.2d 704, 709 (1973).

Upon careful consideration of the facts in Burrow, it is easy to distinguish it from this case. In Burrow, the board noted that the plaintiff, while on work release from an active sentence for the shooting death of her husband, attempted to report for work at a senior high school without notifying the school. However, the local media had been notified to cover Plaintiff's return. In addition, Plaintiff's return without notice was purposefully calculated to embarrass school officials. Clearly, this is information sufficient to fulfill the second prong of .0312(a)(3) -- that Plaintiff's conduct had a reasonable and adverse effect on her ability to continue teaching.

Burrow does not compel the result in this case, however. Petitioner was not serving an active sentence at the time of the Charlotte Observer article. His conviction, although for a serious crime, was not for a homicide. Almost a decade had passed since Petitioner had completed his probation. Petitioner did not receive an active sentence. Petitioner behaved responsibly and with dignity by resigning when his conviction became public, rather than by creating a news story for personal reasons. There is no evidence that Petitioner's ability to teach was adversely affected. The evidence is to the contrary since the Warren County School System retained Petitioner for the balance of the 1994 school year.

Generally, a government employer cannot dismiss an employee for off-duty wrongful conduct unless the employer can demonstrate a reasonable relationship between the wrongful conduct and the employee's continuing ability to perform his or her job. In Eury v. North Carolina Employment Comm'n, the North Carolina Court of Appeals stated that where the agency action was based upon off-duty criminal conduct, the agency:

must demonstrate that the dismissal is supported by the existence of a rational nexus between the type of criminal conduct committed and the potential adverse impact on the employee's future ability to perform for the agency.

Eury v. North Carolina Employment Comm'n, No. 9310SC935 (Filed August 2, 1994).

The Court sets forth seven factors which an agency may consider in determining whether such a rational nexus exists. Those factors are as follows:

1) The degree to which, if any, the conduct may have adversely affected clients or colleagues;

2) The relationship between the type of work performed by the employee for the agency and the type of criminal conduct committed;

3) The likelihood of recurrence of the questioned conduct and the degree to which the conduct may affect work performance, work quality, and the agency's good will and interests;

4) The proximity or remoteness in time of the conduct to the commencement of the disciplinary proceedings;

5) The extenuating or aggravating circumstances, if any, surrounding the conduct;

6) The blameworthiness or praiseworthiness of the motives resulting in the conduct; and

7) The presence or absence of any relevant factors in mitigation.

Eury at 29-30.

There is no evidence in the record that students, colleagues, or parents have been adversely affected by Petitioner's conduct. There is no evidence that Petitioner's assaultive conduct is likely to recur. The only evidence regarding work performance is that it is satisfactory. The crime at issue occurred more than a decade ago and Petitioner successfully completed probation almost a decade ago. There is no evidence of extenuating or aggravating circumstances. There is no evidence of Petitioner's motive for shooting his girlfriend. There is no evidence of aggravating or mitigating factors.

Although several of these guidelines do not impact on whether Petitioner's certificate should be revoked, the second and third guidelines do impact on whether Petitioner's crime bore a reasonable and adverse relationship with his continuing ability to perform his professional functions in an efficient manner.

Allowing a teacher who has been convicted of assault with a deadly weapon to continue teaching, particularly when that weapon was a handgun, would have negative ramifications for DPI. The Charlotte Observer story is proof of that. Parents used to worry that their child might get hurt on the way to school or socked in the eye by a bully on the playground. Now parents must worry about their children being shot and killed.

A primary function of government in North Carolina is to guard and maintain the people's right to a free public education. N.C. Const., Art. I § 15. Parents rely on school systems to protect their children from violence. If DPI certified teachers who have been convicted of assault with a deadly weapon, North Carolinians would tend to think that their government is not serious about protecting children in North Carolina schools, but instead scoffs at the problem and contributes to the problem of violence in schools.

Such an impact would most certainly affect the "good will and interests" which the agency tries to project and would interfere with an effective system of public education. Therefore, while Petitioner may succeed on several other guidelines, the application of these two factors is sufficient to establish a rational nexus and therefore is sufficient for the undersigned to find that there is a reasonable and adverse relationship

between Petitioner's conviction and his continuing ability to perform his professional functions in an effective manner.

RECOMMENDED DECISION

Based on the foregoing, it is recommended that the relief sought by the Petitioner for a Contested Case Hearing be DENIED.

ORDER

It is hereby ordered that the agency serve a copy of the final decision on the Office of Administrative Hearings, P.O. Drawer 27447, Raleigh, N.C. 27611-7447, in accordance with North Carolina General Statute 150B-36(b).

NOTICE

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to this recommended decision and to present written arguments to those in the agency who will make the final decision. G.S. 150B-36(a).

The agency is required by G.S. 150B-36(b) to serve a copy of the final decision on all parties and to furnish a copy to the parties' attorney of record and to the Office of Administrative Hearings.

The agency that will make the final decision in this contested case is the Department of Public Instruction.

This the 20th day of October, 1994.

Thomas R. West
Administrative Law Judge

STATE OF NORTH CAROLINA COUNTY OF WAKE	IN THE OFFICE OF ADMINISTRATIVE HEARINGS 94 INS 0028

SANDRA TATUM, Petitioners, v. STATE OF NORTH CAROLINA TEACHERS' AND STATE EMPLOYEES' COMPREHENSIVE MAJOR MEDICAL PLAN, Respondent,	RECOMMENDED DECISION

This matter was heard before Beecher R. Gray, administrative law judge, on August 16, 1994 in Raleigh, North Carolina. Respondent filed a proposed recommended decision and brief on August 31, 1994. Petitioner filed a proposed recommended decision and brief on September 14, 1994.

APPEARANCES

Petitioner: Richard W. Rutherford, Esq.

Respondent: Evelyn B. Terry, Esq.

ISSUES

1. Whether Respondent's denial of coverage for Petitioner's bilateral salpingo-oophorectomy on the basis that it was prophylactic in nature, and thereby excluded from coverage under the State of North Carolina Teachers' and State Employees' Comprehensive Major Medical Plan (Plan), is proper.

2. Whether Respondent acted erroneously, failed to use proper procedure, or failed to act as required by law and thereby violated Petitioner's due process rights by applying Chapter 135, Article 3, of the General Statutes of North Carolina in a manner such that Respondent initially paid Petitioner's health care providers under Chapter 135 and five months later forced a recoupment of those payments without benefit of pre-event notice and hearing.

EXHIBITS

The parties stipulated on the record that the following exhibits would be offered into the evidence without objection: Joint exhibits 1 and 2; Petitioner's exhibits A-K; and Respondent's exhibits 1-3 and 5-11. The expert testimony of Dr. W. Ronald Neal for Petitioner and Dr. Allen Joseph McBride for Respondent was received by stipulation of the parties in the form of video depositions as Petitioner's exhibits J and K, respectively. Each of these exhibits was offered and admitted into evidence.

FINDINGS OF FACT

1. Official notice was requested and taken of Article 3 of Chapter 135 of the North Carolina General Statutes; the due process clause of the Fifth and Fourteenth Amendments to the United States Constitution; and the law of the land clause, Article 1, Section 19, of the Constitution of the State of North Carolina.

2. The parties received notice of hearing by certified mail more than 15 days prior to the hearing and stipulated on the record that notice was proper in all respects.

3. Petitioner is an employee of the Division of Facility Services, Department of Human Resources, State of North Carolina. She is, and was at all times pertinent, covered by the Teachers' and State Employees' Comprehensive Major Medical Plan of the State of North Carolina (the Plan).

4. Respondent and its employees, trustees, and administrators, are responsible for making available a comprehensive major medical plan for the exclusive benefit of the employees and their dependents and retired employees of the State of North Carolina. The trustees and administrators act as fiduciaries of the Plan. The Plan was created under the provisions of Chapter 135, Article 3 of the General Statutes of North Carolina.

5. Petitioner's mother was diagnosed in the 1960's with cervical cancer. In 1984 Petitioner's mother was diagnosed with ovarian cancer.

6. In about 1989, Dr. Ronald Neal, Petitioner's Obstetrician-Gynecologist, advised Petitioner that prevailing medical data and opinion indicated that she should undergo surgery to remove her ovaries since her mother had experienced both cervical and ovarian cancer. Petitioner was 50 years old at the time and previously had undergone a hysterectomy. She had experienced ovarian failure. Dr. Neal's opinion was that Petitioner had a 50% probability of contracting ovarian cancer. Dr. Neal further advised that many women who contract ovarian cancer are dead within one year and that 90% are dead within 5 years.

7. There are no good early warning tests which can be used to detect ovarian cancer. The expert witnesses for both parties agree on this fact. Seventy-five percent (75%) of women who are detected with ovarian cancer, according to Petitioner's expert, Dr. Neal, and Respondent's expert, Dr. McBride, are at stage 3 or 4, the disease having metastasized to the lungs or liver. Those women who present positive for ovarian cancer usually cannot be saved. The treatment requires hospitalizations with chemotherapy and possibly irradiation, is extremely expensive, and is debilitating to the patient.

8. The experts for both parties agree that a bi-lateral salpingo-oophorectomy in this Petitioner's case was medically necessary and good medical practice.

9. Petitioner obtained a preadmission certification from Respondent on June 30, 1992 for admission to Moses Cone Women's Hospital for removal of her ovaries and fallopian tubes. The preadmission certification contains the following statement: ADMITTING DIAGNOSIS: "Pelvic pain/R/O/Ovarian Cancer". This statement indicates that Petitioner's admission to Moses Cone Women's Hospital was approved and that the patient, although presenting with pelvic pain, was not considered to have active ovarian cancer.

10. On August 6, 1992, Petitioner underwent a bi-lateral salpingo-oophorectomy performed by Dr. Neal in the Moses Cone Women's Hospital in Greensboro. Petitioner developed internal bleeding complications the day after surgery and obtained Respondent's approval, in the form of another preadmission certification, for two (2) extra days in the hospital.

11. Respondent utilizes preadmission certifications to indicate that an inpatient setting is appropriate for the procedure to be performed. It does not use the preadmission certification process to indicate its approval of the procedure or its intent to pay for the procedure.

12. Petitioner's medical expenses for the surgery totalled $8,461.52. Respondent paid $5,391.82 directly to Petitioner's medical vendors after calculating allowable costs and copayment.

13. Respondent notified Petitioner by letter on February 23, 1993, approximately five months after it paid the claims, that it was revoking its approval of Petitioner's claim for benefits and intended to seek refunds from the vendors already paid. Respondent indicated that it was denying Petitioner's claim because she had undergone a prophylactic bilateral salpingo-oophorectomy with no clinical indications of ovarian cancer either pre-op or post-op.

14. Petitioner requested and received an internal review of her claim by Respondent. As part of this review, Petitioner's claim was the subject of a physician consultant review conducted by Dr. Allen Joseph

McBride, Senior Director of Medical Affairs, Blue Cross Blue Shield of North Carolina, Respondent's claims processing contractor. Dr. McBride confirmed the increased risk of ovarian cancer present because of the hereditary factor but denied payment for what he regarded as a preventive procedure because Petitioner exhibited no symptoms of disease.

15. After this review, Respondent demanded and received refunds from every medical vendor it had paid in Petitioner's case.

16. Before giving his medical opinion to revoke coverage for this procedure, Dr. McBride reviewed a letter from Dr. Neal supporting his medical decision to operate; the hospital's operative report; and Article 3 of Chapter 135 of the General Statutes of North Carolina. His opinion that coverage should be revoked was based solely upon his construction of the provisions of the General Statutes involved, principally G.S. 135-40.7(5), (12), and (16).

17. Dr. McBride did not know about Petitioner's presentation with pelvic pain as recorded as the admitting diagnosis on both preadmission certifications issued by Respondent. Dr. McBride's testimony in this hearing is that, had he known about the pelvic pain admitting diagnosis, he would have ordered Petitioner's outpatient medical records for his review. An offer to supply the Plan with Petitioner's clinical records was made by Dr. Neal in his letter to the Plan, dated September 28, 1992, which Dr. McBride had before him during his review. Dr. McBride did not request any of Petitioner's clinical records.

18. In the absence of knowledge about Petitioner's preadmission certification admitting diagnosis of pelvic pain and her extended clinical record, Dr. McBride does not know whether Petitioner's claim should be paid as a diagnostic study under G.S. 135-40.7(12) where the covered individual had a definite symptomatic condition of disease under G.S. 135-40.7(12)(ii).

19. Following the internal review of Petitioner's appeal, Respondent notified her, through counsel, that Respondent had entered a binding decision on or about October 20, 1993 affirming its denial of her claim and appeal.

20. G.S. 135-40.4 provides, in pertinent part:

> In the event a covered person, as a result of accidental bodily injury, disease or pregnancy incurs covered expenses, the Plan will pay benefits up to the amounts described in G.S. 135-40.5 through G.S. 135-40.9.
> N.C. Gen. Stat. §135-40.4(a) (Cum. Supp. 1993).

21. G.S. 135-40.7(5) provides, in pertinent part:

> The following shall in no event be considered covered expenses nor will benefits described in G.S. 135-40.5 through G.S.135-40.11 be payable for:
>
> Charges for any care, treatment, services or supplies other than those which are certified by a physician who is attending the individual as being required for the medically necessary treatment of the injury or disease. This subdivision shall not be construed, however, to require certification by an attending physician for a service provided by an advanced practice registered nurse acting within the nurse's lawful scope of practice, subject to the limitations of G.S. 135-40.6(10).
> N.C. Gen. Stat. §135-40.7(5) (Cum. Supp. 1993).

22. G.S. 135-40.7(12) provides, in pertinent part:

> The following shall in no event be considered covered expenses nor will benefits described in G.S. 135-40.5 through G.S.135-40.11 be payable for:

Charges incurred for any medical observations or diagnostic study when no disease or injury is revealed unless proof satisfactory to the Claims Processor is furnished that (i) the claim is in order in all other respects, (ii) the covered individual had a definite symptomatic condition of disease or injury other than hypochondria, and (iii) the medical observation and diagnostic studies concerned were not undertaken as a matter of routine physical examination or health checkup as provided in G.S. 135-40.6(8)s.
N.C. Gen. Stat. §135-40.7(12) (Cum. Supp. 1993).

23. G.S. 135-40.7(16) provides, in pertinent part:

The following shall in no event be considered covered expenses nor will benefits described in G.S. 135-40.5 through G.S.135-40.11 be payable for:

Costs denied by the Claims Processor as part of its overall program of claim review and cost containment.
N.C. Gen. Stat. §135-40.7(16) (Cum. Supp. 1993).

24. Respondent is authorized to recover disbursements made under the Plan that are not in accordance with Article 3 of Chapter 135. General Statutes Section 135-39.5 provides, in pertinent part:

The Executive Administrator and Board of Trustees of the Teachers' and State Employees' Comprehensive Major Medical Plan shall have the following powers and duties:

(21) [s]upervising the payment of claims and all other disbursements under this Article, including the recovery of any disbursements that are not made in accordance with the provisions of this Article. G.S. 135-39.5(21) (Cum. Supp. 1993).

25. Respondent also is authorized to issue rules and regulations to implement the provisions of Article 3 of Chapter 135: G.S. 135-39.8 (Cum. Supp. 1993) provides, in pertinent part:

The Executive Administrator and Board of Trustees may issue rules and regulations to implement Parts 2 and 3 of this Article.

26. Respondent has not issued rules or regulations implementing Parts 2 and 3 of Article 3 of Chapter 135 of the General Statutes of North Carolina.

CONCLUSIONS OF LAW

Based upon the foregoing findings of fact, I make the following conclusions of law.

1. The parties are properly before the Office of Administrative Hearings.

2. Petitioner is a state employee and a covered person under the Plan, within the meaning of G.S. 135-40.2.

3. A bilateral salpingo-oophorectomy for a female of Petitioner's age and reproductive status whose mother has been diagnosed with both cervical and ovarian cancer is the current recommended and accepted medically necessary treatment, within the meaning of G.S. 135-40.7(5), for the disease of ovarian cancer even though clinical manifestations of the disease are not present. No rule of the Respondent and no statute of the State of North Carolina specifically exclude or disapprove the procedure performed under the facts of this case.

4. The charges for care, treatment, services, and supplies certified by Petitioner's attending physician as necessary for the salpingo-oophorectomy performed by him on Petitioner are covered expenses under the Plan for which benefits described in G.S. 135-40.5 through G.S. 135-40.11 are payable. Because this surgical

procedure is the accepted medically necessary treatment for ovarian cancer, regarding this Petitioner under her particular circumstances, her certified expenses are not excluded by the exclusions and limitations of G.S. 135-40.7 or any other provision of Chapter 135, Article 3.

5. It cannot be concluded as a matter of law that the present statutory scheme, adhered to by Respondent through initial approval and disbursement of Plan benefits to Petitioner, followed by revocation of benefits, recovery of disbursements, and affirmance of revocation upon internal appeal, caused Respondent to act erroneously, fail to use proper procedure, or fail to act as required by law. The facts and the law in this contested case do not compel a conclusion that a post-recovery of disbursements contested case hearing or a post-denial of claim contested case hearing are violations of Petitioner's due process rights and constitute improper, illegal, or erroneous agency action.

RECOMMENDED DECISION

Based upon the foregoing findings of fact and conclusions of law, it is hereby recommended that Respondent reverse its decision revoking approval of Petitioner's claim for benefits under the Plan for the bi-lateral salpingo-oophorectomy performed by Dr. Neal upon her on August 6, 1993. This recommended decision is based upon the fact that it is the accepted medically necessary treatment of the disease of ovarian cancer, in the current absence of methods for early detection, for a 50 year old patient whose mother has had two primary gynecologic malignancies, including ovarian cancer, and whose ovaries have failed.

ORDER

It is hereby ordered that the agency serve a copy of the final decision on the Office of Administrative Hearings, P.O. Drawer 27447, Raleigh, N.C. 27611-7447, in accordance with North Carolina General Statute 150B-36(b).

NOTICE

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to this recommended decision and to present written arguments to those in the agency who will make the final decision. G.S. 150B-36(a).

The agency is required by G.S. 150B-36(b) to serve a copy of the final decision on all parties and to furnish a copy to the parties' attorney of record and to the Office of Administrative Hearings.

The agency that will make the final decision in this contested case is the North Carolina Teachers' and State Employees' Comprehensive Major Medical Plan.

This the 25th day of October, 1994.

Beecher R. Gray
Administrative Law Judge

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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NORTH CAROLINA ADMINISTRATIVE CODE

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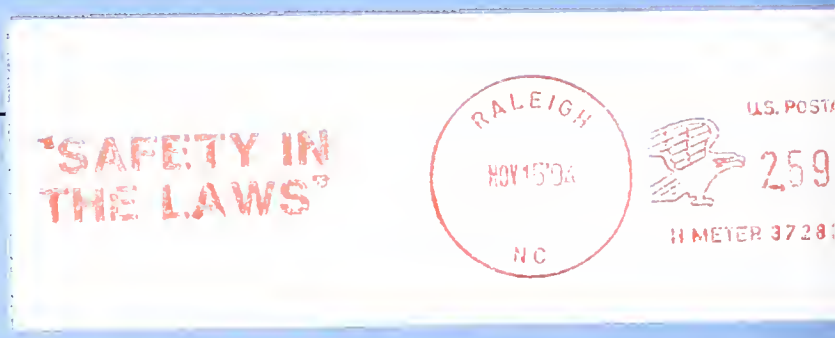

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