

**NORTH CAROLINA  
REGISTER**

**IN THIS ISSUE**



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**NORTH CAROLINA ADMINISTRATIVE CODE CLASSIFICATION SYSTEM**

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

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

<b>TITLE</b>	<b>DEPARTMENT</b>	<b>LICENSING BOARDS</b>	<b>CHAPTER</b>
1	Administration	Acupuncture	1
2	Agriculture	Architecture	2
3	Auditor	Athletic Trainer Examiners	3
4	Commerce	Auctioneers	4
5	Correction	Barber Examiners	6
6	Council of State	Certified Public Accountant Examiners	8
7	Cultural Resources	Chiropractic Examiners	10
8	Elections	Employee Assistance Professionals	11
9	Governor	General Contractors	12
10	Health and Human Services	Cosmetic Art Examiners	14
11	Insurance	Dental Examiners	16
12	Justice	Dietetics/Nutrition	17
13	Labor	Electrical Contractors	18
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16	Public Education	Geologists	21
17	Revenue	Hearing Aid Dealers and Fitters	22
18	Secretary of State	Landscape Architects	26
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**Note:** Title 21 contains the chapters of the various occupational licensing boards.

**NORTH CAROLINA REGISTER**  
 Publication Schedule For January 2000 - December 2000

FILING DEADLINES			NOTICE OF RULE- MAKING PROCEEDIN GS	NOTICE OF TEXT							TEMPORARY RULE
volume and issue number	issue date	last day for filing	earliest register issue for publication of text	earliest date for public hearing	non-substantial economic impact			substantial economic impact			270 <sup>th</sup> day from issue date
					end of required comment period	deadline to submit to RRC for review at next meeting	first legislative day of the next regular session	end of required comment period	deadline to submit to RRC for review at next meeting	first legislative day of the next regular session	
14:13	01/04/00	12/09/99	03/15/00	01/19/00	02/03/00	02/21/00	05/09/00	03/06/00	03/20/00	05/09/00	09/30/00
14:14	01/14/00	12/21/99	03/15/00	01/31/00	02/14/00	02/21/00	05/09/00	03/14/00	03/20/00	05/09/00	10/10/00
14:15	02/01/00	01/10/00	04/03/00	02/16/00	03/02/00	03/20/00	05/09/00	04/03/00	04/20/00	01/26/01	10/28/00
14:16	02/15/00	01/25/00	04/17/00	03/01/00	03/16/00	03/20/00	05/09/00	04/17/00	04/20/00	01/26/01	11/11/00
14:17	03/01/00	02/09/00	05/01/00	03/16/00	03/31/00	04/20/00	01/26/01	05/01/00	05/22/00	01/26/01	11/26/00
14:18	03/15/00	02/23/00	05/15/00	03/30/00	04/14/00	04/20/00	01/26/01	05/15/00	05/22/00	01/26/01	12/10/00
14:19	04/03/00	03/13/00	06/15/00	04/18/00	05/03/00	05/22/00	01/26/01	06/02/00	06/20/00	01/26/01	12/29/00
14:20	04/17/00	03/27/00	07/03/00	05/02/00	05/17/00	05/22/00	01/26/01	06/16/00	06/20/00	01/26/01	01/12/01
14:21	05/01/00	04/07/00	07/03/00	05/16/00	05/31/00	06/20/00	01/26/01	06/30/00	07/20/00	01/26/01	01/26/01
14:22	05/15/00	04/24/00	07/17/00	05/30/00	06/14/00	06/20/00	01/26/01	07/14/00	07/20/00	01/26/01	02/09/01
14:23	06/01/00	05/10/00	08/01/00	06/16/00	07/03/00	07/20/00	01/26/01	07/31/00	08/21/00	01/26/01	02/26/01
14:24	06/15/00	05/24/00	08/15/00	06/30/00	07/17/00	07/20/00	01/26/01	08/14/00	08/21/00	01/26/01	03/12/01
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15:03	08/01/00	07/11/00	10/02/00	08/16/00	08/31/00	09/20/00	01/26/01	10/02/00	10/20/00	01/26/01	04/28/01
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15:06	09/15/00	08/24/00	11/15/00	10/02/00	10/16/00	10/20/00	01/26/01	11/14/00	11/20/00	01/26/01	06/12/01
15:07	10/02/00	09/11/00	12/01/00	10/17/00	11/01/00	11/20/00	01/26/01	12/01/00	12/20/00	05/2002	06/29/01
15:08	10/16/00	09/25/00	12/15/00	10/31/00	11/15/00	11/20/00	01/26/01	12/15/00	12/20/00	05/2002	07/13/01
15:09	11/01/00	10/11/00	01/02/01	11/16/00	12/01/00	12/20/00	05/2002	01/02/01	01/22/01	05/2002	07/29/01
15:10	11/15/00	10/24/00	01/16/01	11/30/00	12/15/00	12/20/00	05/2002	01/16/01	01/22/01	05/2002	08/12/01
15:11	12/01/00	11/07/00	02/01/01	12/18/00	01/02/01	01/22/01	05/2002	01/30/01	02/20/01	05/2002	08/28/01
15:12	12/15/00	11/22/00	02/15/01	01/02/01	01/16/01	01/22/01	05/2002	02/13/01	02/20/01	05/2002	09/11/01

## EXPLANATION OF THE PUBLICATION SCHEDULE

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

### GENERAL

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

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

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

### FILING DEADLINES

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

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

### NOTICE OF RULE-MAKING PROCEEDINGS

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

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

### NOTICE OF TEXT

**EARLIEST DATE FOR PUBLIC HEARING:** The hearing date shall be at least 15 days after the date a notice of the hearing is published.

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

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

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

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

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

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

**CHAPTER 2 – ENVIRONMENTAL MANAGEMENT**

**SUBCHAPTER 2B – SURFACE WATERS AND WETLANDS STANDARDS**

**SECTION .0300 – ASSIGNMENT OF STREAM CLASSIFICATIONS**

**TIME EXTENSION FOR 15A NCAC 2B .0300**

**Informational Item**

A public hearing was held in Wake Forest on July 13, 2000 for the proposed surface water reclassifications of the upper Neuse River from Falls Lake Dam to a point downstream which includes Richland Creek and unnamed tributaries to the Neuse River upstream of the proposed intake to Falls Lake Dam to be reclassified from Class C NSW to Class Water Supply-IV NSW with a segment being reclassified to Water Supply-IV Critical Area (CA) NSW. The hearing was also for the proposed reclassification of Fantasy Lake as a Water Supply CA for the Town of Rolesville. The proposed rule texts were published in the June 15, 2000 (14:24) NC Register. Officials representing the Town of Wake Forest have requested an extension of the comment period for the proposed Neuse River reclassification from July 27, 2000 to August 10, 2000 in order to better address local issues pertaining to local zoning and allow time for comments to be received regarding that issue. The Hearing Officer, Paul Rawls, has agreed to extend the hearing record for the subject proposed reclassification until August 10, 2000. The comment period for the proposed reclassification of Fantasy Lake will also be extended until August 10, 2000. Comments on the proposed reclassifications may be submitted to: Jeff Manning, DWQ Planning Branch, 1617 Mail Service Center, Raleigh, NC 27699. Tel: (919) 733-5083, ext. 579.

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

TITLE 12 – DEPARTMENT OF JUSTICE

CHAPTER 7 – PRIVATE PROTECTIVE SERVICES

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

Citation to Existing Rule Affected by this Rule-making: 12 NCAC 7D .0104 - Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 74C-5

Statement of the Subject Matter: The terms "Administrator" and "Director" will be added to the definition section.

Reason for Proposed Action: The term "Administrator" is not consistent with the Department of Justice personnel terminology, which refers to the position as "Director." Therefore, the terms should be synonymous and the amendment to the rule will attempt to define the meanings.

Comment Procedures: Written comments may be submitted to the following address: W. Wayne Woodard, NC Private Protective Services Board, 3320 Old Garner Rd., Raleigh, NC 27626.

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CHAPTER 11 – NORTH CAROLINA ALARM SYSTEMS LICENSING BOARD

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

Citation to Existing Rule Affected by this Rule-making: 12 NCAC 11 - Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 74D-5(a)(1,2,3,4,5,&6), 74D-6

Statement of the Subject Matter: The Board proposes adopting rules to establish a "grading system" that will be used during background investigations of applicants for license or registration. The "grading system" will be used to determine if an applicant, who has a criminal record, has the requisite good moral character to hold a license or registration.

Reason for Proposed Action: Currently, the Board has no rules to establish a standard for good moral character for applicants with a prior criminal history. To prevent arbitrary decision making, the Board believes a standard should be established which can be used by the staff or the industry in reviewing applicants for a license or a registration.

Comment Procedures: The record is open for receipt of written comments. Such comments, to become part of the record, must be submitted to Administrator W. Wayne Woodard, Alarm Systems Licensing Board, 3320 Old Garner Rd, Raleigh, NC 27626.

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

CHAPTER 7 – COASTAL MANAGEMENT

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

Citation to Existing Rule Affected by this Rule-making: 15A NCAC 7H .0308, .1705 - Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 113A-119.1

Statement of the Subject Matter: Sandbag placement and Erosion Control Structure placement.

Reason for Proposed Action: A petition for rulemaking was received from the Town of Surf City asking that the rules on sandbag erosion control structures of the Coastal Resources Commission's administrative rules be amended so that a more reasonable standard is applied to determine removal of the structures when a community is actively pursuing a beach nourishment project. It has been determined that these erosion control structures need to stay in place to encourage and allow

adequate time for beach re-nourishment and for re-vegetation efforts to be carried out.

**Comment Procedures:** Please submit comments to Charles Jones, 151-B Highway 24, Hestron Plaza II, Morehead City, NC 28557.

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**CHAPTER 13 – SOLID WASTE MANAGEMENT**

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

**Citation to Existing Rule Affected by this Rule-making:** 15A NCAC 13A .0107; .0109; .0113; .0119 - Other rules may be proposed in the course of the rule-making process.

**Authority for the Rule-making:** G.S. 130A-294(c); 150B-21.6

**Statement of the Subject Matter:**

**15A NCAC 13A .0107 - STDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE – PART 262** Establishes standards which apply to generators of hazardous waste.

**15A NCAC 13A .0109 - STANDARDS FOR OWNERS/OPERATORS OF HWTSD FACILITIES – PART 264** Establishes standards for owners and/or operators of hazardous waste facilities (treatment, storage or disposal facilities).

**15A NCAC 13A .0113 - THE HAZARDOUS WASTE PERMIT PROGRAM – PART 270** Establishes permit application information requirements and permit procedures.

**15A NCAC 13A .0119 - STANDARDS FOR UNIVERSAL WASTE MANAGEMENT – PART 273** Streamlines hazardous waste management regulations governing the collection and management of certain widely generated wastes, known as "universal waste". This universal waste rule covers hazardous waste batteries (e.g. nickel cadmium), certain hazardous waste pesticides, and mercury-containing thermostats. By reducing regulatory requirements, this rule will encourage state and local governments and manufacturers to establish environmentally sound collecting programs, and retailers to participate in them.

**Reason for Proposed Action:**

**15A NCAC 13A .0107 - STDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE – PART 262** Eliminated requirements to use the North Carolina Hazardous Waste Manifest form. Instead the Federal Hazardous Waste Manifest form shall be used.

**15A NCAC 13A .0109 - STANDARDS FOR OWNERS/OPERATORS OF HWTSD FACILITIES – PART 264** The proposed amendment adds 40 CFR 264.554 "Staging Piles" to Paragraph (s) (Subpart S), "Corrective Action for Solid Waste Management Units".

**15A NCAC 13A .0113 - THE HAZARDOUS WASTE PERMIT PROGRAM – PART 270** The proposed amendment incorporates by reference all of Subpart F "Special Forms of Permits", and

excludes 40 CFR 270.68 which is not incorporated by reference. .0113(i) has been revised to properly exclude those Federal Regulations that North Carolina is not adopting. Section 270.68 "Remedial Action Plans (RAPs)" allows less stringent provisions in remediation at North Carolina hazardous waste sites.

**15A NCAC 13A .0119 - STANDARDS FOR UNIVERSAL WASTE MANAGEMENT – PART 273** The proposed amendment adds 40 CFR 273.7 which is reserved, Section 273.8 "Applicability—household and conditionally exempt small quantity generator waste", and 273.9 "Definitions" to Paragraph (a), (Subpart A), "General". North Carolina had previously adopted the "Definitions" as 40 CFR 273.6. EPA renumbered the "Definitions" from 273.6 to 273.9 and added 273.8 to describe the applicability of this regulation.

**Comment Procedures:** Written comments may be submitted to Jill Burton, Acting Chief, Hazardous Waste Section, Division of Waste Management, 1646 Mail Service Center, Raleigh, NC 27699-1646.

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

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

*Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Child Care Commission intends to amend the rules cited as 10 NCAC 3U .0302, .0604, .0803, .1304, .1601, .1604, .1606, .1702, .1719-.1722, .1801, .1901, .1903-.1904, .2006-.2012, .2101, .2201, .2206. Notice of Rule-making Proceedings was published in the Register on March 1, 2000.*

**Proposed Effective Date:** April 1, 2001

**Public Hearing:**

**Date:** August 17, 2000

**Time:** 4:00 p.m. – 7:00 p.m.

**Location:** Division of Child Development, Room 300, 320 Chapanoke Rd., Suite 120, Raleigh, NC 27603

**Reason for Proposed Action:** *The Child Care Commission proposes amending these rules to protect the health and safety of children in child care centers and family child care homes. This includes provision for evacuating children safely in case of emergency, safe administration of medication, safe storage of combustible materials, and provisions for discipline practices to be age and developmentally appropriate. Other revisions are proposed relating to recordkeeping, application for child care licenses, and technical changes to update terminology and references.*

**Comment Procedures:** *Anyone wishing to comment of these proposed rules or to request copies of the rules should contact Janice Fain, APA Coordinator, NC Division of Child Development, 2201 Mail Service Center, Raleigh, NC 27699-2201, phone 919-662-4543. Written comments will be accepted through September 1, 2000. Oral comments may be made during the public hearing. The Commission Chairperson may impose time limits for oral remarks.*

**Fiscal Impact**

- State** 10 NCAC 3U .0604
- Local** 10 NCAC 3U .0604
- Substantive** (≥\$5,000,000)
- None** 10 NCAC 3U .0302, .0803, .1304, .1601, .1604, .1606, .1702, .1719-.1722, .1801, .1901, .1903-.1904, .2006-.2012, .2101, .2201, .2206

**CHAPTER 3 – FACILITY SERVICES**

**SUBCHAPTER 3U – CHILD CARE STANDARDS**

**SECTION .0300 – PROCEDURES FOR OBTAINING A LICENSE**

**10 NCAC 3U .0302 APPLICATION FOR A LICENSE FOR A CHILD CARE CENTER**

(a) The individual who will be legally responsible for the operation of the center, which includes assuring compliance with the licensing law and standards, shall apply for a license using the form provided by the Division. If the operator will be a group, organization, or other entity, an officer of the entity who is legally empowered to bind the operator shall complete and sign the application.

(b) The applicant shall arrange for inspections of the center by the local health, building and fire inspectors. The applicant shall provide an approved inspection report signed by the appropriate inspector to the Division representative.

- (1) A provisional classification may be accepted in accordance with Rule .0401(1) of this Subchapter.
- (2) When a center does not conform with a specific building, fire, or sanitation standard, the appropriate inspector may submit a written explanation of how equivalent, alternative protection is provided. The Division may accept the inspector's documentation in lieu of compliance with the specific standard. Nothing in this Regulation is to preclude or interfere with issuance of a provisional license pursuant to Section .0400 of this Subchapter.

(c) The applicant, or the person responsible for the day-to-day operation of the center, shall be able to describe the plans for the daily program, including room arrangement, staffing patterns, equipment, and supplies, in sufficient detail to show that the center will comply with applicable requirements for activities, equipment, and staff/child ratios for the capacity of the center and type of license requested. The applicant shall make the following written information available to the Division for review to verify compliance with provisions of this Subchapter and the licensing law:

- (1) daily schedules,
- (2) activity plans,
- (3) emergency care plan,
- (4) discipline policy,
- (5) incident reports,
- (6) incident logs,
- (7) a copy of the certified criminal history check for the applicant, or the applicant's designee as defined in Rule .2701(g) of this Subchapter, from the Clerk of Superior Court's office in the county or counties where the individual has resided during the previous 12 months.

(d) The applicant shall, at a minimum, demonstrate to the Division representative that measures will be implemented to have the following information in the center's files and readily available to the representative for review:

- (1) Staff records which include an application for employment and date of birth; documentation of



previous education, training, and experience; medical and health records; documentation of participation in training and staff development activities; and required criminal records check documentation;

- (2) Children's records which include an application for enrollment; medical and immunization records; and permission to seek emergency medical care;
- (3) Daily attendance records;
- (4) Records of monthly fire drills giving the date each drill is held, the time of day, the length of time taken to evacuate the building, and the signature of the person that conducted the drill;
- (5) Records of monthly playground inspections documented on a checklist provided by the Division; and
- (6) Records of medication administered.

(e) The Division representative shall measure all rooms to be used for child care and shall assure that an accurate sketch of the center's floor plan is part of the application packet. The Division representative shall enter the dimensions of each room to be used for child care, including ceiling height, and shall show the location of the bathrooms, doors, and required exits on the floor plan.

(f) The Division representative shall make one or more inspections of the center and premises to assess compliance with all applicable standards.

- (1) If the center is in compliance, the Division shall issue the license.
- (2) If the center does not comply, the representative may recommend issuance of a provisional license in accordance with Section .0400 of this Subchapter or the representative may recommend denial of the application. Final disposition of the recommendation to deny is the decision of the Division.
- (3) The license shall be displayed in an area that parents are able to view daily.

(g) ~~When~~ If a person applies for a child care facility ~~license~~ license, ~~after any child care facility license held by that person has been revoked or summarily suspended by the Division within the previous 12 months, or during the appeal if a person appeals the Division's revocation or summary suspension,~~ the Division may deny the application for ~~another~~ the license based on the compliance history of the person applying for a ~~license~~ license under the following circumstances:

- (1) if any child care facility license previously held by that person has been denied, revoked or summarily suspended by the Division;
- (2) if the Division has initiated denial, revocation or summary suspension proceedings against any child care facility license previously held by that person and the person voluntarily relinquished the license;
- (3) during the appeal of a denial, revocation or summary suspension of any child care facility license previously held by that person; or
- (4) if the Division determines that the applicant has a relationship with an operator or former operator who previously held a license under an administrative action described in Paragraph(g)(1), (2), or (3) of this Rule. As used in this Rule, an applicant has a relationship with a former operator if the former operator would be

involved with the applicant's child care facility in one or more of the following ways:

- (A) would participate in the administration or operation of the facility;
- (B) has a financial interest in the operation of the facility;
- (C) provides care to children at the facility;
- (D) resides in the facility; or
- (E) would be on the facility's board of directors, be a partner of the corporation, or otherwise have responsibility for the administration of the business.

Authority G.S. 110-88(2); 110-88(5); 110-91; 110-92; 110-93; 110-99; 143B-168.3.

## SECTION .0600 – SAFETY REQUIREMENTS FOR CHILD CARE CENTERS

### 10 NCAC 3U .0604 GENERAL SAFETY REQUIREMENTS

(a) Potentially hazardous items, such as firearms and ammunition, hand and power tools, nails, chemicals, lawn mowers, gasoline or kerosene, archery equipment, propane stoves, whether or not intended for use by children, shall be stored in locked areas or with other appropriate safeguards, or shall be removed from the premises.

(b) Electrical outlets not in use which are located in space used by the children shall be covered with safety plugs unless located behind furniture or equipment that cannot be moved by a child.

(c) Electric fans shall be mounted out of the reach of children or shall be fitted with an appropriate mesh guard to prevent access by children.

(d) All small electrical appliances shall be used only in accordance with the manufacturer's instructions.

(e) Electrical cords shall not be accessible to infants and toddlers. Extension cords, except as approved by the local fire inspector, shall not be used. Frayed or cracked electrical cords shall be replaced.

(f) All materials used for starting fires, such as matches and lighters, shall be kept in locked storage or shall be stored out of the reach of children.

(g) Smoking shall not be permitted in space used by children when children are present. All smoking materials shall be kept in locked storage or out of the reach of children.

(h) Fuel burning heaters, fireplaces and floor furnaces shall be provided with a protective screen attached securely to substantial supports to prevent access by children and to prevent objects from being thrown into them.

(i) Plants that are toxic shall not be in indoor or outdoor space that is used by or is accessible to children.

(j) The outdoor play area shall be protected by a fence or other protection. The height shall be a minimum of four feet and the top of the fence shall be free of protrusions by January 1, 1999. The requirement disallowing protrusions on the tops of fences shall not apply to fences six feet high or above. The fencing shall exclude fixed bodies of water such as ditches, quarries, canals, excavations, and fish ponds. Gates to the fenced outdoor play area shall remain securely closed while children occupy the area. When the center uses areas outside the fenced outdoor play area for children's activities or takes children off the premises for

play or outings, the parent of each child shall give written permission for the child to be included in such activities. The permission may be:

- (1) a one-time, blanket permission for all activities;
- (2) a one-time, blanket permission for a specific activity at any time; or
- (3) a one-time permission for a specific activity at a designated time.

The center shall maintain the signed permission in the child's record. When children are taken off the premises, staff accompanying the children shall have a list of the names of all children participating in the outing. When the center provides transportation for children, the center shall furnish parents the names of all regularly scheduled drivers.

(k) Air conditioning units shall be located so that they are not accessible to children or shall be fitted with a mesh guard to prevent objects from being thrown into them.

(l) Gas tanks shall be located so they are not accessible to the children or shall be in a protective enclosure or surrounded by a protective guard.

(m) Cribs and playpens shall be placed so that the children occupying them shall not have access to cords or ropes, such as venetian blind cords.

(n) Children shall not be allowed to play on outdoor equipment that is too hot to touch.

(o) The indoor and outdoor premises shall be checked daily for debris, vandalism and broken equipment. Debris shall be removed and disposed of appropriately.

(p) The playground surface area shall be checked at least weekly to assure that surface material is maintained to assure continued resiliency.

(q) Following completion of safety training by the administrator or other staff person as required by Rule .0705(e) of this Subchapter, a monthly playground inspection shall be conducted and a record of each inspection shall be completed. This staff person shall use a playground inspection checklist provided by the Division. The checklist shall be signed by the person who conducts the inspection and shall be maintained in the center's files for review by a representative of the Division.

(r) Plastic bags, toys and toy parts small enough to be swallowed, and materials that can be easily torn apart such as foam rubber and styrofoam, shall not be accessible to children under three years of age, except that styrofoam plates and larger pieces of foam rubber may be used for supervised art activities and styrofoam plates may be used for food service. Latex and rubber balloons shall not be accessible to children under five years of age.

(s) When non-mobile children are in care, a crib or other approved device shall be available for evacuation in case of fire or other emergency. The crib or other approved device shall be fitted with wheels in order to be easily moveable, have a reinforced bottom, and shall be able to fit through the designated fire exit. For centers that do not meet institutional building code, and the exit is more than eight inches above grade, the center shall develop a plan to ensure a safe and timely evacuation of the crib or other approved device. This plan shall be demonstrated to a Division representative for review and approval. During the monthly fire drills required by Rule 10 NCAC 3U .0302d(4), the evacuation crib or other approved device shall be used in the manner described in the evacuation plan.

Authority G.S. 110-85(1); 110-91(3),(6); 143B-168.3.

## SECTION .0800 – HEALTH STANDARDS FOR CHILDREN

### 10 NCAC 03U .0803 ADMINISTERING MEDICATION

(a) No drug or medication shall be administered to any child without specific instructions from the child's parent, a physician, or other authorized health professional. No drug or medication shall be administered after its expiration date. No drug or medication shall be administered for non-medical reasons, such as to induce sleep.

- (1) Prescribed medicine shall be in its original container bearing the pharmacist's label which lists the child's name, date the prescription was filled, the physician's name, the name of the medicine or the prescription number, and directions for dosage, or be accompanied by written instructions for dosage, bearing the child's name, which are dated and signed by the prescribing physician or other health professional. Prescribed medicine shall be administered as authorized in writing by the child's parent, only to the person for whom it is prescribed.
  - (2) Over-the-counter medicines, such as cough syrup, decongestant, acetaminophen, ibuprofen, topical teething medication, topical antibiotic cream for abrasions, or medication for intestinal disorders shall be in its original container and shall be administered as authorized in writing by the child's parent, not to exceed amounts and frequency of dosage specified in the printed instructions accompanying the medicine. The parent's authorization shall give the child's name, the specific name of the over-the-counter medicine, dosage instructions, the parent's signature, and the date signed. Over-the-counter medicine may also be administered in accordance with written instructions from a physician or other authorized health professional.
  - (3) When any questions arise concerning whether medication provided by the parent should be administered, that medication shall not be administered without signed, written dosage instructions from a licensed physician or authorized health professional.
  - (4) A written statement from a parent may give blanket permission for up to six months to authorize administration of medication for asthma and allergic reactions. A written statement from a parent may give blanket permission for up to one year to authorize administration of sunscreen and over-the-counter diapering creams. The written statement shall describe the specific conditions under which these medications and creams are to be administered and detailed instructions on how they are to be administered.
  - (5) A written statement from a parent may give blanket permission to administer a one-time, weight appropriate dose of acetaminophen in cases where the child has a fever and the parent cannot be reached.
- (b) Any medication remaining after the course of treatment is completed shall be returned to the child's parents.

(c) Any time medication other than sunscreen or diapering creams is administered by center personnel to children receiving care, the child's name, the date, time, amount and type of medication given, and the name and signature of the person administering the medication shall be recorded. This information shall be noted on a medication permission slip, or on a separate form developed by the provider which includes the required information. This information shall be available for review by a representative of the Division during the time period the medication is being administered and for at least six months after the medication is administered.

Authority G.S. 110-91(1),(9); 143B-168.3.

**SECTION .1300 – BUILDING CODE REQUIREMENTS FOR CHILD CARE CENTERS**

**10 NCAC 03U .1304 REQUIREMENTS FOR CHILD CARE CENTERS LICENSED IN A RESIDENCE**

For the purpose of carrying out the provisions of G.S. 110-91(4), the North Carolina Building Code standards in Volume I, General Construction, for Large Day Care Homes developed by the Building Code Council are hereby incorporated by reference by the Child Care Commission and include subsequent amendments for child care centers licensed in a ~~an~~ occupied residence for three to 12 children when any preschool-aged children are in care, or for three to 15 children when only school-aged children are in care. A copy of the North Carolina Building Code standards is on file at the Division of Child Development located at the address given in Rule .0102 of this Subchapter and will be available for public inspection during regular business hours.

Authority G.S. 110-91(4); 143B-168.3.

**SECTION .1600 - REQUIREMENTS FOR VOLUNTARY ENHANCED PROGRAM STANDARDS**

AGE	STAFF	NO. OF CHILDREN
Birth to 12 Months	1	5
1 to 2 Years	1	6
2 to 3 Years	1	9
3 to 4 Years	1	10
4 to 5 Years	1	13
5 to 6 Years	1	15
6 Years and Older	1	20

(b) All provisions, excluding staff/child ratios and group sizes of Rules .0712 and .0713 of this Subchapter shall apply.

(c) To achieve two points for program standards, centers shall meet all requirements for voluntary enhanced program standards in Section .1600 of this Subchapter, except that centers may meet either the staff/child ratios required in Paragraph(a) of this Rule or the space requirements in 10 NCAC 03U .1604(a).

Authority G.S. 110-88(7); 143B-168.3.

**SECTION .1700 – FAMILY CHILD CARE HOME STANDARDS**

**10 NCAC 03U .1702 APPLICATION FOR A LICENSE FOR A FAMILY CHILD CARE HOME**

**10 NCAC 03U .1601 ADMINISTRATIVE POLICIES REQUIRED**

~~AA-centers and other centers.~~ Centers seeking a two through five star rated license points for through the voluntary enhanced program standards shall have administrative policies and practices which provide for responsible selection and training of staff, on-going communication with and opportunities for participation by parents, sound operational and fiscal management, and objective evaluation of the program, management and staff in accordance with the rules of this Section.

Authority G.S. 110-88(7); 143B-168.3.

**10 NCAC 03U .1604 SPACE REQUIREMENTS**

(a) There shall be at least 30 square feet inside space per child present at any one time and 100 square feet outside space per child present at any one time. Or, there shall be at least 35 square feet inside space per child present at any one time and 100 square feet outside space per child for at least 50 percent of the total number of children present at any one time.

(b) To achieve two points for program standards, centers shall meet all requirements for voluntary enhanced program standards in Section .1600 of this Subchapter, except that centers may meet either the space requirements in Paragraph(a) of this Rule or the staff/child ratios required in 10 NCAC 03U .1606(a).

~~(c)~~ There must be an area which can be arranged for administrative and private conference activities.

Authority G.S. 110-88(7); 143B-168.3.

**10 NCAC 03U .1606 STAFF/CHILD RATIOS**

(a) The center shall comply with the staff-child ratios and maximum group sizes set in this Rule.

MAXIMUM GROUP SIZE	STAFF
10	2
12	2
18	2
20	2
25	2
25	2
25	2

(a) Any person who plans to operate a family child care home shall apply for a license using a form provided by the Division. The applicant shall submit the completed application, which complies with the following, to the Division:

- (1) Only one licensed family child care home shall operate at the location address of any home.
- (2) The applicant shall list each location address where a licensed family child care home will operate.

(b) When a family child care home will operate at more than one location address by cooperative arrangement among two or more families, the following procedures shall apply:

- (1) One parent whose home is used as a location address shall be designated the coordinating parent and shall co-sign the application with the applicant.

- (2) The coordinating parent is responsible for knowing the current location address at all times and shall provide the information to the Division upon request.
- (c) The operator shall assure that the structure in which the family child care home is located complies with the following requirements:
- (1) Comply with the North Carolina Building Code for family child care homes or have written approval for use as a family child care home by the local building inspector as follows:
    - (A) Meet Volume 1B Uniform Residential Building Code or be a manufactured home bearing a third party inspection label certifying compliance with the Federal Manufactured Home Construction and Safety Standards or certifying compliance with construction standards adopted and enforced by the State of North Carolina. Homes shall be installed in accordance with NC Manufactured/Mobile Home Regulations published by the NC Department of Insurance;
 

Exception: Single wide manufactured homes will be limited to a maximum of three preschool-aged children (not more than two may be two years of age or less) and two school-aged children.
    - (B) All children shall be kept on the ground level with an exit at grade;
    - (C) All homes shall be equipped with an electrically operated (with a battery backup) smoke detector, or one electrically operated and one battery operated smoke detector located next to each other;
    - (D) All homes shall be provided with at least one five lb. 2-A:10-B:C type extinguisher readily accessible for every 2,500 square feet of floor area; and
    - (E) Fuel burning space heaters, fireplaces and floor furnaces which are listed and approved for that installation and are provided with a protective screen attached securely to substantial supports will be allowed. However, unvented fuel burning heaters and portable electric space heaters of all types are prohibited.
  - (2) Assure that all indoor areas used by children are heated in cool weather and ventilated in warm weather.
  - (3) Cover or insulate hot pipes or radiators which are accessible to the children.
- (d) The applicant shall also submit supporting documentation with the application for a license to the Division. The supporting documentation shall include a copy of the applicant's certified criminal history check from the Clerk of Superior Court's office in the county or counties where the individual has resided during the previous 12 months; a copy of documentation of completion of a first aid and cardiopulmonary resuscitation (CPR) course; proof of negative results of the applicant's tuberculosis test completed within the past 12 months; a completed health questionnaire; a copy of current pet vaccinations for any pet in the home; a negative well water bacteriological analysis if the home has a private well; copies of any inspections required by local ordinances; and any other documentation required to support the issuance of a license required by the Division.

(e) Upon receipt of an acceptable application and supporting documentation as required by the Division, a Division representative shall make an announced visit to each home unless the applicant meets the criteria in Paragraph (g) of this Rule to determine compliance with the standards, to offer technical assistance when needed, and to provide information about local resources.

- (1) If the home is found to be in compliance with the applicable requirements of G.S. 110 and this Section, a license shall be issued.
  - (2) If the home is not in compliance but has the potential to comply, the Division representative shall establish with the operator a reasonable time period for the home to achieve full compliance. If the Division representative determines that the home is in compliance within the established time period, a license shall be issued.
  - (3) If the home is not in compliance, cannot potentially comply, or fails to comply within the appropriate time, the Division shall deny the application. Final disposition of the recommendation to deny is the decision of the Division.
- (f) In emergency situations as determined by the Division, the Division may allow the applicant to temporarily operate prior to the Division representative's visit described in Paragraph (e) of this Rule. A person is not able to operate legally until he or she has received from the Division either temporary permission to operate or a license.
- (g) ~~When~~ If a person applies for a child care facility license ~~license, after any child care facility license held by that person has been revoked or summarily suspended by the Division within the previous 12 months, or during the appeal if a person appeals the Division's revocation or summary suspension,~~ the Division may deny the application for ~~another~~ the license based on the compliance history of the person applying for a ~~license~~ license under the following circumstances:
- (1) if any child care facility license previously held by that person has been denied, revoked or summarily suspended by the Division;
  - (2) if the Division has initiated denial, revocation or summary suspension proceedings against any child care facility license previously held by that person and the person voluntarily relinquished the license;
  - (3) during the appeal of a denial, revocation or summary suspension of any child care facility license previously held by that person; or
  - (4) if the Division determines that the applicant has a relationship with an operator or former operator who previously held a license under an administrative action described in Paragraph(g)(1), (2), or (3) of this Rule. As used in this Rule, an applicant has a relationship with a former operator if the former operator would be involved with the applicant's child care facility in one or more of the following ways:
    - (A) would participate in the administration or operation of the facility;
    - (B) has a financial interest in the operation of the facility;
    - (C) provides care to the children at the facility;
    - (D) resides in the facility; or
    - (E) would be on the facility's board of director's, be a partner of the corporation, or otherwise have

responsibility for the administration of the business.

- (h) Use of the license is limited to the following conditions:
- (1) The license cannot be bought, sold, or transferred from one individual to another.
  - (2) The license is valid only for the location address/addresses listed on it.
  - (3) The license must be returned to the Division in the event of termination or revocation.
  - (4) The license shall be displayed in a prominent place that parents are able to view daily and shall be shown to each child's parent, guardian, or custodian when the child is enrolled.
- (i) A licensee is responsible for notifying the Division whenever a change occurs which affects the information shown on the license.

*Authority G.S. 110-88(5); 110-91; 110-93; 110-99; 143B-168.3.*

**10 NCAC 03U .1719 REQUIREMENTS FOR A SAFE INDOOR/OUTDOOR ENVIRONMENT**

The operator shall maintain a safe indoor and outdoor environment for the children in care. In addition, the operator shall: The operator shall make all necessary efforts to provide a safe indoor and outdoor environment for the children in care. The operator shall:

- (1) keep all areas used by the children, indoors and outdoors, clean and orderly and free of items which are potentially hazardous to children. This includes the removal of small items that a child can swallow. In addition, loose nails or screws and splinters shall be removed on inside and outside equipment.
- (2) safely store equipment and supplies such as lawnmowers, power tools, or nails, so they are inaccessible to children.
- (3) ensure that all stationary outdoor equipment is firmly anchored and is not installed over concrete or asphalt. Footings which anchor the equipment shall not be exposed.
- (4) securely mount electric fans out of the reach of children or have a mesh guard on each fan.
- (5) cover all electrical outlets not in use and remove old, cracked or frayed cords in occupied outlets.
- (6) have solid and safe indoor and outdoor stairs and steps if these are used by the children. Indoor and outdoor stairs with two or more steps which are used by the children shall be railed. Indoor stairs with more than two steps shall be made inaccessible to children in care who are two years old or younger.
- (7) maintain any swimming pools or wading pools on the premises in a manner which will safeguard the lives and health of the children. All swimming or wading pools used by children in care shall meet the "Rules Governing Public Swimming Pools," in accordance with 15A NCAC 18A .2500 which are hereby incorporated by reference including subsequent amendments. A copy of these Rules is on file at the Division at the address given in Rule .0102 of this Subchapter or may be obtained at no cost by writing the North Carolina Department of Environment and Natural

Resources, Division of Environmental Health, PO Box 29534, Raleigh, NC 27626-0534.

- (8) enclose any in-ground swimming pools by a fence four feet high to prevent chance access by children. The swimming pool shall be separate from the play area. Access to the water in above ground swimming pools shall be prevented by locking and securing the ladder in place or storing the ladder in a place inaccessible to the children.
- (9) ensure that animals that are potentially dangerous to children as determined by the Division are safely secured in areas not accessible to the children in care.
- (10) safely store all combustible materials that may create a fire hazard.

*Authority G.S. 110-88; 91(3),(4),(5),(6).*

**10 NCAC 03U .1720 SAFETY AND SANITATION REQUIREMENTS**

- (a) To assure the safety of children in care, the operator shall:
- (1) separate firearms from ammunition and keep both in locked storage.
  - (2) keep items used for starting fires, such as matches and lighters, out of the children's reach.
  - (3) keep all medicines in locked storage.
  - (4) keep hazardous cleaning supplies and other items that might be poisonous , e.g., toxic plants, out of reach or in locked storage when children are in care .
  - (5) keep first-aid supplies in a place easily accessible to the operator.
  - (6) ensure the equipment and toys are in good repair and are developmentally appropriate for the children in care.
  - (7) have a working telephone within the family child care home. Telephone numbers for the fire department, law enforcement office, emergency medical service, and poison control center shall be posted near the telephone.
  - (8) have access to a means of transportation that is always available for emergency situations.
  - (9) be able to recognize common symptoms of illnesses.
- (b) No drug or medication shall be administered to any child without specific instructions from the child's parent, a physician, or other authorized health professional. No drug or medication shall be administered for non-medical reasons, such as to induce sleep.
- (1) Prescribed medicine shall be in its original container bearing the pharmacist's label which lists the child's name, date the prescription was filled, the physician's name, the name of the medicine or the prescription number, and directions for dosage, or be accompanied by written instructions for dosage, bearing the child's name, which are dated and signed by the prescribing physician or other health professional. Prescribed medicine shall be administered as authorized in writing by the child' parent, only to the person for whom it is prescribed.
  - (2) Over-the-counter medicines, such as cough syrup, decongestant, acetaminophen, ibuprofen, topical teething medication, topical antibiotic cream for abrasions, or medication for intestinal disorders shall be in its original container and shall be administered as

authorized in writing by the child's parent, not to exceed amounts and frequency of dosage specified in the printed instructions accompanying the medicine. The parent's authorization shall give the child's name, the specific name of the over-the counter medicine, dosage instructions, the parent's signature, and the date signed. Over-the counter medicine may also be administered in accordance with instructions from a physician or other authorized health professional.

- (3) When any questions arise concerning whether medication provided by the parent should be administered, that medication shall not be administered without signed, written dosage instructions from a licensed physician or authorized health professional.
  - (4) A written statement from a parent may give blanket permission for up to six months to authorize administration of medication for asthma and allergic reactions. A written statement from a parent may give blanket permission for up to one year to authorize administration of topical ointments such as sunscreen and over-the-counter diapering creams. The written statement shall describe the specific conditions under which the medication and creams are to be administered and detailed instructions on how they are to be administered. A written statement from a parent may give blanket permission to administer a one-time, weight appropriate dose of acetaminophen in cases where the child has a fever and the parent can not be reached.
  - (5) Any medication remaining after the course of treatment is completed shall be returned to the child's parents.
  - (6) Any time the operator administers medication other than sunscreen and diapering creams to any child in care, the child's name, the date, time, amount and type of medication given, and the signature of the operator shall be recorded. This information shall be noted on a form provided by the Division or on a separate form developed by the operator which includes the required information. This information shall be available for review by a representative of the Division during the time period the medication is being administered and for at least six months after the medication is administered.
- (c) To assure the health of children through proper sanitation, the operator shall:
- (1) collect and submit samples of water from each well used for the children's water supply for bacteriological analysis to the local health department or a laboratory certified to analyze drinking water for public water supplies by the North Carolina Division of Laboratory Services every two years. Results of the analysis shall be on file in the home.
  - (2) have sanitary toilet, diaper changing and handwashing facilities. Diaper changing areas shall be separate from food preparation areas.
  - (3) use sanitary diapering procedures. Diapers shall be changed whenever they become soiled or wet. The operator shall:
    - (A) wash his or her hands before, as well as after, diapering each child.
    - (B) wash the child's hands after diapering the child.

- (C) place soiled diapers in a covered, leak-proof container which is emptied and cleaned daily.
  - (4) use sanitary procedures when preparing and serving food. The operator shall:
    - (A) wash his or her hands before and after handling food and feeding the children.
    - (B) wash the child's hands before and after the child is fed.
  - (5) refrigerate all perishable food and beverages. The refrigerator shall be in good repair and maintain a temperature of 45 degrees Fahrenheit or below. A refrigerator thermometer is required to monitor the temperature.
  - (6) date and label all bottles for each individual child, except when there is only one bottle-fed child in care.
  - (7) have a house that is free of rodents.
  - (8) screen all windows and doors used for ventilation.
  - (9) have all household pets vaccinated with up-to-date vaccinations as required by North Carolina law and local ordinances. Rabies vaccinations are required for cats and dogs.
  - (10) store garbage in waterproof containers with tight fitting covers.
- (d) The operator shall not force children to use the toilet and the operator shall consider the developmental readiness of each individual child during toilet training.

Authority G.S. 110-88; 110-91(6).

**10 NCAC 03U .1721 REQUIREMENTS FOR RECORDS**

- (a) The operator shall maintain the following health records for each child who attends on a regular basis:
- (1) a copy of the child's health assessment as required by G.S. 110-91(1).
  - (2) a copy of the child's immunization record.
  - (3) a health and emergency information form provided by the Division that is completed and signed by the child's parents or guardian. The completed form shall be on file the first day the child attends. An operator may use another form other than the one provided by the Division, as long as the form includes the following information:
    - (A) the child's name, address, and date of birth;
    - (B) the names of individuals to whom the child may be released;
    - (C) the general status of the child's health;
    - (D) any allergies or restrictions on the child's participation in activities with specific instructions from the child's parent or physician;
    - (E) the names and phone numbers of persons to be contacted in an emergency situation;
    - (F) the name and phone number of the child's physician and preferred hospital;
    - (G) notarized authorization for the operator to seek emergency medical care in the parent's absence.
  - (4) when medication is administered, authorization for the operator to administer the specific medication according to the parent's or physician's instructions.
- (b) The operator shall complete and maintain other records which shall include:

- (1) documentation for the operator's procedures in emergency situations, on a form which shall be provided by the Division.
  - (2) documentation that monthly fire drills are practiced. The documentation shall include the date each drill is held, the time of day, the length of time taken to evacuate the home, and the operator's signature.
  - (3) incident reports that are completed each time a child receives medical treatment by a physician, nurse, physician's assistant, nurse practitioner, community clinic, or local health department, as a result of an incident occurring while the child is in the family child care home. Each incident shall be reported on a form provided by the Division, signed by the operator and the parent, and maintained in the child's file. A copy shall be mailed to a representative of the Division within seven calendar days after the incident occurs.
  - (4) an incident log which is filled out any time an incident report is completed. This log shall be cumulative and maintained in a separate file and shall be available for review by a representative of the Division. This log shall be completed on a form supplied by the Division.
  - (5) documentation that a monthly check for hazards on the outdoor play area is completed. This form shall be supplied by the Division and shall be maintained in the family child care home for review by a representative of the Division.
  - (6) Accurate daily attendance records for all children in care, including the operator's own preschool children. The attendance record shall indicate the date and time of arrival and departure for each child.
- (c) Written records shall be available for review, upon request, by a representative of the Division and shall be maintained as follows:
- (1) records required in Paragraph(b)(2) – (6) of this Rule shall be maintained for a minimum of three years, or during the length of time the program has operated, whichever is less;
  - (2) children's records shall be maintained while the child is enrolled, and for a minimum of three years after the child is no longer enrolled; and
  - (3) all other records shall be maintained for as long as the license to which they pertain remains valid.

Authority G.S. 110-88; 110-91(1),(9).

**10 NCAC 03U .1722 DISCIPLINE POLICY**

- (a) The operator shall provide a written copy of and explain the operator's discipline practices to each child's parent, legal guardian, or full-time custodian at the time of enrollment. If an operator changes discipline practices, the child's parent, legal guardian, or full-time custodian must receive written notice of the new policy 30 days prior to the implementation of the new policy.
- (b) No child shall be subjected to any form of corporal punishment by the family child care home operator, substitute caregiver, or any other person in the home, whether or not these persons reside in the home.
- (c) No child shall be handled roughly in any way, including shaking, pushing, shoving, pinching, slapping, biting, kicking, or spanking.

- (d) No child shall ever be placed in a locked room, closet, or ~~box~~ box, or be left alone in a room separated from staff.
- (e) No discipline shall ever be delegated to another child.
- (f) Discipline shall in no way be related to food, rest or toileting.
  - (1) No food shall be withheld, or given, as a means of discipline.
  - (2) No child shall ever be disciplined for lapses in toilet training.
  - (3) No child shall ever be disciplined for not sleeping during rest period.
- (g) No child shall be disciplined by assigning chores that require contact with or use of hazardous materials, such as cleaning bathrooms or floors, or emptying diaper pails.
- (h) Discipline shall be age and developmentally appropriate.

Authority G.S. 110-91(10).

**SECTION .1800 – DISCIPLINE**

**10 NCAC 03U .1801 DISCIPLINE POLICY**

- (a) The person who conducts the enrollment conference shall provide a written copy of and explain the center's discipline practices to each child's parents, legal guardian, or full-time custodian at the time of enrollment. Each parents, legal guardian, or full-time custodian must sign a statement which attests that a copy of the center's written discipline policies were given to and discussed with him or her. That statement must bear the child's name, the date of enrollment, and if different, the date the parent, legal guardian, or full-time custodian signs the statement. The signed, dated statement must be in the child's record and must remain on file in the center as long as the child is enrolled. If a center changes its discipline policy at any time, it must give written notice of such a change to the child's parent, guardian, or full-time custodian 30 days prior to the implementation of the new policy and the parent, guardian, or full-time custodian must sign a statement that attests that a copy of the new policy was given to and discussed with him or her. This statement shall be kept in the child's file.
- (b) No child shall be subjected to any form of corporal punishment by the owner, operator, director, or staff of any day care facility. For purposes of this Rule, "staff" shall mean any regular or substitute caregiver, any volunteer, and any auxiliary personnel, such as cooks, secretaries, janitors, maids, vehicle drivers, etc.
  - (1) No child shall be handled roughly in any way, including shaking, pushing, shoving, pinching, slapping, biting, kicking, or spanking.
  - (2) No child shall ever be placed in a locked room, closet, or ~~box~~ box, or be left alone in a room separated from staff.
  - (3) No discipline shall ever be delegated to another child.
  - (4) Discipline shall in no way be related to food, rest or toileting:
    - (A) No food shall be withheld, or given, as a means of discipline.
    - (B) No child shall ever be disciplined for lapses in toilet training.
    - (C) No child shall ever be disciplined for not sleeping during rest period.
  - (5) No child shall be disciplined by assigning chores that require contact with or use of hazardous materials, such

as cleaning bathrooms or floors, or emptying diaper pails.

(6) Discipline shall be age and developmentally appropriate.

Authority G.S. 110-91(10); 143B-168.3.

**SECTION .1900 – SPECIAL PROCEDURES  
CONCERNING ABUSE/NEGLECT IN CHILD CARE**

**10 NCAC 03U .1901 NOTIFICATION TO COUNTY  
DEPARTMENT OF SOCIAL SERVICES**

Any allegation of abuse or neglect received by the section Division shall be referred to the county department of social services within 24 hours of receipt of the complaint or on the next working day. Even if the county department of social services determines the allegation does not warrant investigation according to G.S. 7A-544, 7B-302, the complaint shall be investigated by the section Division.

Authority G.S. 110-88(5); 143B-168.3.

**10 NCAC 03U .1903 INVESTIGATION PROCEDURES**

(a) The investigation shall include interviews with the registrant, operator, staff, parents, or any other adult who has information regarding the allegation. Reports from law enforcement officers and other professionals, as well as photographs and other investigative tools, may be used as appropriate.

(b) The section's Division's representative may interview the child or children about the allegations of abuse or neglect only in those cases where the county department of social services does not conduct an investigation.

(c) The section Division shall share information related to investigations with departments of social services, as appropriate. However, any information subject to confidentiality laws or regulations shall be handled so as to preserve the confidential nature of the material.

(d) At any time during the investigation, the representative of the section Division may conduct an evaluation for compliance with all licensing applicable requirements.

(e) The section Division shall make a written report to the licensee/registrant operator and the county department of social services when the investigation is completed. The section Division may also report to law enforcement officers and other professionals that were involved in the investigation. This report shall explain the section's Division's findings and what further action will be taken, if any.

(f) The final written report of findings and further action shall be made within 90 days of receipt of the allegation. If the investigation is not complete at that time, an interim report explaining the status of the investigation shall be made to the operator 90 days after receipt of the allegation and every 30 days thereafter until the final report is made. The county department of social services shall be sent a copy of each interim report.

Authority G.S. 7B-301; 110-88(5); 110-105; 143B-168.3.

**10 NCAC 03U .1904 ADMINISTRATIVE SANCTIONS**

(a) A special provisional license or registration permit may be issued for a six-month period when the section Division

determines that abuse or neglect occurred in a child ~~day~~ care center or home. The following provisions shall apply:

- (1) the special provisional license or registration permit and the reasons for its issuance shall be posted in a prominent place in the center or home as soon as they are received by the licensee or registrant operator.
- (2) the special provisional license or registration permit and reasons for issuance shall remain posted for the entire six months covered by the license or registration permit, and also during the time of any administrative proceedings.
- (3) no new children shall be enrolled in the center or home until the section Division is satisfied that the abusive or neglectful situation no longer exists and gives the operator written permission to accept new children.
- (4) ~~a licensee or registrant~~ an operator may obtain an administrative hearing on the issuance of a special provisional license or registration permit in accordance with the provisions of G.S. 150B-23.

(b) A written warning specifying corrective action to be taken by the operator of the day child care center or home may be issued when the investigation is concluded and the section Division determines that abuse or neglect occurred in a center or home and the situation does not warrant issuance of a special provisional license or registration permit.

(c) A civil penalty, in accordance with the schedules listed in Rules .1716 and .2206 of this Subchapter, may be levied against the operator of a day child care home or center when the Section Division determines that child abuse or neglect has occurred while the child was in the care of the home or center. In addition, any violation of the terms of a special provisional license or registration permit may result in the assessment of a civil penalty as provided in Rule .1716 and Rules .2202 through .2206 of this Subchapter.

(d) Failure to implement the corrective action plan required by a written warning pursuant to G.S. 110-88(6a) may result in either the assessment of a civil penalty as provided in Section .2200 of this Subchapter or the issuance of a special provisional license or registration permit or may result in both actions being taken.

(e) The type of sanction imposed by the section Division shall be determined by one or more of the following criteria:

- (1) severity of the incident;
- (2) probability of reoccurrence;
- (3) prior incidents of abuse or neglect in the center or home;
- (4) history of compliance with child ~~day~~ care requirements;
- (5) the section's Division's assessment of the operator's response to the incident.

(f) Nothing in this Rule shall restrict the ~~division~~ Division from using any other statutory or administrative penalty available pursuant to G.S. 110-102.2 and Section .2000 of this Subchapter, or the provisions in 150B-3(c) to summarily suspend a license or registration permit if the health, safety or welfare of any child is in jeopardy.

Authority G.S. 110-88(5); 110-88(6a); 110-102.2; 110-103.1; 143B-168.3; 150B-3; 150B-23;

**SECTION .2000 – RULEMAKING AND CONTESTED  
CASE PROCEDURES**



**10 NCAC 03U .2006 ADMINISTRATIVE PENALTIES:  
GENERAL PROVISIONS**

- (a) Pursuant to G.S. 110-102.2, the secretary or designee may order one or more administrative penalties against any ~~licensee or registrant operator~~ who violates any provision of Article 7 of Chapter 110 of the General Statutes or of this Subchapter.
- (b) Nothing in this Section shall restrict the ~~division~~ Division from using any other statutory or civil penalty available. A civil penalty in accordance with G.S. 110-103.1 and Section .2200 of this Subchapter may be imposed in conjunction with any other administrative activity.
- (c) The issuance of an administrative penalty may be appealed pursuant to G.S. 150B-23.

*Authority G.S. 110-102.2; 110-103.1; 143B-168.3; 150B-23.*

**10 NCAC 03U .2007 WRITTEN WARNINGS**

- (a) A written warning and a ~~request for compliance~~ corrective action plan may be issued in regard to any violation to allow the ~~licensee or registrant operator~~ an opportunity to demonstrate compliance with all requirements.
- (b) The written warning and ~~request for compliance~~ corrective action plan shall describe the reasons for its issuance including identification of the specific section of the statutes or rules violated. It shall also describe those actions necessary for the ~~licensee or registrant operator~~ to be in full compliance with requirements and shall specify a time period for compliance to be achieved.
- (c) If the ~~licensee or registrant operator~~ fails to achieve compliance during the specified time period, the ~~section~~ Division shall employ more restrictive action to achieve compliance or shall revoke the ~~license or registration permit~~.

*Authority G.S. 110-102.2; 143B-168.3.*

**10 NCAC 03U .2008 WRITTEN REPRIMANDS**

- (a) An official written reprimand may be issued to censure any violation which the ~~section~~ Division determines to have been a brief uncustomary event which is unlikely to recur in the ordinary operation of the center or home.
- (b) The reprimand shall describe the reasons for its issuance including identification of the specific section of the statutes or rules violated.

*Authority G.S. 110-102.2; 143B-168.3.*

**10 NCAC 03U .2009 PROBATIONARY STATUS**

- (a) A ~~license or registration permit~~ may be ~~place~~ placed in probationary status for a period of time not to exceed one year when, in the ~~section's~~ Division's determination, violation of any section of the statutes or rules has been willful, continual, or hazardous to health or safety.
- (b) The document ordering probation shall describe the reasons for its issuance including identification of the specific section of the statutes or rules violated and shall specify the period of probation. It shall also specify terms of probation with which the ~~licensee or registrant operator~~ must comply to retain the ~~license or registration permit~~.
- (c) The order of probation shall be posted in a prominent place in the center or home during the probationary period. If

- probation is stayed pending appeal, the probation order shall remain posted in the center or home pending final action.
- (d) Failure of the ~~licensee or registrant operator~~ to comply with the terms of probation shall result in the commencement of proceedings to suspend or revoke the ~~license or registration permit~~.

*Authority G.S. 110-102.2; 143B-168.3.*

**10 NCAC 03U .2010 SUSPENSION**

- (a) Suspension of a ~~license or registration permit~~ for a period of time not to exceed 45 days may be ordered when, in the ~~section's~~ Division's determination and with the concurrence of the ~~Division of Facility Services' Negative Action Review Committee, Division's Review Panel,~~ violation of any section of the statutes or rules has been willful, continual, or hazardous to health or safety, and/or the ~~licensee or registration operator~~ has not made reasonable efforts to conform to standards.
- (b) The ~~licensee or registrant operator~~ shall be notified in advance of the ~~section's~~ Division's determination to suspend the ~~license permit~~ and the reasons for such action. The ~~licensee or registrant operator~~ may request an agency review of the situation and shall be given an opportunity to show compliance with all requirements for retention of the ~~license or registration permit~~.
- (c) The suspension order shall specify the period of suspension and the reasons for its issuance. The ~~licensee or registrant operator~~ shall surrender the ~~license or registration permit~~ to the ~~section~~ Division ~~of on~~ the effective date of the suspension order and shall refrain from operating a center or home during the suspension period.
- (d) If suspension is stayed pending appeal, the suspension order shall be posted in a prominent place in the center or home pending final action.
- (e) Failure to comply with the suspension order shall result in civil action in accordance with G.S. 110-103.1 and/or criminal penalty in accordance with G.S. 110-103. The ~~section~~ Division may also seek injunctive relief in accordance with G.S. 110-104.

*Authority G.S. 110-102.2; 143B-168.3; 150B-3.*

**10 NCAC 03U .2011 REVOCATION**

- (a) Revocation of a ~~license or registration permit~~ may be ordered when, in the ~~section's~~ Division's determination and with the concurrence of the ~~Division of Facility Services' Negative Action Review Committee, Division's Review Panel,~~ violation of any section of the statutes or rules has been willful, continual, or hazardous to health or safety, or the ~~licensee or registrant operator~~ has not made reasonable efforts to conform to standards or is unable to comply.
- (b) The ~~licensee or registrant operator~~ shall be notified in advance of the ~~section's~~ Division's determination to revoke the ~~license permit~~ and the reasons for such action. The ~~licensee or registrant operator~~ may request an agency review of the situation and shall be given an opportunity to show compliance with all requirements for retention of the ~~license or registration permit~~.
- (c) The revocation order shall specify the reasons for its issuance and the effective date of revocation and shall be posted prominently in the center or home immediately upon receipt. The ~~licensee or registrant operator~~ shall surrender the ~~license or registration permit~~ on the effective date of the revocation order and shall refrain from operating the center or home thereafter.

(d) Failure to comply with the revocation order shall result in civil action in accordance with G.S. 110-103.1 or a criminal penalty in accordance with G.S. 110-103, or both. The ~~Section~~ Division may also seek injunctive relief in accordance with G.S. 110-104.

~~(e) The operator may not apply for a new license or registration for that facility or home for at least 90 days from the effective date of the revocation order or, when administrative or judicial review is requested, from the date the final agency decision or judicial determination is rendered, whichever is later.~~

Authority G.S. 110-102.2; 143B-168.3; 150B-3.

**10 NCAC 03U .2012 SUMMARY SUSPENSION**

(a) Summary suspension of a ~~license or registration permit~~ may be ordered in accordance with G.S. 150B-3(c) when, in the ~~section's~~ Division's determination, emergency action is required to protect the health, safety, or welfare of children in a ~~licensed day child care facility or registered day care home, regulated by the Division.~~

(b) The suspension order shall specify the reasons for its issuance including identification of the specific section of the statutes and rules violated and the determination of the need for emergency action. The order shall be effective on the date specified in the order. The order shall be effective during proceedings to suspend or revoke the ~~license or registration permit.~~

(c) The ~~licensee or registrant operator~~ shall surrender the ~~license or registration permit~~ on the effective date of the order and shall refrain from operating a center or home until final action is determined.

(d) Failure to comply with the summary suspension order shall result in civil action in accordance with G.S. 110-103.1, and/or criminal penalty in accordance with G.S. 110-103. The ~~section~~ Division may also seek injunctive relief in accordance with G.S. 110-104.

Authority G.S. 110-102.2; 143B-168.3; 150B-3.

**SECTION .2100 – RELIGIOUS -SPONSORED CHILD CARE CENTER REQUIREMENTS**

**10 NCAC 03U .2101 CENTERS OPERATING UNDER G.S. 110-106**

(a) At least 30 days prior to the first day of operation of a new ~~church day~~ religious-sponsored child care center, the prospective operator shall send a "Letter of Intent to Operate" to the ~~section~~ Division. That letter shall include the name, address, and telephone number of the operator and the center, if known; the proposed number and age range of children to be served; and the center's scheduled opening date. A representative of the ~~section~~ Division shall contact the prospective operator no later than seven calendar days after the Letter of Intent is received to advise the operator of the applicable requirements and procedures.

(b) ~~Church day~~ Religious-sponsored child care centers shall comply with all day child care center requirements in this Subchapter except for the rules regarding age-appropriate activities in 10 NCAC 3U .0505 - .0511(a) and .2508; and staff qualifications and training requirements in Paragraphs (d) through (f) of 10 NCAC 3U .0703, 10 NCAC 3U .0704, .0707 - .0711, and Paragraphs (a) through (d) of 10 NCAC 3U .0714,

~~.0714. Paragraphs (b), (c) and (f) of Rule .2510, and Paragraphs (b), (c) and (g) of Rule .2606 regarding staff qualifications and training requirements. For staff working with school-aged children only, Paragraphs (a)–(i), (l), and (o) of 10 NCAC 3U .2510 shall not apply regarding staff requirements.~~ Compliance shall be documented at least annually using the same forms and in the same manner as for all other centers.

(c) The ~~section~~ Division shall notify the operator in writing as to whether the center complies or does not comply with the requirements.

Authority G.S. 110-106; 143B-168.3.

**SECTION .2200 – CIVIL PENALTIES**

**10 NCAC 03U .2201 SCOPE AND PURPOSE**

Any ~~operator/registrant operator~~ who violates any provision of G.S. 110, Article 7 or of this ~~Subchapter~~ Subchapter, or who fails to take corrective action after being provided adequate written notice by the ~~section~~ Division, shall be considered to be in willful violation of the licensing law and a civil penalty may be levied against the operator by the secretary or designee pursuant to rules and schedules of penalties adopted by the ~~commission.~~ Commission.

Authority G.S. 110-90(9); 110-103.1; 143B-168.3.

**10 NCAC 03U .2206 SCHEDULE OF CIVIL PENALTIES FOR CHILD CARE CENTERS**

(a) The following penalties may be assessed against child ~~day~~ care facilities centers as defined in G.S. 110-86(3).

(b) A civil penalty in an amount up to one thousand dollars (\$1,000) may be imposed for the following violations:

- (1) Non-compliance with the standards for:
  - (A) Staff-child ratios;
  - (B) Adequate supervision of children;
  - (C) Transportation of children; or
  - (D) Use of swimming pools and other swim areas.
- (2) Disapproved fire safety, building or sanitation inspection reports;
- (3) Exceeding licensed capacity of facility, center, or use of unauthorized space;
- (4) Change of ownership or relocation of facility center without prior notification to the ~~section.~~ Division;
- (5) Substantiation that a child (or children) was abused or neglected while in the care of the facility; center; or
- (6) Willful, repeated pattern of non-compliance with any requirement over extended period of time.

(c) A civil penalty in an amount up to five hundred dollars (\$500.00) may be imposed for the following violations:

- (1) Non-compliance with the standards for:
  - (A) Staff health requirements;
  - (B) Staff qualifications;
  - (C) Children's health requirements;
  - (D) Proper nutrition;
  - (E) Sanitation and personal hygiene practices;
  - (F) Discipline of children;
  - (G) Indoor or outdoor space; or
  - (H) Emergency medical plan;
- (2) Failure to comply with a corrective action plan;

- (3) Denial of entry to an authorized representative of the department or ~~section~~. Division.
- (d) A civil penalty in an amount up to two hundred and fifty dollars (\$250.00) may be imposed for the following violations:
  - (1) Non-compliance with the standards to provide:
    - (A) Age-appropriate activities, or
    - (B) Staff ~~Development~~; development;
  - (2) Failure to post provisional ~~license~~; permit;
  - (3) Failure to maintain accurate records.
- (e) Violation of other standards may result in the assessment of a penalty according to the effect or potential effect of the violation on the safety and well-being of the child.

Authority G.S. 110-90(9); 110-103.1; 143B-168.3.

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Notice is hereby given in accordance with G.S. 150B-21.2 that the DHHS-Division of Medical Assistance intends to amend the rule cited as 10 NCAC 50B .0311. Notice of Rule-making Proceedings was published in the Register on August 3, 1998.

Proposed Effective Date: March 1, 2001

Public Hearing:

Date: August 16, 2000

Time: 1:30 p.m.

Location: The Kirby Building, Room 132, 1985 Umstead Dr., Raleigh, NC 27603

Reason for Proposed Action: In part, the rule allows for excluding from countable resources those resources that are owned by a person who is incompetent and for whom there is no individual with legal authority to access the resources on behalf of the incompetent person. The amendment will clarify and further define when an individual's resources are excluded because he is alleged to be incompetent.

Comment Procedures: Written comments concerning this rule-making action must be submitted by August 31, 2000, to Portia W. Rochelle, Rule-making Coordinator, Division of Medical Assistance, 1985 Umstead Dr., 2504 Mail Service Center, Raleigh, NC 27699-2504.

Fiscal Impact

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

CHAPTER 50 – MEDICAL ASSISTANCE

SUBCHAPTER 50B – ELIGIBILITY DETERMINATION

SECTION .0300 – CONDITIONS FOR ELIGIBILITY

10 NCAC 50B .0311 RESERVE

North Carolina has contracted with the Social Security Administration under Section 1634 of the Social Security Act to provide Medicaid to all SSI recipients. Resource eligibility for individuals under any Aged, Blind, and Disabled coverage group

is determined based on standards and methodologies in Title XVI of the Social Security Act except as specified in Items (4) and (5) of this Rule. Applicants for and recipients of Medicaid shall use their own resources to meet their needs for living costs and medical care to the extent that such resources can be made available. Certain resources shall be protected to meet specific needs such as burial and transportation and a limited amount of resources shall be protected for emergencies.

(1) The value of resources currently available to any budget unit member shall be considered in determining financial eligibility. A resource shall be considered available when it is actually available and when the budget unit member has a legal interest in the resource and he, or someone acting in his behalf, can take any necessary action to make it available.

(a) Resources shall be excluded in determining financial eligibility when the budget unit member having a legal interest in the resources is incompetent unless:

- (i) A guardian of the estate, a general guardian or an interim guardian has been lawfully appointed and is able to act on behalf of his ward in North Carolina and in any state in which such resources are located; or
- (ii) A durable power of attorney, valid in North Carolina and in any state in which such resource is located, has been granted to a person who is authorized and able to exercise such power.

(b) When there is a guardian, an interim guardian, or a person holding a valid, durable power of attorney for a budget unit member, but such person is unable, fails, or refuses to act promptly to make the resources actually available to meet the needs of the budget unit member, a referral shall be made to the county department of social services for a determination of whether the guardian or attorney in fact is acting in the best interests of the member and if not, the county department of social services shall contact the clerk of court for intervention. The resources shall be excluded in determining financial eligibility pending action by the clerk of court.

(c) When a Medicaid application is filed on behalf of an individual who:

- (i) is alleged to be mentally incompetent,
- (ii) has or may have a legal interest in a resource that affects the individual's eligibility, and
- (iii) does not have a representative with legal authority to use or dispose of the individual's resources, the individual's representative or family member shall be instructed to file within 30 calendar days a judicial proceeding under Chapter 35A of the North Carolina General Statutes to declare the individual incompetent and appoint a guardian. ~~If the representative or family member either fails to file such a proceeding within 30 calendar days or fails to timely conclude the proceeding, a referral shall be made to the services unit of the county department of social services for~~

~~guardianship services. If the allegation of incompetence is supported by a physician's certification or other competent evidence from sources including but not limited to physicians, nurses, social workers, psychologists, relatives, friends or others with knowledge of the condition of the individual, the resources shall be excluded except as provided in Sub-items (1)(d) or (e) of this Rule. If the individual is found by the court to be incompetent, the resources shall be excluded, beginning with the date that competent evidence, as specified in Sub-item (1)(f) of this Rule, indicates that he became incompetent, except as provided for in Sub-items (1)(d) or (1)(e) of this Rule.~~

- (d) The budget unit member's resources shall be counted in determining his eligibility for Medicaid beginning the first day of the month following the month a guardian of the estate, general guardian or interim guardian is appointed, provided that after the appointment, property which cannot be disposed of or used except by order of the court shall continue to be excluded until completion of the applicable procedures for disposition specified in G.S. 1 or G.S. 35A.
- (e) When the court rules that the budget unit member is competent or no ruling is made because of the death or recovery of the member, his resources shall be counted except for periods of time of at least 30 consecutive calendar days for which it can be established by competent evidence ~~from sources including but not limited to physicians, nurses, social workers, psychologists, relatives, friends or others with knowledge of the condition of the individual, specified in Sub-item (1)(f) of this Rule,~~ that the member was in fact incompetent. Any such showing of incompetence is subject to rebuttal by competent evidence as specified herein and in ~~Sub-item (1)(e)~~(1)(f) of this Rule.
- (f) For purposes of this Rule, competent evidence is limited to the written statement of a physician or psychiatrist with knowledge of the individual, stating the basis of that knowledge, the beginning date of incompetence, the reason the individual is incompetent, and if no longer incompetent, when the individual recovered competence.
- (2) The limitation of resources held for reserve for the budget unit shall be as follows:
  - (a) for Family and Children's related categorically and medically needy cases, three thousand dollars (\$3,000) per budget unit;
  - (b) for aged, blind, and disabled cases, two thousand dollars (\$2000) for a budget unit of one and three thousand dollars (\$3000) for a budget unit of two.
- (3) If the value of countable resources of the budget unit exceeds the reserve allowance for the unit, the case shall be ineligible:
  - (a) for Family and Children's related cases and aged, blind or disabled cases protected by grandfathered provisions, and medically needy cases not

- protected by grandfathered provision, eligibility shall begin on the day countable resources are reduced to allowable limits or excess income is spent down, whichever occurs later;
- (b) for categorically needy aged, blind or disabled cases not protected by grandfathered provisions, eligibility shall begin no earlier than the month countable resources are reduced to allowable limits as of the first moment of the first day of the month.
- (4) Resources counted in the determination of financial eligibility for categorically needy aged, blind and disabled cases is based on resource standards and methodologies in Title XVI of the Social Security Act except for the following methodologies:
  - (a) The value of personal effects and household goods are not counted.
  - (b) Value of tenancy in common interest in real property is not counted.
  - (c) Value of life estate interest in real property is not counted.
- (5) Resources counted in the determination of financial eligibility for medically needy aged, blind and disabled cases is based on resource standards and methodologies in Title XVI of the Social Security Act except for the following methodologies:
  - (a) The value of personal effects and household goods are not counted.
  - (b) Personal property is not a countable resource if it:
    - (i) is used in a trade or a business; or
    - (ii) is used to produce goods and services for personal use; or
    - (iii) produces a net annual income.
  - (c) Real property not exempted under homesite rules is not a countable resource if it:
    - (i) is used in a trade or business; or
    - (ii) is used to produce goods and services for personal use; or
    - (iii) is non-business income producing property that produces net annual income after operational expenses of at least six percent of equity value per methodologies under Title XVI of the Social Security Act. For purposes of this Sub-item equity of agricultural land, horticultural land, and forestland is the present use value of the land, as defined by G.S. 105-277.1A., et seq., less the amount of debts, liens or other encumbrances.
  - (d) Value of tenancy in common interest in real property is not counted.
  - (e) Value of life estate interest in real property is not counted.
  - (f) Individuals with resources in excess of the resource limit at the first moment of the month may become eligible at the point that resources are reduced to the allowable limit.
- (6) Resources counted in the determination of financial eligibility for categorically needy Family and Children's related cases are:
  - (a) Cash on hand;

- (b) The balance of savings accounts, including savings of a student saving his earnings for school expenses;
  - (c) The balance of checking accounts less the current monthly income which had been deposited to meet the budget unit's monthly needs when reserve was verified;
  - (d) The portion of lump sum payments remaining after the month of receipt;
  - (e) Cash value of life insurance policies owned by the budget unit;
  - (f) Stocks, bonds, mutual fund shares, certificates of deposit and other liquid assets;
  - (g) Patient accounts in long term care facilities;
  - (h) Equity in non-essential personal property limited to:
    - (i) Mobile homes not used as home,
    - (ii) Boats, boat trailers and boat motors,
    - (iii) Campers,
    - (iv) Farm and business equipment;
    - (v) Equity in vehicles in excess of one motor vehicle per adult.
- (7) Resources counted in the determination of financial eligibility for medically needy Family and Children's related cases are:
- (a) Cash on hand;
  - (b) The balance of savings accounts, including savings of a student saving his earnings for school expenses;
  - (c) The balance of checking accounts less the current monthly income which had been deposited to meet the budget unit's monthly needs when reserve was verified or lump sum income from self-employment deposited to pay annual expenses;
  - (d) Cash value of life insurance policies when the total face value of all policies that accrue cash value exceeds one thousand five hundred dollars (\$1,500);
  - (e) Stocks, bonds, mutual fund shares, certificates of deposit and other liquid assets;
  - (f) Patient accounts in long term care facilities;
  - (g) Equity in non-essential, non-income producing personal property limited to:
    - (i) Mobile home not used as home,
    - (ii) Boats, boat trailers and boat motors,
    - (iii) Campers,
    - (iv) Farm and business equipment,
    - (v) Equity in motor vehicles in excess of one vehicle per adult if not income-producing.

Authority G.S. 108A-54; 108A-55; 108A-58; 42 U.S.C. 703, 704 1396; 42 C.F.R. 435.121; 42 C.F.R. 435.210; 42 C.F.R. 435.711; 42 C.F.R. 435.712; 42 C.F.R. 435.734; 42 C.F.R. 435.823; 42 C.F.R. 435.840; 42 C.F.R. 435.841; 42 C.F.R. 435-845; 42 C.F.R. 445.850; 42 C.F.R. 435.851; 45 C.F.R. 233.20; 45 C.F.R. 233.51.

**TITLE 11 – DEPARTMENT OF INSURANCE**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Department of Insurance intends to adopt the rules cited as 11 NCAC 10 .0717-.0718 and repeal the rules cited as 11 NCAC 10 .0702, .0712. Notice of Rule-making Proceedings was published in the Register on June 1, 2000.*

**Proposed Effective Date:** April 1, 2001

**Public Hearing:**

**Date:** August 17, 2000

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

**Location:** 3<sup>rd</sup> Floor Hearing Room, Dobbs Building, 430 N. Salisbury St., Raleigh, NC 27603

**Reason for Proposed Action:** Surplus lines statute changes requires changes in rules.

**Comment Procedures:** Written comments should be sent to Charles Swindell, Property & Casualty Division, NC Department of Insurance, PO Box 26387, Raleigh, NC 27611. Comments will be received through August 31, 2000.

**Fiscal Impact**

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

**CHAPTER 10 – PROPERTY AND CASUALTY DIVISION**

**SECTION .0700 – INSURANCE IN UNLICENSED FOREIGN AND ALIEN COMPANIES**

**11 NCAC 10 .0702 PROCEDURE FOR PROCURING INSURANCE IN UNLICENSED COMPANIES**

~~Citizens desiring to procure policies of insurance on risks in this state in unlicensed foreign and alien insurers shall submit to the commissioner through surplus lines licensees, a Form F.~~

Authority G.S. 58-21-15.

**11 NCAC 10 .0712 FORM E**

~~Form E, "Tax Return on Insurance Placed in Surplus Lines Insurers", is to be filed by surplus lines licensees with this department on or before the end of each month following each calendar quarter. A check covering the taxes due, but not otherwise paid, should be remitted at the same time to cover all business placed within the calendar quarter, and all cancellations that have occurred for the business placed during this particular reporting period. The information required shall include, but not be limited to, the name of the insured, the name of the insurance company, policy period, premiums and return premiums, and the premium tax or credit.~~

Authority G.S. 58-9(1); 58-21-35.

**11 NCAC 10 .0717 SURPLUS LICENSEE REPORT**

In addition to the information specified in G.S. 58-21-35(a), the report required by G.S. 58-21-35(a) shall contain the kind of insurance placed by the licensee, the zip code of the location of the risk, and the amount of any additional or return premium.

Authority G.S. 58-2-40; 58-21-35.

**11 NCAC 10 .0718 "FORM F" AFFIDAVIT**

The affidavit required by G.S. 58-21-35(b) shall contain a signed statement by the applicant that insurance is not available from licensed companies, the name and address of the insured, a description of the risk, the nature and amount of insurance, the premium charged, policy period, policy number and, a statement by the surplus lines licensee that the insurance is not available from licensed companies.

Authority G.S. 58-2-40; 58-21-35.

\*\*\*\*\*

*Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Department of Insurance intends to repeal the rules cited as 11 NCAC 16 .0301-.0303. Notice of Rule-making Proceedings was published in the Register on June 1, 2000.*

**Proposed Effective Date:** June 1, 2000

**Public Hearing:**

**Date:** August 17, 2000  
**Time:** 10:00 a.m.  
**Location:** 3<sup>rd</sup> Floor Hearing Room, Dobbs Building, 430 N. Salisbury St., Raleigh, NC 27603

**Reason for Proposed Action:** Rules are obsolete.

**Comment Procedures:** *Written comments should be sent to Ellen K. Sprenkel, NC Department of Insurance, PO Box 26387, Raleigh, NC 27611. Comments will be received through August 31, 2000.*

**Fiscal Impact**

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

**CHAPTER 16 – ACTUARIAL SERVICES DIVISION**

**SECTION .0300 – SMALL EMPLOYER GROUP HEALTH INSURANCE; FOR CALENDER YEAR 1994 ACTUARIAL CERTIFICATION**

**11 NCAC 16 .0301 DEFINITIONS AND SCOPE**

- (a) ~~The definitions contained in G.S. 58-50-110 are incorporated into this Section by reference.~~
- (b) ~~This Section applies to all health benefit plans and carriers subject to the North Carolina Small Employer Group Health Coverage Reform Act, G.S. 58-50-100 et seq.~~

Authority G.S. 58-2-40; 58-50-130(b).

**11 NCAC 16 .0302 RESTRICTIONS ON PREMIUM RATES**

(a) ~~Each class of business shall have its own rate manual. The rate manual will be used to:~~

- (1) ~~Audit the actuarial certification with regards to the relationship of one employer group to the others within a class; and~~
- (2) ~~Determine compliance with the relationship of one class to the other classes.~~
- (b) ~~The requirement in G.S. 58-50-130(b)(2) that within a class the premium rates charged during a rating period to small employers shall not vary from the index rate by more than 25 percent shall be met as follows:~~
  - (1) ~~The carrier shall calculate for each class of business, using the rate manual for that class, an index rate for each plan of benefits and for each small employer-census within that class of business.~~
  - (2) ~~For each small employer within a given class of business, the carrier shall calculate the ratio of the premium rate charged the small employer during the rating period to the index rate for the census, plan of benefits, and class of business of that small employer calculated in Subparagraph (1) of this Paragraph.~~
  - (3) ~~The ratio calculated in Subparagraph (2) of this Paragraph shall be between .75 and 1.25, inclusive.~~

Other methods may be used if the results, using the method in this Paragraph, meet the requirements of this Rule.

(c) ~~The requirement in G.S. 58-50-130(b)(1) that the index rate for a rating period for any class of business shall not exceed the index rate for any other class of business by more than 12.5 percent shall be met as follows:~~

- (1) ~~The carrier shall define a representative census of its business and a representative actuarially equivalent plan of benefits.~~
- (2) ~~The carrier shall calculate an index rate based upon Subparagraph (1) of this Paragraph for each class of business.~~
- (3) ~~The carrier shall identify the class of business with the lowest index rate.~~
- (4) ~~The ratio of the index rate calculated for each class of business in Subparagraph (2) of this Paragraph to the lowest index rate identified in Subparagraph (3) of this Paragraph shall be between 1.00 and 1.125, inclusive.~~

Any change in the representative census or representative actuarially equivalent plan of benefits used in Subparagraphs (1) through (4) of this Paragraph shall be specifically documented and the test must be performed on both the previous and new census or actuarially equivalent plan of benefits at the time of change; and the results of both tests shall be disclosed within the annual actuarial certification filing. Other methods may be used if the results, using the method in this Paragraph, meet the requirements of this Rule.

(d) ~~The acceptability of a proposed rate increase for a small employer for health benefit plans that satisfy Paragraphs (b) and (c) of this Rule, shall be determined as follows:~~

- (1) ~~Calculate a new business premium rate for the new rating period using the rate manual, the actual census and plan of benefits for the small employer at the beginning of the new rating period.~~
- (2) ~~Calculate a now business premium rate for the prior rating period using the rate manual, the actual census and plan of benefits for the small employer at the beginning of the prior rating period.~~
- (3) ~~Divide Subparagraph (1) of this Paragraph by Subparagraph (2) of this Paragraph and multiply this~~

quotient by the gross premium in effect at the beginning of the prior rating period. This product is the maximum renewal premium for the new rating period associated with G.S. 58-50-130(b)(3)a and G.S. 58-50-130(b)(3)c.

- (4) Subparagraph (3) of this Paragraph may be adjusted by a percentage of the gross premium in force before renewal. This percentage shall not exceed 15 percent per year prorated for the months elapsed between the previous and the new rating dates.
- (5) Multiply Subparagraph (3) of this Paragraph by one plus the percentage in Subparagraph (4) of this Paragraph.

The maximum renewal gross premium is Subparagraph (5) of this Paragraph if Paragraph (b) of this Rule is satisfied. If the resulting maximum renewal gross premium calculated in Subparagraph (5) of this Paragraph does not satisfy Paragraph (b) of this Rule, then the maximum renewal gross premium shall be adjusted until Paragraph (b) of this Rule is satisfied. Other methods may be used if the results, using the method in this Paragraph, meet the requirements of this Rule.

~~(e) The acceptability of a proposed rate increase for a small employer for health benefit plans that exceed the limits in Paragraphs (b) and (c) of this Rule and were issued before January 1, 1992, shall be determined as follows:~~

- ~~(1) Calculate a new business premium rate for the new rating period using the rate manual, the actual census and plan of benefits for the small employer at the beginning of the new rating period.~~
- ~~(2) Calculate a new business premium rate for the prior rating period using the rate manual, the actual census and plan of benefits for the small employer at the beginning of the prior rating period.~~
- ~~(3) Divide Subparagraph (1) of this Paragraph by Subparagraph (2) of this Paragraph and multiply this quotient by the gross premium in effect at the beginning of the prior rating period. This product is the maximum renewal premium for the new rating period associated with G.S. 58-50-130(b)(7)a and G.S. 58-50-130(b)(7)b.~~

The maximum renewal gross premium in Subparagraph (3) of this Paragraph is not subject to Paragraphs (b) and (c) of this Rule during a three-year transition period ending January 1, 1995. After January 1, 1995, the acceptability of a proposed rate increase for a small employer shall be based only on Paragraph (d) of this Rule. Other methods may be used if the results, using the method in this Paragraph, meet the requirements of this Rule.

Authority G.S. 58-2-40; 58-50-130(b).

**11 NCAC 16 .0303 ANNUAL FILING**

Each carrier shall make a filing with the Department as of March 15 of each year for each class of insurance administered under this Rule. The filing shall include:

- (1) An actuarial certification stating that:
  - (a) The carrier is in compliance with all provisions of this Section; and
  - (b) The rating methods of the carrier are actuarially sound.
- (2) A list and description of each class of business in the State. The description shall include:
  - (a) The distinct grouping as described in G.S. 58-50-113;

- (b) Whether or not the distinct grouping is open to new business; and
- (c) If the number of distinct groupings in a particular distinct grouping exceeds three, the initial filing must include a request for approval of the additional classes.
- ~~(3) A written description of the definition of the representative census used in 11 NCAC 16 .0302(c) and a statement that the representative census has either changed or not changed during the period between annual filings.~~
- ~~(4) A written description of the definition of the representative actuarially equivalent plan of benefits used in 11 NCAC 16 .0302(e) and a statement that the representative actuarially equivalent plan of benefits has either changed or not changed during the period between annual filings.~~
- ~~(5) A statement that the test outlined in 11 NCAC 16 .0302(c) has been performed on both the previous and new definitions of the representative census and the actuarially equivalent plan of benefits, if such definitions have changed.~~
- ~~(6) A written description of the results of the test performed in Paragraph (5) of this Rule and an explanation addressing the reason for changing either the definition of the representative census or the representative actuarially equivalent plan of benefits, or both.~~

An acceptable format for the actuarial certification is on file at the Department. Copies may be obtained from the Department at the cost for copies stated in G.S. 58-6-5(3).

Authority G.S. 58-2-40; 58-50-130.

**TITLE 12 – DEPARTMENT OF JUSTICE**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Alarm Systems Licensing Board intends to amend the rules cited as 12 NCAC 11 .0501-.0506. Notice of Rule-making Proceedings was published in the Register on February 1, 2000.*

**Proposed Effective Date:** February 26, 2001

**Public Hearing:**

**Date:** August 18, 2000  
**Time:** 11:30 a.m.  
**Location:** SBI Complex, SBI Conference Room, 3320 Old Garner Rd., Raleigh, NC 27626

**Reason for Proposed Action:** *The proposed amendments make several technical corrections to the existing rules. Further, the Board wishes to grant credit for licensee and registrants who attend a regularly scheduled meeting of the Board.*

**Comment Procedures:** *Written comments will be accepted by the Board, with the deadline for submission of all written comments being 15 days after the date of the public hearing. Written comments may be submitted to Administrator W. Wayne Woodard, ASLB, 3320 Old Garner Rd., Raleigh, NC 27626.*

**Fiscal Impact**

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

**CHAPTER 11 – NORTH CAROLINA ALARM SYSTEMS LICENSING BOARD**

**SECTION .0500 – CONTINUING EDUCATION FOR LICENSEES**

**12 NCAC 11 .0501 DEFINITIONS**

In addition to the definitions set forth in 12 NCAC 11 .0103, the following definitions shall apply to this Section:

- (1) "~~continuing licensee education~~" or "~~CLE~~" "continuing education" or "CE" refers to any educational activity approved by the Board to be a continuing education activity.
- (2) "credit hour" means sixty minutes of continuing education instruction.
- (3) "year" refers to the calendar year after the issuance of a new or renewal license.
- (4) "licensee" shall refer to an individual who holds an alarm systems business license issued by the Board.
- (5) "registrant" shall refer to an individual who holds an alarm systems business registration permit issued by the Board. Only registrants who engage in installation, service, sales, or monitoring of alarm systems shall be required to complete the continuing education requirements.

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

**12 NCAC 11 .0502 REQUIRED CONTINUING EDUCATION HOURS**

Each licensee shall complete at least six credit hours of continuing ~~licensee~~ education training during each renewal period. Each registrant shall complete at least three credit hours of continuing ~~licensee~~ education training during each renewal period. Credit shall only be given for classes that have been pre-approved by the Board. Continuing education hours used to satisfy continuing education training for other state required licenses, such as an electrical license, shall not be used to satisfy the continuing education requirements set forth in this Section. A licensee or registrant who attends a complete meeting of a regularly scheduled meeting of the Alarm Systems Licensing Board shall receive three credit hours for each meeting that the licensee or registrant attends. Said credit shall be applied retroactively for those that signed the attendance sheet and attended a regularly scheduled Board meeting prior to the adoption of this rule.

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

**12 NCAC 11 .0503 ACCREDITATION STANDARDS**

(a) ~~CLE~~ CE courses may obtain the sanction of the Alarm Systems Licensing Board by submitting the following information to the Board for consideration:

- (1) the nature and purpose of the course;
- (2) the course objectives or goals;

- (3) the outline of the course, including the number of training hours for each segment; and
  - (4) the identity of each instructor.
- (b) To determine if a course will receive sanctioning from the Alarm Systems Licensing Board, the Board shall complete the following review:

- (1) The matter will be referred to the Education and Training Committee for the appointment of a sub-committee that shall review the course under consideration. The sub-committee shall consist of at least one member of the Education and Training Committee, one member of the Board's staff, and one industry licensee who has no vested interest in the course. Other members of the sub-committee may be appointed at the discretion of the Education and Training Committee Chairman.
- (2) The sub-committee shall review the course to determine if the course is pertinent to the industry, and if the course meets its stated objectives.
- (3) When the sub-committee completes its review, it shall report to the Education and Training Committee. The Education and Training Committee shall review the course to determine if the course is pertinent to the industry, and if the course meets its stated objective. The Education and Training Committee shall then report the findings with a recommendation of acceptance or denial to the Alarm Systems Licensing Board.

(c) Upon receipt of the Education and Training Committee report, the Alarm Systems Licensing Board will determine by majority vote if the course will be sanctioned for continuing ~~licensee~~ education credits. In making its determination, the Board shall review the course to determine if the course is pertinent to the industry, and if the course meets its stated objective.

(d) Each approved course shall remain a validly approved course for four years from the date of approval by the Board.

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

**12 NCAC 11 .0504 NON-RESIDENT LICENSEES AND CONTINUING EDUCATION CREDITS**

A non-resident licensee shall obtain the required continuing ~~licensee~~ education credits as set forth in 12 NCAC 11 .0503. If a non-resident licensee resides in a state that requires continuing education for an alarm systems business license, then the continuing education courses to be offered in the state of residence may be considered by the North Carolina Alarm Systems Licensing Board for sanctioning in North Carolina on an individual course basis. In determining if the course is to be sanctioned, the Board shall review the course to determine if the course is pertinent to the industry, and if the course meets its stated objective.

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

**12 NCAC 11 .0505 RECORDING AND REPORTING CONTINUING EDUCATION CREDITS**

Each licensee shall be responsible for recording and reporting continuing ~~licensee~~ education credits to the Board at the time of license renewal, and for each course taken such report shall



include a certificate of course completion that is signed by at least one course instructor, indicates the name of the licensee that completed the course, indicates the date of course completion, and indicates the number of hours taken by the licensee. Credit will not be given if a certificate of course completion is dated more than two years from the license renewal date. Each course instructor shall be required to maintain a course roster. Said roster shall be delivered to the Board's office within two weeks of the completion date of the course.

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

**12 NCAC 11 .0506 NON-COMPLIANCE**

If a licensee or registrant fails to comply with this Section of the rules, his license or registration permit shall not be renewed.

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

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

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Environmental Management Commission intends to adopt the rules cited as 15A NCAC 02D .1806-.1807; 02Q .0316-.0317; amend the rules cited as 15A NCAC 02D .0501, .0521, .0536, .0539, .1103-.1104; 02Q .0109, .0203, .0401, .0608, .0703, .0711, .0803, .0805-.0808; and repeal the rule cited as 15A NCAC 02D .0522. Notice of Rule-making Proceedings was published in the Register on December 15, 1995, August 15, 1998, February 15, 1999, June 15, 1999, August 16, 1999, September 8, 1999, and May 1, 2000.*

**Proposed Effective Date:** April 1, 2001

**Public Hearing:**

**Date:** August 16, 2000

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

**Location:** Division of Air Quality Training Room, Parker-Lincoln Building, 2728 Capital Blvd., Raleigh, NC 27604

**Reason for Proposed Action:** *To substitute the Title V permitting procedures for State Implementation Plan (SIP) procedures for permit conditions that are part of the SIP; to clarify that the visible emissions rule does not apply to engine maintenance where controls are infeasible; to change schedules for submitting permit applications; to facilitate making minor changes to non-Title V permits; to clarify that permits can be used to avoid rules containing applicability thresholds; to make reporting dates for all exclusionary facilities the same; to extend nonattainment area Title V fees to certain Title V facilities outside nonattainment areas; to make the acid rain applicability the same as the federal acid rain applicability; to revise the Title V compliance certification requirements; to adopt a new general odor rule to replace the current general odor rule; to receive comment on amendment to change the annual opacity for Duke Power Company Riverbend Steam Station; to consolidate the acceptable ambient levels for chromium(VI) compounds; and to define soluble nickel.*

**Comment Procedures:** *All persons interested in these matters are invited to attend the public hearings. Any person desiring to comment is requested to submit a written statement for inclusion in the record of proceedings at the public hearing. The hearing officer may limit oral presentation lengths if many people want to speak. The hearing record will remain open until August 31, 2000 to receive additional written statements. To be included, the statement must be received by the Division by August 31, 2000. Comments should be sent to and additional information concerning the hearings or the proposals may be obtained by contacting: Mr. Thomas C. Allen, Division of Air Quality, 1641 Mail Service Center, Raleigh, NC 27699-1641, phone (919) 733-1489, fax (919)715-7476, or email Thom.Allen@ncmail.net.*

**Fiscal Impact**

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

**CHAPTER 2 – ENVIRONMENTAL MANAGEMENT**

**SUBCHAPTER 2B – SURFACE WATER AND WETLAND STANDARDS**

**SECTION .0500 – SURFACE WATER MONITORING: REPORTING**

**15A NCAC 02D .0501 COMPLIANCE WITH EMISSION CONTROL STANDARDS**

(a) Purpose and Scope. The purpose of this Rule is to assure orderly compliance with emission control standards found in this Section. This Rule shall apply to all air pollution sources, both combustion and non-combustion.

(b) In determining compliance with emission control standards, means shall be provided by the owner to allow periodic sampling and measuring of emission rates, including necessary ports, scaffolding and power to operate sampling equipment; and upon the request of the Division of Environmental Management, data on rates of emissions shall be supplied by the owner.

(c) Testing to determine compliance shall be in accordance with the following procedures, except as may be otherwise required in Rules .0524, .0606, .1110, or .1111 of this Subchapter.

- (1) Method 1 of Appendix A of 40 CFR Part 60 shall be used to select a suitable site and the appropriate number of test points for the following situations:
  - (A) particulate testing,
  - (B) velocity and volume flow rate measurements,
  - (C) testing for acid mist or other pollutants which occur in liquid droplet form,
  - (D) any sampling for which velocity and volume flow rate measurements are necessary for computing final test results, and
  - (E) any sampling which involves a sampling method which specifies isokinetic sampling. (Isokinetic sampling is sampling in which the velocity of the gas at the point of entry into the sampling nozzle is equal to the velocity adjacent to the nozzle.)

Method 1 shall be applied as written with the following clarifications: Testing installations

with multiple breechings may be accomplished by testing the discharge stack(s) to which the multiple breechings exhaust. If the multiple breechings are individually tested, then Method 1 shall be applied to each breeching individually. The Director or his designee may approve a test when test ports in a duct are located less than two diameters downstream from any disturbance (fan, elbow, change in diameter, or any other physical feature that may disturb the gas flow) or one-half diameter upstream from any disturbance, if the tester demonstrates to the Director, or his designee, that locating test ports beyond these distances are impossible because the duct cannot be modified to meet the specifications of Method 1 or testing at an alternative location is not feasible.

- (2) Method 2 of Appendix A of 40 CFR Part 60 shall be applied as written and used concurrently with any test method in which velocity and volume flow rate measurements are required.
- (3) Sampling procedures for determining compliance with particulate emission control standards shall be in accordance with Method 5 of Appendix A of 40 CFR Part 60. Method 17 of Appendix A of 40 CFR Part 60 may be used instead of Method 5 provided that the stack gas temperature does not exceed 320E F. The minimum time per test point for particulate testing shall be two minutes and the minimum time per test run shall be one hour. The sample gas drawn during each test run shall be at least 30 cubic feet. A number of sources are known to emit organic material (oil, pitch, plasticizers, etc.) which exist as finely divided liquid droplets at ambient conditions. These materials cannot be satisfactorily collected by means of the above Method 5. In these cases the Commission may require the use of Method 5 as proposed on August 17, 1971, in the Federal Register, Volume 36, Number 159.
- (4) The procedures for determining compliance with sulfur dioxide emission control standards for fuel burning sources may be either by determining sulfur content with fuel analysis or by stack sampling. Combustion sources choosing to demonstrate compliance through stack sampling shall follow procedures described in Method 6 of Appendix A of 40 CFR Part 60. When Method 6 of Appendix A of 40 CFR Part 60 is used to determine compliance, compliance shall be determined by averaging six 20-minute samples taken over such a period of time that no more than 20 minutes elapses between any two consecutive samples. If a source chooses to demonstrate compliance by analysis of sulfur in fuel, sampling, preparation, and analysis of fuels shall be in accordance with the following American Society of Testing and Materials (ASTM) methods:

(A) coal:

- (i) Sampling.
  - (I) Sampling Location. A source shall collect the coal from a location in the handling or processing system that

provides a sample representative of the fuel bunkered or burned during a boiler operating day. For the purpose of this method, a fuel lot size is defined as the weight of coal bunkered or consumed during each boiler operating day. For reporting and calculation purposes, the gross sample shall be identified with the calendar day on which sampling began. The Director may approve alternate definitions of fuel sizes if the alternative will provide a more representative sample.

- (II) Sample Increment Collection. A source shall use a coal sampling procedure that meets the requirements of ASTM D 2234 Type I, condition A, B, C and systematic spacing for collection of sample increments. All requirements and restrictions regarding increment distribution and sampling device constraints shall be observed.
- (III) Gross Samples. A source shall use ASTM D 2234, 7.1.2, Table 2 except as provided in 7.1.5.2 to determine the number and weight of increments (composite or gross samples).
  - (ii) Preparation. A source shall use ASTM D 2013 for sample preparation from a composite or gross sample.
  - (iii) Gross Caloric Value (GCV). A source shall use ASTM D 2015 or D 3286 to determine GCV on a dry basis from a composite or gross sample.
  - (iv) Moisture Content. A source shall use ASTM D 3173 to determine moisture from a composite or gross sample.
  - (v) Sulfur Content. A source shall use ASTM D 3177 or D 4239 to determine the percent sulfur on a dry basis from a composite or gross sample.

(B) oil:

- (i) sampling--A sample shall be collected at the pipeline inlet to the fuel burning unit after sufficient fuel has been drained from the line to remove all fuel that may have been standing in the line;
- (ii) heat of combustion (BTU)--ASTM Method D 240 or D 2015;
- (iii) sulfur content--ASTM Method D 129 or D 1552.

The sulfur content and BTU content of the fuel shall be reported on a dry basis. When the test methods described in Parts (A) or (B) of this Subparagraph are used to demonstrate that the ambient air quality standards for sulfur dioxide are being protected, the sulfur content shall be determined at least once per year from a composite of at least three or 24 samples taken

at equal time intervals from the fuel being burned over a three-hour or 24-hour period, respectively, whichever is the time period for which the ambient standard is most likely to be exceeded; this requirement shall not apply to sources that are only using fuel analysis in place of continuous monitoring to meet the requirements of Section .0600 of this Subchapter.

- (5) Sulfuric acid manufacturing plants and spodumene ore roasting plants shall demonstrate compliance with Rules .0517 and .0527, respectively, of this Section by using Method 8 of Appendix A of 40 CFR Part 60. Compliance shall be determined by averaging emissions measured by three one-hour tests.
- (6) All industrial processes not covered under Subparagraph (5) of this Paragraph emitting sulfur dioxide shall demonstrate compliance by sampling procedures described in Method 6 of Appendix A of 40 CFR Part 60. Compliance shall be determined by averaging six 20-minute samples taken over such a period of time that no more than 20 minutes elapses between any two consecutive samples.
- (7) Sampling procedures to demonstrate compliance with emission standards for nitrogen oxides shall be in accordance with the procedures set forth in Method 7 of Appendix A of 40 CFR Part 60.
- (8) Method 9 of Appendix A of 40 CFR 60 shall be used when opacity is determined by visual observation.
- (9) Notwithstanding the stated applicability to new source performance standards or primary aluminum plants, the procedures to be used to determine fluoride emissions are:
  - (A) for sampling emissions from stacks, Method 13A or 13B of Appendix A of 40 CFR Part 60,
  - (B) for sampling emissions from roof monitors not employing stacks or pollutant collection systems, Method 14 of Appendix A of 40 CFR Part 60, and
  - (C) for sampling emissions from roof monitors not employing stacks but equipped with pollutant collection systems, the procedure under 40 CFR 60.8(b), except that the Director of the Division of Environmental Management shall be substituted for the administrator.
- (10) Emissions of total reduced sulfur shall be measured by the test procedure described in Method 16 of Appendix A of 40 CFR Part 60 or Method 16A of Appendix A of 40 CFR Part 60.
- (11) Emissions of mercury shall be measured by the test procedure described in Method 101 or 102 of Appendix B of 40 CFR Part 61.
- (12) Each test (excluding fuel samples) shall consist of three repetitions or runs of the applicable test method. For the purpose of determining compliance with an applicable emission standard the average of results of all repetitions shall apply. In the event that a sample is accidentally lost or conditions occur in which one of the three runs must be discontinued because of forced shutdown, failure of an irreplaceable portion of the sample train, extreme meteorological conditions, or other circumstances, beyond the owner or operator's

control, and there is no way to obtain another sample, then compliance may be determined using the arithmetic average of the results of the two other runs.

- (13) In conjunction with performing certain test methods prescribed in this Rule, the determination of the fraction of carbon dioxide, oxygen, carbon monoxide and nitrogen in the gas being sampled is necessary to determine the molecular weight of the gas being sampled. Collecting a sample for this purpose shall be done in accordance with Method 3 of Appendix A of 40 CFR Part 60:
  - (A) The grab sample technique may also be used with instruments such as Bacharach Fyrite (trade name) with the following restrictions:
    - (i) Instruments such as the Bacharach Fyrite (trade name) may only be used for the measurement of carbon dioxide.
    - (ii) Repeated samples shall be taken during the emission test run to account for variations in the carbon dioxide concentration. No less than four samples shall be taken during a one-hour test run, but as many as necessary shall be taken to produce a reliable average.
    - (iii) The total concentration of gases other than carbon dioxide, oxygen and nitrogen shall be less than one percent.
  - (B) For fuel burning sources, concentrations of oxygen and nitrogen may be calculated from combustion relations for various fuels.
- (14) For those processes for which the allowable emission rate is determined by the production rate, provisions shall be made for controlling and measuring the production rate. The source shall ensure, within the limits of practicality, that the equipment or process being tested is operated at or near its maximum normal production rate or at a lesser rate if specified by the Director or his delegate. The individual conducting the emission test shall include with his test results, data which accurately represent the production rate during the test.
- (15) Emission rates for wood or fuel burning sources which are expressed in units of pounds per million BTU shall be determined by the "Oxygen Based F Factor Procedure" described in 40 CFR Part 60, Appendix A, Method 19, Section 5. Other procedures described in Method 19 may be used if appropriate. To provide data of sufficient accuracy to use with the F-factor methods, an integrated (bag) sample shall be taken for the duration of each test run. In the case of simultaneous testing of multiple ducts, there shall be a separate bag for each sampling train. The bag sample shall be analyzed with an Orsat analyzer in accordance with Method 3 of Appendix A of 40 CFR Part 60. (The number of analyses and the tolerance between analyses are specified in Method 3.) The specifications indicated in Method 3 for the construction and operation of the bag sampling apparatus shall be followed.
- (16) Particulate testing on steam generators that utilize soot blowing as a routine means for cleaning heat transfer

surfaces shall be conducted so that the contribution of the soot blowing is represented as follows:

- (A) If the soot blowing periods are expected to represent less than 50 percent of the total particulate emissions, one of the test runs shall include a soot blowing cycle.
- (B) If the soot blowing periods are expected to represent more than 50 percent of the total particulate emissions then two of the test runs shall each include a soot blowing cycle.

Under no circumstances shall all three test runs include soot blowing. The average emission rate of particulate matter is calculated by the equation:

$$E_{AVG} = E_S S \frac{(A+B)}{AR} + E_N \left( \frac{R-S}{R} - \frac{BS}{AR} \right)$$

$E_{AVG}$  equals the average emission rate in pounds per million Btu for daily operating time.  $E_S$  equals the average emission rate in pounds per million Btu of sample(s) containing soot blowing.  $E_N$  equals the average emission rate in pounds per million Btu of sample(s) with no soot blowing. A equals hours of soot blowing during sample(s). B equals hours without soot blowing during sample(s) containing sootblowing. R equals average hours of operation per 24 hours. S equals average hours of soot blowing per 24 hours. If large changes in boiler load or stack flow rate occur during soot blowing, other methods of prorating the emission rate may be considered more appropriate; for these tests the Director or his designee may approve an alternate method of prorating.

- (17) Emissions of volatile organic compounds shall be measured by the appropriate test procedure in Section .0900 of this Subchapter.
- (18) Upon prior approval by the Director or his delegate, test procedures different from those described in this Rule may be used if they will provide equivalent or more reliable results. Furthermore, the Director or his delegate may prescribe alternate test procedures on an individual basis when he considers that the action is necessary to secure reliable test data. In the case of sources for which no test method is named, the Director or his delegate may prescribe or approve methods on an individual basis.

(d) All new sources shall be in compliance prior to beginning operations.

(e) In addition to any control or manner of operation necessary to meet emission standards in this Section, any source of air pollution shall be operated with such control or in such manner that the source shall not cause the ambient air quality standards of Section .0400 of this Subchapter to be exceeded at any point beyond the premises on which the source is located. When controls more stringent than named in the applicable emission standards in this Section are required to prevent violation of the ambient air quality standards or are required to create an offset, the permit shall contain a condition requiring these controls.

(f) The Bubble Concept. A facility with multiple emission sources or multiple facilities within the same area may choose to meet the total emission limitation for a given pollutant through a different mix of controls than that required by the rules in this Section or Section .0900 of this Subchapter.

- (1) In order for this mix of alternative controls to be permitted the Director shall determine that the following conditions are met:

- (A) Sources to which Rules .0524, .0530, .0531, .1110 or .1111 of this Subchapter, the federal New Source Performance Standards (NSPS), the federal National Emission Standards for Hazardous Air Pollutants (NESHAPS), regulations established pursuant to Section 111 (d) of the federal Clean Air Act, or state or federal Prevention of Significant Deterioration (PSD) requirements apply, shall have emissions no larger than if there were not an alternative mix of controls;

- (B) The facility (or facilities) is located in an attainment area or an unclassified area or in an area that has been demonstrated to be attainment by the statutory deadlines (with reasonable further progress toward attainment) for those pollutants being considered;

- (C) All of the emission sources affected by the alternative mix are in compliance with applicable regulations or are in compliance with established compliance agreements; and

- (D) The review of an application for the proposed mix of alternative controls and the enforcement of any resulting permit will not require expenditures on the part of the State in excess of five times that which would otherwise be required.

- (2) The owner(s) or operator(s) of the facility (facilities) shall demonstrate to the satisfaction of the Director that the alternative mix of controls is equivalent in total allowed emissions, reliability, enforceability, and environmental impact to the aggregate of the otherwise applicable individual emission standards; and

- (A) that the alternative mix approach does not interfere with attainment and maintenance of ambient air quality standards and does not interfere with the PSD program; this demonstration shall include modeled calculations of the amount, if any, of PSD increment consumed or created;

- (B) that the alternative mix approach conforms with reasonable further progress requirements in any nonattainment area;

- (C) that the emissions under the alternative mix approach are in fact quantifiable, and trades among them are even;

- (D) that the pollutants controlled under the alternative mix approach are of the same criteria pollutant categories, except that emissions of some criteria pollutants used in alternative emission control strategies are subject to the limitations as defined in 44 FR 71784 (December 11, 1979), Subdivision D.1.c.ii. The Federal Register referenced in this Part is hereby incorporated by reference and does not include subsequent amendments or editions.

The demonstrations of equivalence shall be performed with at least the same level of detail as The North Carolina State Implementation plan for Air Quality demonstration of attainment for the area in question. Moreover, if the facility involves another facility in the alternative strategy, it shall complete a modeling demonstration to ensure that air quality is protected. Demonstrations of equivalency shall also take into account differences in the level of reliability of the control measures or other uncertainties.

- (3) The emission rate limitations or control techniques of each source within the facility (facilities) subjected to the alternative mix of controls shall be specified in the facility's (facilities') permits(s).
- (4) Compliance schedules and enforcement actions shall not be affected because an application for an alternative mix of controls is being prepared or is being reviewed.
- (5) The Director may waive or reduce requirements in this Paragraph up to the extent allowed by the Emissions Trading Policy Statement published in the Federal Register of April 7, 1982, pages 15076-15086, provided that the analysis required by Paragraph (g) of this Rule shall support any waiver or reduction of requirements. The Federal Register referenced in this Paragraph is hereby incorporated by reference and does not include subsequent amendments or editions.
- (g) In a permit application for an alternative mix of controls under Paragraph (f) of this Rule, the owner or operator of the facility shall demonstrate to the satisfaction of the Director that the proposal is equivalent to the existing requirements of the SIP in total allowed emissions, enforceability, reliability, and environmental impact. The Director shall provide for public notice with an opportunity for a request for public hearing following the procedures under 15A NCAC 2Q .0300 or .0500, as applicable.
  - (1) If and when a permit containing these conditions is issued under 15A NCAC 2Q .0300 (non-Title V permits), it shall become a part of the state implementation plan (SIP) as an appendix available for inspection at the department's regional offices. Until the U.S. Environmental Protection Agency (EPA) approves the SIP revision embodying the permit containing an alternative mix of controls, the facility shall continue to meet the otherwise applicable existing SIP requirements.
  - (2) If and when a permit containing these conditions is issued under 15A NCAC 2Q .0500 (Title V permits), it shall be available for inspection at the department's regional offices. Until the U.S. Environmental Protection Agency (EPA) approves the Title V permit modification embodying the permit containing an alternative mix of controls, the facility shall continue to meet the otherwise applicable existing SIP requirements.

The revision shall be approved by EPA on the basis of the revision's consistency with EPA's "Policy for Alternative Emission Reduction Options Within State Implementation Plans" as promulgated in the Federal Register of December 11, 1989, pages 71780-71788, and subsequent rulings.

(h) The referenced ASTM test methods in this Rule are hereby incorporated by reference and include subsequent amendments and editions. Copies of referenced ASTM test methods or Federal Registers may be obtained from the Division of Environmental Management, P.O. Box 29535, Air Quality, 1641 Mail Service Center, Raleigh, North Carolina 27626-0535 27699-1641 at a cost of ten cents (\$0.10) per page.

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

**15A NCAC 02D .0521 CONTROL OF VISIBLE EMISSIONS**

(a) Purpose. The intent of this Rule is to prevent, abate and control emissions generated from fuel burning operations and industrial processes where an emission can be reasonably expected to occur, except during startups made according to procedures approved under Rule .0535 of this Section.

(b) Scope. This Rule shall apply to all fuel burning sources and to other processes that may have a visible emission. However, sources subject to a visible emission standard in Rules .0508, .0524, .1110, or .1111 of this Subchapter shall meet that standard instead of the standard contained in this Rule. This Rule does not apply to engine maintenance, rebuild, and testing activities where controls are infeasible. (In deciding if controls are infeasible, the Director shall consider emissions, capital cost of compliance, annual incremental compliance cost, and environmental and health impacts).

(c) For sources manufactured as of July 1, 1971, visible emissions shall not be more than 40 percent opacity when averaged over a six-minute period. However, six-minute averaging periods may exceed 40 percent opacity if:

- (1) No six-minute period exceeds 90 percent opacity;
- (2) No more than one six-minute period exceeds 40 percent opacity in any hour; and
- (3) No more than four six-minute periods exceed 40 percent opacity in any 24-hour period.

(d) For sources manufactured after July 1, 1971, visible emissions shall not be more than 20 percent opacity when averaged over a six-minute period. However, six-minute averaging periods may exceed 20 percent opacity if:

- (1) No six-minute period exceeds 87 percent opacity;
- (2) No more than one six-minute period exceeds 20 percent opacity in any hour; and
- (3) No more than four six-minute periods exceed 20 percent opacity in any 24-hour period.

(e) Where the presence of uncombined water is the only reason for failure of an emission to meet the limitations of Paragraph (c) or (d) of this Rule, those requirements shall not apply.

(f) Exception from Opacity Standard in Paragraph (d) of this Rule. Sources subject to Paragraph (d) of this Rule may be allowed to comply with Paragraph (c) of this Rule if:

- (1) The owner or operator of the source demonstrates compliance with applicable particulate mass emissions standards; and
- (2) The owner or operator of the source submits necessary data to show that emissions up to those allowed by Paragraph (c) of this Rule will not violate any national ambient air quality standard.

The burden of proving these conditions shall be on the owner or operator of the source and shall be approached in the following manner. The owner or operator of a source seeking an exception

shall apply to the Director requesting this modification in its permit. The applicant shall submit the results of a source test within 90 days of application. Source testing shall be by the appropriate procedure as designated by rules in this Subchapter. During this 90-day period the applicant shall submit data necessary to show that emissions up to those allowed by Paragraph (c) of this Rule will not contravene ambient air quality standards. This evidence shall include, as a minimum, an inventory of past and projected emissions from the facility. In its review of ambient air quality, the Division may require additional information that it considers necessary to assess the resulting ambient air quality. If the applicant can thus show that it will be in compliance both with particulate mass emissions standards and ambient air quality standards, the Director shall modify the permit to allow emissions up to those allowed by Paragraph (c) of this Rule.

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

**15A NCAC 02D .0522 CONTROL AND PROHIBITION OF ODOROUS EMISSIONS**

- ~~(a) Purpose. The purpose of this Regulation is to provide for the control and prohibition of odorous emissions.~~
- ~~(b) Scope. This Regulation shall apply to all operations that produce odorous emissions.~~
- ~~(c) A person shall not cause, allow, or permit any plant to be operated without employing suitable measures for the control of odorous emissions including wet scrubbers, incinerators, or other devices approved by the commission.~~

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

**15A NCAC 02D .0536 PARTICULATE EMISSIONS FROM ELECTRIC UTILITY BOILERS**

- (a) The purpose of this Rule is to establish particulate and visible emission limits for the listed units by utilizing control

technology to protect the public health and welfare of the State and its citizens.

(b) Notwithstanding Rule .0503 of this Section, emissions of particulate matter from the utility boiler units specified in the following table shall not exceed the maximum emission rate in the table as measured by a stack test conducted in accordance with Rule .0501 of this Section. The results of any stack test shall be reported within 30 days, and the test report shall be submitted within 60 days after the test. In addition to limitations contained in Rule .0521 of this Section, visible emissions from the utility boiler units specified in the table shall not exceed the annual average opacity limits in the table. Each day an annual average opacity value shall be calculated for each unit for the most recent 365-day period ending with the end of the previous day. The average is the sum of the measured non-overlapping six-minute averages of opacity determined only while the unit is in operation divided by the number of such measured non-overlapping six-minute averages. Start-up, shut-down, and non-operating time shall not be included in the annual average opacity calculation, but malfunction time shall be included, Rule .0535 of this Section notwithstanding. The director may approve an alternate method of calculating the annual average opacity if:

- (1) the alternate method is submitted by the electric utility company,
- (2) the director concludes that the alternate method will not cause a systematic or unacceptable difference in calculated values from the specified method, and
- (3) it is mutually agreed that the values calculated using the alternate method can be used for enforcement purposes.

The owner or operator of each unit shall submit a report to the director by the 30th day following the end of each month. This report shall show for each day of the previous month the calculated annual average opacity of each unit and the annual average opacity limit. If a violation occurs, the owner or operator of the unit shall immediately notify the director.

Facility	Boiler/ Unit	Maximum Emission Rate (lb/Million BTU of Heat Input)	Annual Average Opacity Limit (Percent)
Duke Power Company Allen	1	0.25	20
	2	0.25	20
	3	0.25	13
	4	0.25	14
	5	0.25	17
Belews Creek	1	0.15	17
	2	0.15	17
Buck	5	0.15	10
	6	0.15	10
	7	0.15	6
	8	0.15	8
	9	0.15	10
Cliffside	1	0.25	8
	2	0.25	12

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	3	0.25	8
	4	0.25	8
	5	0.25	16
Dan River	1	0.15	7
	2	0.15	9
	3	0.25	20
Marshall	1	0.20	20
	2	0.20	20
	3	0.18	20
	4	0.18	20
Riverbend	4	0.12	8 <u>12</u>
	5	0.12	8 <u>12</u>
	6	0.12	8 <u>12</u>
	7	0.12	8 <u>12</u>
Carolina Power & Light Company Asheville	1	0.12	10
	2	0.12	5
Cape Fear	5	0.20	17
	6	0.20	15
Lee	1	0.25	18
	2	0.13	11
	3	0.25	15
Roxboro	1	0.25	15
	2	0.16	20
	3	0.10	25
Sutton	1	0.11	14
	2	0.11	14
	3	0.11	20
Weatherspoon	1	0.14	8
	2	0.14	10
	3	0.15	23

(c) For the purpose of this Rule, the heat input shall be the total heat content of all fuels burned in the unit during the period of time for which the compliance determination is being made.

(d) Stack tests shall be conducted in accordance with Rule .0501 of this Section, and six-minute average opacity readings shall be recorded during the tests. If a stack test and opacity data are acceptable to the director, the results shall be used by the owner or operator to update and refine the mass-opacity curve for that unit at least annually or when otherwise requested by the director. The owner or operator of a unit shall notify the director whenever an alteration in the equipment, method of operation, fuel, or other factors, may cause a systematic change in the mass-opacity curve expected to last more than one month.

(e) The owner or operator of units listed in Paragraph (b) of this Rule shall produce each year for each unit at least one stack test conducted in accordance with Rule .0501 of this Section, the results of which are submitted to and accepted by the director

and which demonstrate achievement of the maximum emission rate for that unit.

(f) Whenever a stack test shows emissions of particulate matter exceeding the maximum emission rate listed in Paragraph (b) of this Rule, all necessary steps shall be taken to ensure that the emissions of particulate matter do not continue to exceed the maximum emission rate and a retest shall be conducted before the 45th operating day following the day the excess was measured.

(g) Opacity shall be measured using an opacity monitoring system that meets the performance specifications of Appendix B of 40 CFR Part 60. The opacity monitoring system shall be subjected to a quality assurance program approved by the director. The owner or operator of each unit subject to this Rule shall have on file with the director an approved quality assurance program, and shall submit to the director within the time period of his request for his approval a revised quality assurance program, including at least procedures and frequencies for

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calibration, standards traceability, operational checks, maintenance, auditing, data validation, and a schedule for implementing the quality assurance program.

(h) The owner or operator of each unit subject to this Rule shall have on file with the director an approved malfunction abatement plan, and shall submit to the director within the time period of his request for his approval a revised malfunction abatement plan, in accordance with Rule .0535 (d) and (e) of this Section. The owner or operator shall submit each month for each malfunction and other equipment failures that occurred at each unit during the preceding month a report that meets the requirements of Rule .0535 (f)(3) of this Section.

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

**15A NCAC 02D .0539 ODOR CONTROL OF FEED INGREDIENT MANUFACTURING PLANTS**

(a) Applicability. The requirements of this Rule apply to any facility that produces feed-grade animal proteins or feed-grade animal fats and oils, but do not apply to any portions of such facilities that are engaged exclusively in the processing of food for human consumption.

(b) This Rule does not apply to those facilities solely engaged in the processing of marine byproducts. Those facilities, however, shall continue to control their odorous emissions in accordance with Rule ~~.1806 of this Subchapter. .0522 of this Section.~~

(c) A person shall not allow, cause, or permit the operation or use of any device, machine, equipment, or other contrivance to process material to be used in the production of feed-grade animal proteins or feed-grade animal fats and oils unless all gases, vapors, and gas-entrained effluents from these processes are passed through condensers to remove all steam and other condensable materials. All noncondensibles passing through the condensers shall then be incinerated at 1200 degrees Fahrenheit for a period of not less than 0.3 seconds, or treated in an equally effective manner.

(d) Measurement and Recording Requirements. Any person processing or incinerating gases, vapors, or gas-entrained matter as required by Paragraph (c) of this Rule shall install, operate, and maintain in good working order and calibration continuous measuring and recording devices for equipment operational parameters to document equipment operation in accordance with this Rule. In addition, the owner or operator of the facility shall:

- (1) demonstrate that the measuring and recording devices are capable of verifying the compliance status of the equipment on a continuous basis;
- (2) describe the parameters to be used to determine the compliance status and how these parameters:
  - (A) are to be measured,
  - (B) are to be used to determine compliance status; and
- (3) provide a quality assurance program approved by the Director for all monitoring devices and systems that includes:
  - (A) procedures and frequencies for calibration,
  - (B) standards traceability,
  - (C) operational checks,
  - (D) maintenance schedules and procedures,
  - (E) auditing schedules and procedures,

(F) data validation, and

(G) schedule for implementing the quality assurance program.

These data shall be available to the Director upon request.

(e) A person shall not allow, cause, or permit the installation or operation of expeller units unless they are properly hooded and all exhaust gases are collected or ducted to odor control equipment.

(f) A person subject to this Rule shall not cause or permit any raw material to be handled, transported, or stored, or to undertake the preparation of any raw material without taking reasonable precautions to prevent odors from being discharged. For the purpose of this Rule, such raw material is in "storage" after it has been unloaded at a facility or after it has been located at the facility for at least 24 hours. Reasonable precautions shall include the following:

- (1) storage of all raw material before or in the process of preparation, in properly enclosed and vented equipment or areas, together with the use of effective devices and methods to prevent the discharge of odor bearing gases;
- (2) use of covered vehicles or containers of watertight construction for the handling and transporting of any raw material; and
- (3) use of hoods and fans to enclose and vent the storage, handling, preparation, and conveying of any odorous materials together with effective devices or methods, or both, to prevent emissions of odors or odor bearing gases.

(g) The owner or operator shall notify the regional supervisor of the appropriate regional office within two business days after conditions are encountered that cause or may cause release of excessive and malodorous gases or vapors.

(h) Compliance Schedule. The owner or operator of a facility subject to this Rule that begins construction or is in operation before July 1, 1996, shall adhere to the following increments of progress and schedules:

- (1) documentation that the facility complies with this Rule or an air permit application containing plans to bring the facility into compliance and a schedule shall be submitted by January 1, 1997;
- (2) the compliance schedule shall contain the following increments of progress:
  - (A) a date by which contracts for the emission control system and process equipment shall be awarded or orders shall be issued for purchase of component parts;
  - (B) a date by which on-site construction or installation of the emission control and process equipment shall begin;
  - (C) a date by which on-site construction or installation of the emission control and process equipment shall be completed; and
  - (D) a date by which final compliance shall be achieved.
- (3) The final compliance date under Subparagraph (2)(D) of this Paragraph shall be no later than July 1, 2001.

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



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(i) The owner or operator of a facility that begins construction after June 30, 1996, shall be in compliance with this Rule before beginning operation.

Authority G.S. 143-215.3(a)(1); 143-215.66; 143-215.107(a)(5).

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

**15A NCAC 02D .1103 DEFINITION**

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

- (1) "Asbestos" means asbestos fibers as defined in 40 CFR 61.141.
- (2) "Bioavailable chromate pigments" means the group of chromium (VI) compounds consisting of calcium chromate (CAS No.13765-19-0), calcium dichromate (CAS No. 14307-33-6), strontium chromate (CAS No. 7789-06-2), strontium dichromate (CAS No. 7789-06-2), zinc chromate (CAS No. 13530-65-9), and zinc dichromate (CAS No. 7789-12-0).
- ~~(2)~~(3) "CAS Number" means the Chemical Abstract Service registry number identifying a particular substance.
- (4) "Chromium (VI) equivalent" means the molecular weight ratio of the chromium (VI) portion of a compound to the total molecular weight of the compound multiplied by the associated compound emission rate or concentration at the facility.
- (5) "Non-specific chromium (VI) compounds" means the group of compounds consisting of any chromium (VI) compounds not specified in this Section as a bioavailable chromate pigment or a soluble chromate compound.
- ~~(3)~~(6) "Cresol" means o-cresol, p-cresol, m-cresol or any combination of these compounds.
- ~~(4)~~(7) "GACT" means any generally available control technology emission standard applied to an area source or facility pursuant to Section 112 of the federal Clean Air Act.
- ~~(5)~~(8) "Hexane isomers except n-hexane" means 2-methyl pentane, 3-methyl pentane, 2,2-dimethyl butane, 2,3-

dimethyl butane, or any combination of these compounds.

~~(6)~~(9) "MACT" means any maximum achievable control technology emission standard applied to a source or facility pursuant to Section 112 of the federal Clean Air Act.

(10) "Nickel, soluble compounds" means the soluble nickel salts of chloride (NiCl<sub>2</sub>, CAS No. 7718-54-9), sulfate (NiSO<sub>4</sub>, CAS No. 7786-81-4), and nitrate (Ni(NO<sub>3</sub>)<sub>2</sub>, CAS No. 13138-45-9).

~~(7)~~(11) "Polychlorinated biphenyls" means any chlorinated biphenyl compound or mixture of chlorinated biphenyl compounds.

(12) "Soluble chromate compounds" means the group of chromium (VI) compounds consisting of ammonium chromate (CAS No. 7788-98-9), ammonium dichromate (CAS No. 7789-09-5), chromic acid (CAS No. 7738-94-5), potassium chromate (CAS No. 7789-00-6), potassium dichromate (CAS No. 7778-50-9), sodium chromate (CAS No. 7775-11-3), and sodium dichromate (CAS No. 10588-01-9).

~~(8)~~(13) "Toxic air pollutant" means any of those carcinogens, chronic toxicants, acute systemic toxicants, or acute irritants listed in Rule .1104 of this Section.

Authority G.S. 143-213; 143-215.3(a)(1); 143B-282; S.L. 1989, c. 168, s. 45.

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

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

Pollutant (CAS Number)	Annual (Carcinogens)	24-hour (Chronic Toxicants)	1-hour (Acute Systemic Toxicants)	1-hour (Acute Irritants)
acetaldehyde (75-07-0)				27
acetic acid (64-19-7)				3.7
acrolein (107-02-8)				0.08
acrylonitrile (107-13-1)	1.5 x 10 <sup>-4</sup>			
ammonia (7664-41-7)				2.7
<del>ammonium chromate (7788-98-9)</del>		6.2 x 10 <sup>-4</sup>		
<del>ammonium dichromate (7789-09-5)</del>		6.2 x 10 <sup>-4</sup>		
aniline (62-53-3)			1	
arsenic and inorganic arsenic compounds	2.3 x 10 <sup>-7</sup>			
asbestos (1332-21-4)	2.8 x 10 <sup>-11</sup> fibers/ml			
aziridine (151-56-4)		0.006		

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Pollutant (CAS Number)	Annual (Carcinogens)	24-hour (Chronic Toxicants)	1-hour (Acute Systemic Toxicants)	1-hour (Acute Irritants)
benzene (71-43-2)	1.2 x 10 <sup>-4</sup>			
benzidine and salts (92-87-5)	1.5 x 10 <sup>-8</sup>			
benzo(a)pyrene (50-32-8)	3.3 x 10 <sup>-5</sup>			
benzyl chloride (100-44-7)			0.5	
beryllium (7440-41-7)	4.1 x 10 <sup>-6</sup>			
beryllium chloride (7787-47-5)	4.1 x 10 <sup>-6</sup>			
beryllium fluoride (7787-49-7)	4.1 x 10 <sup>-6</sup>			
beryllium nitrate (13597-99-4)	4.1 x 10 <sup>-6</sup>			
<u>bioavailable chromate pigments, as chromium (VI) equivalent</u>	8.3 x 10 <sup>-8</sup>			
bis-chloromethyl ether (542-88-1)	3.7 x 10 <sup>-7</sup>			
bromine (7726-95-6)				0.2
1,3-butadiene (106-99-0)	1.7 x 10 <sup>-4</sup>			
cadmium (7440-43-9)	5.5 x 10 <sup>-6</sup>			
cadmium acetate (543-90-8)	5.5 x 10 <sup>-6</sup>			
cadmium bromide (7789-42-6)	5.5 x 10 <sup>-6</sup>			
<del>calcium chromate (13765-19-0)</del>	<del>8.3 x 10<sup>-8</sup></del>			
carbon disulfide (75-15-0)		0.186		
carbon tetrachloride (56-23-5)	6.7 x 10 <sup>-3</sup>			
chlorine (7782-50-5)		0.0375		0.9
chlorobenzene (108-90-7)		2.2		
chloroform (67-66-3)	4.3 x 10 <sup>-3</sup>			
chloroprene (126-99-8)		0.44	3.5	
<del>chromic acid (7738-94-5)</del>		<del>6.2 x 10<sup>-4</sup></del>		
<del>chromium (VI)</del>	<del>8.3 x 10<sup>-8</sup></del>			
cresol (1319-77-3)			2.2	
p-dichlorobenzene (106-46-7)				66
dichlorodifluoromethane (75-71-8)		248		
dichlorofluoromethane (75-43-4)		0.5		
di(2-ethylhexyl)phthalate (117-81-7)		0.03		
dimethyl sulfate (77-78-1)		0.003		
1,4-dioxane (123-91-1)		0.56		
epichlorohydrin (106-89-8)	8.3 x 10 <sup>-2</sup>			
ethyl acetate (141-78-6)			140	
ethylenediamine (107-15-3)		0.3	2.5	
ethylene dibromide (106-93-4)	4.0 x 10 <sup>-4</sup>			
ethylene dichloride (107-06-2)	3.8 x 10 <sup>-3</sup>			
ethylene glycol monoethyl ether (110-80-5)		0.12	1.9	
ethylene oxide (75-21-8)	2.7 x 10 <sup>-5</sup>			
ethyl mercaptan (75-08-1)			0.1	
fluorides		0.016	0.25	
formaldehyde (50-00-0)				0.15
hexachlorocyclopentadiene (77-47-4)		0.0006	0.01	
hexachlorodibenzo-p-dioxin (57653-85-7)	7.6 x 10 <sup>-8</sup>			
n-hexane (110-54-3)		1.1		
hexane isomers except n-hexane				360
hydrazine (302-01-2)		0.0006		
hydrogen chloride (7647-01-0)				0.7

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Pollutant (CAS Number)	Annual (Carcinogens)	24-hour (Chronic Toxicants)	1-hour (Acute Systemic Toxicants)	1-hour (Acute Irritants)
hydrogen cyanide (74-90-8)		0.14	1.1	
hydrogen fluoride (7664-39-3)		0.03		0.25
hydrogen sulfide (7783-06-4)				2.1
maleic anhydride (108-31-6)		0.012	0.1	
manganese and compounds		0.031		
manganese cyclopentadienyl tricarbonyl (12079-65-1)		0.0006		
manganese tetroxide (1317-35-7)		0.0062		
mercury, alkyl		0.00006		
mercury, aryl and inorganic compounds		0.0006		
mercury, vapor (7439-97-6)		0.0006		
methyl chloroform (71-55-6)		12		245
methylene chloride (75-09-2)	$2.4 \times 10^{-2}$		1.7	
methyl ethyl ketone (78-93-3)		3.7		88.5
methyl isobutyl ketone (108-10-1)		2.56		30
methyl mercaptan (74-93-1)			0.05	
nickel carbonyl (13463-39-3)		0.0006		
nickel metal (7440-02-0)		0.006		
nickel, soluble compounds, as nickel		0.0006		
nickel subsulfide (12035-72-2)	$2.1 \times 10^{-6}$			
nitric acid (7697-37-2)				1
nitrobenzene (98-95-3)		0.06	0.5	
N-nitrosodimethylamine (62-75-9)	$5.0 \times 10^{-5}$			
non-specific chromium (VI) compounds, as chromium (VI) equivalent	$8.3 \times 10^{-8}$			
pentachlorophenol (87-86-5)		0.003	0.025	
perchloroethylene (127-18-4)	$1.9 \times 10^{-1}$			
phenol (108-95-2)			0.95	
phosgene (75-44-5)		0.0025		
phosphine (7803-51-2)				0.13
polychlorinated biphenyls (1336-36-3)	$8.3 \times 10^{-5}$			
potassium chromate (7789-00-6)		$6.2 \times 10^{-4}$		
potassium dichromate (7778-50-9)		$6.2 \times 10^{-4}$		
sodium chromate (7775-11-3)		$6.2 \times 10^{-4}$		
sodium dichromate (10588-01-9)		$6.2 \times 10^{-4}$		
soluble chromate compounds, as chromium (VI) equivalent		$6.2 \times 10^{-4}$		
strontium chromate (7789-06-2)	$8.3 \times 10^{-8}$			
styrene (100-42-5)			10.6	
sulfuric acid (7664-93-9)		0.012	0.1	
tetrachlorodibenzo-p-dioxin (1746-01-6)	$3.0 \times 10^{-9}$			
1,1,1,2-tetrachloro-2,2-difluoroethane (76-11-9)		52		
1,1,2,2-tetrachloro-1,2-difluoroethane (76-12-0)		52		
1,1,2,2-tetrachloroethane (79-34-5)	$6.3 \times 10^{-3}$			
toluene (108-88-3)		4.7		56
toluene diisocyanate, 2,4- (584-84-9)				

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Pollutant (CAS Number)	Annual (Carcinogens)	24-hour (Chronic Toxicants)	1-hour (Acute Systemic Toxicants)	1-hour (Acute Irritants)
and 2,6- (91-08-7) isomers		0.0002		
trichloroethylene (79-01-6)	5.9 x 10 <sup>-2</sup>			
trichlorofluoromethane (75-69-4)		<del>560</del>	<u>560</u>	
1,1,2-trichloro-1,2,2- trifluoroethane (76-13-1)				950
vinyl chloride (75-01-4)	3.8 x 10 <sup>-4</sup>			
vinylidene chloride (75-35-4)		0.12		
xylene (1330-20-7)		2.7		65
<del>zinc chromate (13530-65-9)</del>	<del>8.3 x 10<sup>-3</sup></del>			

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

**SECTION .1800 – CONTROL OF ODORS**

**15A NCAC 02D .1806 CONTROL AND PROHIBITION OF ODOROUS EMISSIONS**

(a) Purpose. The purpose of this Rule is to provide for the control and prohibition of objectionable odorous emissions.

(b) Definitions. For the purpose of this Rule the following definitions shall apply:

- (1) "Commercial purposes" means activities that require a state or local business license to operate;
- (2) "Substantive complaints" means complaints that are verified by Division staff field investigation; and
- (3) "Temporary activities or operations" means activities or operations that are less than 30 days in duration and do not require an air quality permit.

(c) Applicability. With the exceptions in Paragraph (d) of this Rule, this Rule shall apply to all operations that may produce odorous emissions that can cause or contribute to objectionable odors beyond the facility's boundaries.

(d) Exemptions. The requirements of this Rule do not apply to:

- (1) processes at kraft pulp mills identified in Rule .0528 of this Section, and covered under Rule .0524 or .0528 of this Section;
- (2) processes at facilities that produce feed-grade animal proteins or feed-grade animal fats and oils identified in and covered under 15A NCAC 2D .0539;
- (3) motor vehicles and transportation facilities;
- (4) all on-farm animal and agricultural operations, including dry litter operations and operations covered under Rule .1804 of this Section;
- (5) municipal wastewater treatment plants and municipal wastewater handling systems;
- (6) restaurants and food preparation facilities that prepare and serve food on site;
- (7) single family dwellings not used for commercial purposes;
- (8) materials odorized for safety purposes;
- (9) painting operations that do not require a business license; or
- (10) all temporary activities or operations.

(e) Control Requirements. The owner or operator of a facility subject to this Rule shall not operate the facility without installing and operating odor control equipment or implementing management practices sufficient to prevent odorous emissions from the facility from causing or contributing to objectionable odors beyond the facility's boundary.

(f) Maximum feasible controls. If the Director determines that a source or facility subject to this Rule is emitting an objectionable odor by the procedures described in Paragraph (g) of this Rule, the Director shall require the owner or operator to implement maximum feasible controls for the control of odorous emissions. (Maximum feasible controls shall be determined according to the procedures in Rule .1807 of this Section.) The owner or operator shall:

- (1) within 90 days of receipt of written notification from the Director of the requirement to implement maximum feasible controls, complete the determination process outlined in 2D .1807 and submit the completed maximum feasible control determination process along with a permit application for maximum feasible controls and a compliance schedule to the Division of Air Quality; the compliance schedule shall contain the following increments of progress:
  - (A) a date by which contracts for the odorous emission control systems and equipment shall be awarded or orders shall be issued for purchase of component parts;
  - (B) a date by which on-site construction or installation of the odorous emission control systems and equipment shall begin;
  - (C) a date by which on-site construction or installation of the odorous emission control systems and equipment shall be completed; and
  - (D) a date by which final compliance shall be achieved.
- (2) within 12 months after receiving written notification from the Director of the requirement to implement maximum feasible controls, have installed and begun operating maximum feasible controls.

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

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(g) Determination of the existence of an objectionable odor. A source or facility is causing or contributing to an objectionable odor when:

- (1) A member of the Division staff determines by field investigation that an objectionable odor is present by taking into account nature, intensity, pervasiveness, duration, and source of the odor and other pertinent factors;
- (2) The Division verifies two substantive complaints within a 120-day period that a person or facility has caused objectionable odors beyond the property line of this person or facility (Complaints from the same household on the same day shall be counted as only one complaint. Complaints from the same household on different days shall be counted as different complaints.);
- (3) The source or facility emits known odor causing compounds such as ammonia, total volatile organics, hydrogen sulfide, or other sulfur compounds at levels that cause objectionable odors beyond the property line of that source or facility; or
- (4) The Division receives epidemiological studies associating health problems with odors from the source or facility or evidence of documented health problems associated with odors from the source or facility provided by the State Health Director.

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

### 15A NCAC 02D .1807 DETERMINATION OF MAXIMUM FEASIBLE CONTROLS FOR ODOROUS EMISSIONS

(a) Scope. This Rule sets out procedures for determining maximum feasible controls for odorous emissions. The owner or operator of the facility shall be responsible for providing the maximum feasible control determination.

(b) Process for maximum feasible control determinations. The following sequential process shall be used on a case-by-case basis to determine maximum feasible controls:

- (1) identify all control technologies. In the first step, all available options for the control of odorous emissions shall be listed. Available options include all possible control technologies or techniques with a practical potential to control, reduce, or minimize odorous emissions. For the purposes of this document, in some specific cases a comprehensive, effective odor control plan can be listed among the possible odor control technologies as a viable and satisfactory maximum feasible control technology option. All possible control technologies shall be included on this list regardless of their technical feasibility or potential energy, human health, economic, or environmental impacts;
- (2) eliminate technically infeasible options. In the second step, the technical feasibility of all the control options identified under Subparagraph (b)(1) of this Rule shall be evaluated with respect to source specific factors. A demonstration of technical infeasibility shall be clearly documented and shall show, based on physical, chemical, or engineering principles, that technical

difficulties preclude the successful use of the control option under review. Technically infeasible control options shall then be eliminated from further consideration as maximum feasible controls; and,

- (3) rank remaining control technologies by control effectiveness. All the remaining control technologies, which have not been eliminated under Subparagraph (b)(2) of this Rule, shall be ranked and then listed in order of their ability to control odorous emissions, with the most effective control option at the top of the list. The list shall present all the control technologies that have not been previously eliminated and shall include the following information:

(A) control effectiveness;

(B) economic impacts (cost effectiveness);

(C) environmental impacts: this shall include any significant or unusual other media impacts (for example, water or solid waste), and, at a minimum, the impact of each control alternative on emissions of toxic or hazardous air pollutants;

(D) human health impacts; and

(E) energy impacts.

However, an owner or operator proposing to implement the most stringent alternative, in terms of control effectiveness, need not provide detailed information concerning the other control options. In such cases, the owner or operator shall only document, to the satisfaction of the Director, that the proposed control option is indeed the most efficient, in terms of control effectiveness, and provide a review of collateral environmental impacts.

- (4) Evaluate most effective controls and document results. Following the delineation of all available and technically feasible control technology options under Subparagraph (b)(3) of this Rule, the energy, human health, environmental, and economic impacts shall be considered in order to arrive at the maximum feasible controls. An analysis of the associated impacts for each option shall be conducted. The owner or operator shall present an objective evaluation of the impacts of each alternative. Beneficial and adverse impacts shall be analyzed and, if possible, quantified. If the owner or operator has proposed to select the most stringent alternative, in terms of control effectiveness, as maximum feasible controls, he shall evaluate whether impacts of unregulated air pollutants or environmental impacts in other media would justify selection of an alternative control technology. If there are no concerns regarding collateral environmental impacts, the analysis is ended and this proposed option is selected as maximum feasible controls. In the event the most stringent alternative is inappropriate, due to energy, human health, environmental, or economic impacts, the justification for this conclusion shall be fully documented; and the next most stringent option, in terms of control effectiveness, becomes the primary alternative and is similarly evaluated. This process

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shall continue until the control technology evaluated can not be eliminated due to source-specific environmental, human health, energy, or economic impacts.

- (5) Select maximum feasible controls. The most stringent option, in terms of control effectiveness, not eliminated under Subparagraph (b)(4) of this Rule shall be selected as maximum feasible controls.

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

**SUBCHAPTER 2Q – AIR QUALITY PERMIT PROCEDURES**

**SECTION .0100 – GENERAL PROVISIONS**

**15A NCAC 02Q .0109 COMPLIANCE SCHEDULE FOR PREVIOUSLY EXEMPTED ACTIVITIES**

(a) If a source has heretofore been exempted from needing a permit, but because of change in permit exemptions, it is now required to have a permit as follows:

- (1) If the source is located at a facility that currently has an air quality permit, the source shall be added to the air quality permit of the facility the next time that permit is revised or renewed, whichever occurs first.
- (2) If the source is located at a facility that currently does not have an air quality permit, the owner or operator of that source shall apply for a permit within six months after the effective date of the change in the permit exemption permit:
  - (A) ~~by the schedule in Rule .0506 of this Subchapter if the source is subject to the requirements of Section .0500 of this Subchapter, or~~
  - (B) ~~by January 1, 1998, if the source is not subject to the requirements of Section .0500 of this Subchapter.~~

(b) If a source becomes subject to requirements promulgated under 40 CFR Part 63, the owner or operator of the source shall apply for a permit unless exempted by Rule .0102 of this Section: Section at least 270 days before the final compliance date of the requirement.

- (1) ~~for a generally available control technology (GACT) requirement, including work practice standards, under 40 CFR Part 63:~~
  - (A) ~~if the source is required to apply a GACT promulgated under 40 CFR Part 63 before July 1, 1994, by February 1, 1995; or~~
  - (B) ~~if the source is required to apply a GACT promulgated after June 30, 1994:~~
    - (i) ~~within 180 days after the date of promulgation; or~~
    - (ii) ~~by the date that initial notification is required by 40 CFR Part 63;~~

~~whichever is later; or~~
- (2) ~~for a maximum achievable control technology (MACT), including work practice standards, under 40 CFR Part 63 promulgated:~~
  - (A) ~~before EPA approves Section .0500 of this Subchapter, by the schedule in Rule .0506 of this Subchapter; or~~
  - (B) ~~after EPA approves Section .0500 of this Subchapter;~~
    - (i) ~~within 180 days;~~
      - (I) ~~after the date of promulgation; or~~
      - (II) ~~when required to have a permit under Section .0500 of this Subchapter; or~~
    - (ii) ~~by the date that initial notification is required by 40 CFR Part 63;~~

~~whichever is later.~~

Authority G.S. 143-215.3(a)(1); 143-215.108; 143-215.109.

**SECTION .0200 – PERMIT FEES**

**15A NCAC 02Q .0203 PERMIT AND APPLICATION FEES**

(a) The owner or operator of any facility holding a permit shall pay the following permit fees:

ANNUAL PERMIT FEES (FOR CALENDAR YEAR 1994)			
Facility Category	Tonnage Factor	Basic Permit Fee	Nonattainment Area Added Fee
Title V	\$14.63	\$5100	\$2600
Synthetic Minor		1500	
Small		250	
Transportation		0	
General		50% of the otherwise applicable fee	

A facility, other than a Title V facility, which has been in compliance may be eligible for a 25 percent discount from the annual permit fees as described in Paragraph (a) of Rule .0205 of this Section. Annual permit fees for Title V facilities shall be adjusted for inflation as described in Rule .0204 of this Section. Annual permit fees for Title V facilities consist of the sum of the applicable fee elements.

(b) In addition to the annual permit fee, a permit applicant shall pay a non-refundable permit application fee as follows:

PERMIT APPLICATION FEES  
(FEES FOR CALENDAR YEAR 1994)

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Facility Category	New Significant Modification	or	New Modification	or	2Q.0300 Minor Modification	or	Ownership Change
<del>Title V (before Title V Program)</del>	\$700						\$50
<del>Title V (after Title V Program)</del>			\$7200		\$700		50
Title V (PSD or NSR/NAA)	10900						50
Title V (PSD and NSR/NAA)	21200						50
Synthetic Minor	400						50
Small	50						25
Transportation	400						50
General			50% of the otherwise applicable fee				25

Permit application fees for Title V facilities shall be adjusted for inflation as described in Rule .0204 of this Section.

(c) If a facility, other than a general facility, belongs to more than one facility category, the fees shall be those of the applicable category with the highest fees. If a permit application belongs to more than one type of application, the fee shall be that of the applicable permit application type with the highest fee.

(d) The tonnage factor fee shall be applicable only to Title V facilities. It shall be computed by multiplying the tonnage factor indicated in the table in Paragraph (a) of this Rule by the facility's combined total actual emissions of all regulated air pollutants, rounded to the nearest ton, contained in the latest emissions inventory that has been completed by the Division. The calculation shall not include:

- (1) carbon monoxide;
- (2) any pollutant that is regulated solely because it is a Class I or II substance listed under Section 602 of the federal Clean Air Act (ozone depleters);
- (3) any pollutant that is regulated solely because it is subject to a regulation or standard under Section 112(r) of the federal Clean Air Act (accidental releases); and
- (4) the amount of actual emissions of each pollutant that exceeds 4,000 tons per year.

Even though a pollutant may be classified in more than one pollutant category, the amount of pollutant emitted shall be counted only once for tonnage factor fee purposes and in a pollutant category chosen by the permittee. If a facility has more than one permit, the tonnage factor fee for the facility's combined total actual emissions as described in this Paragraph shall be paid only on the permit whose anniversary date first occurs on or after July 1.

(e) The nonattainment area added fee shall be applicable only to Title V facilities located in a nonattainment area defined in 15A NCAC 2D .0531 (Sources in Nonattainment Areas) and subject to required to comply with 15A NCAC 2D .0531, .0531 or 15A NCAC 2D .0900 (Volatile Organic Compounds), or 15A NCAC 2D .1400 (Nitrogen Oxides) Compounds), and either:

- (1) are in a area designated in 40 CFR 81.334 as nonattainment; or

(2) are covered by a nonattainment or maintenance State Implementation Plan submitted for approval or approved as part of 40 CFR Part 52, Subpart II.

(f) A Title V (PSD or NSR/NAA) facility is a facility whose application is subject to review under 15A NCAC 2D .0530 (Prevention of Significant Deterioration) or 15A NCAC 2D .0531 (Sources in Nonattainment Areas).

(g) A Title V (PSD and NSR/NAA) facility is a facility whose application is subject to review under 15A NCAC 2D .0530 (Prevention of Significant Deterioration) and 15A NCAC 2D .0531 (Sources in Nonattainment Areas).

(h) Minor modification permit applications which are group processed require the payment of only one permit application fee per facility included in the group.

(i) No permit application fee is required for renewal of an existing permit, for changes to an unexpired permit when the only reason for the changes is initiated by the Director or the Commission, for a name change with no ownership change, for a change under Rule .0523 (Changes Not Requiring Permit Revisions) of this Subchapter, or for a construction date change, a test date change, a reporting procedure change, or a similar change.

(j) The permit application fee paid for modifications under 15A NCAC 2Q .0400, Acid Rain Procedures, shall be the fee for the same modification if it were under 15A NCAC 2D .0500, Title V Procedures.

(k) An applicant who files permit applications pursuant to Rule .0504 of this Subchapter shall pay an application fee as would be determined by the application fee for the permit required under Section .0500 of this Subchapter; this fee will cover both applications provided that the second application covers only what is covered under the first application. If permit terms or conditions in an existing or future permit issued under Section .0500 of this Subchapter will be established or modified by an application for a modification and if these terms or conditions are enforceable by the Division only, then the applicant shall pay the fee under the column entitled "2Q .0300 Only or Minor Modification" in the table in Paragraph (b) of this Rule.

Authority G.S. 143-215.3(a)(1),(1a),(1b),(1d); 150B-21.6.

**SECTION .0300 – CONSTRUCTION AND OPERATION PERMITS**

**15A NCAC 02Q .0316 ADMINISTRATIVE PERMIT AMENDMENTS**

(a) An "administrative permit amendment" means a permit revision that:

- (1) corrects typographical errors;
- (2) identifies a change in the name, address or telephone number of any individual identified in the permit, or provides a similar minor administrative change at the facility;
- (3) requires more frequent monitoring or reporting by the permittee;
- (4) changes test dates or construction dates provided that no applicable requirements are violated by the change in test dates or construction dates; or
- (5) changes the permit number without changing any portion of the permit that would not otherwise qualify as an administrative amendment.

(b) In making administrative permit amendments, the Director:

- (1) shall take final action on a request for an administrative permit amendment within 60 days after receiving such a request; and
- (2) may make administrative amendments without providing notice to the public.

(c) The permittee may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request.

*Authority G.S. 143-215.3(a)(1); 143-215.108.*

**15A NCAC 02Q .0317 AVOIDANCE CONDITIONS**

(a) The owner or operator of a facility may request that terms and conditions be placed in that facility's permit to avoid the applicability of:

- (1) 15A NCAC 2D .0530, Prevention of Significant Deterioration;
- (2) 15A NCAC 2D .0531, Sources in Nonattainment Areas;
- (3) 15A NCAC 2D .0900, Volatile Organic Compounds;
- (4) 15A NCAC 2D .1109, 112(j) Case-by-Case Maximum Achievable Control Technology;
- (5) 15A NCAC 2D .1111, Maximum Achievable Control Technology;
- (6) 15A NCAC 2D .1112(g) Case-by-Case Maximum Achievable Control Technology;
- (7) 15A NCAC 2D .1400, Nitrogen Oxides; or
- (8) other rules of 15A NCAC 2D, Air Pollution Control Requirements or Title 40 of the Code of Federal Regulations that contain applicability thresholds.

(b) The Director may require the monitoring, recordkeeping, and reporting necessary to assure compliance with the terms and conditions placed in the permit to remove the applicability of a rule.

*Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.108.*

**SECTION .0400 – ACID RAIN PROCEDURES**

**15A NCAC 02Q .0401 PURPOSE AND APPLICABILITY**

(a) The purpose of this Rule is to implement Phase II of the federal acid rain program pursuant to the requirements of Title IV of the Clean Air Act as provided in 40 CFR Parts 72 and 76.

(b) This Section applies to the sources described in 40 CFR 72.6 with such exceptions as allowed under 40 CFR 72.6. Applicability.

(1) Each of the following units shall be an affected unit, and any facility that includes such a unit shall be an affected facility, subject to the requirements of the Acid Rain Program:

(A) A unit listed in 40 CFR Part 73, Subpart B, Table 1.

(B) A unit that is identified as qualifying for an allowance allocation under 40 CFR 73.10 Table 2 or 3 and any other existing utility unit, except a unit under Subparagraph (2) of this Paragraph.

(C) A utility unit, except a unit under Subparagraph (2) of this Paragraph, that:

- (i) is a new unit;
- (ii) did not serve a generator with a nameplate capacity greater than 25 MWe on November 15, 1990, but serves such a generator after November 15, 1990;
- (iii) was a simple combustion turbine on November 15, 1990 but adds or uses auxiliary firing after November 15, 1990;
- (iv) was an exempt cogeneration facility under Part (2)(D) of this Paragraph but during any three calendar year period after November 15, 1990, sold to a utility power distribution system, an annual average of more than one third of its potential electrical out put capacity and more than 219,000 MWe hrs electric output, on a gross basis;
- (v) was an exempt qualifying facility under Part (2)(E) of this Paragraph but at any time after the later of November 15, 1990, or the date the facility commences commercial operation, fails to meet the definition of qualifying facility;
- (vi) was an exempt independent power production facility under Part (2)(F) of this Paragraph but at any time after the later of November 15, 1990, or the date the facility commences commercial operation, fails to meet the definition of independent power production facility; or
- (vii) was an exempt solid waste incinerator under Part (2)(G) of this Paragraph but during any three calendar year period after November 15, 1990, consumes 20 percent or more (on a Btu basis) fossil fuel.

(2) The following types of units are not affected units subject to the requirements of the Acid Rain Program:



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- ~~(A) A simple combustion turbine that commenced operation before November 15, 1990.~~
- ~~(B) Any unit that commenced commercial operation before November 15, 1990, and that did not, as of November 15, 1990, and does not currently, serve a generator with a nameplate capacity of greater than 25 MWe.~~
- ~~(C) Any unit that, during 1985, did not serve a generator that produced electricity for sale and that did not, as of November 15, 1990, and does not currently, serve a generator that produces electricity for sale.~~
- ~~(D) A co-generation facility which:~~
- ~~(i) for a unit that commenced construction on or prior to November 15, 1990, was constructed for the purpose of supplying equal to or less than one third its potential electrical output capacity or equal to or less than 219,000 MWe hrs actual electrical output on an annual basis to any utility power distribution system for sale (on a gross basis). If the purpose of construction is not known, it will be presumed to be consistent with actual operation from 1985 through 1987. However, if in any three calendar year period after November 15, 1990, such unit sells to a utility power distribution system an annual average of more than one third of its potential electrical output capacity and more than 219,000 MWe hrs actual electrical output (on a gross basis), that unit shall be an affected unit, subject to the requirements of the Acid Rain Program, or~~
  - ~~(ii) for units that commenced construction after November 15, 1990, supplies equal to or less than one third its potential electrical output capacity or equal to or less than 219,000 MWe hrs actual electrical output on an annual basis to any utility power distribution system for sale (on a gross basis). However, if in any three calendar year period after November 15, 1990, such unit sells to a utility power distribution system an annual average of more than one third of its potential electrical output capacity and more than 219,000 MWe hrs actual electrical output (on a gross basis), that unit shall be an affected unit, subject to the requirements of the Acid Rain Program.~~
- ~~(E) A qualifying facility that:~~
- ~~(i) has, as of November 15, 1990, one or more qualifying power purchase commitments to sell at least 15 percent of its total planned net output capacity; and~~
  - ~~(ii) consists of one or more units designed by the owner or operator with total installed net output capacity not exceeding 130 percent of the total planned net output capacity. If the emissions rates of the units are not the same, the Administrator shall designate which units are exempt.~~
- ~~(F) An independent power production facility that:~~
- ~~(i) has, as of November 15, 1990, one or more qualifying power purchase commitments to sell at least 15 percent of its total planned net output capacity; and~~
  - ~~(ii) consists of one or more units designed by the owner or operator with total installed net output capacity not exceeding 130 percent of the total planned net output capacity. If the emissions rates of the units are not the same, the Administrator shall designate which units are exempt.~~
- ~~(G) A solid waste incinerator, if more than 80 percent (on a Btu basis) of the annual fuel consumed at such incinerator is other than fossil fuels. For a solid waste incinerator which began operation before January 1, 1985, the average annual fuel consumption of non-fossil fuels for calendar years 1985 through 1987 must be greater than 80 percent for such an incinerator to be exempt. For a solid waste incinerator which began operation after January 1, 1985, the average annual fuel consumption of non-fossil fuels for the first three years of operation must be greater than 80 percent for such an incinerator to be exempt. If, during any three calendar year period after November 15, 1990, such incinerator consumes 20 percent or more (on a Btu basis) fossil fuel, such incinerator will be an affected source under the Acid Rain Program.~~
- ~~(H) A non-utility unit.~~
- ~~(3)(c) A certifying official of any unit may petition the Administrator for a determination of applicability under 40 CFR 72.6(c). The Administrator's determination of applicability shall be binding upon the Division, unless the petition is found to have contained significant errors or omissions.~~

*Authority G.S. 143-215.3(a)(1); 143-215.107(a)(8); 143-215.108.*

**SECTION .0500 – TITLE V PROCEDURES**

**15A NCAC 02Q .0508 PERMIT CONTENT**

- (a) The permit shall specify and reference the origin and authority for each term or condition and shall identify any differences in form as compared to the applicable requirement on which the term or condition is based.
- (b) The permit shall specify emission limitations and standards, including operational requirements and limitations, that assure

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compliance with all applicable requirements at the time of permit issuance.

(c) Where an applicable requirement of the federal Clean Air Act is more stringent than an applicable requirement of rules promulgated pursuant to Title IV, both provisions shall be placed in the permit. The permit shall state that both provisions are enforceable by EPA.

(d) The permit for sources using an alternative emission limit established under 15A NCAC 2D .0501(f) or 15A NCAC 2D .0952 shall contain provisions to ensure that any resulting emissions limit has been demonstrated to be quantifiable, accountable, enforceable, and based on replicable procedures.

(e) The expiration date contained in the permit shall be for a fixed term of five years for sources covered under Title IV and for a term of no more than five years from the date of issuance for all other sources including solid waste incineration units combusting municipal waste subject to standards under Section 129(e) of the federal Clean Air Act.

(f) The permit shall contain monitoring and related recordkeeping and reporting requirements as specified in 40 CFR 70.6(a)(3) and 70.6(c)(1) including conditions requiring:

- (1) the permittee to retain records of all required monitoring data and supporting information for a period of at least five years from the date of the monitoring sample, measurement, report, or application (Supporting information includes all calibration and maintenance records and all original strip-chart recordings for continuous monitoring information, and copies of all reports required by the permit.);
- (2) the permittee to submit reports of any required monitoring at least every six months. The permittee shall submit reports:
  - (A) on official forms obtained from the Division at the address in Rule .0104 of this Subchapter,
  - (B) in a manner as specified by a permit condition, or
  - (C) on other forms that contain the information required on official forms provided by the Division or as specified by a permit condition; and
- (3) the permittee to report malfunctions, emergencies, and other upset conditions as prescribed in 15A NCAC 2D .0524, .0535, .1110, or .1111 and to report by the next business day deviations from permit requirements not covered under 15A NCAC 2D .0524, .0535, .1110, or .1111. The permittee shall report in writing to either the Director or Regional Supervisor all other deviations from permit requirements not covered under 15A NCAC 2D .0535 within two business days after becoming aware of the deviation. The permittee shall include the probable cause of such deviation and any corrective actions or preventive measures taken. All deviations from permit requirements shall be certified by a responsible official.

At the request of the permittee, the Director may allow records to be maintained in computerized form in lieu of maintaining paper records.

(g) The permit for facilities covered under 15A NCAC 2D .2100, Risk Management Program, shall contain:

- (1) a statement listing 15A NCAC 2D .2100 as an applicable requirement;
- (2) conditions that require the owner or operator of the facility to submit:
  - (A) a compliance schedule for meeting the requirements of 15A NCAC 2D .2100 by the dates provided in 15A NCAC 2D .2101(a); or
  - (B) as part of the compliance certification under Paragraph (t) of this Rule, a certification statement that the source is in compliance with all requirements of 15A NCAC 2D .2100, including the registration and submission of the risk management plan.

The content of the risk management plan need not itself be incorporated as a permit term or condition.

(h) The permit shall contain a condition prohibiting emissions exceeding any allowances that a facility lawfully holds under Title IV. The permit shall not limit the number of allowances held by a permittee, but the permittee may not use allowances as a defense to noncompliance with any other applicable requirement.

(i) The permit shall contain a severability clause so that various permit requirements will continue to be valid in the event of a challenge to any other portion of the permit.

(j) The permit shall state that noncompliance with any condition of the permit is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

(k) The permit shall state that the permittee may not use as a defense in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit.

(l) The permit shall state that the Director may reopen, modify, revoke and reissue, or terminate the permit for reasons specified in Rule .0517 or .0519 of this Section. The permit shall state that the filing of a request by the permittee for a permit revision, revocation and reissuance, or termination, notification of planned changes, or anticipated noncompliance does not stay any permit condition.

(m) The permit shall state that the permit does not convey any property rights of any sort, or any exclusive privileges.

(n) The permit shall state that the permittee shall furnish to the Division, in a timely manner, any reasonable information that the Director may request in writing to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit or to determine compliance with the permit. The permit shall state that the permittee shall furnish the Division copies of records required to be kept by the permit when such copies are requested by the Director. For information claimed to be confidential, the permittee may furnish such records directly to EPA along with a claim of confidentiality.

(o) The permit shall contain a provision to ensure that the permittee pays fees required under Section .0200 of this Subchapter.

(p) The permit shall state the terms and conditions for reasonably anticipated operating scenarios identified by the applicant in the application. These terms and conditions shall:

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- (1) require the permittee, contemporaneously with making a change from one operating scenario to another, to record in a log at the permitted facility a record of the operating scenario under which it is operating;
  - (2) extend the permit shield described in Rule .0512 of this Section to all terms and conditions under each such operating scenario; and
  - (3) ensure that each operating scenario meets all applicable requirements of Subchapter 2D of this Chapter and of this Section.
- (q) The permit shall identify which terms and conditions are enforceable by:
- (1) both EPA and the Division;
  - (2) the Division only;
  - (3) EPA only; and
  - (4) citizens under the federal Clean Air Act.
- (r) The permit shall state that the permittee shall allow personnel of the Division to:
- (1) enter the permittee's premises where the permitted facility is located or emissions-related activity is conducted, or where records are kept under the conditions of the permit;
  - (2) have access to and copy, at reasonable times, any records that are required to be kept under the conditions of the permit;
  - (3) inspect at reasonable times and using reasonable safety practices any source, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under the permit; and
  - (4) sample or monitor substances or parameters, using reasonable safety practices, for the purpose of assuring compliance with the permit or applicable requirements at reasonable times.
- (s) When a compliance schedule is required under 40 CFR 70.5(c)(8) or under a rule contained in Subchapter 2D of this Chapter, the permit shall contain the compliance schedule and shall state that the permittee shall submit at least semiannually, or more frequently if specified in the applicable requirement, a progress report. The progress report shall contain:
- (1) dates for achieving the activities, milestones, or compliance required in the compliance schedule, and dates when such activities, milestones, or compliance were achieved; and
  - (2) an explanation of why any dates in the compliance schedule were not or will not be met, and any preventive or corrective measures adopted.
- (t) The permit shall contain requirements for compliance certification with the terms and conditions in the permit, including emissions limitations, standards, or work practices. The permit shall specify:
- (1) the frequency (not less than annually or more frequently as specified in the applicable requirements or by the Director) of submissions of compliance certifications;
  - (2) a means for monitoring the compliance of the source with its emissions limitations, standards, and work practices;
  - (3) a requirement that the compliance certification include:
    - (A) the identification of each term or condition of the permit that is the basis of the certification;
    - (B) the compliance status for the period covered by the certification as shown by monitoring data and other information reasonably available to the permittee; this compliance status shall identify:
      - (i) each deviation from a permit condition; and
      - (ii) all excursions or exceedances of parameters set under the Rule 15A NCAC 2D .0614, Compliance Assurance Monitoring.
    - (C) whether compliance was continuous or intermittent;
    - (D) the method(s) used for determining the compliance status of the source, currently and over the reporting period; and
    - (E) such other facts as the permit may specify to determine the compliance status of the source;
  - (4) that all compliance certifications be submitted to EPA as well as to the Division; and
  - (5) such additional requirements as may be specified under Sections 114(a)(3) or 504(b) of the federal Clean Air Act.
- (u) The permit shall contain a condition that authorizes the permittee to make Section 502(b)(10) changes, off-permit changes, or emission trades in accordance with Rule .0523 of this Section.
- (v) The permit shall include all applicable requirements for all sources covered under the permit.
- (w) The permit shall specify the conditions under which the permit shall be reopened before the expiration of the permit.
- (x) If regulated, fugitive emissions shall be included in the permit in the same manner as stack emissions.
- (y) The permit shall contain a condition requiring annual reporting of actual emissions as required under Rule .0207 of this Subchapter.
- (z) The permit shall include all sources including insignificant activities.
- (aa) The permit may contain such other provisions as the Director considers appropriate.

*Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(10); 143-215.108.*

### SECTION .0700 – TOXIC AIR POLLUTANT PROCEDURES

#### 15A NCAC 02Q .0703 DEFINITIONS

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

- (1) "Actual rate of emissions" means:
  - (a) for existing sources:
    - (i) for toxic air pollutants with an annual averaging period, the average rate or rates at which the source actually emitted the pollutant during the two-year period preceding the date of the particular modification and that represents normal operation of the source. If

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this period does not represent normal operation, the Director may allow the use of a different, more representative, period.

- (ii) for toxic air pollutants with a 24-hour or one-hour averaging period, the maximum actual emission rate at which the source actually emitted for the applicable averaging period during the two-year period preceding the date of the particular modification and that represents normal operation of the source. If this period does not represent normal operation, the Director may require or allow the use of a different, more representative, period.
- (b) for new or modified sources, the average rate or rates, determined for the applicable averaging period(s), that the proposed source will actually emit the pollutant as determined by engineering evaluation.
- (2) "Applicable averaging period" means the averaging period for which an acceptable ambient limit has been established by the Commission and is listed in 15A NCAC 2D .1104.
- (3) "Bioavailable chromate pigments" means the group of chromium (VI) compounds consisting of calcium chromate (CAS No.13765-19-0), calcium dichromate (CAS No. 14307-33-6), strontium chromate (CAS No. 7789-06-2), strontium dichromate (CAS No. 7789-06-2), zinc chromate (CAS No. 13530-65-9), and zinc dichromate (CAS No. 7789-12-0).
- ~~(3)~~(4) "CAS Number" means the Chemical Abstract Service registry number identifying a particular substance.
- (5) "Chromium (VI) equivalent" means the molecular weight ratio of the chromium (VI) portion of a compound to the total molecular weight of the compound multiplied by the associated compound emission rate or concentration at the facility.
- ~~(4)~~(6) "Combustion sources" means boilers, space heaters, process heaters, internal combustion engines, and combustion turbines, which burn only unadulterated wood or unadulterated fossil fuel. It does not include incinerators, waste combustors, kilns, dryers, or direct heat exchange industrial processes.
- ~~(5)~~(7) "Creditable emissions" means actual decreased emissions that have not been previously relied on to comply with Subchapter 15A NCAC 2D. All creditable emissions shall be enforceable by permit condition.
- ~~(6)~~(8) "Cresol" means o-cresol, p-cresol, m-cresol, or any combination of these compounds.
- ~~(7)~~(9) "Evaluation" means:
  - (a) a determination that the emissions from the facility, including emissions from sources exempted by Rule .0702 (a) ~~(23)~~(24) through ~~(26)~~(27) of this Section, are less than the rate listed in Rule .0711 of this Section; or
  - (b) a determination of ambient air concentrations as described under 15A NCAC 2D .1106, including

emissions from sources exempted by Rule .0702 ~~(23)~~(24) through ~~(26)~~(27) of this Section.

- ~~(8)~~(10) "GACT" means any generally available control technology emission standard applied to an area source or facility pursuant to Section 112 of the federal Clean Air Act.
- ~~(9)~~(11) "Hexane isomers except n-hexane" means 2-methyl pentane, 3-methyl pentane, 2,2-dimethyl butane, 2,3-dimethyl butane, or any combination of these compounds.
- ~~(40)~~(12) "MACT" means any maximum achievable control technology emission standard applied to a source or facility pursuant to Section 112 federal Clean Air Act.
- ~~(41)~~(13) "Maximum feasible control" means the maximum degree of reduction for each pollutant subject to regulation under this Section using the best technology that is available taking into account, on a case-by-case basis, human health, energy, environmental, and economic impacts and other costs.
- ~~(42)~~(14) "Modification" means any physical changes or changes in the methods of operation that result in a net increase in emissions or ambient concentration of any pollutant listed in Rule .0711 of this Section or that result in the emission of any pollutant listed in Rule .0711 of this Section not previously emitted.
- ~~(43)~~(15) "Net increase in emissions" means for a modification the sum of any increases in permitted allowable and decreases in the actual rates of emissions from the proposed modification from the sources at the facility for which the air permit application is being filed. If the net increase in emissions from the proposed modification is greater than zero, all other increases in permitted allowable and decreases in the actual rates of emissions at the facility within five years immediately preceding the filing of the air permit application for the proposed modification that are otherwise creditable emissions may be included.
- (16) "Nickel, soluble compounds" means the soluble nickel salts of chloride (NiCl<sub>2</sub>, CAS No. 7718-54-9), sulfate (NiSO<sub>4</sub>, CAS No. 7786-81-4), and nitrate (Ni(NO<sub>3</sub>)<sub>2</sub>, CAS No. 13138-45-9).
- (17) "Non-specific chromium (VI) compounds" means the group of compounds consisting of any chromium (VI) compounds not specified in this Section as a bioavailable chromate pigment or a soluble chromate compound.
- ~~(44)~~(18) "Polychlorinated biphenyls" means any chlorinated biphenyl compound or mixture of chlorinated biphenyl compounds.
- ~~(45)~~(19) "Pollution prevention plan" means a written description of current and projected plans to reduce, prevent, or minimize the generation of pollutants by source reduction and recycling and includes a site-wide assessment of pollution prevention opportunities at a facility that addresses sources of air pollution, water pollution, and solid and hazardous waste generation.
- ~~(46)~~(20) "SIC" means standard industrial classification code.

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(21) "Soluble chromate compounds" means the group of chromium (VI) compounds consisting of ammonium chromate (CAS No. 7788-98-9), ammonium dichromate (CAS No. 7789-09-5), chromic acid (CAS No. 7738-94-5), potassium chromate (CAS No. 7789-00-6), potassium dichromate (CAS No. 7778-50-9), sodium chromate (CAS No. 7775-11-3), and sodium dichromate (CAS No. 10588-01-9).

(17)(22) "Toxic air pollutant" means any of those carcinogens, chronic toxicants, acute systemic

toxicants, or acute irritants listed in 15A NCAC 2D .1104.

(48)(23) "Unadulterated wood" means wood that is not painted, varnished, stained, oiled, waxed, or otherwise coated or treated with any chemical. Plywood, particle board, and resinated wood are not unadulterated wood.

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

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

A permit to emit toxic air pollutants shall be required for any facility whose actual (or permitted if higher) rate of emissions from all sources are greater than any one of the following toxic air pollutant permitting emissions rates:

Pollutant (CAS Number)	Carcinogens	Chronic Toxicants	Acute Systemic Toxicants	Acute Irritants
	lb/yr	lb/day	lb/hr	lb/hr
acetaldehyde (75-07-0)				6.8
acetic acid (64-19-7)				0.96
acrolein (107-02-8)				0.02
acrylonitrile (107-13-1)	10			
ammonia (7664-41-7)				0.68
ammonium chromate (7788-98-9)		0.013		
ammonium dichromate (7789-09-5)		0.013		
aniline (62-53-3)			0.25	
arsenic and inorganic arsenic compounds	0.016			
asbestos (1332-21-4)	1.9 X 10 <sup>-6</sup>			
aziridine (151-56-4)		0.13		
benzene (71-43-2)	8.1			
benzidine and salts (92-87-5)	0.0010			
benzo(a)pyrene (50-32-8)	2.2			
benzyl chloride (100-44-7)			0.13	
beryllium (7440-41-7)	0.28			
beryllium chloride (7787-47-5)	0.28			
beryllium fluoride (7787-49-7)	0.28			
beryllium nitrate (13597-99-4)	0.28			
bioavailable chromate pigments, as chromium (VI) equivalent	0.0056			
bis-chloromethyl ether (542-88-1)	0.025			
bromine (7726-95-6)				0.052
1,3-butadiene (106-99-0)	12			
cadmium (7440-43-9)	0.37			
cadmium acetate (543-90-8)	0.37			
cadmium bromide (7789-42-6)	0.37			
calcium chromate (13765-19-0)	0.0056			
carbon disulfide (75-15-0)		3.9		
carbon tetrachloride (56-23-5)	460			
chlorine (7782-50-5)		0.79		0.23
chlorobenzene (108-90-7)		46		
chloroform (67-66-3)	290			
chloroprene (126-99-8)		9.2	0.89	
chromic acid (7783-94-5)		0.013		

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Pollutant (CAS Number)	Carcinogens	Chronic Toxicants	Acute Systemic Toxicants	Acute Irritants
	lb/yr	lb/day	lb/hr	lb/hr
chromium (vi)	0.0056			
cresol (1319-77-3)			0.56	
p-dichlorobenzene (106-46-7)				16.8
dichlorodifluoromethane (75-71-8)		5200		
dichlorofluoromethane (75-43-4)		10		
di(2-ethylhexyl)phthalate (117-81-7)		0.63		
dimethyl sulfate (77-78-1)		0.063		
1,4-dioxane (123-91-1)		12		
epichlorohydrin (106-89-8)	5600			
ethyl acetate (141-78-6)			36	
ethylenediamine (107-15-3)		6.3	0.64	
ethylene dibromide (106-93-4)	27			
ethylene dichloride (107-06-2)	260			
ethylene glycol monoethyl ether (110-80-5)		2.5	0.48	
ethylene oxide (75-21-8)	1.8			
ethyl mercaptan (75-08-1)			0.025	
fluorides		0.34	0.064	
formaldehyde (50-00-0)				0.04
hexachlorocyclopentadiene (77-47-4)		0.013	0.0025	
hexachlorodibenzo-p-dioxin (57653-85-7)	0.0051			
n-hexane (110-54-3)		23		
hexane isomers except n-hexane				92
hydrazine (302-01-2)		0.013		
hydrogen chloride (7647-01-0)				0.18
hydrogen cyanide (74-90-8)		2.9	0.28	
hydrogen fluoride (7664-39-3)		0.63		0.064
hydrogen sulfide (7783-06-4)				0.52
maleic anhydride (108-31-6)		0.25	0.025	
manganese and compounds		0.63		
manganese cyclopentadienyl tricarbonyl (12079-65-1)		0.013		
manganese tetroxide (1317-35-7)		0.13		
mercury, alkyl		0.0013		
mercury, aryl and inorganic compounds		0.013		
mercury, vapor (7439-97-6)		0.013		
methyl chloroform (71-55-6)		250		64
methylene chloride (75-09-2)	1600		0.39	
methyl ethyl ketone (78-93-3)		78		22.4
methyl isobutyl ketone (108-10-1)		52		7.6
methyl mercaptan (74-93-1)			0.013	
nickel carbonyl (13463-39-3)		0.013		
nickel metal (7440-02-0)		0.13		
nickel, soluble compounds, as nickel		0.013		
nickel subsulfide (12035-72-2)	0.14			
nitric acid (7697-37-2)				0.256
nitrobenzene (98-95-3)		1.3	0.13	
N-nitrosodimethylamine (62-75-9)	3.4			

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Pollutant (CAS Number)	Carcinogens lb/yr	Chronic Toxicants lb/day	Acute Systemic Toxicants lb/hr	Acute Irritants lb/hr
<u>non-specific chromium (VI) compounds, as chromium (VI) equivalent</u>	0.0056			
pentachlorophenol (87-86-5)		0.063	0.0064	
perchloroethylene (127-18-4)	13000			
phenol (108-95-2)			0.24	
phosgene (75-44-5)		0.052		
phosphine (7803-51-2)				0.032
polychlorinated biphenyls (1336-36-3)	5.6			
<del>potassium chromate (7789-00-6)</del>		0.013		
<del>potassium dichromate (7778-50-9)</del>		0.013		
<del>sodium chromate (7775-11-3)</del>		0.013		
<del>sodium dichromate (10588-01-9)</del>		0.013		
<u>soluble chromate compounds, as chromium (VI) equivalent</u>		0.013		
<del>strontium chromate (7789-06-2)</del>	0.0056			
styrene (100-42-5)			2.7	
sulfuric acid (7664-93-9)		0.25	0.025	
tetrachlorodibenzo-p-dioxin (1746-01-6)	0.00020			
1,1,1,2-tetrachloro-2,2-difluoroethane (76-11-9)		1100		
1,1,2,2-tetrachloro-1,2-difluoroethane (76-12-0)		1100		
1,1,2,2-tetrachloroethane (79-34-5)	430			
toluene (108-88-3)		98		14.4
toluene diisocyanate,2,4-(584-84-9) and 2,6-(91-08-7) isomers		0.003		
trichloroethylene (79-01-6)	4000			
trichlorofluoromethane (75-69-4)		140	140	
1,1,2-trichloro-1,2,2-trifluoroethane (76-13-1)				240
vinyl chloride (75-01-4)	26			
vinylidene chloride (75-35-4)		2.5		
xylene (1330-20-7)		57		16.4
<del>zinc chromate (13530-65-9)</del>	0.0056			

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

**SECTION .0800 – EXCLUSIONARY RULES**

**15A NCAC 02Q .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, glues, 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) 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 or hazardous air pollutants including perchloroethylene, methyl chloroform, and methyl chloride 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 and perchloroethylene, methyl chloroform, and methyl chloride are assumed to evaporate and be emitted into the atmosphere at the source.

(c) Paragraphs (d) through (l) of this Rule do not apply to any facility whose potential emissions are greater than or equal to:

- (1) 100 tons per year of each regulated air pollutant;
- (2) 10 tons per year of each hazardous air pollutant; or
- (3) 25 tons per year of all hazardous air pollutants combined;

as determined by criteria set out in each individual source category rule. [A particular maximum achievable control technology (MACT) standard promulgated under 40 CFR Part 63 may have a lower applicability threshold than those contained in this Paragraph. The threshold contained in that MACT standard shall be used to determine the applicability of that MACT standard.]

(d) With the exception of Paragraph (c) of this Rule, the owner or operator of a coating, solvent cleaning, or graphics arts operation shall be exempted from the requirements of Section .0500 of this Subchapter, provided the owner or operator of the facility complies with Paragraphs (f) through (j) of this Rule, as appropriate.

(e) Only Paragraph (b) of this Rule applies to coating operations, solvent cleaning 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 more than or equal to 75 tons per year;
- (2) of each hazardous air pollutant is less than 10 tons per year but more than or equal to 7.5 tons per year; or
- (3) of all hazardous air pollutants combined are less than 25 tons per year but more than or equal to 18 tons per year;

shall maintain records and submit reports as described in Paragraphs (g) and (j) 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 total 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 total 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 total pounds of all hazardous air pollutants of each material used during the 12-month period ending on that month; and

(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 using the 12-month rolling average method;
- (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 using the 12-month rolling average method; and
- (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 using the 12-month rolling average method.

(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 Paragraphs (i) and (j) of this Rule.

(i) For facilities covered under Paragraph (h) of this Rule, the owner or operator shall submit to the ~~Director~~ regional supervisors of the appropriate Division regional office by ~~February 15th~~ March 1 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:

- (1) pounds volatile organic compounds used during the previous calendar year,
- (2) pounds of the highest individual hazardous air pollutant used during the previous year, and
- (3) pounds of all hazardous air pollutants used during the previous year.

(j) In addition to the specific reporting requirements for sources covered under Paragraphs (f) and (h) of this Rule, the owner or operator of the source shall:

- (1) 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 Paragraphs (g) or (i) of this Rule regarding materials usage;
- (2) retain purchase orders and invoices for a period of at least three years;
- (3) report to the Director any exceedance of a requirement of this Rule within one week of occurrence; and
- (4) 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.



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

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

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

**15A NCAC 02Q .0805 GRAIN ELEVATORS**

- (a) This Rule applies to grain elevators that only:
  - (1) receive grain directly from the farm; and
  - (2) clean, dry, grind, or store grain before it is transported elsewhere.
- (b) This Rule shall not apply to:
  - (1) facilities that process grain beyond cleaning, drying, or grinding; or
  - (2) facilities that use:
    - (A) tunnel belts, or
    - (B) head houses and elevator legs vented to cyclonic control devices.
- (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 588,000 tons of grain per year shall be exempted from the requirements of Section .0500 of this Subchapter.
- (e) The owner or operator of a grain elevator that receives or ships:
  - (1) less than 392,000 tons of grain per year shall retain records of actual annual tons of grain received or shipped at the site. These records shall be made available to Division personnel upon request of the Division; or
  - (2) at least 392,000 but less than 588,000 tons of grain per year shall retain records of actual annual tons of grain received or shipped at the site and shall submit to the regional supervisor of the appropriate Division regional office, by ~~February 15~~ March 1 of each year, a report containing the following information:
    - (A) the name and location of the grain elevator;
    - (B) the tons of grain received and shipped during the previous calendar year; and
    - (C) 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 the grain elevator exempted by this Rule from Section .0500 of this Subchapter shall provide documentation of actual 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 actual annual tons of grain received or shipped for each of the previous three years.
- (g) For facilities covered by this Rule, the owner or operator shall report to the Director any exceedance of a requirement of this Rule within one week of its occurrence.

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

**15A NCAC 02Q .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 bales of cotton, not exceeding 500 pounds each, produced.

(c) Any cotton gin that gins less than 167,000 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~~, submit to the regional supervisor of the appropriate Division regional office 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.

(f) For facilities covered by this Rule, the owner or operator shall report to the Director any exceedance of a requirement of this Rule within one week of its occurrence.

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

**15A NCAC 02Q .0807 EMERGENCY GENERATORS**

(a) This Rule applies to facilities whose only sources requiring a permit is one or more emergency generators or emergency use internal combustion engines and associated fuel storage tanks.

- (b) For the purposes of this Rule:
  - (1) "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 or during maintenance when necessary to protect the environment. An emergency generator may be operated periodically to ensure that it will operate;
  - (2) "Emergency use internal combustion engines" means stationary internal combustion engines used to drive pumps, aerators, and other equipment only during the loss of primary power at the facility that is beyond the control of the owner or operator of the facility or during maintenance when necessary to protect the environment. An emergency use internal combustion engine may be operated periodically to ensure that it will operate.

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

(d) Any facility whose emergency generators and emergency use internal combustion engines 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 or emergency use internal combustion engine exempted by this Rule from Section .0500 of this Subchapter shall ~~submit, submit~~ submit to the regional supervisors of the appropriate Division regional office by ~~February 15th~~ March 1 of each year a report containing the following information:

- (1) the name and location of the facility,
- (2) the types and quantity of fuel consumed by emergency generators and emergency use internal combustion engines; 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.

(g) For facilities covered by this Rule, the owner or operator shall report to the Director any exceedance of a requirement of this Rule within one week of its occurrence.

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

**15A NCAC 02Q .0808 PEAK SHAVING GENERATORS**

(a) This Rule applies to facilities whose only sources requiring a permit is one or more peak shaving generators and their associated fuel storage tanks.

(b) For the purpose of this Rule, potential emissions shall be determined using actual total energy production.

(c) Any facility whose total energy production from one or more peak shaving generators is less than or equal to 6,500,000 kw-hrs per year shall be exempted from the requirements of Section .0500 of this Subchapter.

(d) The owner or operator of any peak shaving generator exempted by this Rule from Section .0500 of this Subchapter shall ~~submit, submit to the regional supervisors of the appropriate Division regional office~~ submit to the regional supervisors of the appropriate Division regional office by ~~February 15th~~ March 1 of each year a report containing the following information:

- (1) the name and location of the facility;
- (2) the number and size of all peak shaving generators located at the facility;
- (3) the total number of hours of operation of all peak shaving generators located at the facility;
- (4) the actual total amount of energy production per year from all peak shaving generators located at the facility; and

(5) 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 facility exempted by this Rule from Section .0500 of this Subchapter shall provide documentation of number, size, number of hours of operation, and amount of total energy production per rolling 12-month period from all peak shaving generators located at the facility 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 the amount of total energy production per year for the previous three years.

(f) For facilities covered by this Rule, the owner or operator shall report to the Director any exceedance of a requirement of this Rule within one week of its occurrence.

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

## TEMPORARY RULES

*This Section includes temporary rules reviewed by the Codifier of Rules and entered in the North Carolina Administrative Code and includes, from time to time, a listing of temporary rules that have expired. See G.S. 150B-21.1 and 26 NCAC 2C .0500 for adoption and filing requirements. Pursuant to G.S. 150B-21.1(e), publication of a temporary rule in the North Carolina Register serves as a notice of rule-making proceedings unless this notice has been previously published by the agency.*

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

**Rule-making Agency:** *Social Services Commission*

**Rule Citation:** *10 NCAC 30 .0401-.0402*

**Effective Date:** *August 1, 2000*

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

**Authority for the rulemaking:** *G.S. 143B-153*

**Reason for Proposed Action:** *Federal regulations allow states to charge food stamp households for replacement of their Food Stamp EBT card. At the time this regulation was effective, North Carolina like other states were phasing in the Program and there was no historical data to suggest that we would need to build in a process for assessing a fee for replacement cards. During contract renewal negotiations, North Carolina like other states deemed it critical to the Program to assess a fee for replacement of EBT cards. North Carolina law and federal law stress the importance of personal responsibility and we believe households will be more responsible if they know a fee will be assessed for replacement cards. County departments of social services are charged for each EBT card issued to a household. There are approximately 205,000 food stamp households receiving food stamp benefits each month. All food stamp households will receive the first EBT card at no cost. Based on current data, approximately 102,500 cards are replaced each year. This is costing the counties more than \$256,000 a year. In order to offset some of the cost of replacing the EBT cards, households will be charged a \$2.50 fee for each replacement EBT card.*

**Comment Procedures:** *If you wish to make comments please contact Ms. Sharnese Ransome, APA Coordinator, Division of Social Services, 2401 Mail Service Center, Raleigh, NC 27699-2401, (919) 733-3055.*

### CHAPTER 30 – FOOD ASSISTANCE

#### SECTION .0400 – ELECTRONIC BENEFIT TRANSFER (EBT) CARD

##### 10 NCAC 30 .0401 ELECTRIC BENEFIT TRANSFER (EBT) CARD REPLACEMENT FEE

(a) Food Stamp households shall receive the first EBT card at no cost.

(b) Food Stamp households that request a replacement EBT card shall be assessed a two dollar fifty cent (\$2.50) fee:

(c) The fee shall be deducted from the account of the food stamp household.

(d) The fee shall not apply if the EBT card:

(1) was lost in the mail or damaged by the vendor prior to receipt by the food stamp household.

(2) is being replaced due to a name change on card.

(3) was lost due to a natural disaster such as a fire, flood, tornado or hurricane.

*History Note: Authority G.S. 108A-25; 143B-153; 7 U.S.C. 2016 (i)(8); 7 C.F.R. 274.12 (f)(5)(v); Temporary Adoption Eff. August 1, 2000.*

#### 10 NCAC 30 .0402 FAIR HEARINGS The rules of 10 NCAC 30 .0208 will govern for hearings.

*History Note: Authority G.S. 108A-25; 143B-153; 7 U.S.C. 2016 (i)(8); 7 C.F.R. 274.12 (f)(5)(v); Temporary Adoption Eff. August 1, 2000.*

### TITLE 21 – OCCUPATIONAL LICENSING BOARDS

**Rule-making Agency:** *State Board of Examiners of Electrical Contractors*

**Rule Citation:** *21 NCAC 18B .0209, .0404*

**Effective Date:** *June 30, 2000*

**Findings Reviewed and Approved by:** *Julian Mann, III*

**Authority for the rulemaking:** *G.S. 87-42; 87-44*

**Reason for Proposed Action:**

*21 NCAC 18B .0209 – The State Board of Examiners of Electrical Contractors receives no funds by legislative appropriation from the general budget, contingency funds or otherwise. The Agency Budget for 2000-2001 which takes effect July 1, 2000 has been adopted by the Board. The Budget mandates changes in program requiring expenditure of funds to accommodate movement to computerized testing. These budgeting changes mandate an increase in fees within limits previously set by the General Assembly. Permanent Rules, if adopted, cannot be made effective prior to March 2001, after nearly three-fourths of the fiscal year has passed. The current examination fee forces the Board to operate the examination part of its program at a deficit. The movement to computerize testing involves testing at multiple locations around North Carolina on multiple dates. While the service to applicants will improve dramatically, the increased cost causes cost overrun which would jeopardize the ability of the Board to protect the*

**TEMPORARY RULES**

public from fire or electrocution. The impact of this program or budget constitutes a serious unforeseen threat to the safety and welfare of the public.

**21 NCAC 18B .0404** – The State Board of Examiners of Electrical Contractors receives no funds by legislative appropriation, general budget or otherwise. The Agency Budget for 2000-2001 which takes effect July 1, 2000 has been adopted by the Board. The Budget mandates changes in program requiring expenditure of funds for additional investigative personnel. These budgeting changes mandate an increase in fees within limits previously set by the General Assembly. Permanent Rules, if adopted, cannot be made effective prior to March 2001, after nearly three-fourths of the fiscal year has passed.

**Comment Procedures:** All comments should be directed to the Board in writing within 60 days and addressed to Mr. Robert L.

Brooks, Jr., Executive Director, State Board of Examiners of Electrical Contractors, PO Box 16727, Raleigh, NC 27619-8727.

**CHAPTER 18 – BOARD OF EXAMINERS OF ELECTRICAL CONTRACTORS**

**SUBCHAPTER 18B – BOARD'S RULES FOR THE IMPLEMENTATION OF ELECTRICAL CONTRACTING LICENSING ACT**

**SECTION .0200 – EXAMINATIONS**

**21 NCAC 18B .0209 FEES**

(a) The combined application and examination fees for the regular qualifying examinations in the various license classifications are as follows:

APPLICATION AND EXAMINATION FEE SCHEDULE: REGULAR

CLASSIFICATION	APPLICATION FEE	EXAMINATION FEE	TOTAL COMBINED FEE
Limited	\$15.00	\$15.00	\$30.00
Intermediate	\$30.00	<del>\$30.00</del> <u>45.00</u>	<del>\$60.00</del> <u>75.00</u>
Unlimited	\$65.00	<del>\$50.00</del> <u>85.00</u>	<del>\$115.00</del> <u>150.00</u>
SP-SFD	\$15.00	\$15.00	\$30.00
Special Restricted	\$15.00	\$15.00	\$30.00

(b) The combined application and examination fees for a specially-arranged qualifying examination in the various license classifications are as follows:

APPLICATION AND EXAMINATION FEE SCHEDULE:  
SPECIALLY-ARRANGED

CLASSIFICATION	APPLICATION FEE	EXAMINATION FEE	TOTAL COMBINED FEE
All Classifications	\$100.00	\$100.00	\$200.00

(c) The fee for a supervised review of a failed examination with the Board or staff assistance is \$10.00 for all classifications.

(d) The total combined application and examination fees for regular or specially-arranged examinations in all classifications and the fees for examination reviews may be in the form of cash, check or money order made payable to the Board and must accompany the respective applications when filed with the Board.

(e) Application and examination fees received with applications filed for qualifying examinations shall be retained by the Board unless:

- (1) an application is not duly filed as prescribed in Rule .0210 of this Section, in which case the combined application and examination fee shall be returned; or
- (2) the applicant does not take the examination during the examination period applied for and files with the Board a written request for a refund, setting out extenuating circumstances. The Board shall refund the application

fee, the examination fee, or both, if it finds extenuating circumstances.

(f) Examination review fees are non-refundable unless applicant does not take the review and files with the Board a written request for a refund, setting out extenuating circumstances. The Board shall refund the fee if it finds extenuating circumstances.

(g) Any fee retained by the Board shall not be creditable toward the payment of any future application or examination fee or the fee for an examination review.

(h) Extenuating circumstances for the purposes of Paragraphs (e)(2) and (f) of this Rule shall be the applicant's illness, bodily injury or death, or death of the applicant's spouse, child, parent or sibling, or a breakdown of the applicant's transportation to the designated site of the examination or examination review.

*History Note:* Authority G.S. 87-42; 87-43.3; 87-43.4; 87-44;

*Eff. October 1, 1988;*

*Amended Eff. May 1, 1998; July 1, 1989;*

*Temporary Amendment Eff. June 30, 2000.*

**SECTION .0400 – LICENSING REQUIREMENTS**

**TEMPORARY RULES**

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**21 NCAC 18B .0404 ANNUAL LICENSE FEES**

(a) The annual license fees and license renewal fees for the various license classifications are as follows:

CLASSIFICATION	LICENSE FEE SCHEDULE	LICENSE FEE
Limited		\$ 30.00
Intermediate		\$ <del>60.00</del> <u>60.0075.00</u>
Unlimited		\$ <del>115.00</del> <u>115.00150.00</u>
SP-SFD		\$ 30.00
Special Restricted		\$ 30.00

(b) License fees may be in the form of cash, check or money order made payable to the Board and must accompany the applicant's license application or license renewal application when either is filed with the Board.

*History Note: Authority G.S. 87-42; 87-44;  
Eff. October 1, 1988;  
Amended Eff. May 1, 1998; July 1, 1989;  
Temporary Amendment Eff. June 30, 2000.*

**APPROVED RULES**

*This Section includes the Register Notice citation to Rules approved by the Rules Review Commission (RRC) at its meeting of January 20, 2000 pursuant to G.S. 150B-21.17(a)(1) and reported to the Joint Legislative Administrative Procedure Oversight Committee pursuant to G.S. 150B-21.16. The full text of rules is published below when the rules have been approved by RRC in a form different from that originally noticed in the Register or when no notice was required to be published in the Register. The rules published in full text are identified by an \* in the listing of approved rules. Statutory Reference: G.S. 150B-21.17.*

*These rules, unless otherwise noted, will become effective on the 31st legislative day of the 2000 Session of the General Assembly or a later date if specified by the agency unless a bill is introduced before the 31st legislative day that specifically disapproves the rule. If a bill to disapprove a rule is not ratified, the rule will become effective either on the day the bill receives an unfavorable final action or the day the General Assembly adjourns. Statutory reference: G.S. 150B-21.3.*

<b>APPROVED RULE CITATION</b>	<b>REGISTER CITATION TO THE NOTICE OF TEXT</b>
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4	NCAC II	.0202*	14:08 NCR
4	NCAC II	.0701*	14:08 NCR
4	NCAC 21A	.0101	14:14 NCR
4	NCAC 21A	.0102*	14:14 NCR
4	NCAC 21A	.0103	14:14 NCR
4	NCAC 21B	.0101-.0103	14:14 NCR
4	NCAC 21B	.0201	14:14 NCR
4	NCAC 21B	.0202*	14:14 NCR
4	NCAC 21B	.0203	14:14 NCR
4	NCAC 21B	.0204-.0205*	14:14 NCR
4	NCAC 21B	.0206-.0207	14:14 NCR
4	NCAC 21B	.0301-.0302*	14:14 NCR
4	NCAC 21B	.0303-.0306	14:14 NCR
4	MCAC 21B	.0307*	14:14 NCR
4	NCAC 21B	.0308	14:14 NCR
4	NCAC 21B	0309*	14:14 NCR
4	NCAC 21B	.0310-.0311	14:14 NCR
4	NCAC 21B	.0312-.0314*	14:14 NCR
4	NCAC 21B	.0315	14:14 NCR
4	NCAC 21B	.0401*	14:14 NCR
4	NCAC 21B	.0402	14:14 NCR
4	NCAC 21B	.0403*	14:14 NCR
4	NCAC 21B	.0501-.0503	14:14 NCR
4	NCAC 21B	.0504*	14:14 NCR
4	NCAC 21B	.0505	14:14 NCR
4	NCAC 21B	.0601-.0603	14:14 NCR
4	NCAC 21B	.0701*	14:14 NCR
4	NCAC 21B	.0702-.0703	14:14 NCR
4	NCAC 21B	.0801	14:14 NCR
4	NCAC 21B	.0901-.0902*	14:14 NCR
4	NCAC 21B	.1001-.1006	14:14 NCR
4	NCAC 21B	.1008-.1010*	14:14 NCR
4	NCAC 21B	.1011-.1012	14:14 NCR
4	NCAC 21B	.1013*	14:14 NCR
4	NCAC 21B	.1014-.1019	14:14 NCR
4	NCAC 21B	.1020*	14:14 NCR
4	NCAC 21B	.1021-.1022	14:14 NCR
4	NCAC 21B	.1023*	14:14 NCR
4	NCAC 21B	.1024-.1031	14:14 NCR
4	NCAC 21B	.1101*	14:14 NCR
4	NCAC 21B	.1102	14:14 NCR
4	NCAC 21B	.1103*	14:14 NCR
4	NCAC 21B	.1104-.1105	14:14 NCR
4	NCAC 21B	.1201-.1202	14:14 NCR
10	NCAC 42E	.0801	14:13 NCR
10	NCAC 42E	.1502*	14:13 NCR
10	NCAC 42V	.0108	14:13 NCR

**APPROVED RULES**

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10	NCAC	42Z	.1001	14:13 NCR
10	NCAC	47B	.0103	14:13 NCR
10	NCAC	47B	.0204	14:13 NCR
10	NCAC	47B	.0407	14:13 NCR
11	NCAC	10	.0105	14:14 NCR
11	NCAC	10	.1110	14:14 NCR
11	NCAC	11F	.0401-.0405*	14:14 NCR
11	NCAC	11F	.0501-.0504	14:14 NCR
11	NCAC	12	.1701-.1703	14:14 NCR
11	NCAC	12	.1707	14:14 NCR
11	NCAC	12	.1709	14:14 NCR
11	NCAC	13	.0317-.0318	14:14 NCR
11	NCAC	13	.0324	14:14 NCR
11	NCAC	13	.0326	14:14 NCR
12	NCAC	7D	.0807	14:07 NCR
15A	NCAC	2B	.0211*	14:06 NCR
15A	NCAC	2B	.0220*	14:06 NCR
15A	NCAC	2B	.0223*	14:06 NCR
15A	NCAC	2B	.0225*	13:23 NCR
15A	NCAC	2B	.0306*	13:20 NCR
15A	NCAC	2D	.1703	14:07 NCR
15A	NCAC	2D	.1708-.1709	14:07 NCR
15A	NCAC	2D	.2101-.2104*	14:07 NCR
15A	NCAC	2P	.0402	14:11 NCR
15A	NCAC	2S	.0101-.0102*	14:10 NCR
15A	NCAC	2S	.0201-.0202*	14:10 NCR
15A	NCAC	13A	.0101-.0102	14:10 NCR
15A	NCAC	13A	.0103*	14:10 NCR
15A	NCAC	13A	.0104	14:10 NCR
15A	NCAC	13A	.0106	14:10 NCR
15A	NCAC	13A	.0108	14:10 NCR
15A	NCAC	13A	.0110	14:10 NCR
15A	NCAC	13A	.0112	14:10 NCR
15A	NCAC	13A	.0113*	14:10 NCR
15A	NCAC	13A	.0118	14:10 NCR
15A	NCAC	18A	.0134*	14:14 NCR
15A	NCAC	18A	.0188-.0191	14:14 NCR
15A	NCAC	18A	.0301*	14:14 NCR
15A	NCAC	18A	.0433-.0435	14:14 NCR
15A	NCAC	18A	.2515	14:11 NCR
15A	NCAC	18C	.1513	14:10 NCR
15A	NCAC	18C	.1538	14:10 NCR
15A	NCAC	18C	.2007*	14:10 NCR
15A	NCAC	18C	.2008	14:10 NCR
15A	NCAC	18D	.0203*	14:06 NCR
15A	NCAC	18D	.0403*	14:06 NCR
15A	NCAC	21F	.1201-.1202	14:10 NCR
15A	NCAC	21H	.0314	14:10 NCR
15A	NCAC	24A	.0402-.0403	14:10 NCR
16	NCAC	6C	.0102-.0103*	14:12 NCR
16	NCAC	6C	.0202*	14:12 NCR
16	NCAC	6C	.0205-.0206	14:12 NCR
16	NCAC	6C	.0207*	14:12 NCR
16	NCAC	6C	.0301-.0307*	14:12 NCR
16	NCAC	6C	.0308	14:12 NCR
16	NCAC	6C	.0309*	14:12 NCR
16	NCAC	6C	.0311-.0312*	14:12 NCR
16	NCAC	6C	.0313	14:12 NCR
16	NCAC	6E	.0202	14:12 NCR
16	NCAC	6G	.0502	14:12 NCR
16	NCAC	6H	.0103*	14:12 NCR

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**APPROVED RULES**

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16	NCAC	6H	.0106	14:12 NCR
17	NCAC	1C	.0502	14:16 NCR
17	NCAC	1C	.0504	14:16 NCR
17	NCAC	1C	.0506	14:16 NCR
17	NCAC	1C	.0509*	14:16 NCR
17	NCAC	1C	.0601	14:16 NCR
17	NCAC	3B	.0302	14:16 NCR
17	NCAC	3C	.0108	14:16 NCR
17	NCAC	4B	.0302*	13:08 NCR
17	NCAC	4B	.4301-.4302	14:16 NCR
17	NCAC	4B	.4401-.4402	14:16 NCR
17	NCAC	4E	.0703*	13:08 NCR
17	NCAC	5B	.0603	14:16 NCR
17	NCAC	5B	.0803	14:16 NCR
17	NCAC	5B	.0903	14:16 NCR
17	NCAC	5B	.1112*	not published G.S. 150B-1(d)(4)
17	NCAC	5C	.0702-.0703	14:16 NCR
17	NCAC	5C	.2003	14:16 NCR
17	NCAC	6B	.0605*	14:16 NCR
17	NCAC	6B	.3408	14:16 NCR
17	NCAC	6B	.3503*	14:16 NCR
17	NCAC	7B	.0104	14:16 NCR
17	NCAC	7B	.0118	14:16 NCR
17	NCAC	7B	.0123	14:16 NCR
17	NCAC	7B	.0207	14:16 NCR
17	NCAC	7B	.1401	14:16 NCR
17	NCAC	7B	.1404	14:16 NCR
17	NCAC	7B	.1601-.1602	14:16 NCR
17	NCAC	7B	.1702	14:16 NCR
17	NCAC	7B	.1801*	14:16 NCR
17	NCAC	7B	.1802	14:16 NCR
17	NCAC	7B	.1902	14:16 NCR
17	NCAC	7B	.2213	14:16 NCR
17	NCAC	7B	.2401-.2402	14:16 NCR
17	NCAC	7B	.2801	14:16 NCR
17	NCAC	7B	.2901*	14:16 NCR
17	NCAC	7B	.2903	14:16 NCR
17	NCAC	7B	.3001	14:16 NCR
17	NCAC	7B	.3004	14:16 NCR
17	NCAC	7B	.3009-.3010	14:16 NCR
17	NCAC	7B	.3013	14:16 NCR
17	NCAC	7B	.3204	14:16 NCR
17	NCAC	7B	.4301	14:16 NCR
17	NCAC	7B	.4303	14:16 NCR
17	NCAC	9I	.0302	14:16 NCR
17	NCAC	9K	.0602	14:16 NCR
17	NCAC	9L	.0403	14:16 NCR
17	NCAC	10	.0101	14:16 NCR
17	NCAC	10	.0405	14:16 NCR
17	NCAC	10	.0504-.0505	14:16 NCR
19A	NCAC	2E	.0602	14:12 NCR
19A	NCAC	3G	.0203	14:13 NCR
19A	NCAC	3G	.0206-.0207	14:13 NCR
19A	NCAC	3G	.0209	14:13 NCR
19A	NCAC	3G	.0213*	14:13 NCR
21	NCAC	2	.0302-.0303	14:13 NCR
21	NCAC	21	.0502	14:12 NCR
21	NCAC	21	.0514-.0515	14:12 NCR
21	NCAC	21	.1102	14:12 NCR
21	NCAC	36	.0220-.0221*	14:12 NCR
21	NCAC	36	.0227*	14:12 NCR

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**APPROVED RULES**

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21	NCAC	36	.0318*	14:12 NCR
21	NCAC	36	.0404-.0405*	14:12 NCR
21	NCAC	36	.0701	14:12 NCR
21	NCAC	36	.0702*	14:12 NCR
21	NCAC	36	.0703-.0705	14:12 NCR
21	NCAC	37D	.0202	14:09 NCR
21	NCAC	37D	.0302	14:13 NCR
21	NCAC	37D	.0303*	14:13 NCR
21	NCAC	37D	.0405	14:13 NCR
21	NCAC	37D	.0407	14:13 NCR
21	NCAC	37D	.0502	14:13 NCR
21	NCAC	37D	.0504	14:13 NCR
21	NCAC	37D	.0601	14:13 NCR
21	NCAC	37D	.0603	14:13 NCR
21	NCAC	37D	.0605	14:13 NCR
21	NCAC	37D	.0701	14:13 NCR
21	NCAC	37D	.0704	14:13 NCR
21	NCAC	37E	.0101	14:13 NCR
21	NCAC	37E	.0102	14:09 NCR & 14:13 NCR
21	NCAC	37F	.0101	14:13 NCR
21	NCAC	37F	.0102	14:09 NCR & 14:13 NCR
21	NCAC	37G	.0102	14:09 NCR
21	NCAC	37G	.0201	14:09 NCR & 14:13 NCR
21	NCAC	37H	.0102	14:09 NCR & 14:13 NCR
21	NCAC	37H	.0104	14:13 NCR
21	NCAC	37I	.0101	14:13 NCR
21	NCAC	50	.0310	14:14 NCR
21	NCAC	50	.0404	14:14 NCR
21	NCAC	50	.0406	14:14 NCR
21	NCAC	50	.0412	14:14 NCR
21	NCAC	50	.0501	14:14 NCR
21	NCAC	50	.0508	14:14 NCR
21	NCAC	50	.0512	14:14 NCR
21	NCAC	50	.1001	14:14 NCR
21	NCAC	50	.1004	14:14 NCR
21	NCAC	50	.1006	14:14 NCR
21	NCAC	50	.1007-.1011	14:14 NCR
21	NCAC	50	.1013-.1014	14:14 NCR
21	NCAC	50	.1204-.1206	14:14 NCR
21	NCAC	50	.1210*	14:14 NCR
21	NCAC	50	.1212-.1214	14:14 NCR
21	NCAC	58A	.0406*	14:10 NCR
21	NCAC	60	.0102	14:12 NCR
21	NCAC	60	.0207	14:12 NCR
21	NCAC	60	.0311	14:12 NCR
21	NCAC	60	.0316	14:12 NCR
21	NCAC	60	.1102	14:12 NCR
21	NCAC	68	.0101	14:14 NCR
21	NCAC	68	.0503*	14:14 NCR
21	NCAC	68	.0509*	14:14 NCR
21	NCAC	68	.0511	14:14 NCR
21	NCAC	68	.0601*	14:14 NCR
21	NCAC	68	.0706	14:14 NCR

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**TITLE 4 - DEPARTMENT OF ECONOMIC AND  
COMMUNITY DEVELOPMENT**

**CHAPTER 1 - DEPARTMENTAL RULES**

**SUBCHAPTER 11 - INDUSTRIAL DEVELOPMENT  
FUND**

**SECTION .0200 - GENERAL REQUIREMENTS**

**04 NCAC 01I .0202 APPLICATION CATEGORIES AND REQUIREMENTS**

(a) Applicants may apply for funding under the following categories:

- (1) Basic IDF;
- (2) Emergency Economic Development Assistance;
- (3) The Utility Account; and
- (4) Clean Water Bonds Proceeds.

(b) There is no set minimum amount of funding which applicants may request to be awarded. If there are practical difficulties about a small amount or cost disadvantages, these shall be discussed with the applicant in a preapplication conference. IDF awards shall not exceed the total amount appropriated by the General Assembly in its appropriation process. For basic IDF, Emergency Economic Development Assistance, and Clean Water Bonds Proceeds, per job or per project maximum funding limitation will be the amounts established under current law. There is no maximum set for Utility Account funding; but the amount of awards shall be determined by the Secretary. For basic IDF, the per job limitation shall be applied on the basis of requiring a commitment from the operator of the business as to the number of jobs that shall be created over a reasonable period of time, not to exceed three years. Those shall be permanent, full-time jobs; no temporary or contract jobs.

(c) Under basic IDF, improvements to building properties and equipment purchases (either of which becomes private property) shall be loan projects and shall be accomplished with participation loans. The three parties to a participation loan shall be: the borrower's North Carolina bank, the borrower, and the unit of government. The bank shall commit at least as much funding as the unit of government, with the risk and collateral shared on a pro rata basis. Also, in the matter of sharing equally, this means that if the bank takes a certain collateral position, the unit of government shall share in that position. The participation by a financial institution based outside North Carolina may be done at the Secretary's (or his designate) discretion, based on findings made by Department staff concerning that institution's capacity for the proposed loan project. Such findings may include documentation of the bank's charter or institution type, credit reports, and documentation of the institution's financial history with the project company or companies.

(d) IDF funds may be loaned to a unit of government to meet matching funds requirements. In this case the Department shall furnish a loan repayment schedule to the mayor, city manager or county manager, which, in addition to the award letter and application, shall establish the responsibility for repayment, and times and amounts of repayment.

(e) Loans for Emergency Economic Development projects shall be accomplished as in Paragraph (d) of this Rule.

(f) Loans for Utility Account projects shall be accomplished as in Paragraph (d) of this Rule.

(g) With either grants or loans, the Department shall require financial information from the project owner or operator to establish financial capability. The usual requirement shall be the preceding three years' financial and operating statements; for new businesses, at least three years pro forma statements and a business plan. In any case, the Department may use credit reports, bank information, or other data that it deems appropriate to establish the credit worthiness of the borrower.

(h) A project shall be subject to review by the Department at any time during the first three years after the project begins.

(i) The Department may require a unit of government to partially or fully accelerate loan repayments if the operator's business has closed, moved, or if the company has not reached 90% of its job creation commitment within twenty-four months of the grant approval date. The Department may require repayment of a grant, partially or fully, if the operating company has moved, closed, or has not created 90% of its job creation commitment; and, in the case of Emergency Economic Development Assistance or the Utility Account, if funds are not spent for the specific activities which were approved in the project application.

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

**SECTION .0700 - DESIGNATION OF ELIGIBLE TIERS AND QUALIFIED COUNTIES**

**04 NCAC 01I .0701 DESIGNATION OF THE FIFTY MOST ECONOMICALLY DEPRESSED COUNTIES**

*History Note: Authority G.S. 105-129.3; 143B-437.01; Eff. September 1, 1990; Temporary Amendment Eff. January 11, 1999; Codifier determined that agency findings did not meet criteria for temporary rule; Temporary Amendment Eff. October 6, 1999; Repealed Eff. August 1, 2000.*

**CHAPTER 21 – OFFICE OF INFORMATION TECHNOLOGY SERVICES**

**SUBCHAPTER 21A - INFORMATION TECHNOLOGY PROCUREMENT**

**SECTION .0100 - FORMS, TERMS AND CONDITIONS AND DEFINITIONS**

**04 NCAC 21A .0102 DEFINITIONS**

For the purpose of this Chapter,

- (1) Agency is defined as an entity enumerated in G.S. 143B-3(1).
- (2) Best value procurement is defined as a procurement process that has as a fundamental objective the reduction of total cost of ownership. The particular procurement methods used are selected so as to result in the best buy for the state in terms of the function to be performed. Competitive best value procurement allows for the use of alternate competitive purchasing techniques in addition to low price analysis in the selection of supply sources determined to represent best value.

- (3) Clarification is defined as limited exchanges between the state and offerors that may occur after receipt of offer when negotiation is not contemplated. Offerors may be given the opportunity to resolve minor clerical errors. No change in price offer is permitted.
- (4) Communications are exchanges between the state and offerors after receipt of offers to address issues of past performance, to enhance the state's understanding of offers, to allow reasonable interpretation of the offer, or to facilitate the state's evaluation process. Communications shall not be used to cure deficiencies or material omissions in the offer or to alter technical or cost elements of the offer.
- (5) Competition in purchasing exists when the available market for the goods or services to be acquired consists of more than one supplier that is technically qualified and willing to submit an offer. The public competitive process is the process followed by a public agency to solicit offers from multiple suppliers to provide the specified goods or services. The process must be conducted in a manner that attempts to ensure that all qualified suppliers who are willing to submit offers are treated equitably and are not placed at a disadvantage with respect to the process outcome.
- (6) Competitive Range is defined as the range of all of the most highly rated offers, as determined by the evaluation committee. The range shall be used to determine the optimal best value solutions to address requirements of the solicitation document.
- (7) Deficiency is defined as a failure to meet a stated requirement or a combination of weaknesses in an offer that increases the risk of unsuccessful contract performance.
- (8) Goods are defined as any information technology commodities including equipment, materials, or supplies.
- (9) Negotiation is defined as exchanges in either a competitive or sole source environment between the state and offerors that are undertaken with the intent of allowing offerors to revise their offers. Revisions may apply to price, schedule, technical requirements, or other terms of the proposed contract. Negotiations are specific to each offer and shall be conducted to maximize the state's ability to obtain best value based on the evaluation factors set forth in the solicitation. The state may also give evaluation credit for technical solutions exceeding mandatory minimums or negotiate with offerors for increased performance beyond mandatory minimums.
- (10) Offer is defined as a bid or proposal submitted in response to any solicitation document utilizing "Best Value" procurement methodology including Invitation for Bids (IFB), Request for Proposals (RFP), Request for Quotations (RFQ), negotiation, or other acquisition processes, as well as responses to Solution-Based Solicitations and Government-Vendor Partnerships.
- (11) Price is defined as the amount paid by the state to a vendor for a good or service.
- (12) Procurement is defined as acquisition of goods and services

- (13) Services is defined as any process of providing services requiring specialized knowledge, experience, expertise, professional qualifications, or similar capabilities for any aspect of information technology including, but not limited to, work or task performance, review, analysis, and advice in formulating or implementing improvements in programs or services.
- (14) Solicitation document is defined as a written or electronic IFB, RFQ, RFP, Solution-Based Solicitation, Government-Vendor Partnership, Request for Information (RFI) document or other acquisition documents expressly used to invite offers or request information regarding the acquisition of goods and services.
- (15) Total Cost of Ownership is defined as a summation of all purchase, operating, and related costs for a product or service. It includes but is not limited to purchase price, transportation, receiving and inspection, maintenance, operating costs, downtime, energy costs, and disposal costs.
- (16) Weakness is defined as a flaw in the offer that increases the risk of unsuccessful contract performance.

*History Note: Authority G.S. 143-135.9; 143B-472.51; 143B-472.65;  
Temporary Adoption Eff. January 1, 2000;  
Eff. August 1, 2000.*

**SUBCHAPTER 21B - PROCUREMENT REQUESTS**

**SECTION .0200 - SPECIFICATIONS**

**04 NCAC 21B .0202 NEED**

ITS may inquire into the need for and level of quality of goods or services requested by an agency. After consultation with the agency, ITS may modify the level of specification requested to enhance overall direction of the state's program in the area of information technology.

*History Note: Authority G.S. 143B-472.55; 143B-472.65;  
Temporary Adoption Eff. January 1, 2000;  
Eff. August 1, 2000.*

**04 NCAC 21B .0204 ARTICLES FOR SPECIAL PURPOSES**

Where articles are to be used for educational or training purposes, by persons with disabilities, for test and evaluation or research purposes, or for any purpose deemed necessary by the CIO or his designee, special or overriding consideration may be given to the factor of suitability in the preparation of specifications, evaluation of offers, for waiver of competition, and the award of contracts. ITS shall consult with the agency prior to modification by ITS of any information or recommendation submitted by the end user.

*History Note: Authority G.S. 143B-472.55; 143B-472.65;  
Temporary Adoption Eff. January 1, 2000;  
Eff. August 1, 2000.*

**04 NCAC 21B .0205 SUBMISSION FOR ADOPTION**

Upon completion of all studies, reviews, and drafts; any proposed standard specifications shall be submitted to the CIO or his designee for consideration. A specification shall be adopted as a standard if advantageous to the state. ITS may modify a standard specification on an interim basis as deemed necessary or advantageous to the state.

*History Note: Authority G.S. 143B-472.55; 143B-472.65; Temporary Adoption Eff. January 1, 2000; Eff. August 1, 2000.*

## **SECTION .0300 - PROCUREMENT AUTHORIZATION AND PROCEDURES**

### **04 NCAC 21B .0301 PROCUREMENT PROCEDURES**

All technology purchases involving the expenditure of public funds by agencies or ITS shall be in conformity with the "Best Value" information technology procurement requirements in G.S. 143-135.9 and Rule .0308 of this Section. Exemptions may be granted by ITS where a waiver, special delegation, exemption or an emergency purchase is permitted by rule. Information technology procurements not covered by statewide firm, convenience or service contracts issued by ITS shall comply with the following delegations and procedures:

- (1) Small Purchases: A small purchase is defined as the purchase of goods and services, where the expenditure of public funds is five thousand dollars (\$5,000) or less. The executive officer of each agency or ITS, or his designee, shall set forth in writing purchasing procedures for making small purchases. The using agency or ITS shall award contracts for small purchases.
- (2) Purchases Governed by General Delegation or Statute:
  - (a) For purchases made by an agency or ITS involving an expenditure of public funds over five thousand dollars (\$5,000) or less up to the general delegation limit established by the CIO, the agencies or ITS shall use the following methodologies to encourage competition:
    - (i) The agency or ITS shall issue solicitation documents requesting or inviting offers;
    - (ii) The agency or ITS shall include in solicitation documents standard language, including terms and conditions as published by ITS on its IT procurement website. If additional terms and conditions are used, they shall not conflict with ITS' standard terms and conditions unless prior written approval is obtained from ITS for unusual requirements; and
    - (iii) The agency may request distribution lists, if available from ITS, and use them in addition to distribution lists maintained by the agency for the purpose of soliciting competition.
  - (b) Agencies shall advertise their solicitations through ITS for purchases exceeding ten thousand dollars (\$10,000) up to the general delegation established by the CIO. Agencies may advertise smaller dollar purchases through ITS.
  - (c) The agencies may award contracts under their general delegation.
- (3) Procurement Procedure: Where the total requirements for goods or services involve an expenditure of public funds that exceed the general delegation established by the CIO, offers in conformity with G.S. 143-135.9 shall be solicited as follows:
  - (a) Competitive offers for goods, excluding services, shall be solicited by ITS via advertisement, unless the advertising requirement is waived by the CIO or his designee subject to the provisions of Rule .0314 of this Section. This shall include offers for statewide term or convenience contracts.
  - (b) For service contracts exceeding twenty-five thousand dollars (\$25,000), an agency or ITS shall solicit offers in accordance with the rules established for Sub-items (2)(a) and (2)(b) of this rule. For agency solicitations, ITS shall engage in a review and approval process to ensure that proposed and actual acquisitions are advantageous to the state. Agencies shall submit drafts of acquisition documents to ITS for approval prior to proceeding with the acquisition process. After completing the evaluation of offers received, the agency shall prepare a written recommendation for award, and if over the general delegation established by the CIO, shall submit a copy of all offers received and their award recommendation or other action to ITS for approval or other action deemed necessary by the CIO or his designee (Examples: cancellation, negotiation, etc.). ITS shall send a notice of the ITS decision to the agency. The agency shall then award contracts for services. The contract shall not be for more than three years including extensions and renewals, without the prior approval of the CIO or his designee based on a determination that it is advantageous to the state.
  - (4) Notwithstanding any waiver, general delegation, or exemption rules; all telecommunications goods and services shall be procured by ITS.

*History Note: Authority G.S. 143-135.9; 143B-472.63; 143B-472.65; 143B-472.42(1); Temporary Adoption Eff. January 1, 2000; Eff. August 1, 2000.*

### **04 NCAC 21B .0302 METHODS OF SOURCE SELECTION**

Competitive source selection may be conducted in accordance with the following best value methods.

- (1) The following steps describe the process for application of the best value procurement methodology:
  - (a) Appropriate best value bidding method is determined by purchasing authority.
  - (b) Solicitation document is developed and advertised in accordance with other rules of this Chapter.
  - (c) Scheduled conferences or site visits are held in accordance with solicitation requirements.
  - (d) Offers are received and a public bid opening is conducted. For solicitations that allow for negotiation after receipt of offers, only the names of responding bidders are revealed. Price

information shall be made public after evaluation and award.

- (e) An evaluation committee evaluates offers in accordance with the stated evaluation factors. For solicitations that include a best value ranking process, scoring and ranking may be determined by using any consistent rating methodology, including adjectival, numerical, or ordinal rankings. Relative strengths, deficiencies, weaknesses, and risks supporting the evaluation shall be documented in the contract file. Evaluation factors may include but are not limited to quality factors; delivery and implementation schedule; maximum facilitation of data exchange and systems integration; warranties, guarantees, and return policies; vendor financial stability; consistency of the proposed solution with the state=s strategic program direction; effectiveness of business solution and approach; industry and program experience; prior record of vendor performance; vendor expertise with similar projects; proven development methodologies and tools; and innovative use of technologies.
- (f) Clarifications, communications to establish a competitive range, or negotiations may be conducted with offerors after receipt of offers in accordance with instructions and procedures set forth in the solicitation document and as appropriate to the method of source selection chosen. In those cases where negotiation is permitted by procedures set forth in the solicitation document, offerors may be allowed to submit best and final offers subsequent to negotiated changes in the initial offer or previous offer.
- (g) The evaluation committee shall determine a final ranking of all offers under consideration using only the criteria set forth in the solicitation document. All offerors shall be ranked from most advantageous to least advantageous to the state.
- (h) Award must be made to the responsive and responsible offeror whose offer is determined in writing to be the most advantageous to the state, using all evaluation factors set forth in the solicitation. If the lowest price technically acceptable method is used, award must be made to the responding and responsible offeror with the lowest price.
- (i) The following types of solicitations may be used:
  - (i) One-step Invitation for Bids (IFB) or Request for Proposals (RFP) B Technical and price response is submitted at the same time.
    - (A) If the lowest priced technically acceptable method of source selection is used, only clarifications are allowed.
    - (B) If the trade off or ranking method of source selection is used, communications to establish competitive ranges or negotiations may be used.
  - (ii) Two step IFB or RFP B Technical responses (step one) and price responses (step two) to solicitation are submitted separately.
    - (A) If the lowest priced technically acceptable method is used, technical responses (step one) are evaluated for acceptability only. Only clarifications with offerors are allowed. Price offers are opened (step two) for only those offerors who submitted technically acceptable responses. Selection is made by low price analysis.
    - (B) If the trade off or ranking method of source selection is used, technical responses (step one) are submitted, after which clarifications, communications to establish a competitive range, and negotiations with offerors may be allowed as specified in the solicitation document. Price responses (step two) are requested only from offerors placed in the competitive range after the technical evaluation and discussion phase has concluded. Subsequent negotiations may be conducted with offerors after receipt of price responses. Final price adjustments or best and final offers may be allowed.
- (2) A trade off method of source selection may be utilized when it is in the best interest of the state to consider award to other than the lowest priced offer or other than the highest technically qualified offer. For a solicitation using a trade off source selection method, the following shall apply:
  - (a) All evaluation factors that will affect the contract award decision and their relative importance shall be clearly stated in the solicitation.
  - (b) Price must be considered as an evaluation factor in the selection process. The solicitation shall state the importance or numerical weight of all evaluation factors including price.
  - (c) Offers are ranked using the evaluation factors and their relative importance or weight as defined in the solicitation document. The relative overall ranking of any offer may be adjusted up or down when considered with, or traded-off against, other non-price factors. For example, an offer with the lowest price when compared to other offers would normally receive the best ranking in the price evaluation category. However, if other non-price evaluation factors received low rankings, the overall ranking of the offer would be reduced.
  - (d) Clarifications are permitted. If specified in the solicitation, communications and negotiations may be permitted after receipt of offer.
- (3) The lowest price technically acceptable source selection method may be used when best value is expected to result from selection of the technically acceptable offer with the lowest evaluated price. When using the lowest price technically acceptable method, the following shall apply:
  - (a) The evaluation factors that establish the requirements of acceptability shall be set forth in the solicitation. Solicitations shall specify that award will be made on the basis of the lowest

evaluated price of those proposals that meet or exceed the acceptability requirements for non-price factors.

- (b) Trade offs between price and non-price factors are not permitted.
- (c) Proposals are evaluated for acceptability but are not ranked using the non-price factors.
- (d) Only clarifications are permitted.
- (4) Other competitive best value source selection methodologies may be used if they are determined to be advantageous to the state and are approved for use by the CIO or his designee.

*History Note:* Authority G.S. 143-135.9; 143B-472.63; 143B-472.65; 143B-472.42(1);  
Temporary Adoption Eff. January 1, 2000;  
Eff. August 1, 2000.

**04 NCAC 21B .0307 ERROR/CLARIFICATION**

When the agency or ITS determines that an offer appears to contain an obvious error or otherwise where an error is suspected, the agency or ITS may investigate or act upon the circumstances. Any action taken shall not prejudice the rights of the public or other offering companies. Where offers are submitted substantially in accordance with the solicitation document but are not entirely clear as to intent or to some particular fact or where there are other ambiguities, the agency or ITS may seek and accept clarifications or may open communications provided that, in doing so, no change is permitted in prices.

*History Note:* Authority G.S. 143B-472.65;  
Temporary Adoption Eff. January 1, 2000;  
Eff. August 1, 2000.

**04 NCAC 21B .0309 EVALUATION**

(a) In determining the award of contracts, the agency or ITS shall consider and evaluate bona fide offers as provided by statute and applicable rules. The agency or ITS shall identify in the solicitation document the evaluation criteria to be used in determining the award of contract.

(b) Unsigned offers shall be rejected by the awarding agency.

(c) During the period of evaluation and prior to award, only the information provided in the tabulation is public record. Only persons in the agency who are responsible for handling the offers and accompanying information, and others determined necessary by the agency that issued the solicitation document, shall possess offers, including any accompanying information submitted with the offers for the purpose of evaluation and award of contract. Any communication with an offeror that may be necessary for purpose of clarification of its offer shall be conducted by the agency that issued the solicitation document. Further offeror participation in the evaluation process shall not be permitted except as deemed necessary by the CIO or his designee to effectively conclude the award process. After award of the contract or when the need for the item or service is canceled, the complete file shall be available to any interested party with the exception of trade secrets subject to the provisions G.S. 132-1.2(1)d.

*History Note:* Authority G.S. 143B-472.65;

*Temporary Adoption Eff. January 1, 2000;  
Eff. August 1, 2000.*

**04 NCAC 21B .0312 SOLICITATION DOCUMENTS**

An agency or ITS shall use a solicitation document when soliciting offers on contracts valued over five thousand dollars (\$5,000) unless the CIO or his designee waives the requirement pursuant to rule. In their solicitation documents, the agencies and ITS shall require offerors to certify that each offer is submitted competitively and without collusion.

*History Note:* Authority G.S. 143B-472.61; 143B-472.65;  
Temporary Adoption Eff. January 1, 2000;  
Eff. August 1, 2000.

**04 NCAC 21B .0313 DIVISION OF REQUIREMENTS**

An agency or ITS shall not divide requirements to keep the expenditure under its delegation and thereby avoid following the appropriate contracting requirement. In the case of similar and related items and groups of items, the dollar limits apply to the total cost rather than the cost of any single item.

*History Note:* Authority G.S. 143B-472.63; 143B-472.65;  
Temporary Adoption Eff. January 1, 2000;  
Eff. August 1, 2000.

**04 NCAC 21B .0314 ADVERTISEMENT REQUIREMENTS**

(a) All advertisements required by rule shall be through the ITS IT procurement website. Solicitations required by rule shall be advertised at least once and at least 10 days prior to the date designated for opening unless the CIO or his designee waives advertising requirements. Conditions permitting waiver of advertising requirements shall include, but not be limited to the following:

- (1) Acquisition of goods or services subject to rapid price fluctuations or immediate acceptance.
- (2) Emergency situations (pressing need).
- (3) Acquisition of goods or services needed for any ongoing job, task, or project.
- (4) Acquisition of goods or services where performance or price competition is not available.
- (5) Any determination that no useful purpose would be served by requiring advertisement.

(b) This Rule does not prevent solicitation of offers by additional direct mailings or additional advertisement by an agency.

(c) Agencies required by rule to advertise their solicitations shall electronically transmit the required data to the ITS IT procurement website. The required data shall include the complete solicitation document (specifications, requirements, terms and conditions, etc.) with agency name, buyer name, phone number and address for accessing hard copies of the solicitation; solicitation identification number; title (a short description of the good or service); and the opening date, time and place. If the solicitation requires potential offerors to attend a mandatory conference or mandatory site visit, this information shall also be furnished with the advertisement, to include date, time, location, contact person and the contact person's phone number.

(d) Within three agency working days from the award of an advertised contract, agencies shall electronically transmit an

award notice directly to the ITS IT procurement website, unless there is a valid reason for not posting such information. The award notice shall be posted for at least 30 calendar days. This award notice shall identify the contract and award information.

(e) Exceptions to this Rule are as follows:

- (1) When the agency's executive officer or his designee deems that there is a valid reason for the agency not to transmit the advertisement or award notice electronically, that agency may submit the data to ITS so ITS may transmit it electronically or the agency may place the advertisement (excluding the complete solicitation document) via newspaper. If advertised via newspaper, the agency that issued the solicitation document shall be responsible for the advertisement and the award notice shall not be required. Some valid reasons include, but are not limited to, computer equipment failure and networking difficulties. The rationale for waiver of electronic advertising requirements shall be documented and become part of the public record.
- (2) If there is an attachment to a solicitation that the agency determines will not be electronically transmitted, then the solicitation document, when it is electronically transmitted, shall include instructions to contact the agency that issued the solicitation to obtain the attachment.
- (3) If an agency determines that it is not feasible to electronically transmit a particular solicitation document through the ITS IT procurement website, then the agency shall electronically transmit a summary notice in the same way as if it had electronically transmitted the solicitation document. The summary notice shall instruct anyone inquiring about the solicitation on the ITS IT procurement website to contact the agency for a hard copy.

*History Note: Authority G.S. 143B-472.50; 143B-472.65; Temporary Adoption Eff. January 1, 2000; Eff. August 1, 2000.*

**SECTION .0400 - REJECTION OF OFFERS**

**04 NCAC 21B .0401 BASIS FOR REJECTION**

In soliciting offers, the agency or ITS may reject any offer in whole or in part. Basis for rejection shall include, but not be limited to, the agency or ITS deeming the offer unsatisfactory as to quantity, quality, delivery, price or service offered; the offer not complying with conditions of the solicitation document or with the intent of the proposed contract; lack of competitiveness by reason of collusion or otherwise or knowledge that reasonably available competition was not received; error(s) in specifications or indication that revision(s) would be to the state's advantage; cancellation of or changes in the intended project or other determination that the proposed requirement is no longer needed; limitation or lack of available funds; circumstances that prevent determination of the lowest best value offer; or any determination that rejection would be to the best interest of the state.

*History Note: Authority G.S. 143B-472.65; Temporary Adoption Eff. January 1, 2000;*

*Eff. August 1, 2000.*

**04 NCAC 21B .0403 NEGOTIATION**

If an agency or ITS does not receive an offer that is deemed to be advantageous to the state in response to a solicitation or all offers are rejected and if it is determined that soliciting offers again would serve no purpose, negotiations may be conducted with sources of supply that may be capable of satisfying the requirement. The negotiations shall be conducted by that agency or ITS if under their delegation. Negotiations shall be conducted in writing and shall include standard language and terms and conditions issued by ITS. If the negotiations are conducted with only one source or if only one source responds to the negotiations, the reason for lack of competition shall be documented in writing for public record. Negotiations may also be conducted under conditions that merit a waiver of competition or in other situations that are advantageous to the state as determined by the CIO or his designee.

*History Note: Authority G.S. 143B-472.65; Temporary Adoption Eff. January 1, 2000; Eff. August 1, 2000.*

**SECTION .0500 - INSPECTION AND TESTING**

**04 NCAC 21B .0504 SPECIFICATIONS**

When the agency that awarded the contract or ITS determines it to be advantageous to the state, it may authorize revisions to a contract specification, including any cost adjustment associated with any such revision, as part of contract administration. If an increase in cost results in the total contract value being more than the agency's delegation, then the agency shall obtain prior written approval from ITS, regardless of what agency initially awarded the contract.

*History Note: Authority G.S. 143B-472.65; Temporary Adoption Eff. January 1, 2000; Eff. August 1, 2000.*

**SECTION .0700 - CONTRACTS**

**04 NCAC 21B .0701 USE AND DESCRIPTION**

State IT contracts are binding agreements between the state and successful offerors to provide information technology goods or services in accordance with stipulated terms and conditions.

(1) Term Contracts

- (a) A term contract is a binding agreement between purchaser and seller to buy and sell certain goods or services for a period of time at prices established by the contract. Statewide term contracts consolidate normal, anticipated requirements of all agencies into one agreement and shall be handled by ITS. No agency may purchase goods or services covered by a statewide term contract from any other source unless authorized by the CIO or his designee.
- (b) A term contract shall be based upon competition, where available, with potential vendors being advised as to the actual business they are competing for and, if successful, the business they have earned.

(c) Agencies may handle agency specific term contracts for use by their agency if the estimated expenditure over the term of the contract is under their delegation and the good or service is not covered by a statewide term contract. If an agency documents to ITS a need to establish an agency specific term contract for which the expenditure over the term of the contract exceeds the agency's delegation and is not covered by a statewide term contract, ITS may issue a solicitation document for the purpose of awarding an agency specific term contract for use by the requesting agency in accordance with the determining factors set forth in Rule .0702 of this Section.

(2) Convenience Contracts

(a) Convenience contracts are indefinite quantity contracts that are awarded by ITS that may be used by state agencies to purchase goods or services at the agency's discretion. Convenience contracts function like statewide term contracts, but their use by agencies is not mandatory.

(b) If an agency elects not to purchase the goods or services it requires from an established convenience contract, the rules of competitive bidding apply to the acquisition.

(3) Master Agreements are an agreement between a vendor and the state that applies to multiple contracts or purchase orders that include standard terms and conditions.

*History Note: Authority G.S. 143B-472.65; Temporary Adoption Eff. January 1, 2000; Eff. August 1, 2000.*

**SECTION .0900 - WAIVER OF COMPETITION**

**04 NCAC 21B .0901 POLICY**

Under conditions listed in this Rule, and otherwise if deemed to be in the public interest by the CIO or his designee, competition may be waived. If the procurement is under the delegation of the agency, the agency may waive competition in conformance with this rule. If the procurement is over the agency delegation, requests for waiver shall be submitted to ITS for appropriate determination. Competition may be waived under the following conditions: where competition is not available; where a needed product or service is available from only one source of supply; where emergency action is indicated; where competition has been solicited but no satisfactory offers received; where standardization or compatibility is the overriding consideration; where a donation predicates the source of supply; where personal or particular professional services are required; where a product or service is needed for a person with disabilities and there are overriding considerations for its use; where additional products or services are needed to complete an ongoing job or task; where a particular product or service is desired for educational, training, experimental, developmental or research work; where equipment is already installed, connected and in service, and it is determined advantageous to purchase it; where items are subject to rapid price fluctuation or immediate acceptance; where there is evidence of resale price maintenance or other control of prices, lawful or unlawful, or collusion on the

part of companies that thwarts normal competitive procedures; where a purchase is being made and a price is available from a previous contract; where the requirement is for an authorized cooperative project with another governmental unit(s) or a charitable non-profit organization(s); and where a used item(s) is available on short notice and subject to prior sale.

*History Note: Authority G.S. 143B-472.65; Temporary Adoption Eff. January 1, 2000; Eff. August 1, 2000.*

**04 NCAC 21B .0902 APPROVAL AND DOCUMENTATION**

Although competition may be waived pursuant to Rule .0901 of this Section, the use of competition is required wherever practicable. Where waiver is contemplated, agencies may negotiate with a potential vendor(s) in an effort to acquire the quality of good or service needed at the best possible price, delivery, terms and conditions, when the expenditure is less than their respective benchmark or delegation. Documentation justifying waiving the competitive process must be attached to the record of this type of procurement. The procurement process of requesting or inviting an offer(s) shall be handled by the agency, including standard language terms and conditions issued by ITS. Under an emergency or pressing need situation, the procurement process requesting or inviting an offer(s) shall be handled by the agency, including standard language terms and conditions issued by ITS, unless circumstances prohibit their use. Negotiations may also be conducted with a potential vendor(s) for contracts exceeding the delegation if the agency has received prior approval from ITS. All actions that exceed the benchmark are subject to the conditions of Rule .1102 of this Subchapter.

*History Note: Authority G.S. 143B-472.65; Temporary Adoption Eff. January 1, 2000; Eff. August 1, 2000.*

**SECTION .1000 - MISCELLANEOUS PROVISIONS**

**04 NCAC 21B .1008 BOARD OF AWARDS**

(a) When the dollar value of a contract for the purchase, lease, or lease/purchase of IT goods exceeds the benchmark, the Board of Awards (Board) shall canvass ITS' recommended action. This also includes reporting of emergency and pressing need purchases over the benchmark. The Secretary may elect to proceed with the award of a contract without a recommendation of the Board in cases of emergencies or in the event that the Board is not available. ITS shall submit the Board's recommendation (award, cancellation, approval, negotiation, etc.) to the Secretary. The Secretary may either concur with the recommendation of the Board by awarding contracts or approving other recommended action or take other action as deemed necessary.

(b) Exemptions: Review by the Board and approval by the Secretary is not required for the following purchase actions: exemption by statute, by rule, by special delegation, or where one agency is buying from another agency or through the State Surplus Property Agency or the State Agency for Federal Surplus Property.



*History Note: Authority G.S. 143-52.1; 143B-472.63; 143B-472.65;*

*Temporary Adoption Eff. January 1, 2000;*

*Eff. August 1, 2000.*

**04 NCAC 21B .1009 PROTEST PROCEDURES**

- (a) To ensure fairness to all offerors and to promote open competition, agencies and ITS shall actively and consistently respond to an offeror's protest over contract awards.
- (b) This Rule applies to contracts with an estimated value over twenty-five thousand dollars (\$25,000). Agencies may establish procedures to handle protests by offerors with less value.
- (c) When an offeror wants to protest a contract awarded by an agency over twenty-five thousand dollars (\$25,000) in value, the agency and the offeror shall comply with the following:
  - (1) The offeror shall submit a written request for a protest meeting to the agency's executive officer or his designee within 15 calendar days from the date of contract award. The executive officer shall furnish a copy of the written request to the ITS Chief Procurement Officer (CPO) within ten calendar days of receipt. The offeror's request shall contain specific reasons and any supporting documentation regarding why there is a concern with the award. If the request does not contain this information or the executive officer determines that a meeting would serve no purpose, then the executive officer, within ten calendar days from the date of receipt, may respond in writing to the offeror and refuse the protest meeting request. A copy of the executive officer's letter shall be forwarded to the CPO.
  - (2) If the protest meeting is granted, the agency's executive officer shall attempt to schedule the meeting within 30 calendar days after receipt of the letter, or as soon as possible thereafter. Within 10 calendar days from the date of the protest meeting, the executive officer shall respond to the offeror in writing with an agency decision. A copy of the executive officer's letter shall be forwarded to the CPO.
- (d) When an offeror wants to protest a contract awarded by ITS or the Secretary that is over twenty-five thousand dollars (\$25,000) in value, the CPO and the offeror shall comply with the following:

- (1) The offeror shall submit a written request for a protest meeting to the CPO within 15 calendar days from the date of contract award. The offeror's request shall contain specific reasons and any supportive documentation regarding why there is a concern with the award. If the request does not contain this information or the CPO determines that a meeting would serve no purpose, then the CPO, within ten calendar days from the date of receipt of the letter, may respond in writing to the offeror and refuse the protest meeting request. A copy of the CPO's letter shall be forwarded to the ITS hearing officer.
- (2) If the protest meeting is granted, the CPO shall attempt to schedule the meeting within 30 calendar days after receipt of the letter, or as soon as possible thereafter. Within 10 calendar days from the date of the protest meeting, the CPO shall respond to the offeror in writing

with a decision. A copy of the decision shall be forwarded to the ITS hearing officer.

- (e) If an offeror desires further administrative review after receiving a decision under Paragraph (c) or (d) of this Rule, the protesting party may request a final decision by the Secretary in accordance with Article 3A of G.S. 150B. When further administrative review involves a contract awarded by an agency that is over twenty-five thousand dollars (\$25,000) in value, the agency shall be a party in further review processes.
- (f) The signature of an attorney or party on a request for protest constitutes a certification by the signer that the signer has read such document; that to the best of the signer's knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law; and that it is not interposed for any improper purpose such as to harass, cause unnecessary delay or needless increase in the cost of the procurement or of the litigation. If a protest is determined by the hearing officer or any subsequent appellate court proceeding to be frivolous or to have been filed without any substantial basis or reasonable expectation to believe that the protest was meritorious, the CIO, upon motion or upon his own initiative, may impose upon the person who signed it, a represented party, or both, prohibition upon the party from participation in any IT solicitation or award for a period of one year. Notification to the affected party shall be in writing.

*History Note: Authority G.S. 143B-472.65; 150B-38;*

*Temporary Adoption Eff. January 1, 2000;*

*Eff. August 1, 2000.*

**04 NCAC 21B .1010 RIGHT TO HEARING**

Whenever the Department of Commerce (Department) acts in such a way as to affect the rights, duties, or privileges of a party, the party may appeal for a final decision by the Department in accordance with this Section and G.S. 150B-3A.

*History Note: Authority G.S. 150B-38;*

*Temporary Adoption Eff. January 1, 2000;*

*Eff. August 1, 2000.*

**04 NCAC 21B .1013 GENERAL PROVISIONS**

The following general provisions apply to this Section:

- (1) The Rules of Civil Procedure as contained in G.S. 1A-1 and the General Rules of Practice for the Superior and District Courts as authorized by G.S. 7A-34 and found in the Rules Volume of the North Carolina General Statutes apply in contested cases before the Hearing Officer unless another specific statute or rule provides otherwise.
- (2) The Department may supply, at the cost for copies, forms for use in contested cases.
- (3) Every document filed with the hearing officer shall be signed by the author of the document, and shall contain his name, address, telephone number, and North Carolina State Bar number if the author is an attorney. An original and one copy of each document shall be filed.
- (4) Hearings shall be conducted, as nearly as practical, in accordance with the practice in the Trial Division of the General Court of Justice.

- (5) This Section and copies of all matter adopted by reference in this Section are available from the Department at cost.
- (6) The rules of statutory construction contained in Chapter 12 of the General Statutes apply in the construction of this Section.
- (7) Unless otherwise provided in a specific statute, time computations in contested cases under this Section are governed by G.S. 1A-1(6).

*History Note: Authority G.S. 150B-38(h);  
Temporary Adoption Eff. January 1, 2000;  
Eff. August 1, 2000.*

**04 NCAC 21B .1020 DISCOVERY**

- (a) Discovery methods are means designed to assist parties in preparing to meet their responsibilities and protect their rights during hearings without unduly delaying, burdening, or complicating the hearings process and with due regard to the rights and responsibilities of other parties and persons affected. Accordingly, parties shall exhaust all less formal opportunities to obtain discoverable material before utilizing this Rule.
- (b) Any means of discovery available pursuant to the North Carolina Rules of Civil Procedure, G.S. 1A-1, is allowed. If the party from whom discovery is sought objects to the discovery, the party seeking the discovery may file a motion with the hearing officer to obtain an order compelling discovery. In the disposition of the motion, the party seeking discovery shall have the burden of showing that the discovery is needed for the proper presentation of the party's case, is not for purposes of delay, and that the issues in controversy are significant enough to warrant the discovery. In ruling on a motion for discovery, the hearing officer shall recognize all privileges recognized at law.
- (c) When a party serves another party with a request for discovery, that request need not be filed with the hearing officer but shall be served upon all parties.
- (d) The parties shall immediately commence to exchange information voluntarily, to seek access as provided by law to public documents, and to exhaust other informal means of obtaining discoverable material.
- (e) All discovery shall be completed no later than the first day of the hearing. The hearing officer may shorten or lengthen the period for discovery and adjust hearing dates accordingly and where necessary for a fair and impartial hearing, allow discovery during the pendency of the hearing.
- (f) No later than 15 days after receipt of a notice requesting discovery, the receiving party shall:
  - (1) move for relief from the request;
  - (2) provide the requested information, material or access; or
  - (3) offer a schedule for reasonable compliance with the request.
- (g) Sanctions for failure of a party to comply with an order of the hearing officer made pursuant to this Rule shall be as provided for by G.S. 1A-1(37), to the extent that a hearing officer may impose such sanctions, and Rule .1022 of this Section.

*History Note: Authority G.S. 150B-38(h);  
Temporary Adoption Eff. January 1, 2000;  
Eff. August 1, 2000.*

**04 NCAC 21B .1023 MOTIONS**

- (a) Any application to the hearing officer for an order shall be by motion, which shall be in writing unless made during a hearing, and must be filed and served upon all parties not less than 10 days before the hearing, if any, is to be held either on the motion or the merits of the case. The nonmoving party has 10 days after the date of service of the motion to file a response, which must be in writing. Motions practice in contested cases before the hearing officer pursuant to G.S. 150B-3A are governed by Rule 6 of the General Rules of Practice for the Superior and District Court.
- (b) If any party desires a hearing on the motion, he shall make a request for a hearing at the time of the filing of his motion or response. A response shall set forth the nonmoving party's objections. All motions in writing shall be decided without oral argument unless an oral argument is directed by the hearing officer. When oral argument is directed by the hearing officer, a motion shall be considered submitted for disposition at the close of the argument. A hearing on a motion shall be directed by the hearing officer only if it is determined that a hearing is necessary to the development of a full and complete record on which a proper decision can be made. All orders on such motions, other than those made during the course of a hearing, shall be in writing and shall be served upon all parties of record not less than five days before a hearing, if any, is held.

*History Note: Authority G.S. 150B-38(h);  
Temporary Adoption Eff. January 1, 2000;  
Eff. August 1, 2000.*

**SECTION .1100 - EXEMPTIONS, EMERGENCIES, AND SPECIAL DELEGATIONS**

**04 NCAC 21B .1101 EXEMPTIONS**

- (a) It is not mandatory for items listed in this Rule to be purchased through the ITS procurement office.
  - (1) Packaged copyrighted software products;
  - (2) Services provided by individuals through direct employment contracts with the state;
  - (3) Services that are merely incidental to the purchase of supplies, materials, or equipment such as installation services;
  - (4) Personal services provided by a professional individual (person) on a temporary or occasional basis;
  - (5) Services provided directly by an agency of the state, federal or local government, or their employees when performing the service as part of their normal governmental function; and
  - (6) Information technology subscriptions for printed materials or online services.
- (b) In addition to products and services noted in Paragraph (a) of this Rule, the CIO or his designee may exempt other products and services from purchase through ITS provided the CIO or his designee determines that no price or quality advantage would be gained by handling a particular acquisition through ITS.

*History Note: Authority G.S. 143B-472.65;  
Temporary Adoption Eff. January 1, 2000;  
Eff. August 1, 2000.*

**04 NCAC 21B .1103 SPECIAL DELEGATIONS**

- (a) The CIO or his designee may authorize, by special delegation, any agency to purchase specific goods or services even if the expenditure exceeds the benchmark. Such delegation is normally confined, but not limited, to goods or services which by their nature or circumstance, such as perishableness, transportation costs, market volatility, local conditions or local availability, would result in handling by ITS serving no practical purpose. Every such delegation shall be in writing and made a matter of record.
- (b) The CIO or his designee may require that offers received under such delegations be sent to ITS for determination of the successful vendor.
- (c) ITS shall periodically review its special delegations of purchase to ascertain the availability of these goods or services and their continued suitability for delegation.

*History Note: Authority G.S. 143B-472.65; Temporary Adoption Eff. January 1, 2000; Eff. August 1, 2000.*

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

**CHAPTER 42 - INDIVIDUAL AND FAMILY SUPPORT**

**SUBCHAPTER 42E - ADULT DAY CARE STANDARDS FOR CERTIFICATION**

**SECTION .1500 - SPECIAL CARE FOR PERSONS WITH ALZHEIMER=S DISEASE OR OTHER DEMENTIA, MENTAL HEALTH DISABILITIES OR OTHER SPECIAL NEEDS DISEASES OR CONDITIONS IN ADULT DAY CARE CENTERS**

**10 NCAC 42E .1502 POLICIES AND PROCEDURES**

Adult Day Care Centers shall assure that written special care services policies and procedures are established, implemented by staff and available for review within the center. In addition to all applicable policies and procedures for adult day care centers, there should be policies and procedures that address:

- (1) The philosophy of the special care service which includes a statement of mission and objectives regarding the specific population to be served by the center which shall address, but not be limited to, the following:
  - (a) a safe, secure, familiar and consistent environment that maintains and encourages the use of skills for daily living;
  - (b) a structured program of daily activities that allows for flexibility to respond to the needs, abilities, and preferences of participants;
  - (c) individualized service plans that stress the maintenance of participant's abilities and promote the highest possible level of physical and mental functioning; and
  - (d) methods of behavior management which preserve dignity through design of the physical environment, physical exercise, social activity,

- appropriate medication administration, proper nutrition and health maintenance.
- (2) The process and criteria for enrollment in and discharge from the service.
- (3) A description of the special care services offered by the center.
- (4) Participant assessment and service planning, including opportunity for family involvement in the service planning and the implementation of the service plan, including responding to changes in the participant's condition.
- (5) Safety measures addressing specific dangers such as wandering, ingestion, falls, smoking, and aggressive behavior.
- (6) Lost or missing participants.
- (7) Staff to participant ratios in the special care service to meet the needs of participants.
- (8) Amount and content areas of staff training both at orientation and annually based on the special care needs of the participants.
- (9) Physical environment and design features that address the needs of the participants. These features can encompass an entire center if the center promotes itself as providing special care or any section separated by closed doors from the rest of the center and advertised especially for special care of participants.
  - (a) Center or section exit doors may be locked only if the locking devices meet the requirements outlined in the N.C. State Building Code for special locking devices;
  - (b) Where exit doors are not locked, a system of security monitoring shall be provided.
- (10) Activities based on personal preferences and needs of the participants that focus on the individual's interests and abilities.
- (11) Opportunity for involvement of families in participant care, if applicable.
- (12) The availability of or information on family support groups and other community services.
- (13) Additional costs and fees to the participant for the special services provided.

*History Note: Authority G.S. 131D-6; 143B-153; S.L. 1999-334; Temporary Adoption Eff. September 28, 1999; Eff. July 17, 2000.*

**TITLE 11 - DEPARTMENT OF INSURANCE**

**CHAPTER 11 - FINANCIAL EVALUATION DIVISION**

**SUBCHAPTER 11F - ACTUARIAL**

**SECTION .0400 – COMMISSIONER'S RESERVE VALUATION METHOD**

**11 NCAC 11F .0401 APPLICABILITY**

- (a) This Section does not apply to:

- (1) Any individual life insurance policy issued on or after January 1, 2000, if the policy is issued in accordance with and as a result of the exercise of a reentry provision contained in the original life insurance policy of the same or greater face amount, issued before January 1, 2000, that guarantees the premium rates of the new policy; nor to subsequent policies issued as a result of the exercise of such a provision, or a derivation of the provision, in the new policy;
- (2) Any universal life policy that meets all the following requirements:
  - (A) The secondary guarantee period, if any, is five years or less.
  - (B) The specified premium for the secondary guarantee period is not less than the net level reserve premium for the secondary guarantee period based on the CSO valuation tables as defined in 11 NCAC 11F .0402(6) and the applicable valuation interest rate.
  - (C) The initial surrender charge is not less than 100% of the first year annualized specified premium for the secondary guarantee period.
- (3) Any variable life insurance policy that provides for life insurance, the amount or duration of which varies according to the investment experience of any separate account or accounts;
- (4) Any variable universal life insurance policy that provides for life insurance, the amount or duration of which varies according to the investment experience of any separate account or accounts; and
- (5) A group life insurance certificate unless the certificate provides for a stated or implied schedule of maximum gross premiums required in order to continue coverage in force for a period in excess of one year.

(b) Calculation of the minimum valuation standard for policies with guaranteed nonlevel gross premiums or guaranteed nonlevel benefits (other than universal life policies), or both, shall be in accordance with 11 NCAC 11F .0404.

(c) Calculation of the minimum valuation standard for flexible premium and fixed premium universal life insurance policies that contain provisions resulting in the ability of a policyholder to keep a policy in force over a secondary guarantee period shall be in accordance with 11 NCAC 11F .0405.

*History Note: Authority G.S. 58-2-40; 58-58-50(d); 58-58-50(k); Eff. January 1, 1998; Temporary Amendment Eff. January 1, 2000; Amended Eff. July 1, 2000.*

**11 NCAC 11F .0402 DEFINITIONS**

As used in this Section:

- (1) "Basic reserves" means reserves calculated in accordance with G.S. 58-58-50(d).
- (2) "Contract segmentation method" means the method of dividing the period from issue to mandatory expiration of a policy into successive segments, with the length of each segment being defined as the period from the end of the prior segment (from policy inception, for the first segment) to the end of the latest policy year as determined below. All calculations are made using the

1980 CSO valuation tables, as defined in 11 NCAC 11F .0402(6) (or any other valuation mortality table adopted by the NAIC after January 1, 2000, and adopted as a rule by the Commissioner for this purpose), and, if elected, the optional minimum mortality standard for deficiency reserves stipulated in 11 NCAC 11F .0403(b).

The length of a particular contract segment shall be set equal to the minimum of the value t for which Gt is greater than Rt (if Gt never exceeds Rt the segment length is deemed to be the number of years from the beginning of the segment to the mandatory expiration date of the policy), where Gt and Rt are defined as follows:

$$G_t = \frac{GP_{x+k+t}}{GP_{x+k+t-1}}$$

where:

- x = original issue age;
- k = the number of years from the date of issue to the beginning of the segment;
- t = 1, 2, . . . ; t is reset to 1 at the beginning of each segment;
- GP<sub>x+k+t-1</sub> = Guaranteed gross premium per thousand of face amount, for year t of the segment, ignoring policy fees only if level for the premium paying period of the policy.

$$R_t = \frac{q_{x+k+t}}{q_{x+k+t-1}}$$

However, Rt may be increased or decreased by one percent in any policy year, at the company's option, but Rt shall not be less than one;

where:

- x, k and t are as defined above, and
- q<sub>x+k+t-1</sub> = valuation mortality rate for deficiency reserves in policy year k+t, but using the mortality of 11 NCAC 11F .0403(b)(2) if 11 NCAC 11F .0403(b)(3) is elected for deficiency reserves.

However, if GP<sub>x+k+t</sub> is greater than zero (0) and GP<sub>x+k+t-1</sub> is equal to zero (0), Gt shall be deemed to be one thousand (1,000). If GP<sub>x+k+t</sub> and GP<sub>x+k+t-1</sub> are both equal to zero (0), Gt shall be deemed to be zero (0).

- (3) "Deficiency reserves" means the excess, if greater than zero, of minimum reserves calculated in accordance with G.S. 58-58-50(g) over basic reserves.
- (4) "Guaranteed gross premiums" means the premiums under a policy of life insurance that are guaranteed and determined at issue.
- (5) "Maximum valuation interest rates" means the interest rates specified in G.S. 58-58-50(c)(4) that are to be used in determining the minimum standard for the valuation of life insurance policies.
- (6) "1980 CSO valuation tables" means the Commissioners' 1980 Standard Ordinary Mortality Table (1980 CSO Table) without ten-year selection factors, incorporated into the 1980 amendments to the NAIC Standard

Valuation Law, and variations of the 1980 CSO Table approved by the NAIC, such as the smoker and nonsmoker versions approved in December 1983.

- (7) "Scheduled gross premium" means the smallest illustrated gross premium at issue for other than universal life insurance policies. For universal life insurance policies, scheduled gross premium means the smallest specified premium described in 11 NCAC 11F .0405(a)(3), if any, or else the minimum premium described in 11 NCAC 11F .0405(a)(4).
- (8) "Segmented reserves" means reserves, calculated using segments produced by the contract segmentation method, equal to the present value of all future guaranteed benefits less the present value of all future net premiums to the mandatory expiration of a policy, where the net premiums within each segment are a uniform percentage of the respective guaranteed gross premiums within the segment.
- (a) The uniform percentage for each segment is such that, at the beginning of the segment, the present value of the net premiums within the segment equals:
- (i) The present value of the death benefits within the segment, plus;
  - (ii) The present value of any unusual guaranteed cash value (see 11 NCAC 11F .0404(d)) occurring at the end of the segment, less;
  - (iii) Any unusual guaranteed cash value occurring at the start of the segment, plus; and
  - (iv) For the first segment only, the excess of the Item (A) over Item (B), as follows:
    - (A) A net level annual premium equal to the present value, at the date of issue, of the benefits provided for in the first segment after the first policy year, divided by the present value, at the date of issue, of an annuity of one per year payable on the first and each subsequent anniversary within the first segment on which a premium falls due. However, the net level annual premium shall not exceed the net level annual premium on the nineteen-year premium whole life plan of insurance of the same renewal year equivalent level amount at an age one year higher than the age at issue of the policy; and
    - (B) A net one-year term premium for the benefits provided for in the first policy year.
- (b) The length of each segment is determined by the contract segmentation method.
- (c) The interest rates used in the present value calculations for any policy may not exceed the maximum valuation interest rate, determined with a guarantee duration equal to the sum of the lengths of all segments of the policy.
- (d) For both basic reserves and deficiency reserves computed by the segmented method, present values shall include future benefits and net premiums in the current segment and in all subsequent segments.

- (9) "Tabular cost of insurance" means the net single premium at the beginning of a policy year for one-year term insurance in the amount of the guaranteed death benefit in that policy year.
- (10) "Ten-year select factors" means the select factors adopted with the 1980 amendments to the NAIC Standard Valuation Law.
- (11) "Unitary reserves" means the present value of all future guaranteed benefits less the present value of all future modified net premiums, where:
- (a) Guaranteed benefits and modified net premiums are considered to the mandatory expiration of the policy;
  - (b) Modified net premiums are a uniform percentage of the respective guaranteed gross premiums, where the uniform percentage is such that, at issue, the present value of the net premiums equals the present value of all death benefits and pure endowments, plus the excess of Item (i) over Item (ii):
    - (i) A net level annual premium equal to the present value, at the date of issue, of the benefits provided for after the first policy year, divided by the present value, at the date of issue, of an annuity of one per year payable on the first and each subsequent anniversary of the policy on which a premium falls due. However, the net level annual premium shall not exceed the net level annual premium on the nineteen-year premium whole life plan of insurance of the same renewal year equivalent level amount at an age one year higher than the age at issue of the policy.
    - (ii) A net one-year term premium for the benefits provided for in the first policy year; and
  - (c) The interest rates used in the present value calculations for any policy may not exceed the maximum valuation interest rate, determined with a guarantee duration equal to the length from issue to the mandatory expiration of the policy.
- (12) "Universal life insurance policy" means any individual life insurance policy under the provisions of which separately identified interest credits (other than in connection with dividend accumulations, premium deposit funds, or other supplementary accounts) and mortality or expense charges are made to the policy.

*History Note:* Authority G.S. 58-2-40; 58-58-50(d); 58-58-50(k);  
 Eff. January 1, 1998;  
 Temporary Amendment Eff. January 1, 2000;  
 Amended Eff. July 1, 2000.

**11 NCAC 11F .0403 BASIC AND PREMIUM DEFICIENCY RESERVES**

- (a) At the election of the company for any one or more specified plans of life insurance, the minimum mortality standard for basic reserves may be calculated using the 1980 CSO valuation tables with select mortality factors (or any other valuation mortality table adopted by the NAIC after January 1, 2000, and adopted as

a rule by the Commissioner for this purpose). If select mortality factors are elected, they may be:

- (1) The ten-year select mortality factors incorporated into the 1980 amendments to the NAIC Standard Valuation Law;
  - (2) The select mortality factors in the NAIC Model Regulation entitled "Valuation of Life Insurance Policies Model Regulation"; or
  - (3) Any other table of select mortality factors adopted by the NAIC after January 1, 2000, and adopted as a rule by the Commissioner for the purpose of calculating basic reserves.
- (b) Deficiency reserves, if any, are calculated for each policy as the excess, if greater than zero, of the quantity A over the basic reserve. The quantity A is obtained by recalculating the basic reserve for the policy using guaranteed gross premiums instead of net premiums when the guaranteed gross premiums are less than the corresponding net premiums. At the election of the company for any one or more specified plans of insurance, the quantity A and the corresponding net premiums used in the determination of quantity A may be based upon the 1980 CSO valuation tables with select mortality factors (or any other valuation mortality table adopted by the NAIC after January 1, 2000, and adopted as a rule by the Commissioner). If select mortality factors are elected, they may be any of the following:
- (1) The ten-year select mortality factors incorporated into the 1980 amendments to the NAIC Standard Valuation Law;
  - (2) The select mortality factors in the NAIC Model Regulation entitled "Valuation of Life Insurance Policies Model Regulation";
  - (3) For durations in the first segment, X percent of the select mortality factors in the NAIC Model Regulation entitled "Valuation of Life Insurance Policies Model Regulation," subject to the following:
    - (A) X may vary by policy year, policy form, underwriting classification, issue age, or any other policy factor expected to affect mortality experience;
    - (B) X shall not be less than 20%;
    - (C) X shall not decrease in any successive policy years;
    - (D) X is such that, when using the valuation interest rate used for basic reserves, Item (i) is greater than or equal to Item (ii):
      - (i) The actuarial present value of future death benefits calculated using the mortality rates resulting from the application of X;
      - (ii) The actuarial present value of future death benefits calculated using anticipated mortality experience without recognition of mortality improvement beyond the valuation date;
    - (E) X is such that the mortality rates resulting from the application of X are at least as great as the anticipated mortality experience, without recognition of mortality improvement beyond the valuation date, in each of the first five years after the valuation date;
    - (F) The appointed actuary shall increase X at any valuation date where it is necessary to continue to meet all requirements of this Rule;
    - (G) The appointed actuary may decrease X at any valuation date as long as X does not decrease in any successive policy years and as long as it continues to meet all the requirements of this Rule;
    - (H) The appointed actuary shall specifically take into account the adverse effect on expected mortality and lapsation of any anticipated or actual increase in gross premiums; and
    - (I) If X is less than 100% at any duration for any policy, the following requirements shall be met:
      - (i) The appointed actuary shall annually prepare an actuarial opinion and memorandum for the company in conformance with the requirements of 11 NCAC 11F .0300; and
      - (ii) The appointed actuary shall annually opine for all policies subject to this Section as to whether the mortality rates resulting from the application of X meet the requirements of this Rule. This opinion shall be supported by an actuarial report, subject to appropriate Actuarial Standards of Practice promulgated by the Actuarial Standards Board of the American Academy of Actuaries. The X factors shall reflect anticipated future mortality, without recognition of mortality improvement beyond the valuation date, taking into account relevant emerging experience;
  - (4) Any other table of select mortality factors adopted by the NAIC after January 1, 2000, and adopted as a rule by the Commissioner for the purpose of calculating deficiency reserves.
- (c) This Rule applies to both basic reserves and deficiency reserves. Any set of select mortality factors may be used only for the first segment. However, if the first segment is less than 10 years, the appropriate 10-year select mortality factors, incorporated into the 1980 amendments to the NAIC Standard Valuation Law, may be used thereafter through the tenth policy year from the date of issue.
- (d) In determining basic reserves or deficiency reserves, guaranteed gross premiums without policy fees may be used where the calculation involves the guaranteed gross premium, but only if the policy fee is a level dollar amount after the first policy year. In determining deficiency reserves, policy fees may be included in guaranteed gross premiums even if they are not included in the actual calculation of basic reserves.
- (e) Reserves for policies that have changes to guaranteed gross premiums, guaranteed benefits, guaranteed charges, or guaranteed credits that are unilaterally made by the insurer after issue and that are effective for more than one year after the date of the change shall be the greatest of the following:
- (1) Reserves calculated ignoring the guarantee;
  - (2) Reserves assuming the guarantee was made at issue; or
  - (3) Reserves assuming that the policy was issued on the date of the guarantee.
- (f) The Commissioner may require that the insurer document the extent of the adequacy of reserves for specified blocks, including but not limited to policies issued before January 1, 2000. This documentation may include a demonstration of the

extent to which aggregation with other non-specified blocks of business is relied upon in the formation of the appointed actuary opinion pursuant to and consistent with the requirements of 11 NCAC 11F .0300.

*History Note: Authority G.S. 58-2-40; 58-58-50(d); 58-58-50(k);  
Eff. January 1, 1998;  
Temporary Amended Eff. January 1, 2000;  
Amended Eff. July 1, 2000.*

**11 NCAC 11F .0404 CALCULATION OF 11 NCAC 11F .0401(b)**

(a) Basic reserves shall be calculated as the greater of the segmented reserves and the unitary reserves. Both the segmented reserves and the unitary reserves for any policy shall use the same valuation mortality table and selection factors. At the option of the insurer, in calculating segmented reserves and net premiums, either of the following adjustments may be made:

- (1) Treat the unitary reserve, if greater than zero, applicable at the end of each segment as a pure endowment; and subtract the unitary reserve, if greater than zero, applicable at the beginning of each segment from the present value of guaranteed life insurance and endowment benefits for each segment; or
- (2) Treat the guaranteed cash surrender value, if greater than zero, applicable at the end of each segment as a pure endowment; and subtract the guaranteed cash surrender value, if greater than zero, applicable at the beginning of each segment from the present value of guaranteed life insurance and endowment benefits for each segment.

(b) Deficiency Reserves:

- (1) The deficiency reserve at any duration shall be calculated:
  - (A) On a unitary basis if the corresponding basic reserve determined by 11 NCAC 11F .0404(a) is unitary;
  - (B) On a segmented basis if the corresponding basic reserve determined by 11 NCAC 11F .0404(a) is segmented; or
  - (C) On the segmented basis if the corresponding basic reserve determined by 11 NCAC 11F .0404(a) is equal to both the segmented reserve and the unitary reserve.
- (2) 11 NCAC 11F .0404(b) shall apply to any policy for which the guaranteed gross premium at any duration is less than the corresponding modified net premium calculated by the method used in determining the basic reserves, but using the minimum valuation standards of mortality (specified in 11 NCAC 11F .0403 (b)) and rate of interest.
- (3) Deficiency reserves, if any, shall be calculated for each policy as the excess if greater than zero, for the current and all remaining periods, of the quantity A over the basic reserve, where A is obtained as indicated in 11 NCAC 11F .0403(b).
- (4) For deficiency reserves determined on a segmented basis, the quantity A is determined using segment lengths equal to those determined for segmented basic reserves.

(c) Minimum Value - Basic reserves may not be less than the tabular cost of insurance for the balance of the policy year, if mean reserves are used. Basic reserves may not be less than the tabular cost of insurance for the balance of the current modal period or to the paid-to-date, if later, but not beyond the next policy anniversary, if mid-terminal reserves are used. The tabular cost of insurance shall use the same valuation mortality table and interest rates as those that are used for the calculation of the segmented reserves. However, if select mortality factors are used, they shall be the 10-year select factors incorporated into the 1980 amendments of the NAIC Standard Valuation Model Law. In no case may total reserves (including basic reserves, deficiency reserves and any reserves held for supplemental benefits that would expire upon contract termination) be less than the amount that the policyowner would receive (including the cash surrender value of the supplemental benefits, if any, referred to above), exclusive of any deduction for policy loans, upon termination of the policy.

(d) Unusual Pattern of Guaranteed Cash Surrender Values:

- (1) For any policy with an unusual pattern of guaranteed cash surrender values, the reserves actually held prior to the first unusual guaranteed cash surrender value shall not be less than the reserves calculated by treating the first unusual guaranteed cash surrender value as a pure endowment and treating the policy as an n-year policy providing term insurance plus a pure endowment equal to the unusual cash surrender value, where n is the number of years from the date of issue to the date the unusual cash surrender value is scheduled.
- (2) The reserves actually held subsequent to any unusual guaranteed cash surrender value shall not be less than the reserves calculated by treating the policy as an n-year policy providing term insurance plus a pure endowment equal to the next unusual guaranteed cash surrender value, and treating any unusual guaranteed cash surrender value at the end of the prior segment as a net single premium, where:
  - (A) n is the number of years from the date of the last unusual guaranteed cash surrender value prior to the valuation date to the earlier of:
    - (i) The date of the next unusual guaranteed cash surrender value, if any, that is scheduled after the valuation date; or
    - (ii) The mandatory expiration date of the policy;
  - (B) The net premium for a given year during the n-year period is equal to the product of the net to gross ratio and the respective gross premium; and
  - (C) The net to gross ratio is equal to Item (i) divided by Item (ii):
    - (i) The present value, at the beginning of the n-year period, of death benefits payable during the n-year period plus the present value, at the beginning of the n-year period, of the next unusual guaranteed cash surrender value, if any, minus the amount of the last unusual guaranteed cash surrender value, if any, scheduled at the beginning of the n-year period.
    - (ii) The present value, at the beginning of the n-year period, of the scheduled gross

- premiums payable during the n-year period.
- (3) For the purposes of 11 NCAC 11F .0404(d) a policy is considered to have an unusual pattern of guaranteed cash surrender values if any future guaranteed cash surrender value exceeds the prior year's guaranteed cash surrender value by more than the sum of:
- One hundred ten percent (110%) of the scheduled gross premium for that year;
  - One hundred ten percent (110%) of one year's accrued interest on the sum of the prior year's guaranteed cash surrender value and the scheduled gross premium using the nonforfeiture interest rate used for calculating policy guaranteed cash surrender values; and
  - Five percent (5%) of the first policy year surrender charge, if any.
- (e) **Optional Exemption for Yearly Renewable Term Reinsurance** - At the option of the company, the following approach for reserves on YRT reinsurance may be used:
- Calculate the valuation net premium for each future policy year as the tabular cost of insurance for that future year;
  - Basic reserves shall never be less than the tabular cost of insurance for the appropriate period, as defined in 11 NCAC 11F .0404(c);
  - Deficiency reserves:
    - For each policy year, calculate the excess, if greater than zero, of the valuation net premium over the respective maximum guaranteed gross premium.
    - Deficiency reserves shall never be less than the sum of the present values, at the date of valuation, of the excesses determined in accordance with Part (A) of this Subparagraph.
  - For purposes of 11 NCAC 11F .0404(e), the calculations use the maximum valuation interest rate and the 1980 CSO mortality tables with or without ten-year select mortality factors, or any other table adopted after January 1, 2000, by the NAIC and adopted as a rule by the Commissioner for this purpose;
  - A reinsurance agreement shall be considered YRT reinsurance for purposes of this Rule if only the mortality risk is reinsured.
  - If the assuming company chooses this optional exemption, the ceding company's reinsurance reserve credit shall be limited to the amount of reserve held by the assuming company for the affected policies.
- (f) **Optional Exemption for Attained-Age-Based Yearly Renewable Term Life Insurance Policies** - At the option of the company, the following approach for reserves for attained-age-based YRT life insurance policies may be used:
- Calculate the valuation net premium for each future policy year as the tabular cost of insurance for that future year;
  - Basic reserves shall never be less than the tabular cost of insurance for the appropriate period, as defined in 11 NCAC 11F.0404(c);
  - Deficiency reserves:
    - For each policy year, calculate the excess, if greater than zero, of the valuation net premium
- over the respective maximum guaranteed gross premium.
- Deficiency reserves shall never be less than the sum of the present values, at the date of valuation, of the excesses determined in accordance with Part (A) of this Subparagraph;
- (4) For purposes of 11 NCAC 11F .0404(f), the calculations use the maximum valuation interest rate and the 1980 CSO valuation tables with or without 10-year select mortality factors, or any other table adopted after January 1, 2000, by the NAIC and adopted as a rule by the Commissioner for this purpose;
- (5) A policy shall be considered an attained-age-based YRT life insurance policy for purposes of this Rule if:
- The premium rates (on both the initial current premium scale and the guaranteed maximum premium scale) are based upon the attained age of the insured such that the rate for any given policy at a given attained age of the insured is independent of the year the policy was issued; and
  - The premium rates (on both the initial current premium scale and the guaranteed maximum premium scale) are the same as the premium rates for policies covering all insureds of the same sex, risk class, plan of insurance and attained age;
- (6) For policies that become attained-age-based YRT policies after an initial period of coverage, the approach of this Rule may be used after the initial period if:
- The initial period is constant for all insureds of the same sex, risk class and plan of insurance; or
  - The initial period runs to a common attained age for all insureds of the same sex, risk class and plan of insurance; and
  - After the initial period of coverage, the policy meets the conditions of Subparagraph (f)(5) of this Rule;
- (7) If this election is made, this approach shall be applied in determining reserves for all attained-age-based YRT life insurance policies issued on or after January 1, 2000.
- (g) **Exemption from Unitary Reserves for Certain n-Year Renewable Term Life Insurance Policies** - Unitary basic reserves and unitary deficiency reserves need not be calculated for a policy if the following conditions are met:
- The policy consists of a series of n-year periods, including the first period and all renewal periods, where n is the same for each period, except that for the final renewal period, n may be truncated or extended to reach the expiry age, provided that this final renewal period is less than 10 years and less than twice the size of the earlier n-year periods, and for each period, the premium rates on both the initial current premium scale and the guaranteed maximum premium scale are level;
  - The guaranteed gross premiums in all n-year periods are not less than the corresponding net premiums based upon the 1980 CSO Table with or without the 10-year select mortality factors; and
  - There are no cash surrender values in any policy year.
- (h) **Exemption from Unitary Reserves for Certain Juvenile Policies** - Unitary basic reserves and unitary deficiency reserves



need not be calculated for a policy if the following conditions are met, based upon the initial current premium scale at issue:

- (1) At issue, the insured is age 24 or younger;
- (2) Until the insured reaches the end of the juvenile period, which shall occur at or before age 25, the gross premiums and death benefits are level, and there are no cash surrender values; and
- (3) After the end of the juvenile period, gross premiums are level for the remainder of the premium paying period, and death benefits are level for the remainder of the life of the policy.

*History Note: Authority G.S. 58-2-40; 58-58-50(d); 58-58-50(k);*

*Eff. January 1, 1998;*

*Temporary Amendment Eff. January 1, 2000;*

*Amended Eff. July 1, 2000.*

**11 NCAC 11F .0405      CALCULATION OF 11 NCAC 11F .0401(c)**

**(a) General**

- (1) Policies with a secondary guarantee include:
  - (A) A policy with a guarantee that the policy will remain in force at the original schedule of benefits, subject only to the payment of specified premiums;
  - (B) A policy in which the minimum premium at any duration is less than the corresponding one-year valuation premium, calculated using the maximum valuation interest rate and the 1980 CSO valuation tables with or without ten-year select mortality factors, or any other table adopted after January 1, 2000, by the NAIC and adopted as a rule by the Commissioner for this purpose; or
  - (C) A policy with any combination of Parts (A) and (B).
- (2) A secondary guarantee period is the period for which the policy is guaranteed to remain in force subject only to a secondary guarantee. When a policy contains more than one secondary guarantee, the minimum reserve shall be the greatest of the respective minimum reserves at that valuation date of each unexpired secondary guarantee, ignoring all other secondary guarantees. Secondary guarantees that are unilaterally changed by the insurer after issue shall be considered to have been made at issue. Reserves described in Paragraphs (b) and (c) of this Rule shall be recalculated from issue to reflect these changes.
- (3) Specified premiums mean the premiums specified in the policy, the payment of which guarantees that the policy will remain in force at the original schedule of benefits, but which otherwise would be insufficient to keep the policy in force in the absence of the guarantee if maximum mortality and expense charges and minimum interest credits were made and any applicable surrender charges were assessed.
- (4) For purposes of this Rule, the minimum premium for any policy year is the premium that, when paid into a policy with a zero account value at the beginning of the policy year, produces a zero account value at the end of the policy year. The minimum premium calculation shall use the policy cost factors (including mortality

charges, loads and expense charges) and the interest crediting rate, which are all guaranteed at issue.

- (5) The one-year valuation premium means the net one-year premium based upon the original schedule of benefits for a given policy year. The one-year valuation premiums for all policy years are calculated at issue. The select mortality factors defined in 11 NCAC 11F .0403(b)(2), .0403(b)(3), and .0403(b)(4) may not be used to calculate the one-year valuation premiums.
- (6) The one-year valuation premium shall reflect the frequency of fund processing, as well as the distribution of deaths assumption employed in the calculation of the monthly mortality charges to the fund.

(b) Basic reserves for the secondary guarantees shall be the segmented reserves for the secondary guarantee period. In calculating the segments and the segmented reserves, the gross premiums shall be set equal to the specified premiums, if any, or otherwise to the minimum premiums, that keep the policy in force and the segments will be determined according to the contract segmentation method as defined in 11 NCAC 11F .0402(2).

(c) Deficiency reserves, if any, for the secondary guarantees shall be calculated for the secondary guarantee period in the same manner as described in 11 NCAC 11F .0404(b) with gross premiums set equal to the specified premiums, if any, or otherwise to the minimum premiums that keep the policy in force.

(d) The minimum reserves during the secondary guarantee period are the greater of:

- (1) The basic reserves for the secondary guarantee plus the deficiency reserve, if any, for the secondary guarantees; or
- (2) The minimum reserves required by other rules or regulations governing universal life plans.

*History Note: Authority G.S. 58-2-40; 58-58-50(d); 58-58-50(k);*

*Eff. January 1, 1998;*

*Temporary Amendment Eff. January 1, 2000;*

*Amended Eff. July 1, 2000.*

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

**CHAPTER 2 - ENVIRONMENTAL MANAGEMENT**

**SUBCHAPTER 2B - SURFACE WATER AND WETLAND STANDARDS**

**SECTION .0200 - CLASSIFICATIONS AND WATER QUALITY STANDARDS APPLICABLE TO SURFACE WATERS AND WETLANDS OF NORTH CAROLINA**

**15A NCAC 02B .0211 FRESH SURFACE WATER QUALITY STANDARDS FOR CLASS C WATERS**

General. The water quality standards for all fresh surface waters are the basic standards applicable to Class C waters. Additional and more stringent standards applicable to other specific freshwater classifications are specified in Rules .0212, .0214,

.0215, .0216, .0217, .0218, .0219, .0223, .0224 and .0225 of this Section.

- (1) Best Usage of Waters. Aquatic life propagation and maintenance of biological integrity (including fishing, and fish), wildlife, secondary recreation, agriculture and any other usage except for primary recreation or as a source of water supply for drinking, culinary or food processing purposes;
- (2) Conditions Related to Best Usage. The waters shall be suitable for aquatic life propagation and maintenance of biological integrity, wildlife, secondary recreation, and agriculture; sources of water pollution which preclude any of these uses on either a short-term or long-term basis shall be considered to be violating a water quality standard;
- (3) Quality standards applicable to all fresh surface waters:
  - (a) Chlorophyll a (corrected): not greater than 40 ug/l for lakes, reservoirs, and other waters subject to growths of macroscopic or microscopic vegetation not designated as trout waters, and not greater than 15 ug/l for lakes, reservoirs, and other waters subject to growths of macroscopic or microscopic vegetation designated as trout waters (not applicable to lakes and reservoirs less than 10 acres in surface area); the Commission or its designee may prohibit or limit any discharge of waste into surface waters if, in the opinion of the Director, the surface waters experience or the discharge would result in growths of microscopic or macroscopic vegetation such that the standards established pursuant to this Rule would be violated or the intended best usage of the waters would be impaired;
  - (b) Dissolved oxygen: not less than 6.0 mg/l for trout waters; for non-trout waters, not less than a daily average of 5.0 mg/l with a minimum instantaneous value of not less than 4.0 mg/l; swamp waters, lake coves or backwaters, and lake bottom waters may have lower values if caused by natural conditions;
  - (c) Floating solids; settleable solids; sludge deposits: only such amounts attributable to sewage, industrial wastes or other wastes as shall not make the water unsafe or unsuitable for aquatic life and wildlife or impair the waters for any designated uses;
  - (d) Gases, total dissolved: not greater than 110 percent of saturation;
  - (e) Organisms of the coliform group: fecal coliforms shall not exceed a geometric mean of 200/100ml (MF count) based upon at least five consecutive samples examined during any 30 day period, nor exceed 400/100ml in more than 20 percent of the samples examined during such period; violations of the fecal coliform standard are expected during rainfall events and, in some cases, this violation is expected to be caused by uncontrollable nonpoint source pollution; all coliform concentrations are to be analyzed using the membrane filter technique unless high turbidity or other adverse conditions necessitate the tube dilution method; in case of controversy over results, the MPN 5-tube dilution technique shall be used as the reference method;
- (f) Oils; deleterious substances; colored or other wastes: only such amounts as shall not render the waters injurious to public health, secondary recreation or to aquatic life and wildlife or adversely affect the palatability of fish, aesthetic quality or impair the waters for any designated uses; for the purpose of implementing this Rule, oils, deleterious substances, colored or other wastes shall include but not be limited to substances that cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines pursuant to 40 CFR 110.4(a)-(b) which are hereby incorporated by reference including any subsequent amendments and additions. This material is available for inspection at the Department of Environment and Natural Resources, Division of Water Quality, 512 North Salisbury Street, Raleigh, North Carolina. Copies may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402-9325 at a cost of thirteen dollars (\$13.00).
- (g) pH: shall be normal for the waters in the area, which generally shall range between 6.0 and 9.0 except that swamp waters may have a pH as low as 4.3 if it is the result of natural conditions;
- (h) Phenolic compounds: only such levels as shall not result in fish-flesh tainting or impairment of other best usage;
- (i) Radioactive substances:
  - (i) Combined radium-226 and radium-228: the maximum average annual activity level (based on at least four samples collected quarterly) for combined radium-226 and radium-228 shall not exceed five picoCuries per liter;
  - (ii) Alpha Emitters: the average annual gross alpha particle activity (including radium-226, but excluding radon and uranium) shall not exceed 15 picoCuries per liter;
  - (iii) Beta Emitters: the maximum average annual activity level (based on at least four samples, collected quarterly) for strontium-90 shall not exceed eight picoCuries per liter; nor shall the average annual gross beta particle activity (excluding potassium-40 and other naturally occurring radio-nuclides) exceed 50 picoCuries per liter; nor shall the maximum average annual activity level for tritium exceed 20,000 picoCuries per liter;
- (j) Temperature: not to exceed 2.8 degrees C (5.04 degrees F) above the natural water temperature, and in no case to exceed 29 degrees C (84.2 degrees F) for mountain and upper piedmont waters and 32 degrees C (89.6 degrees F) for lower piedmont and coastal plain waters. The temperature for trout waters shall not be increased by more than 0.5 degrees C (0.9 degrees F) due to the discharge of heated liquids, but in no case to exceed 20 degrees C (68 degrees F);

- (k) Turbidity: the turbidity in the receiving water shall not exceed 50 Nephelometric Turbidity Units (NTU) in streams not designated as trout waters and 10 NTU in streams, lakes or reservoirs designated as trout waters; for lakes and reservoirs not designated as trout waters, the turbidity shall not exceed 25 NTU; if turbidity exceeds these levels due to natural background conditions, the existing turbidity level cannot be increased. Compliance with this turbidity standard can be met when land management activities employ Best Management Practices (BMPs) [as defined by Rule .0202(6) of this Section] recommended by the Designated Nonpoint Source Agency [as defined by Rule .0202 of this Section]. BMPs must be in full compliance with all specifications governing the proper design, installation, operation and maintenance of such BMPs;
- (l) Toxic substances: numerical water quality standards (maximum permissible levels) to protect aquatic life applicable to all fresh surface waters:
- (i) Arsenic: 50 ug/l;
  - (ii) Beryllium: 6.5 ug/l;
  - (iii) Cadmium: 0.4 ug/l for trout waters and 2.0 ug/l for non-trout waters; attainment of these water quality standards in surface waters shall be based on measurement of total recoverable metals concentrations unless appropriate studies have been conducted to translate total recoverable metals to a toxic form. Studies used to determine the toxic form or translators must be designed according to the "Water Quality Standards Handbook Second Edition" published by the Environmental Protection Agency (EPA 823-B-94-005a) or "The Metals Translator: Guidance For Calculating a Total Recoverable Permit Limit From a Dissolved Criterion" published by the Environmental Protection Agency (EPA 823-B-96-007) which are hereby incorporated by reference including any subsequent amendments. The Director shall consider conformance to EPA guidance as well as the presence of environmental conditions that limit the applicability of translators in approving the use of metal translators.
  - (iv) Chlorine, total residual: 17 ug/l for trout waters (Tr); (Action Level of 17 ug/l for all waters not classified as trout waters (Tr); see Item (4) of this Rule);
  - (v) Chromium, total recoverable: 50 ug/l;
  - (vi) Cyanide: 5.0 ug/l;
  - (vii) Fluorides: 1.8 mg/l;
  - (viii) Lead, total recoverable: 25 ug/l; collection of data on sources, transport and fate of lead shall be required as part of the toxicity reduction evaluation for dischargers that are out of compliance with whole effluent toxicity testing requirements and the concentration of lead in the effluent is concomitantly determined to exceed an instream level of 3.1 ug/l from the discharge;
- (ix) MBAS (Methylene-Blue Active Substances): 0.5 mg/l;
  - (x) Mercury: 0.012 ug/l;
  - (xi) Nickel: 88 ug/l; attainment of these water quality standards in surface waters shall be based on measurement of total recoverable metals concentrations unless appropriate studies have been conducted to translate total recoverable metals to a toxic form. Studies used to determine the toxic form or translators must be designed according to the "Water Quality Standards Handbook Second Edition" published by the Environmental Protection Agency (EPA 823-B-94-005a) or "The Metals Translator: Guidance For Calculating a Total Recoverable Permit Limit From a Dissolved Criterion" published by the Environmental Protection Agency (EPA 823-B-96-007) which are hereby incorporated by reference including any subsequent amendments. The Director shall consider conformance to EPA guidance as well as the presence of environmental conditions that limit the applicability of translators in approving the use of metal translators.
  - (xii) Pesticides:
    - (A) Aldrin: 0.002 ug/l;
    - (B) Chlordane: 0.004 ug/l;
    - (C) DDT: 0.001 ug/l;
    - (D) Demeton: 0.1 ug/l;
    - (E) Dieldrin: 0.002 ug/l;
    - (F) Endosulfan: 0.05 ug/l;
    - (G) Endrin: 0.002 ug/l;
    - (H) Guthion: 0.01 ug/l;
    - (I) Heptachlor: 0.004 ug/l;
    - (J) Lindane: 0.01 ug/l;
    - (K) Methoxychlor: 0.03 ug/l;
    - (L) Mirex: 0.001 ug/l;
    - (M) Parathion: 0.013 ug/l;
    - (N) Toxaphene: 0.0002 ug/l;
  - (xiii) Polychlorinated biphenyls: 0.001 ug/l;
  - (xiv) Seleniu m: 5 ug/l;
  - (xv) Toluene: 11 ug/l or 0.36 ug/l in trout waters;
  - (xvi) Trialkyltin compounds: 0.008 ug/l expressed as tributyltin;
- (4) Action Levels for Toxic Substances: if the Action Levels for any of the substances listed in this Subparagraph (which are generally not bioaccumulative and have variable toxicity to aquatic life because of chemical form, solubility, stream characteristics or associated waste characteristics) are determined by the waste load allocation to be exceeded in a receiving water by a discharge under the specified low flow criterion for toxic substances (Rule .0206 in this Section), the discharger shall monitor the chemical or biological effects of the discharge; efforts shall be made by all dischargers to reduce or eliminate these substances from their effluents. Those substances for which Action Levels are listed in this Subparagraph

shall be limited as appropriate in the NPDES permit based on the Action Levels listed in this Subparagraph if sufficient information (to be determined for metals by measurements of that portion of the dissolved instream concentration of the Action Level parameter attributable to a specific NPDES permitted discharge) exists to indicate that any of those substances may be a causative factor resulting in toxicity of the effluent. NPDES permit limits may be based on translation of the toxic form to total recoverable metals. Studies used to determine the toxic form or translators must be designed according to "Water Quality Standards Handbook Second Edition" published by the Environmental Protection Agency (EPA 823-B-94-005a) or "The Metals Translator: Guidance For Calculating a Total Recoverable Permit Limit From a Dissolved Criterion" published by the Environmental Protection Agency (EPA 823-B-96-007) which are hereby incorporated by reference including any subsequent amendments. The Director shall consider conformance to EPA guidance as well as the presence of environmental conditions that limit the applicability of translators in approving the use of metal translators.

- (a) Copper: 7 ug/l;
- (b) Iron: 1.0 mg/l;
- (c) Silver: 0.06 ug/l;
- (d) Zinc: 50 ug/l;
- (e) Chloride: 230 mg/l;
- (f) Chlorine, total residual: 17 ug/l in all waters except trout waters (Tr); [a standard of 17 ug/l exists for waters classified as trout waters and is applicable as such to all dischargers to trout waters; see Sub-Item (3)(1)(iv) of this Rule];

For purposes other than consideration of NPDES permitting of point source discharges as described in this Subparagraph, the Action Levels in this Rule, as measured by an appropriate analytical technique, per 15A NCAC 2B .0103(a), shall be considered as numerical ambient water quality standards.

*History Note:* Authority G.S. 143-214.1; 143-215.3(a)(1); Eff. February 1, 1976; Amended Eff. August 1, 2000; October 1, 1995; August 1, 1995; April 1, 1994; February 1, 1993.

#### **15A NCAC 02B .0220 TIDAL SALT WATER QUALITY STANDARDS FOR CLASS SC WATERS**

General. The water quality standards for all tidal salt waters are the basic standards applicable to Class SC waters. Additional and more stringent standards applicable to other specific tidal salt water classifications are specified in Rules .0221 and .0222 of this Section.

- (1) Best Usage of Waters. Aquatic life propagation and maintenance of biological integrity (including fishing, fish and functioning PNAs), wildlife, secondary recreation, and any other usage except primary recreation or shellfishing for market purposes.
- (2) Conditions Related to Best Usage. The waters shall be suitable for aquatic life propagation and maintenance of biological integrity, wildlife, and secondary recreation; Any source of water pollution which precludes any of these uses, including their functioning as PNAs, on

either a short-term or a long-term basis shall be considered to be violating a water quality standard.

- (3) Quality standards applicable to all tidal salt waters:
  - (a) Chlorophyll a (corrected): not greater than 40 ug/l in sounds, estuaries, and other waters subject to growths of macroscopic or microscopic vegetation; the Commission or its designee may prohibit or limit any discharge of waste into surface waters if, in the opinion of the Director, the surface waters experience or the discharge would result in growths of microscopic or macroscopic vegetation such that the standards established pursuant to this Rule would be violated or the intended best usage of the waters would be impaired;
  - (b) Dissolved oxygen: not less than 5.0 mg/l, except that swamp waters, poorly flushed tidally influenced streams or embayments, or estuarine bottom waters may have lower values if caused by natural conditions;
  - (c) Floating solids; settleable solids; sludge deposits: only such amounts attributable to sewage, industrial wastes or other wastes, as shall not make the waters unsafe or unsuitable for aquatic life and wildlife, or impair the waters for any designated uses;
  - (d) Gases, total dissolved: not greater than 110 percent of saturation;
  - (e) Organisms of coliform group: fecal coliforms not to exceed geometric mean of 200/100 ml (MF count) based upon at least five consecutive samples examined during any 30 day period; not to exceed 400/100 ml in more than 20 percent of the samples examined during such period; violations of the fecal coliform standard are expected during rainfall events and, in some cases, this violation is expected to be caused by uncontrollable nonpoint source pollution; all coliform concentrations are to be analyzed using the MF technique unless high turbidity or other adverse conditions necessitate the tube dilution method; in case of controversy over results the MPN 5-tube dilution method shall be used as the reference method;
  - (f) Oils; deleterious substances; colored or other wastes: only such amounts as shall not render the waters injurious to public health, secondary recreation or to aquatic life and wildlife or adversely affect the palatability of fish, aesthetic quality or impair the waters for any designated uses; for the purpose of implementing this Rule, oils, deleterious substances, colored or other wastes shall include but not be limited to substances that cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines pursuant to 40 CFR 110.4(a)-(b);
  - (g) pH: shall be normal for the waters in the area, which generally shall range between 6.8 and 8.5 except that swamp waters may have a pH as low as 4.3 if it is the result of natural conditions;
  - (h) Phenolic compounds: only such levels as shall not result in fish-flesh tainting or impairment of other best usage;

- (i) Radioactive substances:
- (i) Combined radium-226 and radium-228: The maximum average annual activity level (based on at least four samples, collected quarterly) for combined radium-226, and radium-228 shall not exceed five picoCuries per liter;
  - (ii) Alpha Emitters. The average annual gross alpha particle activity (including radium-226, but excluding radon and uranium) shall not exceed 15 picoCuries per liter;
  - (iii) Beta Emitters. The maximum average annual activity level (based on at least four samples, collected quarterly) for strontium-90 shall not exceed eight picoCuries per liter; nor shall the average annual gross beta particle activity (excluding potassium-40 and other naturally occurring radio-nuclides) exceed 50 picoCuries per liter; nor shall the maximum average annual activity level for tritium exceed 20,000 picoCuries per liter;
- (j) Salinity: changes in salinity due to hydrological modifications shall not result in removal of the functions of a PNA; projects that are determined by the Director to result in modifications of salinity such that functions of a PNA are impaired will be required to employ water management practices to mitigate salinity impacts;
- (k) Temperature: shall not be increased above the natural water temperature by more than 0.8 degrees C (1.44 degrees F) during the months of June, July, and August nor more than 2.2 degrees C (3.96 degrees F) during other months and in no cases to exceed 32 degrees C (89.6 degrees F) due to the discharge of heated liquids;
- (l) Turbidity: the turbidity in the receiving water shall not exceed 25 NTU; if turbidity exceeds this level due to natural background conditions, the existing turbidity level shall not be increased. Compliance with this turbidity standard can be met when land management activities employ Best Management Practices (BMPs) [as defined by Rule .0202(6) of this Section] recommended by the Designated Nonpoint Source Agency (as defined by Rule .0202 of this Section). BMPs must be in full compliance with all specifications governing the proper design, installation, operation and maintenance of such BMPs;
- (m) Toxic substances: numerical water quality standards (maximum permissible levels) to protect aquatic life applicable to all tidal saltwaters:
- (i) Arsenic, total recoverable: 50 ug/l;
  - (ii) Cadmium: 5.0 ug/l; attainment of these water quality standards in surface waters shall be based on measurement of total recoverable metals concentrations unless appropriate studies have been conducted to translate total recoverable metals to a toxic form. Studies used to determine the toxic form or translators must be designed according to the "Water Quality Standards Handbook Second Edition" published by the Environmental Protection Agency (EPA 823-B-94-005a) or "The Metals Translator: Guidance For Calculating a Total Recoverable Permit Limit From a Dissolved Criterion" published by the Environmental Protection Agency (EPA 823-B-96-007) which are hereby incorporated by reference including any subsequent amendments. The Director shall consider conformance to EPA guidance as well as the presence of environmental conditions that limit the applicability of translators in approving the use of metal translators.
- (iii) Chromium, total: 20 ug/l;
- (iv) Cyanide: 1.0 ug/l;
- (v) Mercury: 0.025 ug/l;
- (vi) Lead, total recoverable: 25 ug/l; collection of data on sources, transport and fate of lead shall be required as part of the toxicity reduction evaluation for dischargers that are out of compliance with whole effluent toxicity testing requirements and the concentration of lead in the effluent is concomitantly determined to exceed an instream level of 3.1 ug/l from the discharge;
- (vii) Nickel: 8.3 ug/l; attainment of these water quality standards in surface waters shall be based on measurement of total recoverable metals concentrations unless appropriate studies have been conducted to translate total recoverable metals to a toxic form. Studies used to determine the toxic form or translators must be designed according to the "Water Quality Standards Handbook Second Edition" published by the Environmental Protection Agency (EPA 823-B-94-005a) or "The Metals Translator: Guidance For Calculating a Total Recoverable Permit Limit From a Dissolved Criterion" published by the Environmental Protection Agency (EPA 823-B-96-007) which are hereby incorporated by reference including any subsequent amendments. The Director shall consider conformance to EPA guidance as well as the presence of environmental conditions that limit the applicability of translators in approving the use of metal translators.
- (viii) Pesticides:
- (A) Aldrin: 0.003 ug/l;
  - (B) Chlordane: 0.004 ug/l;
  - (C) DDT: 0.001 ug/l;
  - (D) Demeton: 0.1 ug/l;
  - (E) Dieldrin: 0.002 ug/l;
  - (F) Endosulfan: 0.009 ug/l;
  - (G) Endrin: 0.002 ug/l;
  - (H) Guthion: 0.01 ug/l;
  - (I) Heptachlor: 0.004 ug/l;
  - (J) Lindane: 0.004 ug/l;
  - (K) Methoxychlor: 0.03 ug/l;
  - (L) Mirex: 0.001 ug/l;
  - (M) Parathion: 0.178 ug/l;
  - (N) Toxaphene: 0.0002 ug/l.

- (ix) Polychlorinated biphenyls: 0.001 ug/l;
- (x) Selenium: 71 ug/l;
- (xi) Trialkyltin compounds: 0.002 ug/l expressed as tributyltin.

(4) Action Levels for Toxic Substances: if the Action Levels for any of the substances listed in this Subparagraph (which are generally not bioaccumulative and have variable toxicity to aquatic life because of chemical form, solubility, stream characteristics or associated waste characteristics) are determined by the waste load allocation to be exceeded in a receiving water by a discharge under the specified low flow criterion for toxic substances (Rule .0206 in this Section), the discharger shall be required to monitor the chemical or biological effects of the discharge; efforts shall be made by all dischargers to reduce or eliminate these substances from their effluents. Those substances for which Action Levels are listed in this Subparagraph may be limited as appropriate in the NPDES permit if sufficient information (to be determined for metals by measurements of that portion of the dissolved instream concentration of the Action Level parameter attributable to a specific NPDES permitted discharge) exists to indicate that any of those substances may be a causative factor resulting in toxicity of the effluent. NPDES permit limits may be based on translation of the toxic form to total recoverable metals. Studies used to determine the toxic form or translators must be designed according to: "Water Quality Standards Handbook Second Edition" published by the Environmental Protection Agency (EPA 823-B-94-005a) or "The Metals Translator: Guidance For Calculating a Total Recoverable Permit Limit From a Dissolved Criterion" published by the Environmental Protection Agency (EPA 823-B-96-007) which are hereby incorporated by reference including any subsequent amendments. The Director shall consider conformance to EPA guidance as well as the presence of environmental conditions that limit the applicability of translators in approving the use of metal translators.

- (a) Copper: 3 ug/l;
- (b) Silver: 0.1 ug/l;
- (c) Zinc: 86 ug/l.

*History Note:* Authority G.S. 143-214.1; 143-215.3(a)(1);  
Eff. October 1, 1995;  
Amended Eff. August 1, 2000.

#### 15A NCAC 02B .0223 NUTRIENT SENSITIVE WATERS

(a) In addition to existing classifications, the Commission may classify any surface waters of the state as nutrient sensitive waters (NSW) upon a finding that such waters are experiencing or are subject to excessive growths of microscopic or macroscopic vegetation. Excessive growths are growths which the Commission determines impair the use of the water for its best use as determined by the classification applied to such waters.

(b) NSW may include any or all waters within a particular river basin as the Commission deems necessary to effectively control excessive growths of microscopic or macroscopic vegetation.

(c) For the purpose of this Rule, the term "nutrients" shall mean phosphorous or nitrogen or any other chemical parameter or combination of parameters which the commission determines to be contributing to excessive growths of microscopic or macroscopic vegetation.

(d) Those waters additionally classified as nutrient sensitive shall be identified in the appropriate schedule of classifications as referenced in Section .0300 of this Subchapter.

(e) Nutrient strategies applicable to NSW shall be developed by the Commission to control the magnitude, duration, or frequencies of excessive growths of microscopic or macroscopic vegetation so that the existing and designated uses of the waterbody are protected or restored.

*History Note:* Authority G.S. 143-214.1;  
Eff. October 1, 1995;  
Amended Eff. August 1, 2000.

#### 15A NCAC 02B .0225 OUTSTANDING RESOURCE WATERS

(a) General In addition to the existing classifications, the Commission may classify unique and special surface waters of the state as outstanding resource waters (ORW) upon finding that such waters are of exceptional state or national recreational or ecological significance and that the waters have exceptional water quality while meeting the following conditions:

- (1) that the water quality is rated as excellent based on physical, chemical or biological information;
- (2) the characteristics which make these waters unique and special may not be protected by the assigned narrative and numerical water quality standards.

(b) Outstanding Resource Values In order to be classified as ORW, a water body must exhibit one or more of the following values or uses to demonstrate it is of exceptional state or national recreational or ecological significance:

- (1) there are outstanding fish (or commercially important aquatic species) habitat and fisheries;
- (2) there is an unusually high level of water-based recreation or the potential for such recreation;
- (3) the waters have already received some special designation such as a North Carolina or National Wild and Scenic River, Native or Special Native Trout Waters, National Wildlife Refuge, etc, which do not provide any water quality protection;
- (4) the waters represent an important component of a state or national park or forest; or
- (5) the waters are of special ecological or scientific significance such as habitat for rare or endangered species or as areas for research and education.

(c) Quality Standards for ORW

- (1) Freshwater: Water quality conditions shall clearly maintain and protect the outstanding resource values of waters classified ORW. Management strategies to protect resource values shall be developed on a site specific basis during the proceedings to classify waters as ORW. At a minimum, no new discharges or expansions of existing discharges shall be permitted, and stormwater controls for all new development activities requiring an Erosion and Sedimentation Control Plan in accordance with rules established by the NC Sedimentation Control Commission or an

appropriate local erosion and sedimentation control program shall be required to follow the stormwater provisions as specified in 15A NCAC 2H .1000. Specific stormwater requirements for ORW areas are described in 15A NCAC 2H .1007.

- (2) Saltwater: Water quality conditions shall clearly maintain and protect the outstanding resource values of waters classified ORW. Management strategies to protect resource values shall be developed on a site-specific basis during the proceedings to classify waters as ORW. At a minimum, new development shall comply with the stormwater provisions as specified in 15A NCAC 2H .1000. Specific stormwater management requirements for saltwater ORWs are described in 15A NCAC 2H .1007. New non-discharge permits shall meet reduced loading rates and increased buffer zones, to be determined on a case-by-case basis. No dredge or fill activities shall be allowed if those activities would result in a reduction of the beds of submerged aquatic vegetation or a reduction of shellfish producing habitat as defined in 15A NCAC 3I .0101(b)(20)(A) and (B), except for maintenance dredging, such as that required to maintain access to existing channels and facilities located within the designated areas or maintenance dredging for activities such as agriculture. A public hearing is mandatory for any proposed permits to discharge to waters classified as ORW.

Additional actions to protect resource values shall be considered on a site specific basis during the proceedings to classify waters as ORW and shall be specified in Paragraph (e) of this Rule. These actions may include anything within the powers of the commission. The commission shall also consider local actions which have been taken to protect a water body in determining the appropriate state protection options. Descriptions of boundaries of waters classified as ORW are included in Paragraph (e) of this Rule and in the Schedule of Classifications (15A NCAC 2B .0302 through 2B .0317) as specified for the appropriate river basin and shall also be described on maps maintained by the Division of Water Quality.

(d) Petition Process Any person may petition the Commission to classify a surface water of the state as an ORW. The petition shall identify the exceptional resource value to be protected, address how the water body meets the general criteria in Paragraph (a) of this Rule, and the suggested actions to protect the resource values. The Commission may request additional supporting information from the petitioner. The Commission or its designee shall initiate public proceedings to classify waters as ORW or shall inform the petitioner that the waters do not meet the criteria for ORW with an explanation of the basis for this decision. The petition shall be sent to:

Director  
DENR/Division of Water Quality  
1617 Mail Service Center  
Raleigh, North Carolina 27699-1617

The envelope containing the petition shall clearly bear the notation: **RULE-MAKING PETITION FOR ORW CLASSIFICATION.**

(e) Listing of Waters Classified ORW with Specific Actions Waters classified as ORW with specific actions to protect exceptional resource values are listed as follows:

- (1) Roosevelt Natural Area [White Oak River Basin, Index Nos. 20-36-9.5-(1) and 20-36-9.5-(2)] including all fresh and saline waters within the property boundaries of the natural area shall have only new development which complies with the low density option in the stormwater rules as specified in 15A NCAC 2H .1005(2)(a) within 575 feet of the Roosevelt Natural Area (if the development site naturally drains to the Roosevelt Natural Area).
- (2) Chattooga River ORW Area (Little Tennessee River Basin and Savannah River Drainage Area): the following undesignated waterbodies that are tributary to ORW designated segments shall comply with Paragraph (c) of this Rule in order to protect the designated waters as per Rule .0203 of this Section. However, expansions of existing discharges to these segments shall be allowed if there is no increase in pollutant loading:
  - (A) North and South Fowler Creeks,
  - (B) Green and Norton Mill Creeks,
  - (C) Cane Creek,
  - (D) Ammons Branch,
  - (E) Glade Creek, and
  - (F) Associated tributaries.
- (3) Henry Fork ORW Area (Catawba River Basin): the following undesignated waterbodies that are tributary to ORW designated segments shall comply with Paragraph (c) of this Rule in order to protect the designated waters as per Rule .0203 of this Section:
  - (A) Ivy Creek,
  - (B) Rock Creek, and
  - (C) Associated tributaries.
- (4) South Fork New and New Rivers ORW Area [New River Basin (Index Nos. 10-1-33.5 and 10)]: the following management strategies, in addition to the discharge requirements specified in Subparagraph (c)(1) of this Rule, shall be applied to protect the designated ORW areas:
  - (A) Stormwater controls described in Subparagraph (c)(1) of this Rule shall apply within one mile and draining to the designated ORW areas;
  - (B) New or expanded NPDES permitted wastewater discharges located upstream of the designated ORW shall be permitted such that the following water quality standards are maintained in the ORW segment:
    - (i) the total volume of treated wastewater for all upstream discharges combined shall not exceed 50 percent of the total instream flow in the designated ORW under 7Q10 conditions;
    - (ii) a safety factor shall be applied to any chemical allocation such that the effluent limitation for a specific chemical constituent shall be the more stringent of either the limitation allocated under design conditions (pursuant to 15A NCAC 2B .0206) for the normal standard at the point of discharge, or the limitation allocated under design conditions for

- one-half the normal standard at the upstream border of the ORW segment;
- (iii) a safety factor shall be applied to any discharge of complex wastewater (those containing or potentially containing toxicants) to protect for chronic toxicity in the ORW segment by setting the whole effluent toxicity limitation at the higher (more stringent) percentage effluent determined under design conditions (pursuant to 15A NCAC 2B .0206) for either the instream effluent concentration at the point of discharge or twice the effluent concentration calculated as if the discharge were at the upstream border of the ORW segment;
- (C) New or expanded NPDES permitted wastewater discharges located upstream of the designated ORW shall comply with the following:
- (i) Oxygen Consuming Wastes: Effluent limitations shall be as follows: BOD = 5 mg/1, and NH3-N = 2 mg/1;
- (ii) Total Suspended Solids: Discharges of total suspended solids (TSS) shall be limited to effluent concentrations of 10 mg/1 for trout waters and to 20 mg/1 for all other waters;
- (iii) Emergency Requirements: Failsafe treatment designs shall be employed, including stand-by power capability for entire treatment works, dual train design for all treatment components, or equivalent failsafe treatment designs;
- (iv) Nutrients: Where nutrient overenrichment is projected to be a concern, effluent limitations shall be set for phosphorus or nitrogen, or both.
- (5) Old Field Creek (New River Basin): the undesignated portion of Old Field Creek (from its source to Call Creek) shall comply with Paragraph (c) of this Rule in order to protect the designated waters as per Rule .0203 of this Section.
- (6) In the following designated waterbodies, no additional restrictions shall be placed on new or expanded marinas. The only new or expanded NPDES permitted discharges that shall be allowed shall be non-domestic, non-process industrial discharges. The Alligator River Area (Pasquotank River Basin) extending from the source of the Alligator River to the U.S. Highway 64 bridge including New Lake Fork, North West Fork Alligator River, Juniper Creek, Southwest Fork Alligator River, Scouts Bay, Gum Neck Creek, Georgia Bay, Winn Bay, Stumpy Creek Bay, Stumpy Creek, Swann Creek (Swann Creek Lake), Whipping Creek (Whipping Creek Lake), Grapevine Bay, Rattlesnake Bay, The Straits, The Frying Pan, Coopers Creek, Babbitt Bay, Goose Creek, Milltail Creek, Boat Bay, Sandy Ridge Gut (Sawyer Lake) and Second Creek, but excluding the Intracoastal Waterway (Pungo River-Alligator River Canal) and all other tributary streams and canals.
- (7) In the following designated waterbodies, the only type of new or expanded marina that shall be allowed shall be those marinas located in upland basin areas, or those with less than 10 slips, having no boats over 21 feet in length and no boats with heads. The only new or expanded NPDES permitted discharges that shall be allowed shall be non-domestic, non-process industrial discharges.
- (A) The Northeast Swanquarter Bay Area including all waters northeast of a line from a point at Lat. 35E 23N 51O and Long. 76E 21N 02O thence southeast along the Swanquarter National Wildlife Refuge hunting closure boundary (as defined by the 1935 Presidential Proclamation) to Drum Point.
- (B) The Neuse-Southeast Pamlico Sound Area (Southeast Pamlico Sound Section of the Southeast Pamlico, Core and Back Sound Area); (Neuse River Basin) including all waters within an area defined by a line extending from the southern shore of Ocracoke Inlet northwest to the Tar-Pamlico River and Neuse River basin boundary, then southwest to Ship Point.
- (C) The Core Sound Section of the Southeast Pamlico, Core and Back Sound Area (White Oak River Basin), including all waters of Core Sound and its tributaries, but excluding Nelson Bay, Little Port Branch and Atlantic Harbor at its mouth, and those tributaries of Jarrett Bay that are closed to shellfishing.
- (D) The Western Bogue Sound Section of the Western Bogue Sound and Bear Island Area (White Oak River Basin) including all waters within an area defined by a line from Bogue Inlet to the mainland at SR 1117 to a line across Bogue Sound from the southwest side of Gales Creek to Rock Point, including Taylor Bay and the Intracoastal Waterway.
- (E) The Stump Sound Area (Cape Fear River Basin) including all waters of Stump Sound and Alligator Bay from marker Number 17 to the western end of Permuda Island, but excluding Rogers Bay, the Kings Creek Restricted Area and Mill Creek.
- (F) The Topsail Sound and Middle Sound Area (Cape Fear River Basin) including all estuarine waters from New Topsail Inlet to Mason Inlet, including the Intracoastal Waterway and Howe Creek, but excluding Pages Creek and Futch Creek.
- (8) In the following designated waterbodies, no new or expanded NPDES permitted discharges and only new or expanded marinas with less than 10 slips, having no boats over 21 feet in length and no boats with heads shall be allowed.
- (A) The Swanquarter Bay and Juniper Bay Area (Tar-Pamlico River Basin) including all waters within a line beginning at Juniper Bay Point and running south and then west below Great Island, then northwest to Shell Point and including Shell Bay, Swanquarter and Juniper Bays and their tributaries, but excluding all waters northeast of a line from a point at Lat. 35E 23N 51O and Long. 76E 21N 02O thence southeast along the



Swanquarter National Wildlife Refuge hunting closure boundary (as defined by the 1935 Presidential Proclamation) to Drum Point and also excluding the Blowout Canal, Hydeland Canal, Juniper Canal and Quarter Canal.

- (B) The Back Sound Section of the Southeast Pamlico, Core and Back Sound Area (White Oak River Basin) including that area of Back Sound extending from Core Sound west along Shackelford Banks, then north to the western most point of Middle Marshes and along the northwest shore of Middle Marshes (to include all of Middle Marshes), then west to Rush Point on Harker's Island, and along the southern shore of Harker's Island back to Core Sound.
- (C) The Bear Island Section of the Western Bogue Sound and Bear Island Area (White Oak River Basin) including all waters within an area defined by a line from the western most point on Bear Island to the northeast mouth of Goose Creek on the mainland, east to the southwest mouth of Queen Creek, then south to green marker No. 49, then northeast to the northern most point on Huggins Island, then southeast along the shoreline of Huggins Island to the southeastern most point of Huggins Island, then south to the northeastern most point on Dudley Island, then southwest along the shoreline of Dudley Island to the eastern tip of Bear Island.
- (D) The Masonboro Sound Area (Cape Fear River Basin) including all waters between the Barrier Islands and the mainland from Carolina Beach Inlet to Masonboro Inlet.

(9) Black and South Rivers ORW Area (Cape Fear River Basin) [Index Nos. 18-68-(0.5), 18-68-(3.5), 18-68-(11.5), 18-68-12-(0.5), 18-68-12-(11.5), and 18-68-2]: the following management strategies, in addition to the discharge requirements specified in Subparagraph (c)(1) of this Rule, shall be applied to protect the designated ORW areas:

- (A) Stormwater controls described in Subparagraph (c)(1) of this Rule shall apply within one mile and draining to the designated ORW areas;
- (B) New or expanded NPDES permitted wastewater discharges located one mile upstream of the stream segments designated ORW (upstream on the designated mainstem and upstream into direct tributaries to the designated mainstem) shall comply with the following discharge restrictions:
  - (i) Oxygen Consuming Wastes: Effluent limitations shall be as follows: BOD = 5 mg/l and NH<sub>3</sub>-N = 2 mg/l;
  - (ii) Total Suspended Solids: Discharges of total suspended solids (TSS) shall be limited to effluent concentrations of 20 mg/l;
  - (iii) Emergency Requirements: Failsafe treatment designs shall be employed, including stand-by power capability for entire treatment works, dual train design

for all treatment components, or equivalent failsafe treatment designs;

- (iv) Nutrients: Where nutrient overenrichment is projected to be a concern, effluent limitations shall be set for phosphorus or nitrogen, or both.
- (v) Toxic substances: In cases where complex discharges (those containing or potentially containing toxicants) may be currently present in the discharge, a safety factor shall be applied to any chemical or whole effluent toxicity allocation. The limit for a specific chemical constituent shall be allocated at one-half of the normal standard at design conditions. Whole effluent toxicity shall be allocated to protect for chronic toxicity at an effluent concentration equal to twice that which is acceptable under flow design criteria (pursuant to 15A NCAC 2B .0206).

(10) Lake Waccamaw ORW Area (Lumber River Basin) [Index No. 15-2]: all undesignated waterbodies that are tributary to Lake Waccamaw shall comply with Paragraph (c) of this Rule in order to protect the designated waters as per Rule .0203 of this Section.

*History Note: Authority G.S. 143-214.1; Eff. October 1, 1995; Amended Eff. August 1, 2000; April 1, 1996; January 1, 1996.*

**SECTION .0300 - ASSIGNMENT OF STREAM CLASSIFICATIONS**

**15A NCAC 02B .0306 BROAD RIVER BASIN**

- (a) The schedule may be inspected at the following places:
  - (1) Clerk of Court:
    - Buncombe County
    - Cleveland County
    - Gaston County
    - Henderson County
    - Lincoln County
    - McDowell County
    - Polk County
    - Rutherford County
  - (2) North Carolina Department of Environment and Natural Resources:
    - (A) Mooresville Regional Office  
919 North Main Street  
Mooresville, North Carolina
    - (B) Asheville Regional Office  
Interchange Building  
59 Woodfin Place  
Asheville, North Carolina.
- (b) Unnamed Streams. Such streams entering South Carolina are classified "C."
- (c) The Broad River Basin Schedule of Classifications and Water Quality Standards was amended effective:
  - (1) March 1, 1977;
  - (2) February 12, 1979;
  - (3) August 12, 1979;
  - (4) April 1, 1983;

- (5) February 1, 1986;
- (6) August 3, 1992;
- (7) September 1, 1994;
- (8) August 1, 1998;
- (9) August 1, 2000.

(d) The Schedule of Classifications and Water Quality Standards for the Broad River Basin was amended effective August 3, 1992 with the reclassification of all water supply waters (waters with a primary classification of WS-I, WS-II or WS-III). These waters were reclassified to WS-I, WS-II, WS-III, WS-IV or WS-V as defined in the revised water supply protection rules, (15A NCAC 2B .0100, .0200 and .0300) which became effective on August 3, 1992. In some cases, streams with primary classifications other than WS were reclassified to a WS classification due to their proximity and linkage to water supply waters. In other cases, waters were reclassified from a WS classification to an alternate appropriate primary classification after being identified as downstream of a water supply intake or identified as not being used for water supply purposes.

(e) The Schedule of Classifications and Water Quality Standards for the Broad River Basin was amended effective September 1, 1994 with the reclassification of the Second Broad River [Index No. 9-41-(0.5)] from its source to Roberson Creek including associated tributaries was reclassified from Class WS-V to Classes WS-V, WS-IV and WS-IV CA.

(f) The Schedule of Classifications and Water Quality Standards for the Broad River Basin was amended effective August 1, 1998 with the revision to the primary classification for portions of the Broad River [Index No. 9-(23.5)] from Class WS-IV to Class C and Second Broad River [Index Nos. 9-41-(10.5) and 9-41-(14.5)] and First Broad River [Index No. 950-(11)] from Class WS-IV to Class WS-V.

(g) The Schedule of Classifications and Water Quality Standards for the Broad River Basin was amended August 1, 2000 with the reclassification of the Green River [Index No. 9-29-(1)], including all tributaries, from its source to its mouth in Lake Summit at elevation 2011 from Class C Tr to Class B Tr.

(h) The Schedule of Classifications and Water Quality Standards for the Broad River Basin was amended effective August 1, 2000 with the reclassification of Lake Montonia [Index No. 9-54-1-(1)], and all tributaries, from Class B to Class B HQW.

*History Note: Authority G.S. 143-214.1; 143-215.1; 143-215.3(a)(1); Eff. February 1, 1976; Amended Eff. August 1, 2000; August 1, 1998; September 1, 1994; August 3, 1992; February 1, 1986; January 1, 1985.*

**SUBCHAPTER 2D - AIR POLLUTION CONTROL REQUIREMENTS**

**SECTION .2100 – RISK MANAGEMENT PROGRAM**

**15A NCAC 02D .2101 APPLICABILITY**

(a) This Section applies to any facility that has more than a threshold quantity of a regulated substance listed in 40 CFR 68.130 in a process as determined under 40 CFR 68.115, except for those exemptions listed in Paragraph (b) of this Rule. The

facility shall comply with this Section no later than the latest of the following dates:

- (1) July 1, 2000 [NOTE: Before the effective date of the rules in this Section, the U. S. Environmental Protection Agency is the implementing agency of 40 CFR Part 68. Under 40 CFR 68.10(a)(1) the facility is required to comply by June 21, 1999.];
  - (2) three years after the date on which a regulated substance is first listed under 40 CFR 68.130; or
  - (3) the date on which a regulated substance is first present above a threshold quantity in a process.
- (b) The following substances are exempt from the provisions of this Section:
- (1) exemptions listed in 40 CFR 68.125, and
  - (2) flammable substances that are used as a fuel or held for sale as a fuel at a retail facility.
- (c) A covered process that meets all the requirements of 40 CFR 68.10(b) is eligible for Program 1 requirements.
- (d) A covered process that meets the requirements of 40 CFR 68.10(c) is subject to Program 2 requirements.
- (e) A covered process that meets the requirements of 40 CFR 68.10(d) is subject to Program 3 requirements.
- (f) If at any time a covered process no longer meets the eligibility criteria of its Program level, the owner or operator of the facility shall comply with the requirements of the new Program level that applies to the process and update the risk management plan as provided in 40 CFR 68.190.

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10); Eff. July 1, 2000.*

**15A NCAC 02D .2102 DEFINITIONS**

For the purpose of this Section the definitions contained in 40 CFR 68.3 shall apply with the following exception: "Implementing agency" means the Division of Air Quality.

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10); Eff. July 1, 2000.*

**15A NCAC 02D .2103 REQUIREMENTS**

Except as provided in 40 CFR 68.2 and 15A NCAC 02D .2101(b), the owner or operator of any facility covered under this Section shall comply with all the applicable requirements in:

- (1) 40 CFR 68.12, General Requirements;
- (2) 40 CFR 68.15, Management;
- (3) 40 CFR Part 68, Subpart B, Hazard Assessment, including 40 CFR Part 68, Appendix A, Table of Toxic Endpoints;
- (4) 40 CFR Part 68, Subpart C, Program 2 Prevention Program;
- (5) 40 CFR Part 68, Subpart D, Program 3 Prevention Program;
- (6) 40 CFR Part 68, Subpart E, Emergency Response;
- (7) 40 CFR Part 68, Subpart G, Risk Management Plan;
- (8) 40 CFR 68.200, Recordkeeping; and
- (9) 40 CFR 68.220(f).

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10);*

*Eff. July 1, 2000.*

**15A NCAC 02D .2104 IMPLEMENTATION**

(a) The owner or operator of each facility covered under this Section shall:

- (1) submit a risk management plan or a revised plan when required by this Section to the Environmental Protection Agency; and
- (2) submit a source certification or, in its absence, submit a compliance schedule consistent with 15A NCAC 2Q .0508(g)(2).

(b) The Division may initiate enforcement action against any facility that fails to comply with the requirements of this Section or any provision of its plan submitted pursuant to this Section.

(c) The Division may conduct completeness checks, source audits, record reviews, or facility inspections to ensure that facilities covered under this Section are in compliance with the requirements of this Section. In addition, the Division may conduct periodic audits following the audit procedures of 40 CFR 68.220. The Division may take enforcement action if the owner or operator fails to comply with the provisions of 40 CFR 68.220.

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10); Eff. July 1, 2000.*

**SUBCHAPTER 2S – RULES AND CRITERIA FOR THE ADMINISTRATION OF THE DRY-CLEANING SOLVENT CLEANUP FUND**

**SECTION .0100 – GENERAL CONSIDERATIONS**

**15A NCAC 02S .0101 GENERAL**

The purpose of this Subchapter is to establish the criteria for determining eligibility for certification into the North Carolina Dry-Cleaning Solvent Cleanup Fund program, a risk-based approach for assessment and remediation or certified facilities, and for the disbursement of funds from the North Carolina Dry-Cleaning Solvent Cleanup Fund.

*History Note: Authority G.S. 143-215.104D(b); 150B-21.2; Eff. August 1, 2000.*

**15A NCAC 02S .0102 DEFINITIONS**

The definition of any word or phrase used in this Subchapter shall be the same as given in G.S. 143-215.104B and the following words and phrases shall have the following meanings:

- (1) "Number of full time employees" is equivalent to the total hours worked by all persons employed by a company or corporation in the previous year divided by 40 hours per week.
- (2) "Impervious" means a material that is specifically manufactured for the containment of dry-cleaning solvent.
- (3) "Spill containment" means a structure constructed of steel with welded seams or a product specifically manufactured to prevent the release of dry-cleaning solvent.
- (4) "Closed container solvent transfer system" means a device or system specifically designed to fill a dry-

cleaning machine with dry-cleaning solvent through a mechanical valve or sealed coupling in order to prevent spills or other loss of solvent liquids or vapors to the environment.

*History Note: Authority G.S. 143-215.104D(b); 150B-21.2; Eff. August 1, 2000.*

**SECTION .0200 – MINIMUM MANAGEMENT PRACTICES**

**15A NCAC 02S .0201 APPLICABILITY**

The provisions contained in this Section set forth the minimum management practices for the storage and handling of dry-cleaning solvents required to be implemented at all dry-cleaning facilities and dry-cleaning solvent wholesale distribution facilities in order for those facilities to be eligible for certification pursuant to the Dry-Cleaning Solvent Cleanup Act of 1997. These Rules are applicable only to owners and operators of dry-cleaning facilities or dry-cleaning solvent wholesale distribution facilities.

*History Note: Authority G.S. 143-215.104D(b); 150B-21.2; Eff. August 1, 2000.*

**15A NCAC 02S .0202 REQUIRED MINIMUM MANAGEMENT PRACTICES**

(a) Any abandoned site, as defined by G.S.143-215.104(B)(b)(1), wishing to petition for certification pursuant to the Dry-Cleaning Solvent Cleanup Act of 1997 shall demonstrate, at all times after this Rule becomes effective, compliance with Minimum Management Practice (b)(5) of this Rule.

(b) All currently operating dry-cleaning, or wholesale distribution facilities wishing to petition for certification pursuant to the Dry-Cleaning Solvent Cleanup Act of 1997 shall demonstrate, at all times after this Rule becomes effective, compliance with the following minimum management practices:

- (1) At no time shall any dry-cleaning solvent, wastes containing dry-cleaning solvent, or water containing dry-cleaning solvent be discharged onto land or into waters of the State, sanitary sewers, storm drains, floor drains, septic systems, boilers, or cooling-towers. All invoices generated as a result of disposal of all dry-cleaning solvent waste shall be made available for review by the Department. If a dry-cleaning facility uses devices such as atomizers, evaporators, carbon filters, or other equipment for the treatment of wastewater containing solvent, all records, including but not limited to, invoices for the purchase, maintenance, and service of such devices, shall be made available to the Department. Records shall be kept for a period of three years;
- (2) Spill containment shall be constructed in areas around dry-cleaning machines, filters, stills, vapor adsorbers, solvent storage areas, and waste solvent storage areas by January 1, 2002. The spill containment shall be constructed of or sealed with materials that are impervious to the applicable dry-cleaning solvent with a volumetric capacity of 110 percent of the largest vessel, tank, or container within the spill containment

area. All floor drains within the containment shall be removed or permanently sealed with materials impervious to dry-cleaning solvents. Emergency adsorbent spill clean-up materials shall be on the premises. Facilities must maintain an emergency response plan that is in compliance with federal, state and local requirements;

- (3) All perchloroethylene dry-cleaning machines installed at a dry-cleaning facility after the effective date of this Rule shall meet air emissions that equal or exceed the standards that apply to a comparable dry-to-dry perchloroethylene dry-cleaning machine with an integrated refrigerated condenser. All perchloroethylene dry-cleaning facilities must be in compliance with the EPA Perchloroethylene Dry Cleaner NESHAP: 40CFR, Part 63, Subpart M to be eligible for certification;
- (4) Facilities that use perchloroethylene shall use a closed container solvent transfer system by January 1, 2002; and
- (5) Within six months of the effective date of this Rule, no dry-cleaning facility shall use underground storage tanks for solvents or waste.

*History Note: Authority G.S. 143-215.104D(b); 150B-21.2; Eff. August 1, 2000.*

**CHAPTER 13 - SOLID WASTE MANAGEMENT**

**SUBCHAPTER 13A - HAZARDOUS WASTE MANAGEMENT**

**SECTION .0100 - HAZARDOUS WASTE**

**15A NCAC 13A .0103 PETITIONS - PART 260**

- (a) All rulemaking petitions for changes in this Subchapter shall be made in accordance with 15A NCAC 24B .0101.
- (b) In applying the federal requirements incorporated by reference in this Rule, "15A NCAC 24B .0101" shall be substituted for references to 40 CFR 260.20.
- (c) 40 CFR 260.21 through 260.41 (Subpart C), "Rulemaking Petitions," are incorporated by reference including subsequent amendments and editions.

*History Note: Authority G.S. 130A-294(c); 150B-21.6; Eff. November 19, 1980; Amended Eff. June 1, 1988; May 1, 1987; January 1, 1986; October 1, 1985; Transferred and Recodified from 10 NCAC 10F .0028 Eff. April 4, 1990; Amended Eff. April 1, 1993; November 1, 1991; October 1, 1990; Recodified from 15A NCAC 13A .0003 Eff. December 20, 1996; Amended Eff. August 1, 2000.*

**15A NCAC 13A .0113 THE HAZARDOUS WASTE PERMIT PROGRAM - PART 270**

- (a) 40 CFR 270.1 through 270.6 (Subpart A), "General Information", are incorporated by reference including subsequent amendments and editions. For the purpose of this

incorporation by reference, "January 26, 1983" shall be substituted for "July 26, 1982" contained in 40 CFR 270.1(c).

(b) 40 CFR 270.10 through 270.29 (Subpart B), "Permit Application", are incorporated by reference including subsequent amendments and editions.

(c) The following are additional Part B information requirements for all hazardous waste facilities:

- (1) Description and documentation of the public meetings as required in 15A NCAC 13A .0109(r)(7);
  - (2) A description of the hydrological and geological properties of the site including, at a minimum, flood plains, depth to water table, ground water travel time, seasonal and long-term groundwater level fluctuations, proximity to public water supply watersheds, consolidated rock, soil pH, soil cation exchange capacity, soil characteristics and composition and permeability, existence of cavernous bedrock and seismic activity, slope, mines, climate, location and withdrawal rates of surface water users within the immediate drainage basin and well water users within a one mile radius of the facility; water quality information of both surface and groundwater within 1000 ft. of the facility, and a description of the local air quality;
  - (3) A description of the facility's proximity to and potential impact on wetlands, endangered species habitats, parks, forests, wilderness areas, historical sites, mines, and air quality;
  - (4) A description of local land use including residential, industrial, commercial, recreational, agricultural and the proximity to schools and airports;
  - (5) A description of the proximity of the facility to waste generators and population centers; a description of the method of waste transportation; the comments of the local community and state transportation authority on the proposed route, and route safety. Comments shall include proposed alternative routes and restrictions necessary to protect the public health;
  - (6) A description of facility aesthetic factors including visibility, appearance, and noise level; and
  - (7) A description of any other objective factors that the Department determines are reasonably related and relevant to the proper siting and operation of the facility.
- (d) In addition to the specific Part B information requirements for hazardous waste disposal facilities, owners and operators of hazardous waste landfills or longterm storage facilities shall provide the following information:
- (1) Design drawings and specifications of the leachate collection and removal system;
  - (2) Design drawings and specifications of the artificial impervious liner;
  - (3) Design drawings and specifications of the clay or clay-like liner below the artificial liner, and a description of the permeability of the clay or clay-like liner; and
  - (4) A description of how hazardous wastes will be treated prior to placement in the facility.
- (e) In addition to the specific Part B information requirements for surface impoundments, owners and operators of surface impoundments shall provide the following information:

- (1) Design drawings and specifications of the leachate collection and removal system;
  - (2) Design drawings and specifications of all artificial impervious liners;
  - (3) Design drawings and specifications of all clay or clay-like liners and a description of the clay or clay-like liner; and
  - (4) Design drawings and specifications that show that the facility has been constructed in a manner that will prevent landsliding, slippage, or slumping.
- (f) 40 CFR 270.30 through 270.33 (Subpart C), "Permit Conditions", are incorporated by reference including subsequent amendments and editions.
- (g) 40 CFR 270.40 through 270.43 (Subpart D), "Changes to Permit", are incorporated by reference including subsequent amendments and editions.
- (h) 40 CFR 270.50 through 270.51 (Subpart E), "Expiration and Continuation of Permits", are incorporated by reference including subsequent amendments and editions.
- (i) 40 CFR 270.60 through 270.66 (Subpart F), "Special Forms of Permits", are incorporated by reference including subsequent amendments and editions.
- (j) 40 CFR 270.70 through 270.73 (Subpart G), "Interim Status", are incorporated by reference including subsequent amendments and editions. For the purpose of this incorporation by reference, "January 1, 1986" shall be substituted for "November 8, 1985" contained in 40 CFR 270.73(c).
- (k) The following are additional permitting requirements concerning operating record of other facilities.
- (1) An applicant applying for a permit for a hazardous waste facility shall submit a disclosure statement to the Department as a part of the application for a permit or any time thereafter specified by the Department. The disclosure statement shall be supported by an affidavit attesting to the truth and completeness of the facts asserted in the statement and shall include:
    - (A) A brief description of the form of the business (e.g. partnership, sole proprietorship, corporation, association, or other);
    - (B) The name and address of any hazardous waste facility constructed or operated after October 21, 1976 by the applicant or any parent or subsidiary corporation if the applicant is a corporation; and
    - (C) A list identifying any legal action taken against any facility identified in Part (k)(1)(B) of this Rule involving:
      - (i) any administrative ruling or order issued by any state, federal or local authority relating to revocation of any environmental or waste management permit or license, or to a violation of any state or federal statute or local ordinance relating to waste management or environmental protection;
      - (ii) any judicial determination of liability or conviction under any state or federal law or local ordinance relating to waste management or environmental protection; and
      - (iii) any pending administrative or judicial proceeding of the type described in this Part.
  - (D) The identification of each action described in Part (k)(1)(C) of this Rule shall include the name and location of the facility that the action concerns, the agency or court that heard or is hearing the matter, the title, docket or case number, and the status of the proceeding.
- (2) In addition to the information set forth in Subparagraph (k)(1) of this Rule, the Department may require from any applicant such additional information as it deems necessary to satisfy the requirements of G.S. 130A-295. Such information may include, but shall not be limited to:
- (A) The names, addresses, and titles of all officers, directors, or partners of the applicant and of any parent or subsidiary corporation if the applicant is a corporation;
  - (B) The name and address of any company in the field of hazardous waste management in which the applicant business or any of its officers, directors, or partners, hold an equity interest and the name of the officer, director, or partner holding such interest; and
  - (C) A copy of any administrative ruling or order and of any judicial determination of liability or conviction described in Part (k)(1)(C) of this Rule, and a description of any pending administrative or judicial proceeding in that item.
- (3) If the Department finds that any part or parts of the disclosure statement is not necessary to satisfy the requirements of G.S. 130A-295, such information shall not be required.
- (1) An applicant for a new, or modification to an existing, commercial facility permit, shall provide a description and justification of the need for the facility.
  - (m) Requirements for Off-site Recycling Facilities.
    - (1) The permit requirements of this Rule apply to owners and operators of off-site recycling facilities.
    - (2) The following provisions of 40 CFR Part 264, as incorporated by reference, shall apply to owners and operators of off-site recycling facilities:
      - (A) Subpart B - General Facility Standards;
      - (B) Subpart C - Preparedness and Prevention;
      - (C) Subpart D - Contingency Plan and Emergency Procedures;
      - (D) Subpart E - Manifest System, Recordkeeping and Reporting;
      - (E) Subpart G - Closure and Post-closure;
      - (F) Subpart H - Financial Requirements;
      - (G) Subpart I - Use and Management of Containers;
      - (H) Subpart J - Tank Systems;
      - (I) 264.101 - Corrective Action for Solid Waste Management Units;
      - (J) Subpart X - Miscellaneous Units; and
      - (K) Subpart DD - Containment Buildings.
    - (3) The requirements listed in Subparagraph (m)(2) of this Rule apply to the entire off-site recycling facility, including all recycling units, staging and process areas, and permanent and temporary storage areas for wastes.

- (4) The following provisions of 15A NCAC 13A .0109 shall apply to owners and operators of off-site recycling facilities:
  - (A) The substitute financial requirements of Rule .0109(i)(1), (2) and (4); and
  - (B) The additional standards of Rule .0109(r)(1), (2), (3), (6) and (7).
- (5) The owner or operator of an off-site recycling facility shall keep a written operating record at his facility.
- (6) The following information must be recorded, as it becomes available, and maintained in the operating record until closure of the facility:
  - (A) A description and the quantity of each hazardous waste received, and the method(s) and date(s) of its treatment, storage, or recycling at the facility;
  - (B) The location of all hazardous waste within the facility and the quantity at each location. This information must include cross-references to specific manifest document numbers if the waste was accompanied by a manifest; and
  - (C) Documentation of the fate of all hazardous wastes received from off-site or generated on-site. This shall include records of the sale, reuse, off-site transfer, or disposal of all waste materials.

- (n) Permit Fees for Commercial Hazardous Waste Facilities.
  - (1) An applicant for a permit modification for a commercial hazardous waste facility shall pay an application fee as follows:
    - (A) Class 1 permit modification \$100;
    - (B) Class 2 permit modification \$1,000; or
    - (C) Class 3 permit modification \$5,000.

Note: Class 1 permit modifications which do not require prior approval of the Division Director are excluded from the fee requirement.

- (2) The application fee for a new permit, permit renewal, or permit modification must accompany the application, and is non-refundable. The application shall be considered incomplete until the fee is paid. Checks shall be made payable to: Division of Waste Management.

*History Note: Authority G.S. 130A-294(c); 130A-294.1; 130A-295(a)(1),(2), (c); 150B-21.6; Eff. November 19, 1980; Amended Eff. November 1, 1989; June 1, 1988; February 1, 1988; December 1, 1987; Transferred and Recodified from 10 NCAC 10F .0034 April 4, 1990; Amended Eff. August 1, 1990; Recodified from 15A NCAC 13A .0014 Eff. August 30, 1990; Amended Eff. April 1, 1993; August 1, 1991; October 1, 1990; Recodified from 15A NCAC 13A .0013 Eff. December 20, 1996; Amended Eff. August 1, 2000.*

**CHAPTER 18 - ENVIRONMENTAL HEALTH**

**SUBCHAPTER 18A - SANITATION**

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

**15A NCAC 18A .0134 DEFINITIONS**

The following definitions shall apply throughout this Section; however, nothing in this Section shall be construed as expanding or restricting the definitions in G.S. 106-129 and G.S. 106-130:

- (1) "Adulterated" as used in G.S. 106-129 means the following:
  - (a) Any cooked crustacea or crustacea meat that does not comply with these Rules;
  - (b) Any cooked crustacea or crustacea meat which exceeds the bacteriological standards in Rule .0182 of this Section;
  - (c) Any cooked crustacea or crustacea meat which has been deemed to be an imminent hazard;
- (2) "Code date" means the date conspicuously placed on the container to indicate the date that the product was packed.
- (3) "Cook" means to prepare or treat raw crustacea by heating.
- (4) "Critical control point" means a point, step or procedure in a food process at which control can be applied, and a food safety hazard can as a result be prevented, eliminated or reduced to acceptable levels.
- (5) "Critical limit" means the maximum or minimum value to which a physical, biological or chemical parameter must be controlled at a critical control point to prevent, eliminate or reduce to an acceptable level the occurrence of the identified food safety hazard.
- (6) "Crustacea meat" means the meat of crabs, lobster, shrimp or crayfish.
- (7) "Division" means the Division of Environmental Health or its authorized agent.
- (8) "Food-contact surface" means the parts of equipment, including auxiliary equipment, which may be in contact with the food being processed, or which may drain into the portion of equipment with which food is in contact.
- (9) "Food safety hazard" means any biological, chemical or physical property that may cause a food to be unsafe for human consumption.
- (10) "Foreign" means any place or location outside the United States.
- (11) "Fresh crustacea" means a live, raw or frozen raw crab, lobster, shrimp or crayfish which shows no decomposition.
- (12) "HACCP plan" means a written document that delineates the formal procedures a dealer follows to implement food safety controls.
- (13) "Hazard analysis critical control point (HACCP)" means a system of inspection, control and monitoring measures initiated by a dealer to identify microbiological, chemical or physical food safety hazards which are likely to occur in shellfish products produced by the dealer.
- (14) "Imminent hazard" means a situation which is likely to cause an immediate threat to human life, an immediate threat of serious physical injury, an immediate threat of serious physical adverse health effects, or a serious risk of irreparable damage to the environment if no immediate action is taken.
- (15) "Internal temperature" means the temperature of the product as opposed to the ambient temperature.

- (16) "Misbranded" as used in G.S. 106-130 means any container of cooked crustacea or crustacea meat which is not labeled in compliance with these Rules.
- (17) "Operating season" means the season of the year during which a crustacea product is processed.
- (18) "Pasteurization" means the process of heating every particle of crustacea meat in a hermetically-sealed 401 by 301 one pound container to a temperature of at least 185°F (85°C) and holding it continuously at or above this temperature for at least one minute in properly operated equipment. The term includes any other process which has been found equally effective by the Division.
- (19) "Pasteurization date" means a code conspicuously placed on the container to indicate the date that the product was pasteurized.
- (20) "Person" means an individual, corporation, company, association, partnership, unit of government or other legal entity.
- (21) "Processing" means any of the following operations when carried out in conjunction with the cooking of crustacea or crustacea meat: receiving, refrigerating, air-cooling, picking, packing, repacking, thermal processing, or pasteurizing.
- (22) "Repacker" means a facility which repacks cooked crustacea meat into other containers.
- (23) "Responsible person" means the individual present in a cooked crustacea facility who is the apparent supervisor of the cooked crustacea facility at the time of the inspection. If no individual is the apparent supervisor, then any employee is the responsible person.
- (24) "Sanitize" means a bactericidal treatment by a process which meets the temperature and chemical concentration levels in 15A NCAC 18A .2619.
- (25) "Standardization report" means a report of tests which show that a piece of equipment can produce time/temperature results as required by these Rules.
- (26) "Thermal processing" means the heating of previously cooked crustacea or crustacea meat to a desired temperature for a specified time in properly operated equipment.
- (c) Any shellfish which exceed the bacteriological standards in Rule .0430 of this Subchapter; and
- (d) Any shellfish which are deemed to be an imminent hazard;
- (2) "Approved area" means an area determined suitable for the harvest of shellfish for direct market purposes.
- (3) "Bulk shipment" means a shipment of loose shellstock.
- (4) "Buy boat or buy truck" means any boat which complies with Rule .0419 of this Subchapter or truck which complies with Rule .0420 of this Subchapter that is used by a person permitted under these Rules to transport shellstock from one or more harvesters to a facility permitted under these Rules.
- (5) "Certification number" means the number assigned by the state shellfish control agency to each certified shellfish dealer. It consists of a one to five digit number preceded by the two letter state abbreviation and followed by the two letter symbol designating the type of operation certified.
- (6) "Critical control point" means a point, step or procedure in a food process at which control can be applied, and a food safety hazard can as a result be prevented, eliminated or reduced to acceptable levels.
- (7) "Critical limit" means the maximum or minimum value to which a physical, biological or chemical parameter must be controlled at a critical control point to prevent, eliminate or reduce to an acceptable level the occurrence of the identified food safety hazard.
- (8) "Depuration" means mechanical purification or the removal of adulteration from live shellstock by any artificially controlled means.
- (9) "Depuration facility" means the physical structure wherein depuration is accomplished, including all the appurtenances necessary to the effective operation thereof.
- (10) "Division" means the Division of Environmental Health or its authorized agent.
- (11) "Food safety hazard" means any biological, chemical or physical property that may cause a food to be unsafe for human consumption.
- (12) "HACCP plan" means a written document that delineates the procedures a dealer follows to implement food safety controls.
- (13) "Hazard analysis critical control point (HACCP)" means a system of inspection, control and monitoring measures initiated by a dealer to identify microbiological, chemical or physical food safety hazards which are likely to occur in shellfish products produced by the dealer.
- (14) "Heat shock process" means the practice of heating shellstock to facilitate removal of the shellfish meat from the shell.
- (15) "Imminent hazard" means a situation which is likely to cause an immediate threat to human life, and immediate threat of serious physical injury, an immediate threat of serious physical adverse health effects, or a serious risk of irreparable damage to the environment if no immediate action is taken.
- (16) "Misbranded" means the following:
  - (a) Any shellfish which are not labeled with a valid identification number awarded by regulatory

*History Note: Authority G.S. 106-129; 106-130; 130A-230; Eff. October 1, 1992; Amended Eff. August 1, 2000; August 1, 1998; February 1, 1997.*

**SECTION .0300 - SANITATION OF SHELLFISH - GENERAL**

**15A NCAC 18A .0301 DEFINITIONS**

The following definitions shall apply throughout Sections .0300 to .0900 of this Subchapter:

- (1) "Adulterated" means the following:
  - (a) Any shellfish that have been harvested from prohibited areas;
  - (b) Any shellfish that have been shucked, packed, or otherwise processed in a plant which has not been permitted by the Division in accordance with these Rules;

authority of the state or territory of origin of the shellfish; or

(b) Any shellfish which are not labeled as required by these Rules.

- (17) "Operating season" means the season of the year during which a shellfish product is processed.
- (18) "Person" means an individual, corporation, company, association, partnership, unit of government or other legal entity.
- (19) "Prohibited area" means an area unsuitable for the harvesting of shellfish for direct market purposes.
- (20) "Recall procedure" means the detailed procedure the permitted dealer will use to retrieve product from the market when it is determined that the product may not be safe for human consumption as determined by the State Health Director.
- (21) "Relaying or transplanting" means the act of removing shellfish from one growing area or shellfish grounds to another area or ground for any purpose.
- (22) "Repacking plant" means a shipper, other than the original shucker-packer, who repacks shucked shellfish into containers for delivery to the consumer.
- (23) "Reshipper" means a shipper who ships shucked shellfish in original containers, or shellstock, from permitted shellstock dealers to other dealers or to consumers.
- (24) "Sanitary survey" means the evaluation of factors having a bearing on the sanitary quality of a shellfish growing area including sources of pollution, the effects of wind, tides and currents in the distribution and dilution of polluting materials, and the bacteriological quality of water.
- (25) "Sanitize" means the a bactericidal treatment by a process which meets the temperature and chemical concentration levels in 15A NCAC 18A .2619.
- (26) "SELL BY date" means a date conspicuously placed on a container or tag by which a consumer is informed of the latest date the product will remain suitable for sale.
- (27) "Shellfish" means oysters, mussels, scallops and all varieties of clams. However, the term shall not include scallops when the final product is the shucked adductor muscle only.
- (28) "Shellstock" means any shellfish which remain in their shells.
- (29) "Shellstock conveyance" means all trucks, trailers, or other conveyances used to transport shellstock.
- (30) "Shellstock dealer" means a person who buys, sells, stores, or transports or causes to be transported shellstock which was not obtained from a person permitted under these Rules.
- (31) "Shellstock plant" means any establishment where shellstock are washed, packed, or otherwise prepared for sale.
- (32) "Shucking and packing plant" means any establishment or place where shellfish are shucked and packed for sale.
- (33) "Wet storage" means the temporary placement of shellstock from approved areas, in containers or floats in

natural bodies of water or in tanks containing natural sea water.

*History Note: Authority G.S. 130A-230; Eff. February 1, 1987; Amended Eff. August 1, 2000; August 1, 1998; February 1, 1997; January 4, 1994; September 1, 1990; December 1, 1987.*

**SUBCHAPTER 18C - WATER SUPPLIES**

**SECTION .2000 - FILTRATION AND DISINFECTION**

**15A NCAC 18C .2007 ENHANCED FILTRATION AND DISINFECTION**

- (a) Public water systems shall respond to the State in writing to significant deficiencies outlined in sanitary survey reports no later than 45 days after receipt of the report, indicating how and on what schedule the system will address significant deficiencies noted in the survey.
- (b) Public water systems shall take necessary steps to address significant deficiencies identified in sanitary survey reports if such deficiencies are within the control of the public water system and its governing body.
- (c) Sanitary survey means an onsite review by the State of the water source (identifying sources of contamination using results of source water assessments where available), facilities, equipment, operation, maintenance, and monitoring compliance of a public water system to evaluate the adequacy of the system, its sources and operations and the distribution of safe drinking water.
- (d) A Comprehensive Performance Evaluation (CPE) is a thorough review and analysis of a plant's performance-based capabilities and associated administrative, operation, and maintenance practices. It is conducted to identify factors that may be adversely impacting a plant's capability to achieve compliance and emphasizes approaches that can be implemented without significant capital improvements.
- (e) A significant deficiency is a defect in a system's design, operation, or maintenance, as well as any failures or malfunctions of its treatment, storage, or distribution system, that is causing or has the potential to cause the introduction of contamination into water delivered to customers.
- (f) The provisions of 40 C.F.R. 141, Subpart P - Enhanced Filtration and Disinfection are hereby incorporated by reference including any subsequent amendments and editions. This material is available for inspection at the Department of Environment and Natural Resources, Division of Environmental Health, 2728 Capital Boulevard, Raleigh, North Carolina. Copies may be obtained from the Environmental Protection Agency's (USEPA) Drinking Water Hotline at 1-800-426-4791 or from EPA's webpage at <http://www.epa.gov/ogwdw/regs.html>.

*History Note: Authority G.S. 130A-315; P.L. 93-523; 40 C.F.R. 141; Eff. August 1, 2000.*

**SUBCHAPTER 18D - WATER TREATMENT FACILITY OPERATORS**

**SECTION .0200 - QUALIFICATION OF APPLICANTS AND CLASSIFICATION OF FACILITIES**



**15A NCAC 18D .0203 DETERMINATION OF VARIOUS CLASSES OF CERTIFICATION**

- (a) Determination of various classes of certification shall be based on the classification of water treatment facilities to be operated.  
 (b) The designation of plant classification shall be based on the following point system:

PARAMETER	RATING VALUE
(1) Surface Water Source	
(A) flowing stream	5
(B) flowing stream with impoundment	7
(C) raw water treatment	3
(2) Ground Water Source	
(A) first five wells	5
(B) add 1 point per 5 wells or fraction thereof over 5	1
(3) Coagulation	
(A) aluminum sulfate, ferric chloride	10
(B) polymer	5
(4) Mixing	
(A) baffle	2
(B) mechanical	4
(C) air	3
(5) Oxidation (pre-treatment)	
(A) Cl <sub>2</sub> O <sub>2</sub> ;	5
(B) ozone	5
(C) KMnO <sub>4</sub> ;	3
(D) Cl <sub>2</sub> ;	3
(6) Carbon Treatment	2
(7) Aeration	
(A) mechanical draft	3
(B) coke tray/splash tray	2
(C) diffused	3
(D) packed tower (VOC reduction)	10
(8) pH Adjustment (primary)	
(A) caustic Na OH	10
(B) lime/soda ash	3
(C) acid	10
(9) Sedimentation	
(A) standard rate	5
(B) tube settlers	3
(C) upflow	8
(D) pulsators and plates	5
(10) Contact Tank	1
(11) Filtration	
(A) pressure	
(i) sand/anthracite	8
(ii) synthetic media (birm)	8
(iii) granular activated carbon (GAC)	10
(B) gravity	
(i) sand	10
(ii) anthracite (mixed)/GAC	12
(iii) with surface wash or air scour	2
(C) membrane	10
(12) Ion Exchange	
(A) softener, Na cycle	5
(B) softener, H cycle	7
(C) Fe and Mn (greensand)	10
(D) mixed bed or split stream	12
(13) Lime Softening	
(A) spiractors	10
(B) clarifier with coagulation	12
(C) fuel burner (recarbonation)	5
(14) Phosphate (sequestering agent)	5
(15) Stabilization	

(A) acid feed	10
(B) phosphate	2
(C) caustic (NaOH)	10
(D) lime/soda ash	3
(E) contact units	5
(16) Reverse Osmosis, Electrodialysis	15
(17) Disinfection	
(A) gas Cl <sub>2</sub> ;	10
(B) hypochlorite solution	7
(C) Cl <sub>2</sub> O <sub>2</sub> (sodium chlorite and Cl <sub>2</sub> )	13
(D) ozone	13
(E) ammonia and Cl <sub>2</sub> ;	12
(F) ultraviolet light (uv)	5
(18) Fluoridation	
(A) saturator	8
(B) dry feed	8
(C) solution (acid)	10
(19) Pumping	
(A) raw	3
(B) intermediate	1
(C) finished	3
(D) system booster	2
(20) Storage	
(A) raw	1
(B) treated ground level tank	1
(C) elevated in system (each extra tank 1 pt)	2
(D) hydropneumatic	2
(21) Population Served 1 point per 1,000 persons served	50 max.
(22) Plant Capacity 1 point per 1 MGD capacity	25 max.
(23) On-Site Quality Control	
(A) bacteriological	
(i) MPN/MF	5
(ii) HPC	2
(iii) MMO-MUG (Colilert)	2
(B) pH	
(i) meter	2
(ii) test kit	1
(C) fluoride	
(i) meter	3
(ii) colorimetric	3
(D) chlorine	
(i) titrator	3
(ii) colorimeter/spec.	2
(iii) test kit	1
(E) iron	1
(F) hardness	1
(G) alkalinity	1
(H) turbidity	1
(I) manganese	1
(J) others (1 pt. each)	1
(K) A.A. Spec, or G.C. Unit	5 each

(c) The designation of distribution system classifications shall be based on system characteristics as outlined in Rule .0205 of this Section.

*History Note:* Authority G.S. 90A-21(c); 90A-22;

*Eff. February 1, 1976;*

*Readopted Eff. March 1, 1979;*

*Amended Eff. August 1, 2000; August 3, 1992; January 1, 1992; September 1, 1990.*

**15A NCAC 18D .0403 ISSUANCE OF GRADE  
CERTIFICATE**

**SECTION .0400 - ISSUANCE OF CERTIFICATE**

(a) When the names of the operators and the grade of their current voluntary certificate are known, the Board shall notify the operator involved and upon payment of the license fee issue a grade certificate corresponding to the grade of certification now held by the operator.

(b) The existing operator in responsible charge for systems which have no treatment and have fewer than 100 service connections may be granted a grandparented certification valid only for the system or systems that the operator managed on August 2, 2000. The operator shall not be responsible for more than 10 systems without written permission from the Board. All grandparented certifications are site specific, non-transferable, and shall expire on July 1, 2003. If the classification of the plant or distribution system managed changes to a higher level, the grandparented certification shall no longer be valid for the oversight of the system. Grandparented certifications may be issued after July 1, 2001.

(c) To obtain a certificate the applicant shall satisfactorily complete an examination except in the case of a grandparented certificate, temporary certificate or when certification is by reciprocity, or when the certificate is being issued to the holder of a current voluntary certificate pursuant to Paragraph (a) of this Rule.

*History Note: Authority G.S. 90A-21(c); 90A-23; 90A-25; Eff. February 1, 1976; Readopted Eff. March 1, 1979; Amended Eff. August 1, 2000; August 3, 1992; January 1, 1992; March 1, 1991; September 1, 1990.*

**TITLE 16 - DEPARTMENT OF PUBLIC EDUCATION**

**CHAPTER 6 - ELEMENTARY AND SECONDARY EDUCATION**

**SUBCHAPTER 6C - PERSONNEL**

**SECTION .0100 - GENERAL PROVISIONS**

**16 NCAC 06C .0102 NATURE OF LICENSURE**

(a) The SBE shall exercise its licensing authority through the department in two general areas:

- (1) The SBE shall consider for approval the teacher education programs of IHEs that belong to the SACS and that meet the requirements of Rule .0202 of this Subchapter. The SBE shall award or deny approval to teacher education programs by the process described in 16 NCAC 6C .0202.
- (2) The SBE shall award licenses to individuals who desire to obtain employment as a professional public school employees and who meet the requirements of Section .0300 of this Subchapter. The SBE shall act on personnel license requests according to the process contained in 16 NCAC 6C .0301.

(b) The SBE shall base its approval on the requirements that are in effect at the time the IHE or the individual applies for approval.

*History Note: Authority G.S. 115C-284(c); 115C-296; 115C-315(d);*

*Eff. July 1, 1986; Amended Eff. August 1, 2000.*

**16 NCAC 06C .0103 STATE BOARD OF EDUCATION ACTION**

*History Note: Authority G.S. 115C-284(c); 115C-296; 115C-315(d); Eff. July 1, 1986; Repealed Eff. August 1, 2000.*

**SECTION .0200 - TEACHER EDUCATION**

**16 NCAC 06C .0202 APPLICATION FOR APPROVAL; CRITERIA**

- (a) Each IHE that seeks approval for any teacher education program must file with the department a preliminary application.
- (b) The IHE shall engage in self-study in accordance with the existing NCATE/state protocol agreement.
- (c) When the IHE has completed all preparation phases of the self-study, the department shall send a visitation committee to verify the reports for all specialty areas for which approval is sought.
- (d) The SBE shall notify IHEs that are denied approval of the reasons for denial. The IHE may reapply after it has corrected the conditions that led to the denial of approval.
- (e) Each approved IHE shall continually review its programs. The SBE shall annually monitor student performance based upon required examinations and progression toward continuing licensure. The IHE may request or the SBE may conduct a re-evaluation at any time.
- (f) During the final year of the current approval period, the IHE shall arrange for a re-approval committee visit.
- (g) The SBE must approve any revisions to approved programs.
- (h) The SBE must approve each teacher education program before an IHE may recommend its graduates for licensure. In making recommendations to the SBE and in determining the approval status of an IHE teacher education program and its specialty area program, such as mathematics or science, the state evaluation committee and the SBE, respectively, shall weigh the following criteria:

- (1) SACS accreditation of the IHE;
- (2) either:
  - (A) full accreditation or accreditation with stipulations of the professional education unit by the National Council for Accreditation of Teacher Education (NCATE) at the basic and advanced levels, as appropriate; or
  - (B) approval of the professional education unit by the state program approval process as follows:
    - (i) the standards for unit approval must be equal to or higher than those applied by NCATE; and
    - (ii) the state review team must include out-of-state evaluators;
- (3) all IHE specialty area program reports at the undergraduate and graduate levels;
- (4) evidence that the IHE requires at least a 2.50 grade point average on a 4.00 scale for formal admission into teacher education;

- (5) evidence that during the two preceding consecutive years, 70% of the graduates of the IHE have passed the NTE/PRAXIS exams required for licensure;
- (6) evidence that during the two preceding consecutive years, 95% of the graduates of the IHE employed by public schools in the State have earned a continuing license as provided by Rule .0304 of this Subchapter; and
- (7) evidence that faculty members assigned by the IHE to teach undergraduate or graduate methods courses or to supervise field experiences for prospective teachers hold valid North Carolina teachers' licenses in the area(s) of their assigned responsibilities.

*History Note: Authority G.S. 115C-12(9)a.; 115C-296(b); N.C. Constitution, Article IX, s. 5; Eff. July 1, 1986; Amended Eff. July 1, 1993; December 1, 1992; March 1, 1990; Amended Eff. August 1, 2000.*

**16 NCAC 06C .0207 PROSPECTIVE TEACHER SCHOLARSHIP LOANS**

- (a) Recipients of prospective teacher scholarship loans who attend a college or university will receive up to the amount specified in G.S. 115C-471(1) per year to pay for courses, fees and books. Recipients of prospective teacher scholarship loans who attend a technical/community college will receive nine hundred dollars (\$900.00) per year to pay for courses, fees and books.
- (b) Scholarship loans shall be available only to legal residents of North Carolina. To be considered a legal resident, a person must have lived in the state for at least 12 months before applying for the loan.
- (c) Persons who are in default on another student loan shall not be eligible for a scholarship loan under this Rule.
- (d) Scholarship loan recipients must enroll in and attend a public or private college or university in this state with a teacher education program that has been approved under Rule .0202 of this Subchapter or a technical/community college in this state with a program of study that leads to teacher licensure.
- (e) A recipient's scholarship loan may be continued during periods of study abroad only if the recipient remains enrolled in a North Carolina college or university and receives credit toward completion of requirements for the work completed while abroad.
- (f) Scholarship loans may not be used to obtain credits through correspondence courses or extension courses even if the recipient uses less than the maximum amount as an undergraduate.
- (g) The department may cancel a loan if the recipient:
  - (1) willfully reports requested information that is erroneous or incomplete;
  - (2) fails to complete and return requested forms by the required dates;
  - (3) fails to pursue a full-time program in teacher education or withdraws permanently from college;
  - (4) is not admitted to the college's teacher education program;
  - (5) is convicted of a felony or other crime involving moral turpitude, possession or use of controlled substances, or

other grounds for which a teaching certificate may be revoked under 16 NCAC 6C .0312;

- (6) does not maintain a 2.5 cumulative average for the freshman year and a 3.0 cumulative average for each of the following years, based upon a 4.0 grading scale; or
- (7) fails to keep the department informed of any address change or change in status as a prospective teacher.
- (h) Upon cancellation or default, the entire principal balance, together with any accrued interest, shall become immediately due and payable.
- (i) Once a recipient receives a license based upon the entry-level degree, the amount of the loan and accrued interest must be repaid by either employment as a regular full-time teacher or by making cash payments. Recipients who do not begin teaching in the school year following their qualifying for licensure must begin repayment upon their failure to begin teaching. Repayment shall be made in full or in equal monthly payments as determined by the Department, contingent upon the number of notes received.
- (j) For purposes of credit for teaching, "full school year" shall mean a minimum of six calendar months within one school year. Service as a tutor, a substitute teacher, a part-time teacher or a teacher in a non-public school shall not qualify as service credit for loan repayment.

*History Note: Authority G.S. 115C-471; Eff. September 1, 1991; Amended Eff. July 1, 1995; Amended Eff. August 1, 2000.*

**SECTION .0300 - CERTIFICATION**

**16 NCAC 06C .0301 GENERAL INFORMATION**

- (a) Any person who desires to obtain employment from a LEA in a professional position shall apply for and obtain a license from the department. Each applicant shall file an application together with an official transcript(s), a recommendation by a designated official of the approved IHE where preparation was completed, and the licensure fee specified in G.S. 115C-296(a2).
- (b) The department shall evaluate each application and its supporting documentation and shall notify each applicant of the action it takes.
- (c) An applicant who desires to upgrade, renew or add new fields to a license shall supply documentation to the department that supports the desired action.
- (d) A class "A" teaching license may be changed from early childhood, intermediate, middle grades or secondary to either of the other categories upon the applicant's completion of the program for the license. An applicant who secures credit as provided in Rule .0302 of this Section for new subject or teaching fields may have these fields added to a teaching license.
- (e) The department shall base the effective date of a license on the date the applicant completed the educational program requirements for the license. For applicants who completed these requirements before the current fiscal year in which the application is processed, the effective date shall be July 1. For applicants who have completed these requirements within the current fiscal year in which the application is processed, the effective date shall be the date the applicant completed the requirements. Every license shall expire on June 30 unless it is renewed or extended in accordance with the provisions of this

Section. A provisional license issued pursuant to Rule .0305(c) of this Section shall be valid for one year. A lateral entry license issued pursuant to Rule .0305(b) of this Section shall be valid for two years. The initial license issued pursuant to Rule .0304(c)(1) of this Section shall be valid for three years. The continuing license issued pursuant to Rule .0304(c)(2) of this Section shall be valid for five years.

(f) Any licensed person may apply to the department on forms that it shall furnish for a duplicate license, in the event the original is lost, or for the change of the applicant's name.

(g) Professional personnel may be assigned only to areas in which the individual holds a license, a provisional license, endorsement or provisional endorsement as required by the department. The LEA may assign any licensed teacher who is the best qualified to teach remedial courses, regardless of license area. This provision shall not apply to any vocational license that has been restricted by the department as a part of completing licensure requirements.

*History Note: Authority G.S. 115C-12(9)a; N.C. Constitution, Article IX, s. 5; Eff. July 1, 1986; Amended Eff. August 1, 2000; March 1, 1990;*

**16 NCAC 06C .0302 CREDIT**

(a) The department shall compute all credit for licensure, including residence, extension and correspondence credit, in semester hours. The department shall compute credit for re-licensing or renewal purposes in quarter hours. A quarter hour shall have the value of two-thirds of a semester hour.

(b) The department may accept extension and correspondence credit earned from an IHE that has been accredited by a national or regional accrediting authority such as SACS at the class "A" license level and below, for purposes of renewal, adding a teaching subject and removing deficiencies. The department shall allow no more than six semester hours of correspondence credit per certificate action. For purposes of upgrading undergraduate licenses, a maximum of 10 of the 30 semester hours required for raising the license to the next higher level may be extension and correspondence credit. The IHE that has been approved under Rule .0202 of this Subchapter shall accept all credits applying to graduate licenses and licenses in the special services areas, including all licenses above the "A" level.

(c) When a person earns credits in more than one IHE before obtaining a degree, the person shall transfer the credit to an IHE that has been approved under Rule .0202 of this Subchapter that the person has attended or expects to attend. The person must be enrolled in a teacher education curriculum at the IHE that has been approved under Rule .0202 of this Subchapter.

(d) A person may use credit used for renewal or reinstatement of a license of lower rank toward upgrading a license.

(e) The department shall retain all credits submitted to it. The department shall not return transcripts nor furnish certified copies of credits to applicants.

*History Note: Authority G.S. 115C-12(9)a; N.C. Constitution, Article IX, s. 5; Eff. July 1, 1986; Amended Eff. August 1, 2000.*

**16 NCAC 06C .0303 PROGRAM REQUIREMENTS**

**FOR LICENSURE**

In order to receive the initial regular license, an applicant must obtain the bachelor's or other required degree as specified in Paragraph (b) of Rule .0304 of this Section. The applicant must also receive a recommendation from the IHE that includes the approval or endorsement of the administrative head of the professional education unit. The IHE must determine that the candidate has satisfied all minimum score requirements on standard examinations specified by the SBE before it makes a recommendation.

*History Note: Authority G.S. 115C-12(9)a; N.C. Constitution, Article IX, s. 5; Eff. July 1, 1986; Amended Eff. August 1, 2000.*

**16 NCAC 06C .0304 LICENSE PATTERNS**

(a) Licenses shall indicate grade levels, content areas and specializations for which the professional shall be eligible for employment, as well as preparation and experience levels.

(b) Licenses shall be of the following types:

- (1) Teacher. The license shall entitle the holder to teach in some designated area of specialization at the elementary, middle, or secondary level. There shall be four levels of preparation:
  - (A) bachelor's degree (A level);
  - (B) master's degree (G level);
  - (C) sixth-year (AG level); and
  - (D) doctorate (DG level).

The teacher license shall further be categorized as prekindergarten B-K, elementary K-6, middle grades 6-9, secondary 9-12, special subjects K-12, and work force development.

- (2) Administrator/supervisor. The holder may serve in generalist and program administrator roles such as superintendent, assistant or associate superintendent, principal, assistant principal or curriculum-instructional specialist. There shall be three levels of preparation:
  - (A) master's degree;
  - (B) sixth-year; and
  - (C) doctorate.

- (3) Student services area. The holder may provide specialized assistance to the learner, the teacher, the administrator and the education program in general. This category shall include school counseling, school social work, school psychology, audiology, speech language pathology, and media. There shall be three levels of preparation as in the case of the administrator/supervisor, except that school psychology shall be restricted to the sixth-year or doctorate and school social work may be earned at the bachelor's level.

(c) The department shall base license classification on the level and degree of career development and competence. There shall be two classifications of licenses:

- (1) The initial license, which shall be valid for three years, shall allow the holder to begin practicing the profession on an independent basis.
- (2) The continuing license shall authorize professional school service on an ongoing basis, subject to renewal every five years.

*History Note: Authority G.S. 115-12(9)a; N.C. Constitution, Article IX, s. 5; Eff. July 1, 1986; Amended Eff. August 1, 2000; March 1, 1990.*

**16 NCAC 06C .0305 LICENSES FOR NON-TEACHER EDUCATION GRADUATES**

(a) A person who has not graduated from a teacher education program that has been approved under Rule .0202 of this Subchapter who later desires to teach shall have his/her credentials evaluated by an approved IHE or teacher education consortium. The person shall satisfy the assessment of his/her needs and be recommended by the IHE or consortium for a license.

(b) Persons who have been selected for employment by a LEA under the lateral entry provisions of G.S. 115C-296(c) may obtain a license as follows:

- (1) To be eligible for a lateral entry license, a person shall:
  - (A) have attained a bachelor's degree in the license area from a regionally-accredited IHE;
  - (B) be recommended for a lateral entry license by the employing LEA; and
  - (C) have had a minimum cumulative grade point average of at least a 2.5 or have passed the NTE PRAXIS 1 exams (Preprofessional Skills Tests in Reading, Writing, and Mathematics) and have attained one of the following:
    - (i) a grade point average of at least 3.0 on all work completed in the senior year;
    - (ii) a grade point average of at least 3.0 in the major; or
    - (iii) a grade point average of at least 3.0 on a minimum of 15 semester hours of coursework completed within the last 5 years.
- (2) A person who holds a lateral entry license shall complete a program that includes the following components:
  - (A) The employing LEA shall assess the person's transcripts and experience in collaboration with an approved teacher education program of an IHE or an alternative licensure program approved by the SBE. If the collaboration cannot occur, the LEA must document its efforts toward collaboration or the reasons why collaboration did not occur. The LEA must send that documentation with its recommendation that the person be issued a lateral entry license. As a result of the assessment, the LEA may identify competencies for which the person must receive training;
  - (B) The employing LEA shall commit in writing to:
    - (i) provide a two-week pre-work orientation that includes lesson planning, classroom organization, classroom management, and an overview of the ABCs Program including the standard course of study and end-of-grade and end-of-course testing;
    - (ii) assign the person a mentor on or before the first day on the job;

- (iii) provide working conditions that are similar to those for novice teachers;
  - (iv) give regular focused feedback to the person for improving instruction; and
  - (v) assist the person in accessing prescribed course work and professional development opportunities;
- (C) The person shall attain passing scores on appropriate NTE specialty area or PRAXIS 2 exams during the first two years of assignment;
  - (D) The person shall complete a staff development program that includes a two-week training course prior to beginning the work assignment, together with 9 renewal hours or 6 semester hours each year;
  - (E) The person shall successfully complete the three-year initial licensure program in the lateral entry license area the person is seeking;
  - (F) The person shall present evidence from evaluations that demonstrates three years successful experience in the license area the person is seeking;
  - (G) The person shall attain a passing score on the PRAXIS principles of learning and teaching examination upon completion of the training identified as a result of the assessment described in Part (b)(2)(A) of this Rule;
  - (H) The person shall complete all requirements of this Rule within 5 years of becoming eligible for a lateral entry license; and
  - (I) The IHE or alternative licensure program approved by the SBE shall recommend to the Department that the person be licensed.
- (c) A person who is qualified to hold at least a class "A" teaching license may be issued additional areas of licensure on a provisional basis as needed by LEAs. The person must satisfy deficiencies for full licensure at the rate of six semester hours per year. The person must complete this yearly credit before the beginning of the following school year and the credit must be directly applicable to the provisional area(s). The person must complete all credit requirements by the end of the fifth year of provisional licensure.
- (d) The Department shall issue an emergency license to persons who hold at least a baccalaureate degree but who do not qualify for a lateral entry license. The emergency license shall be valid for one year and may not be renewed. When it requests an emergency license for a person, the LEA must document that no appropriately licensed professionals or persons who are eligible for a lateral entry license are available to accept the position.
- (1) To be eligible for an emergency license, the person must have attained a bachelor's degree from a regionally-accredited IHE and be recommended by the employing LEA.
  - (2) A person who holds an emergency license shall complete a program that includes the following components:
    - (A) The employing LEA shall commit in writing to:
      - (i) provide a two-week pre-work orientation that includes lesson planning, classroom organization, classroom management, and an overview of the ABCs Program

- including the standard course of study and end-of-grade and end-of-course testing;
  - (ii) assign the person a mentor on or before the first day on the job;
  - (iii) provide working conditions that are similar to those for novice teachers;
  - (iv) give regular focused feedback to the person for improving instruction; and
  - (v) assist the person in obtaining a teaching license.
- (B) The person shall complete a staff development program that includes a two-week training course prior to beginning the work assignment.
- (C) The LEA shall provide the person with on-going support designed to enhance the person's classroom teaching performance.

- (B) the activity shall have identified goals and objectives that are designed to increase knowledge or skills in the person's license area or job assignment;
  - (C) the activity shall include focused content and instruction that are sequenced to develop specified competencies of a specific population;
  - (D) the activity shall be conducted by instructional personnel approved by the sponsoring school unit or employer; and
  - (E) the activity shall include a focused evaluation designed to gauge the change in learner knowledge or skill and to guide the development of future programs;
- (5) independent study of no more than five units of renewal credit per five-year renewal period which meets the following criteria:
- (A) teachers and other licensed personnel help to develop local independent study procedures which the superintendent shall keep on file and periodically send to each licensed employee; and
  - (B) the employee and the superintendent or his or her designee shall plan the experience in advance, including identification of competencies to be acquired and an evaluation to determine satisfactory achievement of those competencies.

(d) LEAs and governing boards of schools shall assure that all local courses, workshops and independent study activities which do not carry IHE credit meet the standards contained in this Rule.

(e) LEAs may develop an alternative license renewal plan that is competency-based and results-oriented. The plan must describe the connection among professional development, the school improvement plan, and the individual's license area or job responsibilities through processes such as peer review and annual evaluation. The plan may waive specific hour requirements that a licensed employee must meet and focus instead on knowledge and skill acquired by participants. The plan must include outcome measures and must be submitted to the Department for review in advance of its implementation.

(f) LEAs must adopt a procedure to determine the appropriateness of credit in advance of renewal activities. In determining appropriateness the LEA must consider direct relationship to critical job responsibilities, school improvement plans, and SBE strategic priorities to properly establish credit for the activity. Each LEA must report on participation in and effectiveness of professional development to the North Carolina Professional Teaching Standards Commission on an annual basis.

(g) Persons who hold a North Carolina license but who are not currently employed in the public schools or by governing boards of nonpublic schools may earn renewal credit in college or university credit activities, or local courses and workshops on the same basis as currently employed persons. The Department shall evaluate the appropriateness of the credits based on their direct relationship to the license field, the suitability of the content level, and the requirements set out in Paragraph (c) of this Rule.

*History Note: Authority G.S. 115C-12(9)(a); N.C. Constitution, Article IX, s. 5;*

*History Note: Authority G.S. 115C-12(9)(a); N.C. Constitution, Article IX, s. 5; Eff. July 1, 1986; Amended Eff. August 1, 2000; March 1, 1990.*

**16 NCAC 06C .0306 LICENSE ENDORSEMENT**

Within the operation of programs approved under Rule .0202 of this Subchapter, IHEs may recommend persons who qualify for full licensure for an endorsement to that license. The department shall issue an endorsement based on a minimum of 18 hours in a specific content area where these hours are specifically related to that license area. License endorsements shall be restricted to less than half-time teaching assignments.

*History Note: Authority G.S. 115C-12(9)(a); N.C. Constitution, Article IX, s. 5; Eff. July 1, 1986; Amended Eff. August 1, 2000; March 1, 1990.*

**16 NCAC 06C .0307 LICENSE RENEWAL**

(a) Licenses shall be valid for a period of five years from the effective date of issuance. Holders must renew their licenses within each five-year period. The Department shall apply license renewal credit to the person's license field(s) and professional duties.

(b) The Department shall base renewal or reinstatement of a license on 15 units of renewal credit. A unit of credit shall be equal to one quarter hour or two-thirds of a semester hour of IHE college or university credit, 10 hours of professional development, or one school year of teaching experience.

(c) Currently employed personnel shall maintain an individual growth plan. These persons may obtain renewal credit for the following activities:

- (1) college or university credit;
- (2) teaching experience (one unit for each year);
- (3) earning National Board for Professional Teaching Standards certification or completion of the National Board for Professional Teaching Standards certification process (15 units of renewal credit);
- (4) completion of activities that meet the following criteria (one unit of renewal credit per 10 clock hours):
  - (A) the activity shall be delivered in a minimum of 10 clock hours over time with on-the-job application, feedback, and follow-up;

*Eff. July 1, 1986;*  
*Amended Eff. August 1, 2000; January 2, 1998; July 1, 1994;*  
*December 1, 1991.*

### **16 NCAC 06C .0309 RECIPROCITY IN LICENSURE**

Persons who have not completed a teacher education program in this state that has been approved under Rule .0202 of this Subchapter shall be eligible for a license by the department at the class "A" level as follows:

- (1) graduates of institutions outside the state that are accredited by the National Council for Accreditation of Teacher Education, provided that:
  - (a) the applicant seeks a license in his major area(s) of preparation;
  - (b) the applicant is recommended by the preparing institution for a license in his major area(s) of preparation;
  - (c) the recommendation is supported by an official transcript supplied by the institution; and
  - (d) the applicant seeks a license in an area or level of teaching for which the department provides a license;
- (2) teachers accepted from other states under G.S. 115C-349 through 115C-358;
- (3) graduates who meet the standards developed by the National Association of State Directors of Teacher Education and Certification; and
- (4) teacher education graduates of out-of-state institutions that are accredited by a national or regional accrediting authority such as SACS who do not meet the requirements of Items (1)-(3) of this Rule, as follows:
  - (a) The department shall issue a reciprocity license, which is a provisional license that is valid for one year. The department shall remove the provisional limitation after the person has taught for one school year.
  - (b) The license shall cover only the areas and levels in which the applicant holds, or is qualified to hold, an out-of-state license.
  - (c) A person who holds a reciprocity license must satisfy the renewal requirements of Rule .0307 of this Section.
  - (d) The applicant must hold or be qualified to hold the highest grade current license in the state in which the applicant completed the bachelor's level teacher education program.

*History Note: Authority G.S. 115C-12(9)a; N.C. Constitution, Article IX, s. 5;*  
*Eff. July 1, 1986;*  
*Amended Eff. August 1, 2000; March 1, 1990.*

### **16 NCAC 06C .0311 TEMPORARY PERMIT**

- (a) A candidate for a license who has not met the standard examinations requirement shall receive a temporary permit if:
  - (1) the candidate did not know that a minimum standard examination score was required for a license; and
  - (2) the candidate has not had the opportunity to satisfy this requirement after becoming aware of it.
- (b) A temporary permit shall be valid for the remainder of the fiscal year during which the permit is established. Graduates of

in-state programs approved under Rule .0202 of this Subchapter shall not be eligible for a temporary permit.

*History Note: Authority G.S. 115C-12(9)a; N.C. Constitution, Article IX, s. 5;*  
*Eff. July 1, 1986;*  
*Amended Eff. August 1, 2000; March 1, 1990.*

### **16 NCAC 06C .0312 LICENSE SUSPENSION AND REVOCATION**

(a) The SBE may deny an application for a license or may suspend or revoke a license issued by the department only for the following reasons:

- (1) fraud, material misrepresentation or concealment in the application for the license;
- (2) changes in or corrections of the license documentation that make the individual ineligible to hold a license;
- (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;
- (4) final dismissal of a person by a local board pursuant to G.S. 115C-325(e)(1)b., if there is a reasonable and adverse relationship between the underlying misconduct and the continuing ability of the person to perform any of his/her professional functions effectively;
- (5) final dismissal of a person by a LEA under G.S. 115C-325(e)(1)e.;
- (6) resignation from employment with a LEA without thirty work days' notice, except with the prior consent of the local superintendent;
- (7) revocation of a license by another state;
- (8) any other illegal, unethical or lascivious conduct by a person, if there is a reasonable and adverse relationship between the underlying conduct and the continuing ability of the person to perform any of his/her professional functions in an effective manner; and
- (9) failure to report revocable conduct as required under Paragraph (b) of this Rule.

(b) In addition to any duty to report suspected child abuse under G.S. 7B-301, any superintendent, assistant superintendent, associate superintendent, personnel administrator or principal who knows or has substantial reason to believe that a licensed employee of the LEA has engaged in behavior that would justify revocation of the employee's license under Subparagraphs (3), (4) or (8) of Paragraph (a) of this Rule and which behavior involves physical or sexual abuse of a child shall report that information to the Superintendent of Public Instruction no later than five working days after the date of a dismissal or other disciplinary action or the acceptance of a resignation based upon that conduct. For purposes of this section, the term "physical abuse" shall mean the infliction of serious physical injury other than by accidental means and other than in self-defense. The term "sexual abuse" shall mean the commission of any sexual act upon a student or causing a student to commit a sexual act, regardless of the age of the student and regardless of the presence or absence of consent. This paragraph shall apply to acts that occur on or after October 1, 1993.



(c) Upon the receipt of a written request and substantiating information from any LEA, local superintendent or other person in a position to present information as a basis for the suspension or revocation of a person's license, the Superintendent of Public Instruction will conduct an investigation sufficient to determine whether reasonable cause exists to believe that the person's license should be suspended or revoked.

- (1) If the Superintendent determines that reasonable cause exists to believe that the person's license should be suspended or revoked on one or more of the grounds specified in Paragraph (a) of this Rule, the Superintendent shall prepare and file written charges with the SBE.
- (2) The SBE will review the written charges and determine whether the person's license should be suspended or revoked based on the information contained in the written charges. If the SBE determines that the written charges constitute grounds for suspension or revocation, it shall provide the person with a copy of the written charges, and notify the person that it will revoke the person's license unless the person, within 60 days of receipt of notice, initiates administrative proceedings under G.S. 150B-3. The notice will be sent certified mail, return receipt requested.
- (3) If the person initiates administrative proceedings the SBE will defer final action on the matter until receipt of a proposed decision as provided for in G.S. 150B-34. If the person does not initiate administrative proceedings within 60 days of receipt of notice, the SBE may suspend or revoke the person's license at its next meeting.
- (d) The SBE may suspend an individual's license for a stated period of time or may permanently revoke the license, except as limited by G.S. 115C-325(o).
- (e) The SBE may accept the voluntary surrender of a license in lieu of seeking revocation of the license. Before it accepts a voluntary surrender the SBE shall make findings of fact regarding the circumstances surrounding the voluntary surrender to demonstrate that grounds existed under which the SBE could have initiated license revocation proceedings. The SBE shall treat a voluntary surrender the same as a revocation.
- (f) The SBE may reinstate a suspended or revoked license or may grant a new license after denial of a license under Paragraph (a) of this Rule upon application and showing of good cause, as defined by 26 NCAC 03 .0118, by the individual. The burden of proving good cause is on the applicant. The SBE will not grant any request for reinstatement or for granting a new license unless it finds as facts that:
  - (1) the action that resulted in revocation or denial of the license did not involve abuse of minors; moral turpitude or grounds listed in G.S. 115C-325 (e)(1)b;
  - (2) the person has no record of subsequent behavior that could have resulted in license revocation; and
  - (3) there is no court order or judicial determination that would prohibit the person from returning to or holding a licensed position.
- (g) The SBE will notify all other states of all actions which involve the, suspension, revocation, surrender, or reinstatement of a certificate.

*History Note: Authority G.S. 115C-12(9)a.; N.C. Constitution, Article IX, s. 5; Eff. July 1, 1986; Amended Eff. January 1, 1988; ARRC Objection Lodged Eff. February 22, 1990; ARRC Objection Removed Eff. March 15, 1990; Amended Eff. August 1, 2000; October 1, 1993; November 1, 1990; August 1, 1990.*

**SUBCHAPTER 6H - FEDERAL PROGRAMS**

**SECTION .0100 – FEDERAL PROGRAMS**

**16 NCAC 06H .0103 COMPLAINT PROCEDURES FOR FEDERAL PROGRAMS**

- (a) The department shall receive, review and resolve complaints for which no other procedures or remedies are available. These complaints must involve the allegation that LEAs, another subgrantee or the department has violated a federal statute, regulation or interpretive rule. This Rule shall affect those federal education programs listed in 34 CFR Part 76.
- (b) Any person(s) who believes that grounds exist for filing a complaint under Paragraph (a) of this Rule may file a written complaint with the department. The complaint must:
  - (1) be signed by the person(s) making it;
  - (2) show who has violated a specific federal requirement;
  - (3) tell how the requirement has been violated;
  - (4) state the facts upon which the complaint is based; and
  - (5) tell what relief the person is seeking.
- (c) If the department receives a complaint which is not complete, it shall contact the person making it and explain how the complaint may be made complete.
- (d) The department shall send the complaint to staff for review and response. If the complaint involves a subgrantee, the department shall send the complaint to that subgrantee.
- (e) The department may, in its discretion, allow the person to appear and present evidence.
- (f) The department shall issue a final written resolution of each acceptable complaint to each party involved within 60 days of receipt, unless it finds good cause, as that term is defined in 26 NCAC 03 .0118, for an extension.
- (g) The resolution shall include:
  - (1) a summary of the facts involved;
  - (2) a statement of the federal requirement involved;
  - (3) the department's findings of fact and a summary of the evidence it considered;
  - (4) the department's conclusions regarding each allegation and a summary of its reasons for them; and
  - (5) the department's order for any technical assistance, negotiation or corrective action that must occur and when those actions must be taken.
- (h) If a federal education program requires a subgrantee to develop and use a complaint procedure, the person complaining may use either that or the department's procedure. If the person uses the subgrantee's procedure, the person may appeal that decision to the department within 30 days after receiving it.

*History Note: Authority G.S. 115C-113; 115C-409; 34 C.F.R. 76.780; N.C. Constitution Article IX, s. 5; 34 C.F.R. 300.660-662; Eff. July 1, 1986;*

*Amended Eff. August 1, 2000.*

## TITLE 17 - DEPARTMENT OF REVENUE

### CHAPTER 1 - DEPARTMENTAL RULES

#### SUBCHAPTER 1C - GENERAL ADMINISTRATION

##### SECTION .0500 - FORM OF PAYMENT

###### 17 NCAC 01C .0509 EFT PAYMENT PROCEDURES

(a) Initiating Transfer. -- Taxpayers who are required to remit tax payments through EFT must initiate the transfer so that the amount due settles into the Department's bank account on or before the due date under the appropriate General Statute. If a tax due date falls on a Saturday, a Sunday, or a legal holiday, the deposit by electronic funds transfer is required on or before the first banking day thereafter. If the date on which the taxpayer is required to initiate either an ACH Debit or an ACH Credit transfer (call-in day) falls on a Saturday, Sunday, or a holiday, the taxpayer must initiate the transaction on the preceding business day.

(b) ACH Credit. -- If a taxpayer is approved for the ACH Credit payment method, the taxpayer is responsible for ensuring the bank originating the transaction has the information necessary for timely completion of the transaction. Further the taxpayer is responsible for the correct completion of the transaction. The taxpayer must provide the information necessary for the bank to complete the NACHA CCD+ entry with the TXP Banking Convention addenda record.

(c) Effect on Filing Requirements. -- The EFT method of payment does not change the filing requirements for tax reports and returns. It is a substitute, however, for filing a tax payment coupon, such as an NC-5 for withholding tax payments or a CD-429 for corporate estimated income tax payments. It is also a substitute for a payment requirement for which no payment coupon is used, such as the payment requirement imposed on companies by G.S. 105-116 and G.S. 105-120 for the first two months of each calendar quarter. Late EFT payments are subject to the penalty in G.S. 105-236 for failure to pay a tax when due and are subject to any other applicable penalties.

*History Note: Authority G.S. 105-236; 105-241; 105-262; Eff. October 1, 1993; Amended Eff. July 1, 2000; November 1, 1994.*

#### CHAPTER 4 - GROSS RECEIPTS AND PRIVILEGE LICENSE TAXES

##### SUBCHAPTER 4B - LICENSE TAXES

###### SECTION .0300 - AMUSEMENTS NOT OTHERWISE TAXED

###### 17 NCAC 04B .0302 COMPUTATION AND PAYMENT OF AMUSEMENT GROSS RECEIPTS TAXES

(a) Computation. - The gross receipts taxes on amusements imposed by G.S. 105-37.1 and 105-38.1 are computed on the admission price of the amusements, less any federal tax included

in the admission price. Gross receipts taxes are not deducted from the admission price to determine the tax base.

(b) Payment. - The gross receipts taxes imposed on amusements must be reported to the Secretary on Form B-205. The return and the taxes payable with the return are due by the date set in G.S. 105-37.1.

*History Note: Authority G.S. 105-37.1; 105-38.1; 105-104; 105-262; Eff. February 1, 1976; Amended Eff. July 1, 2000.*

#### SUBCHAPTER 4E - ALCOHOLIC BEVERAGES TAX

##### SECTION .0700 - DISTRIBUTION OF MALT AND WINE EXCISE TAX TO LOCAL GOVERNMENTS

###### 17 NCAC 04E .0703 DISTRIBUTION NOTICE

The Department annually notifies each county and city of whether it is eligible to receive a share of the distribution of the State excise taxes on beer, unfortified wine, and fortified wine. Each county or city must review the notice to determine if the notice is correct. If the notice is correct, an official of the county or city must sign the notice and return it to the Department. If the notice is not correct, an official of the county or city must write the correct information on the notice or attach a statement of correction to the notice and then sign the corrected notice and return it to the Department.

*History Note: Authority G.S. 105-113.82; 105-262; Eff. February 1, 1976; Amended Eff. July 1, 2000; March 14, 1980.*

#### CHAPTER 5 - CORPORATE FRANCHISE, INCOME, AND INSURANCE TAXES

##### SUBCHAPTER 5B - FRANCHISE TAX

###### SECTION .1100 - CAPITAL STOCK: SURPLUS AND UNDIVIDED PROFITS BASE

###### 17 NCAC 05B .1112 BORROWED CAPITAL DEFINED

*History Note: Authority G.S. 105-122; 105-262; Eff. February 1, 1976; Amended Eff. November 2, 1992; Repealed Eff. July 1, 2000.*

#### CHAPTER 6 - INDIVIDUAL INCOME TAX

##### SUBCHAPTER 6B - INDIVIDUAL INCOME TAX

###### SECTION .0600 - TAX CREDITS

###### 17 NCAC 06B .0605 RESIDENTIAL SOLAR ENERGY EQUIPMENT

(a) SCOPE. -- This Rule describes solar energy equipment that qualifies under G.S. 105-129.16A for the tax credit for investing in renewable energy property when the equipment is placed in service in a residential unit. A residential unit is a single-family

dwelling or a dwelling unit in a multi-dwelling building. The rule does not address solar energy equipment for non-residential buildings.

- (1) Limits. -- The tax credit for investing in residential solar energy equipment is 35% of the cost of the equipment, subject to the per residential unit maximum amounts set in G.S. 105-129.16A. The maximums vary depending on whether the equipment is for water heating, space heating or cooling, generating electricity, or another purpose. Each maximum is an annual maximum that applies to each residential unit. The cost of the property includes the cost of installing it. The credit cannot exceed 50% of the tax liability for the year, after that liability has been reduced by all other credits. Only one credit is allowed per system, regardless of the number of subsequent owners or owner-lessors. Repairs to an existing solar system ~~will~~ do not qualify for any additional credit; however, enhancements to an existing system qualify up to the applicable annual maximum. The cost on which the credit is based is the sales price less discounts, rebates, advertising, installation assistance, name referral allowances paid to the purchaser or someone he or she designates, other similar reductions, and the fair market value of items given as inducements to purchase the solar energy system. If the allowable credit exceeds 50% of the tax liability for the year after being reduced by all other credits, the unused portion of the credit may be carried over for the next five succeeding years. A system is not a solar energy system for purposes of the tax credit until it is installed and fully functional. If an individual has paid for the system, but it is not yet installed and available for use during the year, no credit is allowed until the year in which the system is placed in service.
- (2) Items That Do Not Qualify. -- Equipment, components, and other items not qualifying as solar energy equipment include:
- (A) Insulation (except where otherwise noted in this Rule);
  - (B) Storm windows and storm doors;
  - (C) Wood burning stoves and furnaces;
  - (D) Oil and gas furnaces, including replacement burners and ignition systems labeled as "energy efficient;"
  - (E) Automatic set back thermostats;
  - (F) Heat pumps, including both air and water-source units; and
  - (G) Evaporative cooling systems.

To qualify for the tax credit, a solar energy system must conform to all applicable state and local codes and inspecting jurisdictions. The intent of the credit is to encourage the installation and use of equipment that takes advantage of the renewable resource, solar energy. Systems which only incidentally incorporate solar energy to sell other products do not satisfy the intent of this credit. Therefore, any portion of a system that serves an additional purpose to what is necessary to collect, store, and utilize solar energy either does not qualify for the credit or only a percentage of the cost qualifies in accordance with this Rule.

(b) SOLAR ENERGY SYSTEMS. Solar energy is energy that is derived directly from sunlight (solar radiation). Solar energy property is equipment that uses solar energy to heat or cool a building or provide hot water or electricity to offset loads associated with the building. Solar energy property includes active, passive and solar-electric solar energy systems. A taxpayer claiming a solar energy equipment tax credit must designate on the North Carolina income tax return the type of solar system installed.

(c) ACTIVE SOLAR ENERGY SYSTEM. An active solar energy system is capable of collecting solar radiation, converting it into heat, and transferring the heat to storage or to the point of use. Any solar system which has a fan, pump, or other mechanical means of moving the collection medium in the collection loop of the system is an active system. While the components, design, operation, and performance of active systems will vary, to qualify for the tax credit the system must have the following capabilities:

- (1) a means of collecting or absorbing sunlight to heat fluids (liquid, vapor or air); and
- (2) a means of transporting the heated fluids directly to the point of use or to a thermal storage system to be distributed later for use.

100% of the cost of the active solar system is eligible for the tax credit. Components of a solar system which serve an additional purpose to what is necessary for the active solar system (e.g. conventional heating systems, air conditioning, or domestic hot water systems) do not qualify for the credit.

(d) SOLAR-ELECTRIC SYSTEM. A solar-electric system is a system that converts sunlight into usable electricity. This can be done by any one of a number of processes including photovoltaic and solar thermal-electric. These systems may be used to power direct current (DC) or alternating current (AC) devices. Some systems use the energy as it is produced while others require energy storage which allows the energy to be used as it is needed. 100% of the cost of all parts of the system that are necessary to collect, store, and convert solar energy into usable electrical energy is eligible for the credit. Portions of the system which serve an additional purpose to what is necessary for the solar-electric system do not qualify for the credit.

Energy Storage System Limits. Energy storage systems capable of storing more than the equivalent of 50 hours of the solar collector's peak performance shall be considered excessive and shall not qualify for the credit.

Example: A photovoltaic system with a maximum collector output of 500 Watts. Maximum allowable battery storage size would be 25,000 Watt-hours or 25kWh. (calculation: 500 Watts x 50 peak hours = 25,000 Watt-hours = 25 kWh)

(e) PASSIVE SOLAR ENERGY SYSTEM. A passive solar energy system is an assembly of components which is designed to provide a net energy savings to a building from solar energy, using non-mechanical means of moving heat from the collection area to thermal storage. All qualifying equipment and materials must be integral parts of a system designed to collect, convert, transport or control energy derived directly from sunlight. To qualify as a passive solar energy system, the following elements must be present:

- (1) solar collection surface;

- (2) thermal storage; and
- (3) control and distribution elements.

These three elements must be designed to work together as a whole.

Items which only incidentally provide passive solar benefits are not eligible. For example, southfacing glass is only eligible if part of a complete system with thermal storage and control and distribution elements. Components which serve a dual function in a building are not fully eligible for the tax credit. There are two exceptions to the solar system criteria (requiring all three elements). The first is a thermosiphoning collector, which may be used without thermal storage. Thermosiphoning collectors, sometimes known as dayheaters or window box heaters, qualify for the tax credit. The second exception is a "sun-tempered" house. The limited solar collection surface allows the contents of the house to serve as the thermal mass to keep the house from overheating. Eligibility requirements are established below according to subsystem type and individual component type.

(A) Solar Collection Surfaces: All solar collection surfaces must be oriented to within 30 degrees of true south for new construction and within 45 degrees of true south for retrofits. Solar collection surfaces must be no more than 25% shaded on December 21 between 11 a.m. and 2 p.m. (December 21 is the day when the sun is at the lowest angle in the sky). Solar collection must be designed so as not to cause additional heat gain to the conditioned area of the building in the summer. Solar collection surfaces include:

- (i) South-facing windows. These must be at least double-glazed or equipped with moveable insulation having an insulating value of at least R-3 to prevent nighttime heat loss. They must also be shaded to prevent direct sunlight from entering the conditioned area at noon on June 21 (June 21 is the day when the sun is at the highest angle in the sky). The percentage of windows eligible for the solar energy equipment tax credit is calculated using the worksheet in Paragraph (g) of this Rule. The purpose of the calculation is to determine that portion of south-facing windows which have been added to improve passive solar performance. The formula does this by taking into account the amount of windows on the non-south walls of the house to ensure that credit is given to houses that have more windows on the south side than any other orientation.
- (ii) Attached solar greenhouses and other "sunspaces". These must be double-glazed or equipped with moveable insulation having an insulating value of at least R-3. They must also have a means of distributing the solar heat into the conditioned area of the adjacent building. The greenhouse or "sunspace" must have a specifically designed distribution method to facilitate or enhance the

convective flow. Greenhouses or other sunspaces which do not provide solar heat to an adjacent building or which require heat from non-solar sources to maintain inside temperature for any reason are not eligible for the tax credit as a "sunspace." If supplementary heating is used in a "sunspace", the classification shall change, and the space may qualify under section a. South-facing windows. 50% of the cost of glazing and accompanying structural components, including foundation, framing, siding, insulation, and roofing materials, is eligible for the credit. Thermal storage, and control and distribution elements are eligible according to the formulas listed for those categories. For prefabricated sunspaces in which component costs are not provided, 50% the cost of the sunspace is eligible for the credit.

- (iii) Trombe wall or water-wall glazing. 100% of the cost of glazing and framing mounted no more than two feet in front of a thermal storage wall is eligible for the credit, provided that its sole function is for the collection of solar energy.
  - (iv) Skylights. 100% of the cost of skylights located on a south-facing roof having a pitch of 8-12 (34E tilt angle from horizontal) or greater is eligible for the credit. These must be double-glazed or equipped with moveable insulation having an insulating value of at least R-3.
  - (v) Thermosiphoning collectors. 100% of the cost of solar collectors that operate on thermosiphoning principles and that serve no other function besides solar collection is eligible for the credit. These include solar window box heaters, thermosiphoning water and air panels, and "breadbox" solar water heaters.
- (B) Thermal Storage Elements: Devices or materials specifically designed for the storage of solar energy are eligible for the solar energy equipment tax credit. These materials must either be exposed to direct sunlight in the heating season or have a specific means of transporting solar energy to the thermal storage element. These materials must be located within the insulated shell of the building or enclosed by fixed or moveable insulation or double-glazing. Masonry products used as thermal storage in walls or floors must be a minimum of two inches thick. Materials which are not specifically designed for thermal storage, such as hot tubs, swimming pools, single layer gypsum board, wood paneling and flooring, linoleum tile, masonry walls and floors not exposed to direct sunlight during the heating season, and floors covered with carpeting are not eligible for the

credit. 100% of the cost of qualifying thermal storage elements is eligible for the credit.

(C) Control and Distribution: Devices that are specifically designed to control heat loss or heat gain or to distribute heat energy from a passive solar energy system are eligible for the solar energy equipment tax credit. These include:

- (i) Moveable insulation. 100% of the cost of moveable insulation devices is eligible for the credit provided they have an R-value of at least 3 and seal tightly against the window frame. Standard draperies and curtains do not qualify;
- (ii) Shading devices. 100% of the cost of devices used to shade solar collection surfaces is eligible for the credit, provided that these devices shade no portion of the collection surface at noon on December 21 and completely shade the collection surface at noon on June 21. Adjustable or removable awnings, solar screens, and lattice work used to support vines are examples of shading devices. Overhangs that meet the above criteria and extend more than 12 inches will be eligible. Trees, shrubbery and other vegetation are not eligible, nor are interior shading devices such as shades or blinds;
- (iii) Ducts, fans, vents, backflow preventers, etc... 100% of the cost of these items is eligible for the credit if designed exclusively as part of the solar energy distribution (not collection) system. Although fans are not technically passive elements, some passive systems may use fans to assist the natural convective flows to improve system performance. Ceiling fans, attic fans and free standing fans are not eligible for the credit; and
- (iv) Controls. 100% of the cost of thermostatic controls or other controls, sensors and equipment is eligible for the credit when designed as part of the solar system.

(f) Glossary. When using this Rule, the following terms mean:

- (1) collection loop - that part of a solar energy system which first collects solar energy, converts it to heat and moves the heated media to a thermal storage mass, distribution system or point of use.
- (2) collector - a device which collects solar radiation and converts it to heat.
- (3) conditioned area - any space within the shell of a building which is artificially heated or cooled at any time.

(g) PASSIVE SOLAR ENERGY SYSTEM WORKSHEET.

Solar Collection Surfaces

South-facing windows

- (1) Find the total area of windows on all exterior walls by multiplying the length times the width of the area inside the frames.
- (2) Find the area of south-facing windows by multiplying the length

- (4) double-glazing - two separate layers of glazing enclosing air to create an insulating barrier.
- (5) glazing - a covering of transparent or translucent material used for admitting light.
- (6) greenhouse - a "sunspace" the primary purpose of which is to grow plants.
- (7) heat gain - an increase in the amount of heat contained in a space, resulting from direct solar radiation and heat given off by people, lights, equipment, machinery and other sources.
- (8) heat loss - a decrease in the amount of heat contained in a space, resulting from heat flow through walls, windows, roof and other building envelope components.
- (9) heating season - the period in North Carolina from October to May.
- (10) photovoltaic - the process of generating electricity from light.
- (11) retrofit - the addition of a solar energy system or other device to an existing home.
- (12) R-value - a unit of thermal resistance used for comparing insulation values for different materials; the reciprocal of thermal conductivity; the higher the R-value of a material, the greater its insulating properties.
- (13) skylight - a clear or translucent panel set into a roof to admit sunlight into a building.
- (14) sun-tempered - a house having a south-facing window area which is less than 7% of the floor area, window areas less than 7% of the floor area on the other exterior walls, and no specifically-designed thermal storage element. The limited solar collection surface allows the contents of the house to serve as the thermal mass to keep the house from overheating.
- (15) sunspace - also known as a Florida room, solar greenhouse or solarium. A structure added onto or incorporated into a building that is specifically designed to collect solar energy, but also serves as additional living space to grow plants by virtue of allowing human access. A sunspace is thermally isolated from the rest of the building by walls, windows or doors.
- (16) thermal storage - a device or medium specifically designed and constructed to absorb collected solar heat and store it for later use.
- (17) thermosiphoning - the convective circulation of fluid or air which occurs when warm fluid or air rises and is displaced by cooler fluid or air in the same system.
- (18) Trombe wall - a passive heating system consisting of a vertical masonry wall with glazing in front. Solar radiation is absorbed by the wall, converted to heat and transferred to the building by convection, radiation or combination thereof.
- (19) water wall - an interior wall of water-filled containers used for solar energy collection and storage.

\_\_\_\_\_ sq. ft.

- times the width of the area inside the frames. \_\_\_\_\_ sq. ft.
- (3) Subtract line 2. from line 1. \_\_\_\_\_ sq. ft.
- (4) Find the area of the north, east and west-facing walls by multiplying the length of each wall times the height from floor to ceiling. \_\_\_\_\_ sq. ft.
- (5) Find the area of the south-facing wall by multiplying the length times the height from floor to ceiling. \_\_\_\_\_ sq. ft.
- (7) Divide line 5. by line 4. \_\_\_\_\_ sq. ft.
- (8) Multiply line 7. by line 3. \_\_\_\_\_ sq. ft.
- (9) Subtract line 8. from line 2. \_\_\_\_\_ sq. ft.
- (10) Divide line 9. by line 1. to find the percentage of windows eligible for the tax credit. \_\_\_\_\_
- (11) Multiply line 10. by the total cost of exterior windows \$ \_\_\_\_\_

**IMPORTANT:** This worksheet must be retained with your tax records for examination by the North Carolina Department of Revenue. It will be a necessary supporting document, together with other substantiation for the credit claimed on your tax return, for active, passive, and solar electric systems.

*History Note: Authority G.S. 105-129.15; 105-129.16A; 105-262; Eff. June 1, 1982; Amended Eff. July 1, 2000; June 1, 1995; June 1, 1993; June 1, 1990; July 1, 1986.*

**SECTION .3500 - PARTNERSHIPS**

**17 NCAC 06B .3503 PARTNERSHIP RETURNS**

(a) When Required -- A North Carolina partnership return, Form D-403, must be filed by every partnership doing business in North Carolina if a federal partnership return was required to be filed. The partnership return must be filed on or before April 15 if on a calendar year basis and on or before the 15th day of the fourth month following the end of the fiscal year if on a fiscal year basis. For individual income tax purposes, the term "business carried on in this State" means the operation of any activity within North Carolina regularly, continuously, and systematically for the purpose of income or profit. A sporadic activity, a hobby, or an amusement diversion does not come within the definition of a business carried on in this State. Income from an intangible source, including gain realized from the sale of intangible property received in the course of a business carried on in this State so as to have a taxable situs here (including income in the distributive share of partnership income, whether distributed or not) is included in the numerator of the fraction used in determining the portion of federal taxable income that is taxable to North Carolina by a nonresident. The return must include the names and addresses of the individuals entitled to share in the net income of the partnership and must be signed by the managing partner and the individual preparing the return.

(b) NC K-1 -- A partnership must provide a completed Schedule NC K-1, or similar schedule, to each person who was a partner in the partnership at any time during the year reflecting that partner's share of the partnership's income, adjustments, tax credits, and tax paid by the manager of the partnership. The schedule must be provided to each partner on or before the day on which the partnership return is required to be filed. When reporting the distributive share of tax credits, a list of the amount and type of tax credits must be provided each taxpayer.

(c) Investment Activity -- In determining whether a partnership is carrying on a trade or business in North Carolina if its principal business activity is "investments," all facts and circumstances must be considered. Determining factors include all of the following:

- (1) The extent of business operations in this State, including having an office, employees, property, or bank transactions in this State;
- (2) The source of principal income (interest and dividends versus gain from the sale of securities);
- (3) The length of time securities are held (long-term holding of securities for capital appreciation versus short-term trading for profit; and
- (4) The volume of transactions and value of securities bought and sold.

If a partnership's only activities within North Carolina are in the nature of an investment account in which the securities are held for capital appreciation and income, the receipt of dividends and interest and the occasional sales of stocks and bonds do not constitute carrying on a trade or business in this State, and a nonresident partner's distributive share of this income is excludable from the numerator of the fraction used to determine the nonresident partner's North Carolina taxable income. If the activities of the partnership are extensive, the partnership is considered to be engaged in a trade or business, and a nonresident partner's distributive share of this income must be included in the numerator of the fraction used to determine the nonresident partner's North Carolina taxable income.

*History Note: Authority G.S. 105-152(a)(2); 105-154(c); 105-262; Eff. February 1, 1976; Amended Eff. July 1, 2000; August 1, 1998; May 1, 1984; June 1, 1993; July 1, 1991; June 1, 1990.*

**CHAPTER 7 - SALES AND USE TAX DIVISION**

**SUBCHAPTER 7B - STATE SALES AND USE TAX**

**SECTION .1800 - HOSPITALS AND SANITARIUMS**

**17 NCAC 07B .1801 SALES TO AND BY HOSPITALS AND SIMILAR INSTITUTIONS**

(a) General -- Hospitals, sanitariums, nursing homes, and rest homes are primarily engaged in rendering services and are considered the users or consumers of all tangible personal property they purchase for use in connection with these institutions. These institutions are liable for payment of sales or

use tax on their purchases of tangible personal property except as explained in this Rule.

(b) Food -- Purchases of food by hospitals, sanitariums, nursing homes, or rest homes for use in furnishing meals to patients are exempt from State tax, but not the 2% local tax, if the food could be purchased under the Food Stamp Program. If food purchased by an institution could not be purchased under that Program, the food is subject to both State and local sales or use tax. If, in addition to furnishing meals to patients, one of these institutions operates a cafeteria from which it makes sales of prepared meals or food to guests, visitors, employees, staff, or other persons, the institution must register with the Department of Revenue and collect and remit the tax on its sales. If the food purchased by the institution for use in furnishing meals to patients cannot be distinguished from the food purchased for resale through the cafeteria, the institution may purchase all the food under a certificate of resale. An institution that does this assumes liability for payment of sales or use tax on food used in furnishing meals to its patients and on sales of meals by the cafeteria.

(c) Meals to Students -- Meals and food products sold by a hospital operated by a State or private educational institution to student nurses are exempt from tax in accordance with G.S. 105-164.13(27).

(d) Purchases for Consumption -- Except as provided by Paragraph (b) of this Rule, a Certificate of Resale, Form E-590, may not be used by hospitals, sanitariums, nursing homes, or rest homes when making taxable purchases of tangible personal property for use or consumption. The tax due on taxable purchases from North Carolina suppliers or out-of-state suppliers who charge North Carolina sales or use tax must be paid to the suppliers. An institution that makes taxable purchases from an out-of-state supplier who does not collect and remit North Carolina sales or use tax must register with the department and remit monthly the tax due on the purchases.

*History Note: Authority G.S. 105-164.4; 105-164.6; 105-262; 105-467; Eff. February 1, 1976; Amended Eff. July 1, 2000; May 1, 1999; August 1, 1998; October 1, 1993; October 1, 1991; July 1, 1989.*

**SECTION .2900 - VENDING MACHINES**

**17 NCAC 07B .2901 SALES THROUGH VENDING MACHINES**

(a) Every person who serves as county assessor must attend at least during each two-year period to be eligible for reappointment. requirement:

- (1) Courses offered by the International Association of Assessing Officers (IAAO) 24 hours
- (2) Personal Property Appraisal and Assessment Course offered by the Department of Revenue 24 hours
- (3) The Fundamentals of Property Tax Listing and Assessing Course offered by the Institute of Government 24 hours
- (4) Other Appraisal Courses approved by the Department of Revenue 24 hours
- (5) IAAO, Institute of Government or Department of Revenue Workshops Hours vary with program length
- (6) IAAO, Institute of Government or Department of Revenue

(a) Requirement -- A person who sells tangible personal property through a vending machine must register with the Department and remit sales tax on the sales price of the property sold, unless the sale is exempt from tax. The sale of an item in a vending machine for one cent is exempt from tax.

(b) Sales Price -- The "sales price" of an item sold in a vending machine differs depending on the item. For closed-container soft drinks and tobacco products sold through vending machines, the sales price is 100% of the price at which the item is sold in the vending machine. For all other items, the sales price is 50% of the price at which the item is sold in the vending machine.

A vending machine retailer may calculate receipts from items sold, separate the receipts from items that are taxable at 100% of their price from those that are taxable at 50% of their price, and then divide the receipts by the appropriate number to determine the amount of receipts on which sales tax is due. The appropriate number for sales not subject to the Mecklenburg Public Transportation ½% tax is 106% (100% plus the combined State 4% rate and general local 2% rate). The appropriate number for sales subject to the additional Mecklenburg tax is 106.5%.

(c) Soft Drink Defined -- A soft drink is any nonalcoholic beverage, whether carbonated or not, except the following:

- (1) Drinks that contain at least 35% natural liquid milk;
- (2) Drinks that contain 100% natural fruit or vegetable juice without added ingredients of any kind other than vitamins, minerals, or ingredients extracted from an item and later returned to the item during the manufacturing process;
- (3) Coffee;
- (4) Tea; and
- (5) Natural water.

*History Note: Authority G.S. 105-164.3; 105-164.4; 105-164.13; 105-262; Eff. February 1, 1976; Amended Eff. July 1, 2000; October 1, 1993; June 1, 1992; July 1, 1989.*

**CHAPTER 10 - PROPERTY TAX**

**SECTION .0500 - TRAINING/CERTIFICATION:  
COUNTY ASSESSORS: AD VALOREM TAX  
APPRAISALS**

**17 NCAC 10 .0505 CONTINUING EDUCATION REQUIREMENTS FOR COUNTY ASSESSORS**

30 hours of instruction in the appraisal or assessment of property. The following credit-hours will be allowed in fulfilling this

Seminars		Hours vary with program length
(7) Fall Conference of North Carolina Association of Assessing Officers		
Opening Session		4 hours
2nd day - Morning Session		3 hours
2nd day - Afternoon Session		4 hours
3rd day - Morning Session		<u>3 hours</u>
	Total	14 hours
(8) Summer Conference of North Carolina Association of Assessing Officers and North Carolina Collectors Association		
Opening Session		3 hours
Afternoon Session		3 hours
2nd day - Morning Session		3 hours
2nd day - Afternoon Session		<u>3 hours</u>
	Total	12 hours
(9) Regional County Assessors Meetings		2 hours
(b) Credit for workshops and seminars will depend on actual length of program, i.e., one-half day seminars would be 4 hours; one day, 8 hours; and one and one-half days, 12 hours.	<i>Eff. April 1, 1989;</i> <i>Amended Eff. August 1, 2000; August 1, 1991.</i>	

*History Note: Authority G.S. 105-289(d); 105-294(d); Eff. August 1, 1984; Amended Eff. July 1, 2000; July 1, 1993.*

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**TITLE 21 - OCCUPATIONAL LICENSING BOARDS**

**CHAPTER 36 - BOARD OF NURSING**

**SECTION .0200 - LICENSURE**

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**TITLE 19A - DEPARTMENT OF STATE  
TRANSPORTATION**

**CHAPTER 3 - DIVISION OF MOTOR VEHICLES**

**SUBCHAPTER 3G - SCHOOL BUS AND TRAFFIC  
SAFETY SECTION**

**SECTION .0200 - SCHOOL BUS DRIVER TRAINING**

**19A NCAC 03G .0213 RENEWAL OF CERTIFICATION  
AFTER CANCELLATION**

(a) Any driver whose school bus driver certificate has been canceled shall not be eligible to apply for re-certification for a period of six months from the date of cancellation. Any person so applying must be recommended by the superintendent or principal of the school and shall be required to complete the full training course required for a beginning driver. Such person must meet all the requirements of an original applicant.

(b) The only exceptions to this policy shall be in the case of a local cancellation, in which a written request from the school authorities will be required, and in the case of a suspension for the duration of a status offense such as lapsed liability insurance, failure to appear in court, or failure to comply with an out-of-state citation.

(c) For the purposes of this Section a ten-day revocation shall be considered a suspension for an actual driving action. The driver will remain suspended until the actual adjudication of the case. If at the actual adjudication of the case the driver is found not guilty of driving while impaired, he may be re-instated. If the driver is found guilty of driving while impaired, his suspension will be declared fully effective, and he will not be considered for re-certification for a period of five years following the date of conviction.

*History Note: Authority G.S. 20-39(b); 20-218;*

**21 NCAC 36 .0220 REFRESHER COURSE**

(a) A refresher course shall be designed for those persons, previously licensed, who are not eligible for re-entry into nursing practice because their license has lapsed for five or more years.

(b) Satisfactory completion of a Board-approved refresher course is required of the person who:

- (1) requests reactivation of an inactive license and who has not held an active license for five or more years;
- (2) requests reinstatement of a lapsed license and who has not held an active license for five or more years;
- (3) requests endorsement to North Carolina who has not held an active license for five or more years;
- (4) is directed by the Board to complete such a course when the Board takes action as authorized in G.S. 90-171.37; or
- (5) needs a refresher course as a result of the license being inactive for disciplinary action and has met all eligibility requirements for reinstatement of the license.

Those persons identified in Subparagraph (4) and (5) of this Paragraph may be subject to Board-stipulated restrictions in the clinical component of the refresher course.

(c) Application for approval of a refresher course shall be completed and submitted by the provider at least 90 days prior to the expected date of enrollment and shall include evidence of complying with the rules for refresher courses. Board approval shall be secured prior to the enrollment of students. Provider approval will be granted for a period of time not to exceed five years. However, any changes in faculty, curriculum, or clinical facilities shall be approved by the Board prior to implementation as set out in the Rules of this Chapter.

(d) The Board will make site visits if necessary. A decision on an application to offer a refresher course will be given within 30 days following receipt of the application.



## APPROVED RULES

- (e) The provider of a refresher course shall be approved by the Board. A provider may be a post-secondary educational institution, a health care institution, or other agency.
- (f) Administrative responsibility for developing and implementing the course shall be vested in a registered nurse director.
- (g) Instructors in the course shall be directly accountable to the nurse director. The director shall have had at least one year prior teaching experience preparing individuals for LPN or RN licensure at the post-secondary level or in a nursing staff development position. The director and each instructor shall:
- (1) be duly licensed to practice nursing as a registered nurse in North Carolina;
  - (2) hold a baccalaureate or higher degree; and
  - (3) have had at least two years experience in direct patient nursing practice as an RN.
- (h) Proximity of the instructor to students is the major factor in determining faculty-student ratio for clinical learning experiences. In no case shall this ratio exceed 1:10.
- (i) Course objectives shall be stated which:
- (1) show relationships between theory and practice; and
  - (2) indicate behaviors consistent with the ability to safely practice nursing.
- (j) The curriculum for the R.N. Refresher Course shall incorporate:
- (1) common medical-surgical conditions and management of common nursing problems associated with these conditions, including mental health principles associated with management of nursing problems;
  - (2) functions of the registered nurse as defined in G.S. 90-171.20 and 21 NCAC 36 .0221, .0224, .0225 and .0401; and
  - (3) instruction in and opportunities to demonstrate ability to safely practice nursing and knowledge in caring for clients with common medical-surgical problems.
- (k) The curriculum for the L.P.N. Refresher Course shall incorporate:
- (1) common medical-surgical conditions and common nursing approaches to their management, including mental health principles;
  - (2) functions of the licensed practical nurse as defined in G.S. 90-171.0 and 21 NCAC 36 .0221, .0225 and .0401; and
  - (3) instruction in and opportunity to demonstrate ability to safely practice nursing and knowledge in caring for clients with common medical-surgical problems.
- (l) The course shall include both theory and clinical instruction:
- (1) The R.N. Refresher Course shall include at least 240 hours of instruction, at least 120 of which shall consist of clinical learning experiences.
  - (2) The L.P.N. Refresher Course shall include at least 180 hours of instruction, at least 90 of which shall consist of clinical learning experiences.
- (m) Evaluation processes shall be implemented which effectively measure:
- (1) knowledge and understanding of curriculum content; and
  - (2) clarify individuals ability to provide safe nursing care to clients with common medical-surgical conditions.
- (n) Clinical resources shall:
- (1) indicate in written contract their support and availability to provide the necessary clinical experiences; and
  - (2) be approved by the Board of Nursing consistent with 21 NCAC 36.0322(b)(4).
- (o) The application for approval of a refresher course shall include:
- (1) course objectives, content outline and time allocation;
  - (2) didactic and clinical learning experiences including teaching methodologies, for measuring the registrant's abilities to practice nursing;
  - (3) plan for evaluation of student competencies and ability to practice safe nursing;
  - (4) a faculty list which includes the director and all instructors and identifies their qualifications and their functions in teaching roles; and
  - (5) the projected clinical schedule.
- (p) A course or combination of courses within a basic nursing curriculum may be considered a refresher course for re-entry into practice if:
- (1) such course or combination of courses equals or exceeds requirements for refresher courses;
  - (2) such course or combination of courses is taught on a level commensurate with level of relicensure sought; and
  - (3) the Board designee approves such course or combination of courses as a substitute for a refresher course.
- (q) Individuals, previously licensed in North Carolina, presently residing outside of North Carolina, may meet these requirements by successfully completing a North Carolina approved refresher course completed in another state or country. Agencies desiring approval for conducting refresher courses shall submit applications per Paragraphs (c) through (p) of this Rule. Clinical experiences shall be in agencies approved by the comparable state/country agency to the Board of Nursing. The agency applying for refresher course approval shall submit evidence of the agency approval.
- (r) Individuals enrolled in refresher courses shall identify themselves as R.N. Refresher Student (RN RS) or LPN Refresher Student (LPN RS) consistent with the course level, after signatures on records or on name pins.
- (s) Upon completion of a Board-approved refresher course, the course provider shall furnish the Board with the names and North Carolina certificate numbers of those persons who have satisfactorily completed the course and are deemed safe to practice nursing at the appropriate level of licensure on the Board supplied form.
- (t) Upon request, the Board shall provide:
- (1) a list of approved providers;
  - (2) forms for applications for program approval; and
  - (3) forms for verification of successful completion to all approved programs.

*History Note: Authority G.S. 90-171.23(b)(3); 90-171.35; 90-171.36; 90-171.37;*

*Eff. May 1, 1982;*

*Amended Eff. July 1, 2000; June 1, 1993; April 1, 1989.*

**21 NCAC 36 .0221**

**LICENSURE REQUIRED**

(a) No cap, pin, uniform, insignia or title shall be used to represent to the public that an unlicensed person is a registered nurse or a licensed practical nurse as defined in G.S. 90-171.43.

(b) The repetitive performance of a common task or procedure which does not require the professional judgment of a registered nurse or licensed practical nurse shall not be considered the practice of nursing for which a license is required. Tasks that may be delegated to the Nurse Aide I and Nurse Aide II shall be established by the Board of Nursing as defined in 21 NCAC 36.0401 and .0405. Tasks may be delegated to an unlicensed person which:

- (1) frequently recur in the daily care of a client or group of clients;
- (2) are performed according to an established sequence of steps;
- (3) involve little or no modification from one client-care situation to another;
- (4) may be performed with a predictable outcome; and
- (5) do not inherently involve ongoing assessment, interpretation, or decision-making which cannot be logically separated from the procedure(s) itself.

Client-care services which do not meet all of these criteria shall be performed by a duly licensed nurse. The restrictions, however, do not apply to care performed by clients themselves, their families or significant others, or by caretakers who provide personal care to individuals whose health care needs are incidental to the personal care required.

(c) It shall be considered the practice of nursing for which a license is required to implement any treatment and pharmaceutical regimen which is likely to produce side or toxic effects, allergic reactions, or other unusual effects or which may rapidly endanger a client's life or well-being and which is prescribed by a person authorized by state law to prescribe such a regimen.

- (1) The nurse who assumes responsibility for implementing a treatment and pharmaceutical regimen shall be accountable for:
  - (A) recognizing side effects;
  - (B) recognizing toxic effects;
  - (C) recognizing allergic reactions;
  - (D) recognizing immediate desired effects;
  - (E) recognizing unusual and unexpected effects;
  - (F) recognizing changes in client's condition that contraindicates continued administration of the medication;
  - (G) anticipating those effects which may rapidly endanger a client's life or well-being; and
  - (H) making judgments and decisions concerning actions to take in the event such untoward effects occur.
- (2) Exceptions to .0221(c)(1) are:
  - (A) persons who hold statutory authority to administer medications;
  - (B) clients themselves, their families or significant others, or caretakers who provide personal care to individuals whose health care needs are incidental to the personal care required;
  - (C) administration of oral nutritional supplements;
  - (D) applications of non-systemic, topical skin preparations which have local effects only provided that ongoing, periodic assessment of any

skin lesion present shall be carried out by a person licensed to make such assessments; and

(E) administration of commonly used cleansing enema solutions or suppositories with local effects only.

(d) Unlicensed nursing students enrolled in out-of-state nursing education programs who are requesting utilization of North Carolina clinical facilities, shall be allowed such experiences following approval by the Board of Nursing or its designee. Upon receiving such a request, the chief nurse administrator of a North Carolina clinical facility contacted by an out-of-state nursing education program seeking nursing student clinical education experiences in North Carolina shall provide the Board with the following at least 60 days prior to the start of the requested experience prior to receiving approval for accepting the students:

- (1) letter of request for approval to provide the clinical offering;
- (2) course description, which includes course objectives, content outline, grading criteria for the course, and curriculum pattern which lists all courses required and placement of this course in the curriculum;
- (3) names of faculty members responsible for coordinating the student's experiences;
- (4) documentation that the nursing program is currently approved by the Board of Nursing or other appropriate approval bodies in the state in which the parent institution is located;
- (5) proposed starting and completion dates for the requested clinical experiences;
- (6) criteria used for selection of the students for the clinical experience in North Carolina;
- (7) number of students to be placed in the facility;
- (8) units for placement and number of students on each unit;
- (9) RN faculty or preceptor qualifications criteria with vitae, including the license number of each faculty or preceptor issued by the North Carolina Board of Nursing or by the nurse licensing Board of a state party to the Nurse Licensure Compact;
- (10) signed contract between nursing program and clinical facility indicating ratio will not be greater than 1:10 faculty to student ratio for groups of students or 1:2 preceptor to students if preceptor arrangement is proposed;
- (11) written statement from chief nursing administrator indicating the proposed clinical experience does not conflict with clinical unit commitment to approved North Carolina nursing programs who have contracts with the facility;
- (12) evidence that all students involved in the proposed clinical experience are in good academic standing; and
- (13) plans that ensure timely communications between the coordinating faculty from out-of-state program, the participating NC nurses, the chief nursing administrator of the NC clinical facility and the students.

(e) If the approved experience is to continue on an annual basis, written notification shall be submitted annually, by the chief nurse administrator of the NC facility at least 30 days prior to the resumption of the experiences. This notice shall include notification of any changes in the information submitted in material required in Paragraph (d) of this Rule. Upon review by

the Board or its designee, written approval shall be sent to the Chief Nurse Administrator of the NC facility and the out-of-state nursing program, within 30 business days of receipt of the materials in the Board office. Copies of the following shall be distributed by the chief nursing administrator of the clinical facility to all students and faculty involved in the clinical experiences:

- (1) North Carolina Nursing Practice Act;
- (2) North Carolina administrative rules and related interpretations regarding the role of the RN, LPN, and unlicensed nursing personnel;
- (3) North Carolina Board developed Guidelines for Utilization of Preceptors; and
- (4) North Carolina Board of Nursing developed Interpretations According to Adopted Categories.

(f) Failure to comply with the requirements in Paragraph (d) of this Rule as established by the North Carolina Board of Nursing shall result in the immediate withdrawal of the Board's approval of the clinical offerings.

*History Note: Authority G.S. 90-171.23(b); 90-171.39; 90-171.43; 90-171.83; Eff. May 1, 1982; Amended Eff. July 1, 2000; January 1, 1996; February 1, 1994; April 1, 1989; January 1, 1984.*

**21 NCAC 36 .0227 APPROVAL AND PRACTICE PARAMETERS FOR NURSE PRACTITIONERS**

(a) Definitions:

- (1) "Medical Board" means the North Carolina Medical Board.
- (2) "Board of Nursing" means the Board of Nursing of the State of North Carolina.
- (3) "Joint Subcommittee" means the subcommittee composed of members of the Board of Nursing and Members of the Medical Board to whom responsibility is given by G.S. 90-6 and G. S. 90-171.23(b)(14) to develop rules to govern the performance of medical acts by nurse practitioners in North Carolina.
- (4) "Nurse Practitioner or NP" means a currently licensed registered nurse approved to perform medical acts under an agreement with a licensed physician for ongoing supervision, consultation, collaboration and evaluation of the medical acts performed. Only a registered nurse approved by the Medical Board and the Board of Nursing may legally identify oneself as a Nurse Practitioner. It is understood that the nurse practitioner, by virtue of RN licensure, is independently accountable for those nursing acts which he or she may perform.
- (5) "Nurse Practitioner Applicant" means a registered nurse who may function prior to full approval as a Nurse Practitioner in accordance with Part (c)(2)(D) of this Rule.
- (6) "Supervision" means the physician's function of overseeing medical acts performed by the nurse practitioner.
- (7) "Collaborative practice agreement" means the arrangement for nurse practitioner-physician continuous availability to each other for on-going supervision,

consultation, collaboration, referral and evaluation of care provided by the nurse practitioner.

- (8) "Primary Supervising Physician" means the licensed physician who, by signing the nurse practitioner application, is held accountable for the on-going supervision, consultation, collaboration and evaluation of the medical acts performed by the nurse practitioner as defined in the site specific written protocols.
  - (A) The primary supervising physician shall assume the responsibility of assuring the Boards that the nurse practitioner is qualified to perform those medical acts described in the site specific written protocols.
  - (B) A physician in a graduate medical education program, whether fully licensed or holding only a resident's training license, shall not be named as a primary supervising physician.
  - (C) A physician in a graduate medical education program who is also practicing in a non-training situation may supervise a nurse practitioner in the non-training situation if fully licensed.
- (9) "Back-up Supervising Physician" means the licensed physician who, by signing an agreement with the nurse practitioner and the primary supervising physician(s) shall be held accountable for the supervision, consultation, collaboration and evaluation of medical acts by the nurse practitioner in accordance with the site specific written protocols when the Primary Supervising Physician is not available.
  - (A) The signed and dated agreements for each back-up supervising physician(s) shall be maintained at each practice site.
  - (B) A physician in a graduate medical education program, whether fully licensed or holding only a resident's training license, shall not be named as a back-up supervising physician.
  - (C) A physician in a graduate medical education program who is also practicing in a non-training situation may be a back-up supervising physician to a nurse practitioner in the non-training situation if fully licensed and has signed an agreement with the nurse practitioner and the primary supervising physician.
- (10) "Approval" means authorization by the Medical Board and the Board of Nursing for a registered nurse to practice as a nurse practitioner in accordance with this Subchapter.
- (11) "Written protocols" means the signed and dated set of written practice guidelines maintained at each practice site which describe the prescribing privileges, treatments, tests and procedures that define the scope of the nurse practitioner's medical acts in that setting. Clinical practice issues that are not covered by the written protocols require nurse practitioner/physician consultation, and documentation related to the treatment plan.
- (12) "Volunteer practice" means practice without expectation of compensation or payment (monetary, in kind or otherwise) to the nurse practitioner either directly or indirectly.

- (13) "Disaster" means a state of disaster as defined in G.S. 166A-4(3) and proclaimed by the Governor, or by the General Assembly pursuant to G. S. 166A-6.
- (14) "Interim Status" means the privilege granted by the Boards to a graduate of an approved nurse practitioner education program or a registered nurse seeking initial approval in North Carolina with limited privileges, as defined in Part (c)(2)(D) of this Rule while awaiting final approval to practice as a nurse practitioner.
- (15) "Temporary Approval" means authorization by the Medical Board and the Board of Nursing for a registered nurse to practice as a nurse practitioner in accordance with this Rule for a period not to exceed 18 months while awaiting notification of successful completion of the national certification examination.
- (16) "National Credentialing Body" means one of the following credentialing bodies that offers certification and re-certification in the nurse practitioner's specialty area of practice: American Nurses Credentialing Center (ANCC); American Academy of Nurse Practitioners (AANP); National Certification Corporation of the Obstetric, Gynecologic and Neonatal Nursing Specialties (NCC); and the National Certification Board of Pediatric Nurse Practitioners and Nurses (PNP/N).
- (b) Scope of Practice. The nurse practitioner shall be responsible and accountable for the continuous and comprehensive management of a broad range of personal health services for which the nurse practitioner shall be educationally prepared and for which competency has been maintained, with physician supervision and collaboration as described in Paragraph (i) of this Rule. These services include but are not restricted to:
- (1) promotion and maintenance of health;
  - (2) prevention of illness and disability;
  - (3) diagnosing, treating and managing acute and chronic illnesses;
  - (4) guidance and counseling for both individuals and families;
  - (5) prescribing, administering and dispensing therapeutic measures, tests, procedures and drugs;
  - (6) planning for situations beyond the nurse practitioner's expertise, and consulting with and referring to other health care providers as appropriate; and
  - (7) evaluating health outcomes.
- (c) Nurse Practitioner Approval.
- (1) Qualifications for nurse practitioner approval. A registered nurse shall be approved by the Medical Board and the Board of Nursing before the applicant may practice as a nurse practitioner. The Boards may grant approval to practice as a nurse practitioner to an applicant who:
    - (A) is duly licensed to practice as a registered nurse in North Carolina.
    - (B) has successfully completed an approved educational program as outlined in Paragraph (d) of this Rule; or, as of January 1, 2000, meets the certification requirements set forth in Subparagraph (d)(2) of this Rule.
    - (C) has an unrestricted license to practice as a registered nurse and, if applicable, an unrestricted approval to practice as a nurse practitioner unless the Boards consider such condition and agree to approval;
  - (D) submits any information deemed necessary to evaluate the application;
  - (E) has a collaborative practice agreement with a primary supervising physician; and
  - (F) pays the appropriate fee.
- (2) Application for nurse practitioner approval.
- (A) Application for nurse practitioner approval shall be made upon the appropriate forms and shall be submitted jointly by the nurse practitioner and primary supervising physician(s).
  - (B) Applications for first-time approval in North Carolina shall be submitted to the Board of Nursing and then approved by both Boards as follows:
    - (i) the Board of Nursing will verify compliance with Parts (c)(1)(A) - (D) of this Rule;
    - (ii) the Medical Board will verify compliance with Parts (c)(1)(D) - (F) of this rule; and
    - (iii) the appropriate Board will notify applicant of final approval status.
  - (C) Applications for approval of changes in practice arrangements for a nurse practitioner currently approved to practice in North Carolina:
    - (i) addition or change of primary supervising physician shall be submitted to the Medical Board;
    - (ii) request for change(s) in the scope of practice shall be submitted to the Joint Subcommittee; and
    - (iii) the appropriate Board will notify applicant of final approval status.
  - (D) Interim status for nurse practitioner applicant may be granted to: a registered nurse who is a new graduate of an approved nurse practitioner educational program as set forth in Paragraph (d) of this Rule; or a registered nurse seeking first time approval to practice as a nurse practitioner in North Carolina who has worked previously as a nurse practitioner in another state and who meets the nurse practitioner educational requirement as set forth in Paragraph (d) of this Rule with the following limitations:
    - (i) no prescribing privileges;
    - (ii) primary or back-up physicians shall be continuously available for appropriate ongoing supervision, consultation, collaboration and countersigning of notations of medical acts in all patient charts within two working days of nurse practitioner applicant-patient contact;
    - (iii) face-to-face consultation with the primary supervising physician shall be weekly with documentation of consultation consistent with Part (i)(4)(D) of this Rule; and
    - (iv) may not exceed period of six months.

- (E) Beginning January 1, 2000, first time applicants who meet the qualifications for approval, but are awaiting certification from a national credentialing body approved by the Board of Nursing, may be granted a temporary approval to practice as a nurse practitioner. Temporary approval is valid for a period not to exceed 18 months from the date temporary approval is granted or until the results of the applicant's certification examination are available, whichever comes first.
- (F) The registered nurse who was previously approved to practice as a nurse practitioner in this state shall:
- (i) meet the nurse practitioner approval requirements as stipulated in Parts (c)(1)(A), (C) - (F) of this Paragraph;
  - (ii) complete the appropriate application;
  - (iii) receive notification of approval; and
  - (iv) meet the consultation requirements as outlined in Parts (i)(4)(C) - (D) of this Rule.
- (G) If for any reason a nurse practitioner discontinues working within the approved nurse practitioner-supervising physician(s) arrangement, the Boards shall be notified in writing and the nurse practitioner's approval shall automatically terminate or be placed on an inactive status until such time as a new application is approved in accordance with this Subchapter. Special consideration may be given in an emergency situation.
- (H) Volunteer Approval for Nurse Practitioners. The Boards may grant approval to practice in a volunteer capacity to a nurse practitioner who has met the qualifications as outlined in Parts (c)(1)(A) - (F) and (2)(A) - (G) of this Rule.
- (d) Requirements for Approval of Nurse Practitioner Educational Programs.
- (1) A nurse practitioner applicant who completed a nurse practitioner educational program prior to December 31, 1999 shall provide evidence of successful completion of a course of formal education which contains a core curriculum including 400 contact hours of didactic education and 400 contact hours of preceptorship or supervised clinical experience.
    - (A) The core curriculum shall contain as a minimum the following components:
      - (i) health assessment and diagnostic reasoning including:
        - (I) historical data;
        - (II) physical examination data;
        - (III) organization of data base;
      - (ii) pharmacology;
      - (iii) pathophysiology;
      - (iv) clinical management of common health care problems and diseases related to:
        - (I) respiratory system;
        - (II) cardiovascular system;
        - (III) gastrointestinal system;
        - (IV) genitourinary system;
        - (V) integumentary system;
        - (VI) hematologic and immune systems;
        - (VII) endocrine system;
        - (VIII) musculoskeletal system;
        - (IX) infectious diseases;
        - (X) nervous system;
        - (XI) behavioral, mental health and substance abuse problems;
    - (v) clinical preventative services including health promotion and prevention of disease;
    - (vi) client education related to Parts (d)(1)(A)(iv) and (v) of this Rule; and
    - (vii) role development including legal, ethical, economical, health policy and interdisciplinary collaboration issues.
- (B) Nurse practitioner applicants who may be exempt from components of the core curriculum requirements listed in Subparagraph (d)(1)(A) of this Rule are:
- (i) Any nurse practitioner approved in North Carolina prior to January 18, 1981, is permanently exempt from the core curriculum requirement.
  - (ii) A nurse practitioner certified by a national credentialing body who also provides evidence of satisfying Parts (d)(1)(A)(i) - (iii) of this Rule shall be exempt from core curriculum requirements in Parts (d)(1)(A)(iv) - (vii) of this Rule. Evidence of satisfying Parts (d)(1)(A)(i) - (iii) of this Rule shall include, but may not be limited to:
    - (I) a narrative of course content; and
    - (II) contact hours.
  - (iii) A nurse practitioner seeking initial approval after January 1, 1998 shall be exempt from the core curriculum requirements if certified as a nurse practitioner in his/her specialty by a national credentialing body when initial certification was obtained after January 1, 1998.
  - (iv) A nurse practitioner applicant, whose formal education does not meet all of the stipulations in Subparagraph (d)(1) of this Rule, may appeal to the Joint Subcommittee on the basis of other education and experience.
- (2) Instead of educational program approval, all nurse practitioner applicants who are applying for or have received, first time approval to practice as a nurse practitioner on or after January 1, 2000 shall be certified by a national credentialing body approved by the Board of Nursing or be awaiting initial certification by a national credentialing body approved by the Board of Nursing for a period not to exceed 18 months from date temporary approval is granted.
- (e) Annual Renewal.
- (1) Each registered nurse who is approved as a nurse practitioner in this state shall annually renew each approval with the Medical Board no later than 30 days after the nurse practitioner's birthday by:

- (A) Verifying current RN licensure;
  - (B) Submitting the fee required in Paragraph (l) of this Rule; and
  - (C) Completing the renewal form.
- (2) For the nurse practitioner who had first time approval to practice after January 1, 2000, provide evidence of certification or recertification by a national credentialing body.
- (3) If the nurse practitioner has not renewed within 60 days of the nurse practitioner's birthday, the approval to practice as a nurse practitioner will lapse.
- (f) Continuing Education (CE). In order to maintain nurse practitioner approval to practice beginning no sooner than two years after initial approval has been granted, the nurse practitioner shall earn 30 hours of continuing education every two years. At least three hours of continuing education every two years shall be the study of the medical and social effects of substance abuse including abuse of prescription drugs, controlled substances, and illicit drugs. Continuing Education hours are those hours for which approval has been granted by the American Nurses Credentialing Center (ANCC) or Accreditation Council on Continuing Medical Education (ACCME) or other national credentialing bodies. Documentation shall be maintained by the nurse practitioner at each practice site and made available upon request to either Board.
- (g) Inactive Status.
- (1) Any nurse practitioner who wishes to place his or her approval on an inactive status may notify the Boards by completing the form supplied by the Boards.
  - (2) The registered nurse with inactive nurse practitioner status shall not practice as a nurse practitioner.
  - (3) The registered nurse with inactive nurse practitioner status who reapplies for approval to practice shall be required to meet the qualifications for approval as stipulated in Parts (c)(1)(A), (c)(1)(C) - (F) and Part (c)(2)(A) of this Rule; and shall provide documentation to the Boards of 30 contact hours of practice relevant continuing education during the preceding two years.
- (h) Prescribing Authority.
- (1) The prescribing stipulations contained in this Paragraph apply to writing prescriptions and ordering the administration of medications;
  - (2) Prescribing and dispensing stipulations are as follows:
    - (A) Drugs and devices that may be prescribed by the nurse practitioner in each practice site shall be included in the written protocols as outlined in Paragraph (i), Subparagraph (2) of this Rule.
    - (B) Controlled Substances (Schedules 2, 2N, 3, 3N, 4, 5) defined by the State and Federal Controlled Substances Acts may be procured, prescribed or ordered as established in written protocols, providing all of the following requirements are met:
      - (i) the nurse practitioner has an assigned DEA number which is entered on each prescription for a controlled substance;
      - (ii) dosage units for schedules 2, 2N, 3 and 3N are limited to a 30 day supply; and
      - (iii) the prescription or order for schedules 2, 2N, 3 and 3N may not be refilled.
- (C) The nurse practitioner may prescribe a drug not included in the site-specific written protocols only as follows:
- (i) upon a specific written or verbal order obtained from a primary or back-up supervising physician before the prescription or order is issued by the nurse practitioner; and
  - (ii) the verbal or written order as described in Subpart (h)(2)(C)(i) of this Rule shall be entered into the patient record with a notation that it is issued on the specific order of a primary or back-up supervising physician and signed by the nurse practitioner and the physician.
- (D) Refills may be issued for a period not to exceed one year except for schedules 2, 2N, 3 and 3N controlled substances which may not be refilled.
- (E) Each prescription shall be noted on the patient's chart and include the following information:
- (i) medication and dosage;
  - (ii) amount prescribed;
  - (iii) directions for use;
  - (iv) number of refills; and
  - (v) signature of nurse practitioner.
- (F) The prescribing number assigned by the Medical Board to the nurse practitioner shall appear on all prescriptions issued by the nurse practitioner.
- (G) Prescription Format:
- (i) all prescriptions issued by the nurse practitioner shall contain the supervising physician(s) name, the name of the patient, and the nurse practitioner's name, telephone number, and prescribing number;
  - (ii) the nurse practitioner's assigned DEA number shall be written on the prescription form when a controlled substance is prescribed as defined in Paragraph (h) Part (B) of this Rule; and
- (3) The nurse practitioner may obtain approval to dispense the drugs and devices included in written protocols for each practice site from the Board of Pharmacy, and dispense in accordance with 21 NCAC 46.1700, which is hereby incorporated by reference including subsequent amendments of the referenced materials.
- (i) Quality Assurance standards for a Collaborative Practice Agreement.
- (1) Availability: The primary or back-up supervising physician(s) and the nurse practitioner shall be continuously available to each other for consultation by direct communication or telecommunication.
  - (2) Written Protocols:
    - (A) Written protocols shall be agreed upon and signed by both the primary supervising physician and the nurse practitioner, and maintained in each practice site.
    - (B) Written protocols shall be reviewed at least yearly, and this review shall be acknowledged by a dated signature sheet, signed by both the primary supervising physician and the nurse practitioner,

appended to the written protocol and available for inspection by members or agents of either Board.

- (C) The written protocols shall include the drugs, devices, medical treatment, tests and procedures that may be prescribed, ordered and implemented by the nurse practitioner consistent with Paragraph (h) of this Rule, and which are appropriate for the diagnosis and treatment of the most commonly encountered health problems in that practice setting.
  - (D) The written protocols shall include a pre-determined plan for emergency services.
  - (E) The nurse practitioner shall be prepared to demonstrate the ability to perform medical acts as outlined in the written protocols upon request by members or agents of either Board.
- (3) Quality Improvement Process.
- (A) The primary supervising physician and the nurse practitioner shall develop a process for the ongoing review of the care provided in each practice site to include a written plan for evaluating the quality of care provided for one or more frequently encountered clinical problems; and
  - (B) This plan shall include a description of the clinical problem(s), an evaluation of the current treatment interventions, and if needed, a plan for improving outcomes within an identified time-frame.
  - (C) The quality improvement process shall include scheduled meetings between the primary supervising physician and the nurse practitioner at least every six months. Documentation for each meeting shall:
    - (i) identify clinical problems discussed, including progress toward improving outcomes as stated in Part (i)(3)(B) of this Rule, and recommendations, if any, for changes in treatment plan(s).
    - (ii) be signed and dated by those who attended; and
    - (iii) be available for review by members or agents of either Board for the previous five calendar years and be retained by both the nurse practitioner and physician.
- (4) Nurse Practitioner-Physician Consultation. The following requirements establish the minimum standards for consultation between the nurse practitioner/primary or back-up supervising physician(s):
- (A) The nurse practitioner with temporary approval shall have:
    - (i) review and countersigning of notations of medical acts by a primary or back-up supervising physician within seven days of nurse practitioner-patient contact for the first six months of collaborative agreement. This time-frame includes the period of interim status.
    - (ii) face-to-face consultation with the primary supervising physician on a weekly basis for one month after temporary approval is achieved and at least monthly

throughout the period of temporary approval.

- (B) The nurse practitioner with first time approval to practice shall have:
  - (i) review and countersigning of notations of medical acts by a primary or back-up supervising physician within seven days of nurse practitioner-patient contact for the first six months of collaborative agreement. This time-frame includes the period of interim status.
  - (ii) face-to-face consultation with the primary supervising physician on a weekly basis for one month after full approval is received and at least monthly for a period no less than the succeeding five months.
- (C) The nurse practitioner previously approved to practice in North Carolina who changes Primary supervising physician shall have face-to-face consultation with the primary supervising physician weekly for one month and then monthly for the succeeding five months.
- (D) Documentation of consultation shall:
  - (i) identify clinical issues discussed and actions taken;
  - (ii) be signed and dated by those who attended; and
  - (iii) be available for review by members or agents of either Board for the previous five calendar years and be retained by both the nurse practitioner and physician.
- (j) Method of Identification. The nurse practitioner shall wear an appropriate name tag spelling out the words "Nurse Practitioner."
- (k) Disciplinary Action. The approval of a nurse practitioner may be restricted, denied or terminated by the Medical Board and the registered nurse license may be restricted, denied, or terminated by the Board of Nursing, if after due notice and hearing in accordance with provisions of Article 3A of G.S. 150B, the appropriate Board shall find one or more of the following:
  - (1) that the nurse practitioner has held himself or herself out or permitted another to represent the nurse practitioner as a licensed physician;
  - (2) that the nurse practitioner has engaged or attempted to engage in the performance of medical acts other than according to the written protocols and collaborative practice agreement;
  - (3) that the nurse practitioner has been convicted in any court of a criminal offense;
  - (4) that the nurse practitioner is adjudicated mentally incompetent or that the nurse practitioner's mental or physical condition renders the nurse practitioner unable to safely function as a nurse practitioner; or
  - (5) that the nurse practitioner has failed to comply with any of the provisions of this Rule.
- (l) Fees:
  - (1) An application fee of one hundred dollars (\$100.00) shall be paid at the time of initial application for approval and each subsequent application for approval to practice. All initial, subsequent and volunteer

application fees shall be equally divided between the Board of Nursing and the Medical Board. No other fees are shared. Application fee shall be twenty dollars (\$20.00) for volunteer approval.

- (2) The fee for annual renewal of approval shall be fifty dollars (\$50.00).
- (3) The fee for annual renewal of volunteer approval, shall be ten dollars (\$10.00).
- (4) No portion of any fee in this Rule is refundable.

(m) Practice During a Disaster. A nurse practitioner approved to practice in this State or another state is authorized to perform medical acts, tasks, or functions as a nurse practitioner under the supervision of a physician licensed to practice medicine in North Carolina during a disaster in a county in which a state of disaster has been declared or counties contiguous to a county in which a state of disaster has been declared. The nurse practitioner shall notify the Boards in writing of the names, practice locations and telephone numbers for the nurse practitioner and each primary supervising physician within 15 days of the first performance of medical acts, tasks, or functions as a nurse practitioner during the disaster. Teams of physician(s) and nurse practitioner(s) practicing pursuant to this Rule shall not be required to maintain on-site documentation describing supervisory arrangements and instructions for prescriptive authority as otherwise required pursuant to Paragraphs (h) and (i) of this Rule.

*History Note: Authority G.S. 90-6; 90-18(c)(13), (14); 90-18.2; 90-171.20(4); 90-171.20(7); 90-171.23(b); 90-171.36; 90-171.37; 90-171.42; 90-171.83*

*Eff. January 1, 1996;*

*Amended Eff. July 1, 2000; May 1, 1999.*

## SECTION .0300 - APPROVAL OF NURSING PROGRAMS

### 21 NCAC 36 .0318 FACULTY

(a) Both full-time and part-time faculty members shall be considered nursing program faculty. When part-time faculty are utilized, evidence shall exist of their participation in curriculum implementation and evaluation.

(b) Policies for nursing program faculty members shall reflect those of the institution; however, variations in these policies may be necessary because of the nature of the nursing curriculum.

(c) Qualifications for nurse faculty members shall be stated and reflect knowledge and experiences in clinical nursing and teaching which are appropriate for assigned responsibilities.

(d) Faculty members who teach non-nursing courses required in the nursing curriculum shall have appropriate academic and experiential qualifications for the program areas in which they participate.

(e) Each nurse faculty member shall hold a current unrestricted license to practice as a registered nurse in North Carolina. The program director shall be held accountable for validating and documenting current registered nurse licensure to practice as a registered nurse in North Carolina.

(f) Each nurse faculty member shall hold a baccalaureate in nursing or a baccalaureate with a major in nursing. Exceptions are:

- (1) the individual who holds a master's degree in nursing and a baccalaureate in another discipline;
- (2) the individual employed as a faculty member prior to January 1, 1998, who holds a baccalaureate in another

discipline. This exception applies to continuing employment in the current setting.

(g) Each nurse faculty member employed after January 1, 1984, shall have had a minimum of two years prior employment in direct patient care. Each nurse faculty member employed after January 1, 1998, shall have had a minimum of two years prior employment in direct patient care as a registered nurse. Each nurse faculty member employed after July 1, 1992, shall have had a minimum of two calendar years prior full-time employment or the equivalent in clinical nursing practice as a registered nurse.

(h) In addition to all qualifications for nurse faculty members, the nurse director of a practical nurse education program employed as such after January 1, 1984, shall have had at least two years full-time experience teaching in nursing program(s).

(i) In addition to all qualifications for nurse faculty member, the nurse director of a program preparing individuals for registered nurse practice shall hold a baccalaureate and a master's degree, one of which shall be in nursing; and if employed after January 1, 1984, shall have had at least two years full-time experience teaching at or above the academic level of the program. For purposes of this standard, associate degree and diploma nursing program levels are considered comparable.

(j) In addition to all qualifications for nurse faculty members, the nurse faculty member in a program preparing individuals for registered nurse practice who has primary responsibility, designated by the program, for coordinating the planning, implementation, and evaluation, of each major clinical nursing course shall hold a master's degree. This nurse faculty member shall also have had a minimum of one academic year of full-time teaching experience in a nursing program.

(k) In addition to all qualifications for nurse faculty members, the nurse faculty member in a program preparing individuals for practical nurse licensure who has primary responsibility, designated by the program, for coordinating the planning, implementation and evaluation of each major clinical nursing course, shall have had a minimum of one academic year of full-time teaching experience in a nursing program.

(l) The nurse faculty members shall have the appropriate authority and responsibility for:

- (1) student admission, progression, and graduation requirements; and
- (2) the development, implementation, and evaluation of the curriculum.

(m) The nurse faculty members shall be sufficient in number to implement the curriculum as demanded by the course objectives, the levels of the students, and the nature of the learning environment. The faculty-student ratio in clinical areas shall depend upon the level of students, the acuity of patients, and the average daily census in the unit. The ratio shall be 1:10 or less. Request to exceed the 1:10 ratio shall be submitted to the Board or its designated representatives for approval prior to implementation. Request may be approved for one academic term only.

(n) There shall be written annual evaluation of each nurse faculty member by the program director or a designee; and evidence of written evaluation of the program director by an immediate supervisor according to the institutional policy.

*History Note: Authority G.S. 90-171.23(b)(8); 90-171.38; 90-171.83*



*Eff. February 1, 1976;  
Amended Eff. July 1, 2000; January 1, 1996; June 1, 1992;  
January 1, 1989; January 1, 1984.*

**SECTION .0400 - UNLICENSED PERSONNEL: NURSE  
AIDES**

**21 NCAC 36 .0404 LISTING AND RENEWAL**

(a) All nurse aide II's, as defined in Rule .0403(b) of this Section, regardless of working title, employed or assigned in a service agency or facility for the purpose of providing nursing care activities shall be listed on the Board of Nursing Nurse Aide II Registry and shall meet the following requirements:

- (1) successful completion of a nurse aide II program or its Board approved equivalent;
- (2) listed as a Level I nurse aide on the DFS Nurse Aide Registry with no substantiated findings of abuse, neglect, or misappropriation of property; and
- (3) submission of an application to the Board of Nursing for placement on the Board of Nursing Nurse Aide II Registry prior to working as a nurse aide II.

The application shall be submitted with the required fee within 30 days of completion of the nurse aide II program. Application for initial listing received in the Board office between April and June shall show an expiration day of June 30 of the following year.

(b) Nursing students currently enrolled in Board of Nursing approved nursing programs desiring listing as a nurse aide II shall submit:

- (1) An application fee; and
- (2) A listing form completed by the nursing program director indicating successful completion of course work equivalent in content and clinical hours to that required for a nurse aide II.

(c) Registered nurses and licensed practical nurses who hold current, unrestricted licenses to practice in North Carolina, and registered nurses and licensed practical nurses in the discipline process by the Board of Nursing who have been granted approval by the Board of Nursing or its designee may make application as a nurse aide II.

(d) An individual previously enrolled in a Board approved nursing program leading to licensure as RN or LPN may list with no additional testing provided the student withdrew from school in good standing within the last 24 months and completed the equivalent content and clinical hours. Such individual shall submit listing form as described in Paragraph (b)(2) of this Rule. If the student was in good standing upon withdrawal from the school and withdrew from the school in excess of 24 months, the student must complete entire nurse aide II program.

(e) Individuals who have completed a training course equivalent in content and clinical hours to the nurse aide II program, may submit documentation of same to the Board of Nursing for review. If training is equivalent, the individual may submit the application with required fee and be listed on the Board of Nursing Nurse Aide Registry as a nurse aide II.

(f) An employing agency or facility may choose up to four nurse aide II tasks to be performed by nursing aide I personnel without the nurse aide I completing the entire nurse aide II program. These tasks are individual activities which may be performed after the nurse aide has received the approved training

and competency evaluation as defined in Rule .0403(b) of this Section.

- (1) The agency may obtain the selected tasks curriculum model from the nearest Community College or the Board of Nursing or may submit a self generated curriculum to the Board for approval. Board approval must be obtained prior to teaching the nurse aide II tasks.
- (2) Once approval has been obtained, the Board of Nursing must be notified of the nurse aide II task(s) that will be performed by nurse aide I personnel in the agency and for which all Board stipulations have been met. The notification of nurse aide II task(s) form which may be requested from the Board office shall be used. Each agency shall receive a verification letter once the Board has been appropriately notified.
- (3) Documentation of the training and competency evaluation must be maintained for each nurse aide I who is approved to perform nurse aide II task(s) within the agency.

(g) Each nurse aide II shall renew listing with the Board of Nursing biennially on forms provided by the Board. The renewal application shall be accompanied by the required fee.

- (1) To be eligible for renewal, the nurse aide II must have worked at least eight hours for compensation during the past 24 months performing nursing care activities under the supervision of a Registered Nurse.
- (2) Any nurse aide II who has had a continuous period of 24 months during which no nursing care activities were performed for monetary compensation but who has performed patient care activities for monetary compensation shall successfully complete the competency evaluation portion of the nurse aide II program and submit application in order to be placed on the Board of Nursing Nurse Aide II Registry.
- (3) A nurse aide II who has performed no nursing care or patient care activities for monetary compensation within the past 24 months must successfully complete a nurse aide II program prior to submitting the application for renewal.
- (4) A nurse aide II who has substantiated findings of abuse, neglect, or misappropriation of funds on the DFS Nurse Aide Registry shall not be eligible for renewal as a nurse aide II.

*History Note: Authority G.S. 90-171.19; 90-171.20(2)(4)(7)d,e,g.; 90-171.37; 90-171.43(4); 90-171.55; 490-171.83; 2 U.S.C.S. 1395i-3 (1987);*

*Eff. March 1, 1989;*

*Amended Eff. July 1, 2000; December 1, 1995; April 1, 1990.*

**21 NCAC 36 .0405 APPROVAL OF NURSE AIDE  
EDUCATION PROGRAMS**

(a) The Board of Nursing shall accept those programs approved by DFS to prepare the nurse aide I.

(b) The North Carolina Board of Nursing shall approve nurse aide II programs. Nurse aide II programs may be offered by an individual, agency, or educational institution after the program is approved by the Board.

- (1) Each entity desiring to offer a nurse aide II program shall submit a program approval application at least 60

days prior to offering the program. It shall include documentation of the following standards:

- (A) policy established which provides for supervised clinical experience with faculty/student ratio not to exceed 1:10;
- (B) Board of Nursing approval of each clinical facility for student use as defined in 21 NCAC 36.0322(b);
- (C) a written contract between the program and clinical facility prior to admitting students to the facility for clinical experience;
- (D) admission requirements which include:
  - (i) successful completion of nurse aide I training program or Board of Nursing established equivalent and current nurse aide I listing on DFS Registry; and
  - (ii) GED or high school diploma; and
  - (iii) other admission requirements as identified by the program; and
- (E) policy regarding the processing and disposition of program and student complaints.

(2) Level II nurse aide programs shall include a minimum of 80 hours of theory and 80 hours of supervised clinical instruction consistent with the legal scope of practice as defined by the Board of Nursing in Rule .0403(b) of this Section. Changes made by the Board of Nursing in content hours or scope of practice in the nurse aide II program shall be published in the Bulletin. Requests by the programs to modify the nurse aide II course content shall be directed to the Board office.

(3) The Board shall identify and publish minimum competency and qualifications for faculty for the nurse aide Level II programs. These are:

- (A) hold a current unrestricted license to practice as a registered nurse in North Carolina;
- (B) have had at least two years of direct patient care experiences as an R.N.; and
- (C) have experience teaching adult learners.

(4) Each nurse aide II program shall furnish the Board records, data, and reports requested by the Board in order to provide information concerning operation of the program and any individual who successfully completes the program.

(5) When an approved nurse aide II program closes, the Board shall be notified in writing by the program. The Board shall be informed as to permanent storage of student records.

(c) An annual program report shall be submitted by the Program Director to the Board of Nursing on Board form by March 15 of each year. Failure to submit annual report shall result in administrative action affecting approval status as described in 21 NCAC 36.0405(5)(d) and (e). Complaints regarding nurse aide II programs may result in an on site survey by the North Carolina Board of Nursing.

(d) Approval status shall be determined by the Board of Nursing using the annual program report, survey report and other data submitted by the program, agencies, or students. The determination shall result in full approval or approval with stipulations.

(e) If stipulations have not been met as specified by the Board of Nursing, a hearing shall be held by the Board of Nursing regarding program approval status. A program may continue to

operate while awaiting the hearing before the Board. EXCEPTION: In the case of summary suspension of approval as authorized by G.S. 150B(3)(c), the program must immediately cease operation.

- (1) When a hearing is scheduled, the Board shall cause notice to be served on the program and shall specify a date for the hearing to be held not less than 20 days from the date on which notice is given.
- (2) If the Board determines from evidence presented at hearing that the program is complying with the Law and all rules, the Board shall assign the program Full Approval status.
- (3) If the Board, following a hearing, finds that the program is not complying with the Law and all rules, the Board shall withdraw approval.
  - (A) This action constitutes discontinuance of the program; and
  - (B) The parent institution shall present a plan to the Board for transfer of students to approved programs or fully refund tuition paid by the student. Closure shall take place after the transfer of students to approved programs within a time frame established by the Board; and
  - (C) The parent institution shall notify the Board of the arrangements for storage of permanent records.

*History Note: Authority G.S. 90-171.20(2)(4)(7)d., e., g.; 90-171.39; 90-171.40; 90-171.43(4); 90-171.55; 90-171.83; 42 U.S.C.S. 1395i-3 (1987);*

*Eff. March 1, 1989;*

*Amended Eff. July 1, 2000; December 1, 1995; March 1, 1990.*

## SECTION .0700 – NURSE LICENSURE COMPACT

### 21 NCAC 36 .0702 ISSUANCE OF A LICENSE BY A COMPACT PARTY STATE

For the purpose of the Compact:

- (1) A nurse applying for a license in a home state shall produce evidence of the nurses' primary state of residence. Such evidence shall include a declaration signed by the licensee attesting to the licensee's primary state of residence. Further evidence that may be requested includes, but is not limited to:
  - (a) Driver's license with a home address;
  - (b) Voter registration card displaying a home address; or
  - (c) Federal income tax return declaring the primary state of residence.
- (2) A nurse changing primary state of residence, from one party state to another party state, may continue to practice under the former home state license and multistate licensure privilege during the processing of the nurse's licensure application in the new home state for a period not to exceed 30 days.
- (3) The licensure application in the new home state of a nurse under pending investigation by the former home state shall be held in abeyance. The 30-day period in Item (2) of this Rule shall be stayed until resolution of the pending investigation.
- (4) The former home state license shall no longer be valid upon the issuance of a new home state license.

- (5) If a decision is made by the new home state denying licensure, the new home state shall notify the former home state within 10 business days and the former home state may take action in accordance with that state's laws and rules.

*History Note: Authority G.S. 90-171.82(6); 90-171.83(a)(b); 90-171.85(b); 90-171.87(4); Eff. July 1, 2000.*

**CHAPTER 37 - BOARD OF NURSING HOME ADMINISTRATORS**

**SUBCHAPTER 37D - NEW LICENSES**

**SECTION .0300 - EDUCATION, EXPERIENCE AND REQUIRED COURSE**

**21 NCAC 37D .0303 REQUIRED COURSE**

The course prescribed by the Board pursuant to G.S. 90-278(1)c shall be comprised of in-class, field and correspondence components included in the current description of the Basic Nursing Home Administrator Course provided by the School of Public Health at UNC-Chapel Hill or its substantial equivalent. An applicant with a health care administration degree may request in writing that the Board approve college courses as substantially equivalent to portions of the required course, provided the applicant tests out of portions of the required course with a passing score of at least 70%.

*History Note: Authority G.S. 90-278(1)c; Eff. April 1, 1996; Amended Eff. July 1, 2000.*

**CHAPTER 50 - BOARD OF EXAMINERS OF PLUMBING, HEATING AND FIRE SPRINKLER CONTRACTORS**

**SECTION .1200 - PETITIONS FOR RULES**

**21 NCAC 50 .1210 WRITTEN SUBMISSIONS**

(a) Any person may file a written submission containing data, comments or arguments, after publication of a rulemaking notice and up to the day of the hearing, unless a different period has been prescribed in the notice or granted upon request. These written comments shall be sent to the Board at Box 110, Raleigh, North Carolina 27602. The submission should clearly state the rule(s) or proposed rule(s) to which the comments are addressed ~~to~~.

(b) Upon receipt of written comments, acknowledgment will be made with an assurance that the comments therein will be considered fully by the Board.

*History Note: Authority G.S. 87-18; 150B-21.2; Eff. February 1, 1991; Amended Eff. August 1, 2000.*

**CHAPTER 58 - REAL ESTATE COMMISSION**

**SUBCHAPTER 58A - REAL ESTATE BROKERS AND SALESMEN**

**SECTION .0400 - EXAMINATIONS**

**21 NCAC 58A .0406 EXAMINATION REVIEW**

(a) An applicant who fails an examination may review the examination as provided in Paragraphs (b) and (c) of this Rule. Applicants who pass an examination may not review the examination. Applicants who review an examination may not be accompanied by any other person at a review session, nor may any other person review an examination on behalf of an applicant.

(b) An applicant who fails an examination taken by computer may review the examination at the testing center immediately following completion of the examination and receipt of the applicant's examination results but prior to leaving the testing center. An applicant eligible for examination review who fails to review the examination at the testing center immediately following completion of the examination will be deemed to have waived the right to review the examination.

(c) An applicant who fails an examination taken by the paper and pencil method may review the examination at such times and places as are scheduled by the Executive Director provided the applicant makes a request to review the examination not later than the request deadline date established by the Executive Director for a scheduled examination review date. Failure to request an appointment to review an examination by the request deadline date shall constitute a waiver of the right to review such examination. An applicant who has taken the examination by the paper and pencil method may be granted an excused absence from a scheduled examination review if the applicant provides evidence satisfactory to the Commission that the absence was the direct result of an emergency situation or condition which was beyond the applicant's control and which could not have been reasonably foreseen. A request for an excused absence must be promptly made in writing and must be supported by appropriate documentation verifying the reason for the absence. A request for an excused absence received more than 15 days after the scheduled examination review will be denied unless the applicant was unable to file a timely request due to the same circumstances that prevented the applicant from attending the examination review. An applicant who fails to appear for a scheduled examination review and who does not obtain an excused absence in accordance with this Rule shall be deemed to have waived the right to review the examination.

*History Note: Authority G.S. 93A-4(d); Eff. December 1, 1985; Amended Eff. October 1, 2000; July 1, 1989; February 1, 1989.*

**CHAPTER 68 - CERTIFICATION BOARD FOR SUBSTANCE ABUSE PROFESSIONALS**

**SECTION .0500 - ETHICAL PRINCIPLES OF CONDUCT**

**21 NCAC 68 .0503 COMPETENCE**

(a) The substance abuse professional shall recognize that the profession is founded on national standards of competency which promote the best interests of society, of the client and of the profession as a whole. The substance abuse professional shall obtain continuing education as a component of professional competency.

- (1) The substance abuse professional shall assist in the prevention of practices by unqualified or unauthorized persons in the field.
- (2) The substance abuse professional who is aware of unethical conduct or of unprofessional modes of practice shall report such violations to the appropriate certifying authority.
- (3) The substance abuse professional shall recognize boundaries and limitations of his or her competencies and not offer services or use techniques outside of these professional competencies.
- (4) The substance abuse professional shall recognize the effect of impairment on professional performance and shall be willing to seek appropriate treatment for oneself or for a colleague. The substance abuse professional shall support peer assistance programs in this respect.

(b) The application of this Rule is limited to actions by substance abuse professionals acting within the substance abuse professional fields.

(c) No person shall be certified as a substance abuse professional who is sentenced to an active or probationary term by the courts of this land and any part of the sentence is unserved.

*History Note:* Filed as a Temporary Adoption Eff. October 23, 1995 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Authority G.S. 90-113.30; 90-113.36; 90-113.37; 90-113.39; 90-113.40; 90-113.41; 90-113.43; 90-113.44; Eff. February 1, 1996; Amended Eff. August 1, 2000.

**21 NCAC 68 .0509 CLIENT RELATIONSHIPS**

The substance abuse professional shall inform the prospective client of the important aspects of the potential relationship.

- (1) The substance abuse professional shall inform the client and the client's agreement in areas likely to affect the client's participation including the recording of an interview, the use of interview material for training purposes, or the observation of an interview by another person.
- (2) The substance abuse professional shall inform the designated guardian or responsible person of the circumstances that may influence the relationship, when the client is a minor or incompetent.
- (3) The substance abuse professional shall not enter into a professional relationship with members of one's immediate family, friends or close associates. The substance abuse professional may enter into a counseling relationship with others where there was a pre-existing relationship involving the welfare of that person that will not be jeopardized by this dual relationship.
- (4) Sexual activity or contact of a substance abuse professional with a client shall be restricted as follows:
  - (a) The substance abuse professional shall not engage in or solicit sexual activity or sexual contact with a current client.

- (b) The substance abuse professional shall not engage in or solicit sexual activity or sexual contact with a former client for at least two years after the termination of the counseling relationship.
- (c) The substance abuse professional shall not engage in or solicit sexual activity or sexual contact with any person the professional knows to be a current client of his or her own agency or place of professional employment.
- (d) The substance abuse professional shall not engage in or solicit sexual activity or sexual contact with any person the professional knows to be a former client of his or her own agency or place of professional employment for at least two years after the termination of the counseling relationship if both the professional was employed at the agency and the former client was a client of the agency during the same time period.

*History Note:* Filed as a Temporary Adoption Eff. October 23, 1995 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Authority G.S. 90-113.30; 90-113.33; 90-113.34; 90-113.44; Eff. February 1, 1996; Amended Eff. August 1, 2000.

**SECTION .0600 - GROUNDS FOR DISCIPLINE AND DISCIPLINARY PROCEDURES**

**21 NCAC 68 .0601 GROUNDS FOR PROFESSIONAL DISCIPLINE**

Violation of these principles shall be deemed grounds for discipline:

- (1) Fraud or Misrepresentation in Procuring or Maintaining Certification.
  - (a) Acts such as to practice, attempt to practice, or to supervise others while representing oneself to be a certified substance abuse professional without being duly certified;
  - (b) False representation of material fact to procure or maintain certification, whether by word or conduct;
  - (c) Concealment of requested information contained in the application;
  - (d) Attempting to file or filing any false or forged diploma, certificate, affidavit, transcript, identification or qualification;
  - (e) Submitting material which is not the work product of the applicant;
  - (f) Knowingly assisting another to procure or maintain certification on the basis of fraud; or
  - (g) Aid, abet, or assist any uncertified person to practice as a certified substance abuse professional in violation of this code.
- (2) Fraud or Misrepresentation to the Public.
  - (a) Knowingly make misleading, deceptive, false, or fraudulent misrepresentations in the practice of the profession; or
  - (b) Pursue an illegal practice as set forth in G.S. 90-113.43.
- (3) Exploitation of Client or Recipient Relationships.

**APPROVED RULES**

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- (a) Entering into a professional relationship in violation of Rule .0509 of this Chapter;
  - (b) Participating in or soliciting sexual activity or sexual contact with a current or former client or client of one's agency in violation of Rule .0509 of this Chapter;
  - (c) Entering into personal financial arrangements with a client or recipient which make an improper use of the client or recipient.
- (4) **Illegal Acts of Practices.**
- (a) Violation of Federal or State confidentiality statutes;
  - (b) Conviction of any controlled substances law, until proof of rehabilitation is established to the Board's satisfaction; or
  - (c) Being any accessory to or participating in dishonesty, fraud, misrepresentation or any other illegal act involving a client or recipient.
- (5) **Professional Incompetency or Failure to Meet Standards of Practice.**
- (a) Failure to follow the standards of skill and competence possessed and applied by professional peers certified in this State acting in the same or similar circumstances;
  - (b) Use of drugs or alcoholic beverages to the extent that professional competency is affected, until proof of rehabilitation can be established;
  - (c) Refusal to seek treatment for chemical dependency or mental health problems which impair professional performance; or
  - (d) Engaging in conduct that an ordinary, reasonable, and prudent person could foresee would result in harm or injury to the public.
- (6) The following are prohibited governing professional relationships:
- (a) Offering professional services to a client or other service recipient in a professional relationship with another substance abuse professional except with the knowledge of the other professional or after the termination of the client or recipient's relationship with the other professional;
  - (b) Sending or receiving any commission or rebate or any other form or remuneration for referral of clients or recipients for professional services from the professional to whom the referral was made;
  - (c) Accepting from or charging the client a fee for a referral only when no other services are provided;
  - (d) Accepting or charging a fee when no substance abuse professional services are actually provided; except actual costs for copies and administrative services may be recovered;
  - (e) Accepting a gratuity or any other gift other than a one-time gift having a value of less than twenty five dollars (\$25.00) for professional work with a person who is receiving the services through the professional's employer; or
  - (f) Failing to cooperate with the investigations and proceedings of any professional ethics committee unless the failure is within the exercise of the professional's constitutional rights.

*History Note: Filed as a Temporary Adoption Eff. October 23, 1995 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Authority G.S. 90-113.30; 90-113.33; 90-113.44; Eff. February 1, 1996; Amended Eff. August 1, 2000.*

**RULES REVIEW COMMISSION**

This Section contains the agenda for the next meeting of the Rules Review Commission on Thursday, August 17, 2000, 10:00 a.m., at 1307 Glenwood Ave., Assembly Room, Raleigh, NC. Anyone wishing to submit written comment on any rule before the Commission should submit those comments to the RRC staff, the agency, and the individual Commissioners by Friday, August 11, 2000, at 5:00 p.m. Specific instructions and addresses may be obtained from the Rules Review Commission at 919-733-2721. Anyone wishing to address the Commission should notify the RRC staff and the agency at least 24 hours prior to the meeting.

**RULES REVIEW COMMISSION MEMBERS**

**Appointed by Senate**  
 Teresa L. Smallwood, Chairman  
 John Arrowood  
 Laura Devan  
 Jim Funderburke  
 David Twiddy

**Appointed by House**  
 R. Palmer Sugg, 1<sup>st</sup> Vice Chairman  
 Jennie J. Hayman, 2<sup>nd</sup> Vice Chairman  
 Walter Futch  
 Paul Powell  
 George Robinson

**RULES REVIEW COMMISSION MEETING DATES**

August 17, 2000	September 21, 2000 October 19, 2000
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**LOG OF FILINGS**

**RULES SUBMITTED: June 20, 2000 through July 20, 2000**

AGENCY/DIVISION	RULE NAME	RULE CITATION	ACTION
<b>DENR/ENVIRONMENTAL MANAGEMENT COMMISSION</b>			
	Activities Deemed to Comply with Wetlands Standard	15A NCAC 2B .0230	Adopt
	Broad River Basin	15A NCAC 2B .0306	Amend
<b>DENR/WILDLIFE RESOURCES COMMISSION</b>			
	Wildlife Collectors	15A NCAC 10B .0119	Amend
	Protection of Endangered Species	15A NCAC 10I .0102	Amend
	Endangered Species Listed	15A NCAC 10I .0103	Amend
	Threatened Species Listed	15A NCAC 10I .0104	Amend
	Special Concern Species Listed	15A NCAC 10I .0105	Amend
<b>DENR/DHHS</b>			
	Application for Initial Permit	15A NCAC 19B .0301	Amend
	Limitation of Permit	15A NCAC 19B .0302	Amend
	Conditions for Renewal of Permit	15A NCAC 19B .0304	Amend
	Qualifications of Maintenance Personnel	15A NCAC 19B .0309	Amend
	Log	15A NCAC 19B .0311	Amend
	Breath-Testing Instruments	15A NCAC 19B .0313	Amend
	Intoxilyzer: Model 5000	15A NCAC 19B .0320	Amend
	Preventive Maintenance: Intoxilyzer: Model 5000	15A NCAC 19B .0321	Amend
	Approval: Alcohol Screening Test Devices	15A NCAC 19B .0502	Amend
<b>SECRETARY OF STATE</b>			
	Application for Registration of Salesmen	18 NCAC 6 .1402	Amend
	Salesmen Examination Required	18 NCAC 6 .1413	Amend
	Examination for Investment Advisers and Represent	18 NCAC 6 .1709	Amend
<b>STATE BOARDS/COSMETIC ART EXAMINERS, STATE BOARD OF</b>			
	Definitions	21 NCAC 14A .0101	Amend
	Withdrawals	21 NCAC 14I .0104	Amend
	Student Daily Records	21 NCAC 14I .0106	Amend
	Application/Licensure/Individuals Convicted	21 NCAC 14I .0401	Amend
	Identifications Pins	21 NCAC 14O .0105	Amend
	Temporary Employment Permit	21 NCAC 14P .0103	Amend
	Renewals;Expired Licenses;Licenses Required	21 NCAC 14P .0105	Amend
	License to be posted	21 NCAC 14P .0107	Amend

**RULES REVIEW COMMISSION**

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Revocation of Licenses and other Measures	21 NCAC 14P .0108	Amend
Sanitary Ratings	21 NCAC 14P .0115	Amend

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**RULES REVIEW COMMISSION**

**July 20, 2000  
MINUTES**

The Rules Review Commission met on July 20, 2000, in the Assembly Room of the Methodist Building, 1307 Glenwood Avenue, Raleigh, North Carolina. Commissioners in attendance were Chairman Teresa Smallwood, John Arrowood, R. Palmer Sugg, Paul Powell, Walter Futch, and George Robinson. Robert Saunders, who is waiting for his appointment to be signed by the governor, was also in attendance.

Staff members present were: Joseph J. DeLuca, Staff Director; Bobby Bryan, Rules Review Specialist; Judith Moore; and Celia Cox.

The following people attended:

David Tuttle	Engineers & Land Surveyors
Dedra Alston	DENR
Al Eisele	DHHS
Emily Lee	TRANSPORTATION/Division of Motor Vehicles
Paul Glover	DHHS
Larry D. Michael	DENR/Health Services
Shirley Bullard	DHHS
Portia Rochelle	DHHS
Andrew Wilson	DHHS/DMA
Jessica Gill	DENR/ Coastal Management
Bill Crowell	DENR/ Coastal Management
Stephanie Montgomery	Secretary of State
Scott Templeton	Secretary of State
Peter Goolsby	Secretary of State
Denise Stanford	Dental Board
Dale Herman	DHHS
Susan Grayson	DENR
Jim Payne	DHHS/DMA

**APPROVAL OF MINUTES**

The meeting was called to order at 10:10 a.m. with Chairman Teresa Smallwood presiding. The Chairman asked for any discussion, comments, or corrections concerning the minutes of the June 15, 2000 meeting. There being none, the minutes were approved.

**FOLLOW-UP MATTERS**

10 NCAC 26B .0113: DHHS/Division of Medical Assistance - The Commission approved the rewritten rule.

10 NCAC 42C .2506: DHHS/Medical Care Commission- The Commission approved the rewritten rule.

10 NCAC 42E .0704: DHHS/Social Services Commission- No action was necessary.

10 NCAC 42Q .0016: DHHS/Social Services Commission- No action was necessary.

10 NCAC 42S .0501: DHHS/Social Services Commission- No action was necessary.

18 NCAC 10 .0201, .0303, .0304, .0305, .0306, .0307, .0307, .0701, .0801, .0802 and .0901: Secretary of State- The Commission approved the rewritten rules with the exception of .0802. This rule was returned to the agency at the agency request.

21 NCAC 56 .0503, .0603, .0804 and .0901: NC Board of Examiners of Engineers and Surveyors- A bill passed by the General Assembly gave the Board the authority for these rules; rules were approved.

**LOG OF FILINGS**

Chairman Teresa Smallwood presided over the review of the log and all rules were approved with the following exceptions:

10 NCAC 3R- all rules: DHHS/Division of Family Services- These rules were withdrawn by the agency.

10 NCAC 50B .0305: DHHS/Division of Medical Assistance – The Commission objected to this rule due to ambiguity. In (2), it is not clear what is meant by "reduce substantially." How much reduction would be considered "substantial?" There appears to be a contradiction between (3) and (3)(d). In (3), deprivation means continued absence for a reason other than hospitalization, yet (3)(d) says that absence may be for treatment or medical care. That would seem to mean hospitalization. It is not clear which is meant. In (f), it is not clear what is meant by a "definite plan" for bringing the child back into the home. This objection applies to existing language in the rule.

15A NCAC 7H .0209: DENR/Coastal Resources Commission – The Commission objected to this rule due to lack of statutory authority and ambiguity. In (b), it is not clear what is meant by the statement that the shorelines are "especially vulnerable" to erosion, etc. In (e)(3)(b), it is not clear what is meant by "adequate" erosion control devices or structures. In (e)(4), it is not clear what is meant by "significant adverse impact." In (e)(5), it is not clear what is meant by "significantly interfere." In (e)(6), it is not clear what is meant by "extraordinary public expenditures." In (e)(7), it is not clear what is meant by "major...damage to valuable, documented historic architectural or archeological resources." In (e)(9), it is not clear what is meant by "temporary." In (g)(4)(A)(ii), it is not clear who would be considered a "licensed design professional" and if no law requires certification by a licensed professional then the Coastal Resources Commission has no authority to require it. In (g)(4)(B)(ii)(VIII), it is not clear what is meant by "significant adverse impacts." This objection applies to existing language in the rule.

15A NCAC 18A .2806: DENR/Commission for Health Services – The Commission objected to this rule due to ambiguity. In (d), it is not clear what is meant by "properly protected food."

15 NCAC 18A .2812: DENR/Commission for Health Services – The Commission objected to this rule due to ambiguity. In (c), it is not clear what is meant by "proper handling of soiled utensils." In (e)(2), it is not clear what is meant by the phrase "hot detergent solution that is kept clean."

In (h), it is not clear what the standards are for approval of a testing method or equipment. This objection applies to existing language in the rule.

15A NCAC 19B .0301, .0302, .0304, .0309, .0311, .0320, .0321, .0502: DHHS/Commission for Health Services – These rules were postponed until the August meeting at the request of the agency.

15A NCAC 19B .0313: DHHS/Commission for Health Services – This rule was withdrawn by the agency.

15A NCAC 26B .0104: DHHS/Commission for Health Services – The Commission objected to this rule due to lack of statutory authority. In (a), there is no authority to require adherence to an Operation's Manual that has not been adopted as a rule.

18 NCAC 7 .0102: Secretary of State – The Commission objected to this rule due to lack of unnecessary. This rule contains no requirements or standards and is thus not necessary. This objection applies to existing language in the rule.

21 NCAC 16W .0103: State Board of Dental Examiners – This rule was withdrawn by the agency.

## COMMISSION PROCEDURES AND OTHER MATTERS

Mr. DeLuca reported that there was \$48,000 in this year's budget to cover accrued attorney's fees and that \$200,000 had been placed in a special Office of State Budget Management reserve for future attorney fees.

The next meeting will be on August 17, 2000.

The meeting adjourned at 11:30 a.m.

Respectfully submitted,  
Judith Moore



**CONTESTED CASE DECISIONS**

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

**OFFICE OF ADMINISTRATIVE HEARINGS**

**Chief Administrative Law Judge**

JULIAN MANN, III

**Senior Administrative Law Judge**

FRED G. MORRISON JR.

**ADMINISTRATIVE LAW JUDGES**

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

*James L. Conner, II  
Robert Roosevelt Reilly Jr.  
Beryl E. Wade*

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<b>ALCOHOL BEVERAGE CONTROL COMMISSION</b>				
NC ABC Commission v.DCL., Inc. T/A Cheap Shot O'Malleys	99 ABC 1341	Morrison	06/15/00	15:03 NCR 340
NC ABC Commission v. Harris Teeter, Inc. T/A Harris Teeter 142	99 ABC 1746	Lassiter	05/01/00	
<b>CRIME CONTROL AND PUBLIC SAFETY</b>				
Mamie Lee French v. N.C. Crime Victims Compensation Commission	99 CPS 1646	Conner	04/27/00	15:01 NCR 38
<b>HEALTH AND HUMAN SERVICES</b>				
William M. Gardin v. Department of Health & Human Services	98 CRA 1054	Lassiter	06/20/00	
Frederica LaShon Smith v. Department of Health & Human Services	00 CRA 0278 <sup>1</sup>	Wade	06/30/00	
<b>Child Support Enforcement Section</b>				
Loany Centeno v. Department of Health & Human Services	99 CSE 1325	Chess	06/29/00	
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**CONTESTED CASE DECISIONS**

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**STATE PERSONNEL**

***Health and Human Services***

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STATE OF NORTH CAROLINA  
COUNTY OF PITT

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
99 ABC 1341

N.C. ALCOHOLIC BEVERAGE CONTROL COMMISSION )  
Petitioner, )  
 )  
v. )  
 )  
D C L, INC. )  
T/A CHEAP SHOT O'MALLEYS, )  
Respondent. )

RECOMMENDED DECISION

This matter was heard before Fred G. Morrison, Jr., Senior Administrative Law Judge, on April 10, 2000 in Raleigh, North Carolina.

APPEARANCES

For Petitioner: LoRita K. Pinnix, Assistant Counsel  
N.C. Alcoholic Beverage Control Commission  
Raleigh, North Carolina  
  
For Respondent: William H. Potter, Jr.  
Sink Powers Sink & Potter  
Raleigh, North Carolina

ISSUE

Whether the Respondent's employee knowingly allowed Summer Leigh Greer; Melissa Ann Treadwell; Carl Andrew Linn; Kyle Lee Yatco; Katherine Eden Ringgold; Aaron Mackendri Flagg and Edward Michael Morahito, persons less than 21 years of age, to possess malt beverages on the licensed premises on or about February 5, 1999, at 12:30 a.m. in violation of North Carolina General Statute 18B-302(b)(1), G.S. 18B-1005(a)(1) and 4NCAC 2S.0233?

FINDINGS OF FACT

From official documents in the file, sworn testimony of the witnesses, and other competent and admissible evidence, it is found as a fact that:

1. On February 5, 1999, the Respondent held on-premises Malt Beverage, on-premises Fortified Wine, on-premises Unfortified Wine and Mixed Beverages Private Club permits from the Petitioner for its business located at 118 E. Fifth Street, Greenville, Pitt County North Carolina.
2. On February 5, 1999 at approximately 12:30 a.m., Alcohol Law Enforcement Agents Jason Godwin and Frank Huggins business located at 118 E. Fifth Street, Greenville, Pitt County, North Carolina.
3. Agents Godwin and Huggins entered Respondent's business by way of the patio in the back of Respondent's business. When they entered the business, two of Respondent's employees who were acting as doormen ceased talking to the patrons they had been interacting with and stopped the agents. After identifying themselves to Respondent's employees, Agents Godwin and Huggins were then allowed to enter Respondent's business.
4. Upon entering Respondent's business and walking past Respondent's employees, Agent Godwin immediately saw, in a large crowd, a youthful looking white male holding what appeared to be a malt beverage. Agent Godwin approached this person and established that he was Carl Andrew Linn, a person less than 21 years of age on that date.
5. When Agent Godwin approached Mr. Linn, Mr. Linn was holding a malt beverage. Mr. Linn's hands were marked with black "X"s to denote that he was under 21 years of age and a stamp to denote that he had paid the fee to enter the business. Agent Godwin issued a citation to Mr. Linn for underage possession of malt beverages.

**CONTESTED CASE DECISIONS**

6. Mr. Linn was standing approximately seven to ten feet from the door Agents Godwin and Huggins used to enter Respondent's business.

7. Duties of the doormen at Respondent's business included looking for violations of ABC laws and to take care of people drinking.

8. Petitioner did not present any evidence as to underage possession by Summer Leigh Greer, Melissa Ann Treadwell, Kyle Lee Yatco, Katherine Eden Ringgold; Aaron Mackendri Flagg and Edward Michael Morahito.

Based on the foregoing Findings of Fact, the undersigned Administrative Law Judge makes the following:

**CONCLUSIONS OF LAW**

1. The Office of Administrative Hearing has jurisdiction in this matter.

2. North Carolina General Statute Section 18B-302(b)(1) provides, in pertinent part:

"It shall be unlawful for (1) a person less than 21 years old ... to possess malt beverages..."

3. North Carolina General Statute Section 18B-1005(a)(1) provides, in pertinent part:

"It shall be unlawful for a permittee or his agent or employee to knowingly allow any of the following kinds of conduct to occur on his licensed premises: (a) any violation of this Chapter..."

4. 4 NCAC 2S.0233 provides that no permittee or his employees shall knowingly allow a person under the age of 21 to possess or consume any alcoholic beverages on the licensed premises.

5. On February 5, 1999, at approximately 12:30 a.m., Carl Andrew Linn, a person less than 21 years old, possessed a malt beverage on the licensed premises, in violation of G.S. 18B-302(b)(1). Petitioner failed to prove by the greater weight of the evidence that Respondent's employees knowingly allowed Mr. Linn's possession.

**RECOMMENDED DECISION**

Based upon the foregoing Findings of Fact and Conclusions of Law, the undersigned Administrative Law Judge recommends that all charges in this matter be DISMISSED.

**ORDER**

It is hereby ordered that the agency serve a copy of the final decision on the Office of Administrative Hearing, 6714 Mail Service Center, Raleigh, NC 27699-6417, 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 the 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-36b to serve a copy of the final agency decision on all parties and to furnish a copy to the parties' attorney on record and to the Office of Administrative Hearings.

The agency that will make the final decision in this contested case is the N.C. Alcoholic Beverage Control Commission.

This is the 15<sup>th</sup> day of June, 2000.

\_\_\_\_\_  
Fred G Morrison Jr.  
Senior Administrative Law Judge

STATE OF NORTH CAROLINA  
COUNTY OF PAMLICO

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
99 EHR 1438

GREGORY A. BOHMERT,  
Petitioner,

v.

COASTAL RESOURCES COMMISSION  
Respondent.

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RECOMMENDED DECISION

This matter came on for hearing before the undersigned administrative law judge on March 22, 2000, in Beaufort. The petitioner appeared *pro se*. Ms. Meredith Jo Alcoke represented the respondent. The parties agreed that there was no disagreement concerning the facts of the case but only concerning the proper interpretation of the law. The parties further agreed that a Motion for Summary Judgment was the proper manner to resolve the dispute. The respondent filed the Motion on April 20, 2000. The petitioner filed a Response on May 19, 2000.

**DISCUSSION**

The petitioner filed a completed application and fee with respondent on May 28, 1998, for construction of a pier in the waters of Smith Creek, Pamlico County. A permit was issued on October 20, 1999. In the meantime, 15A NCAC 7H.0208(b)(6)(J)(iii) was adopted effective August 1, 1998. The new language provides in part that “the proposed pier cannot be longer than the pier head line established by the adjacent piers.” The result is that the petitioner’s proposed pier is shortened and becomes financially infeasible.

The respondent first cites 15A NCAC 7H.0105 and GS 113A-120(a)(8) and argues that State guidelines takes precedence over duly-adopted rules under the Administrative Procedure Act. A guideline cannot trump a rule. GS 150B-18 provides that Article 2A “applies to an agency’s exercise of its authority to adopt a rule. A rule is not valid unless it is adopted in substantial compliance with this Article.” Assuming that these guidelines were duly-adopted as rules, a more specific rule on pier construction would take precedence over a more generic rule.

The remaining issue is whether the common law vested rights doctrine is applicable to this case. The respondent has demonstrated with various citations that this State is not among the minority of states that has adopted the “time of application” vested rights doctrine. North Carolina law requires substantial obligations and expenditures, good faith, reasonable reliance and issuance of a permit before a person has vested rights. See Browning-Ferris Indus. v Guilford County Bd. Of Adjustment, 126 NC App 168, 484 SE 2d 411 (1997).

**RECOMMENDED DECISION**

The petitioner acquired no vested rights when he submitted his application or at any time prior to the issuance of the permit. Therefore, the rule, in effect at the time the permit is issued, is controlling.

It is recommended that summary judgment under Rule 56, Rules of Civil Procedure, be entered in favor of respondent because there is no genuine issue of material fact and, as a matter of law, the conditions were properly included in the permit.

**NOTICE**

The final decision in this contested case will be made by the respondent. The parties have the right to file exceptions to this recommended decision and to present written arguments to this agency. The agency will mail a copy of the final decision to the parties, the attorneys of record and the Office of Administrative Hearings.

This the 24<sup>th</sup> day of May, 2000.

\_\_\_\_\_  
Robert Roosevelt Reilly, Jr.  
Administrative Law Judge



10. Is it physically possible that a discharge can be made from the premises of Weston's Mobile Home Park to Reedy Branch or its tributaries by the methods alleged by Respondent?
11. Did Petitioner, or any agent of Weston acting within the course and scope of his authority, discharge to or create an outlet to Reedy Branch or its tributaries?

**CIVIL PENALTY:**

12. If a civil penalty pursuant to G.S. 143-215.6A is proper in this matter, is Petitioner the proper person to assess that penalty against?
13. If a civil penalty pursuant to G.S. 143-215.6A is proper in this matter, is \$4,360.58 the proper amount, and if not, what is the proper amount?

**STATUTORY SECTIONS IN QUESTION**

- N.C. Gen. Stat. §§ 143-212 and 143-213 (1999) (Definitions)  
N.C. Gen. Stat. § 143-215.1 (1999) (Control of sources of water pollution; permits required)  
N.C. Gen. Stat. § 134-215.6A (1999) (Enforcement procedures: civil penalties)  
N.C. Gen. Stat. § 28A-15-2 (1999) (Title and possession of property).

**EXHIBITS RECEIVED INTO EVIDENCE**

**PETITIONER:**

- I. Deed recorded at Book 8285, Page 2578, Wake County Registry, North Carolina.

**RESPONDENT:**

1. Wake County Human Services Chain of Custody Record with Wake County Dept. of Health Coliform Bacteria Analysis;
2. February 5, 1999 Notice of Violation, Recommendation for Enforcement;
3. March 8, 1999 Memorandum with attached draft Findings and Decisions and Assessment of Civil Penalties and draft Enforcement Case Assessment Factors;
4. October 25, 1999 Assessment Factors;
5. October 29, 1999 Findings and Decision and Assessment of Civil Penalties with cover letter, attachment and certified mail return receipt;
6. Topographic Map of the area;
7. Topographic Map of the area;
8. Wake County Geographic Information Services Map;
9. N. C. Gen. Stat. §§ 143-212 and 143-213 "Definitions;"
10. N. C. Gen. Stat. § 143-215.1 "Control of sources of water pollution; permits required;"
11. N. C. Gen. Stat. § 134-215.6A "Enforcement procedures: civil penalties;" and
12. February 15, 1999 Response by Petitioner to February 5, 1999 Notice of Violation, Recommendation for Enforcement.

Based upon careful consideration of the testimony, evidence, and legal briefs received during the contested case hearing as well as the entire record of this proceeding, the undersigned makes the following:



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**FINDINGS OF FACT**

1. Weston's Mobile Home Park is located north of Buffalo Road and Lake Benson. It is located between two water branches, one of which is Reedy Branch, which converge before entering Lake Benson. Christian Road runs east from Buffalo Road and intersects with Kibutz Street which runs south. The intersection of Christian Road and Kibutz Street falls within Weston's Mobile Home Park. Buffalo Road forms the southern boundary of Weston's Mobile Home Park.
2. Petitioner's mother owned Weston's Mobile Home Park prior to Petitioner's inheritance of Weston's Mobile Home Park upon her death. Prior to Petitioner's mother's ownership, Weston's Mobile Home Park was owned by Petitioner's father.
3. Residents of Weston's Mobile Home Park knew Petitioner was the son of the owners and that he acted on their behalf by assisting them and collecting rents personally at times.
4. Petitioner owns a lot and a house in Weston's Mobile Home Park and has occasion to visit the park routinely. His lot is located approximately 100 feet from the site of the violation in this case.
5. Petitioner's mother died sometime prior to 1999. At least a portion of her estate, the deed to Weston's Mobile Home Subdivision, more commonly known in this proceeding as Weston's Mobile Home Park, was settled on March 30, 1999 "pursuant to a Family Settlement Agreement and Consent Judgment set out in a caveat proceeding entitled In the Matter of the Will of Bertha B. Weston, Deceased, In the General Court of Justice, Superior Court Division, file No. 95-SP-0637." The file number indicates that her will was filed in 1995.
6. Wake County Department of Environmental Services personnel act as agents of the Respondent when investigating violations of North Carolina General Statutes Article 21 which includes the investigations of waste discharges to water bodies without a required permit.
7. On February 2, 1999, Wake County Department of Environmental Services investigated a citizen complaint regarding septage being pumped to a pond at Weston's Mobile Home Park.
8. During the February 2, 1999 investigation, Ron Dudley of Wake County Department of Environmental Services observed a submersible pump and hose running from beneath the ground's surface at Christian Road near the intersection of Kibutz Street in Weston's Mobile Home Park, Garner, North Carolina. Mr. Dudley observed, through sight, smell and comparisons to past experience, a sewage trail leading from the pump and hose across the ground to a nearby ditch containing water which connected to a branch which was a tributary to Lake Benson, WS-III NSW Critical Area in the Neuse River Basin and a back-up water supply for the City of Raleigh.
9. During the February 2, 1999 investigation, a man at the site, David Edward Jones, claimed to be doing maintenance with the pump and hose to remove the septic liquid from beneath the ground's surface. On that date, Mr. Jones claimed he pumped the septic liquid at the direction of Petitioner and that it was a recurring problem at the mobile home park. He went on further to tell the inspectors that he had conducted similar pumping of septic systems several times in the past on the direction of Petitioner. Finally, he showed the inspectors another failing septic area in the mobile home park where there was evidence of human sewage such as toilet paper and waste above ground.
10. Mr. Jones' relationship with Petitioner is that of a friend of five years and a long-term tenant of Weston's Mobile Home Park who, at least since March 30, 1999, receives rent discounts for minor maintenance jobs he performs for Petitioner at Weston's Mobile Home Park. His testimony at hearing regarding his statements contradicted that of the inspector's testimony as to what he said on the dates of the inspections.
11. Petitioner controlled Mr. Jones' actions through direct communications or through general incentives to conduct maintenance of the property by pumping sewage onto the ground and into nearby waters.
12. Mr. Dudley instructed Mr. Jones not to pump again and to inform Mr. Weston that he was not to pump.
13. On February 3, 1999, Wake County Department of Environmental Services returned to Weston's Mobile Home Park for a follow-up inspection. Prior to visiting Weston's Mobile Home Park, Edwin Kent Penny of Wake County Department of Environmental Services reviewed the real estate file for ownership information which reflected Petitioner owned the property.
14. During the February 3, 1999 inspection, Mr. Penny observed, through sight, smell and comparisons to past experience, the active pumping of septic fluid from beneath the ground's surface, across the ground and into a water-filled ditch which connected to a nearby branch and ultimately connected to Lake Benson.

15. Also during the February 3, 1999 inspection, Mr. Penny ran conductivity tests around the area which indicated septic malfunction near the area of the pumping.
16. Also during the February 3, 1999 inspection, Mr. Penny sampled the water in the ditch below the pump hose. A laboratory set up the sample within one hour of its collection by Mr. Penny. The laboratory analyzed the sample and reported 2,400 colonies of fecal coliform bacteria per 100 milliliters. The presence of fecal coliform bacteria in this amount indicates the presence of human waste.
17. Mr. Penny and Mr. Dudley spoke briefly to Petitioner. Petitioner told them they were trespassing and asked them to leave. Mr. Penny and Mr. Dudley left.
18. The water table level during the time of the inspections was high. A high water table level can elevate the amount of liquid in a septic tank and make it more likely to back up into a residence or bleed out of the septic system.
19. One of the septic system lines runs approximately ten feet from the hole that contained the pump and hose.
20. Petitioner did not obtain a permit to make an outlet to waters of the State.
21. The cost of pumping out a septic tank and having the septage disposed of properly at a permitted septage land application site by a professional service equals \$175.00.
22. Respondent sent Petitioner a Notice of Violation, Recommendation for Enforcement (hereinafter "Notice") dated February 5, 1999 describing the investigation and the discovered violation. The Notice requested that Petitioner respond within fifteen days.
23. Petitioner responded to the Notice by hand-written note dated February 15, 1999. In the response, Petitioner denies removing any septic fluid, but stated that he removed a "few gallons from the hole, so I could fill the hole with dirt. What little water was pumped didn't reach the pond. It soaked in the grass."
24. Petitioner, in his written submission to Respondent, in his own testimony, in the testimony of David Edward Jones, and in the arguments of his counsel, offered several stories regarding these events in the nature of avoidance of liability. Some of these stories conflicted with each other, and others conflicted with the apparently truthful testimony of witnesses for Respondent. The undersigned specifically finds the testimony of Petitioner and his agent David Edward Jones not credible.
25. Mr. Penny prepared draft civil penalty assessment documents dated March 8, 1999 for review by Respondent's regional and central offices. It included factual descriptions of the violations observed, draft conclusions of law, and commentary on each of the statutory factors for assessing civil penalties to be considered by the Respondent.
26. Steve Lewis of the Respondent's Central Office reviewed the draft civil penalty assessment documents and found them acceptable and appropriate for enforcement. Mr. Lewis discussed the case with the Respondent's Director.
27. Kerr T. Stevens, Director of Respondent, reviewed the facts of this case and assessed a civil penalty of \$4,000.00 plus \$360.58 in enforcement costs. In assessing the civil penalty against Petitioner, Mr. Stevens considered each of the factors listed in G.S. § 143B-282.1, as required by G.S. § 143-215.6A. Mr. Stevens used a worksheet to guide his consideration of each statutory factor and found three items moderately significant from the range of not significant, moderately significant, significant, very significant, and extremely significant. The three moderately significant factors were: the duration and gravity of the violation, the effect on ground or surface water quantity or quality, and whether the violation was committed willfully or intentionally. The other factors were not ignored, but were considered not significant.
28. Civil penalty assessments by Respondent for a discharge to waters of the State without a permit routinely equals a minimum of \$4,000.00. Civil penalty assessments may often be increased if factors are found to be moderately significant.
29. The costs of enforcement by Wake County Department of Environmental Services and the Respondent's Regional Office totaled \$260.58 which included four hours of time by an Environmental Health Specialist, one hour of time by an Environmental Chemist II, one hour of time by the Regional Water Quality Supervisor, one fecal coliform lab cost, and \$100.00 administrative costs. The costs of enforcement by the Respondent's Central Office totaled \$100.00. The cumulative total of enforcement costs equaled \$360.58.

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**CONCLUSIONS OF LAW**

1. All parties are properly before the Office of Administrative Hearings, and the Office has jurisdiction over the parties and the subject matter.
2. All parties have been correctly designated, and there is no question as to misjoinder or nonjoinder.
3. Petitioner is a "person" within the meaning of G.S. § 143-215.6A, pursuant to G.S. § 143-212(4).
4. Petitioner fully owns and operates Weston's Mobile Home Park in Wake County as of March 30, 1999.
5. Petitioner held an ownership interest in Weston's Mobile Home Park after his mother's death and prior to March 30, 1999, pursuant to G.S. § 28A-15-2.
6. Petitioner exerted apparent authority and control over the maintenance actions at Weston's Mobile Home Park during the time of the observed violation and resulting enforcement action.
7. Petitioner was liable for the actions of his agent in pumping septic fluid from beneath ground into a ditch which connected to a branch and ultimately Lake Benson.
8. Petitioner was an appropriate person to be assessed civil penalties for the septic fluid pumping.
9. The water-filled ditch, the adjacent branch, and Lake Benson all constitute waters of the State within the meaning of G.S. § 143-215.1, pursuant to G.S. § 143-212(6).
10. The discharge of human waste from Weston's Mobile Home Park into waters of the State constitutes making an outlet within the meaning of G.S. § 143-215.1, pursuant to G.S. § 143-213(13).
11. Petitioner created an outlet to waters of the State without a permit required by G.S. § 143-215.1.
12. Respondent had authority to assess civil penalties against Petitioner in this matter pursuant to G.S. § 143-215.6A, which provided (as of the date of violation and initial assessment) that a civil penalty of not more than \$10,000.00 per violation may be assessed against a person who is required but fails to secure a permit required by G.S. § 143-215.1.
13. A \$4,000.00 civil penalty plus \$360.58 enforcement costs is reasonable and appropriate under the circumstances and is in accordance with the water quality statutes and the rules of the EMC.
14. The procedures taken to assess the civil penalty and the civil penalty, itself, were free of error, proper, and lawful. Respondent did not act arbitrary or capriciously in assessing the civil penalty against Petitioner.

Based on the foregoing Findings of Fact and Conclusions of Law, the undersigned makes the following:

**RECOMMENDED DECISION**

The Environmental Management Commission should uphold the \$4,000.00 civil penalty plus \$360.58 enforcement costs assessed against the Petitioner.

**ORDER**

It is hereby ordered that the Environmental Management Commission serve a copy of its final agency decision on the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, NC 27699-6417, in accordance with N.C. Gen. Stat. § 150B-36(b).

**NOTICE**

The Environmental Management Commission, 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. N.C. Gen. Stat. § 150B-36(a).

The Environmental Management Commission is required by N.C. Gen. Stat. § 150B-36(b) to serve a copy of the final decision on all parties and to furnish a copy to the parties' attorneys of record and to the Office of Administrative Hearings.

This the 24<sup>th</sup> day of May, 2000.

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James L. Conner, II  
Administrative Law Judge