

**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

TITLE	DEPARTMENT	LICENSING BOARDS	CHAPTER
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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15A	Environment and Natural Resources	Foresters	20
16	Public Education	Geologists	21
17	Revenue	Hearing Aid Dealers and Fitters	22
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NORTH CAROLINA REGISTER
 Publication Schedule For January 2000 - December 2000

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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 th 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	01/24/01	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	01/24/01	11/11/00
14:17	03/01/00	02/09/00	05/01/00	03/16/00	03/31/00	04/20/00	01/24/01	05/01/00	05/22/00	01/24/01	11/26/00
14:18	03/15/00	02/23/00	05/15/00	03/30/00	04/14/00	04/20/00	01/24/01	05/15/00	05/22/00	01/24/01	12/10/00
14:19	04/03/00	03/13/00	06/15/00	04/18/00	05/03/00	05/22/00	01/24/01	06/02/00	06/20/00	01/24/01	12/29/00
14:20	04/17/00	03/27/00	07/03/00	05/02/00	05/17/00	05/22/00	01/24/01	06/16/00	06/20/00	01/24/01	01/12/01
14:21	05/01/00	04/07/00	07/03/00	05/16/00	05/31/00	06/20/00	01/24/01	06/30/00	07/20/00	01/24/01	01/26/01
14:22	05/15/00	04/24/00	07/17/00	05/30/00	06/14/00	06/20/00	01/24/01	07/14/00	07/20/00	01/24/01	02/09/01
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15:01	07/03/00	06/12/00	09/01/00	07/18/00	08/02/00	08/21/00	01/24/01	09/01/00	09/20/00	01/24/01	03/30/01
15:02	07/17/00	06/23/00	09/15/00	08/01/00	08/16/00	08/21/00	01/24/01	09/15/00	09/20/00	01/24/01	04/13/01
15:03	08/01/00	07/11/00	10/02/00	08/16/00	08/31/00	09/20/00	01/24/01	10/02/00	10/20/00	01/24/01	04/28/01
15:04	08/15/00	07/25/00	10/16/00	08/30/00	09/14/00	09/20/00	01/24/01	10/16/00	10/20/00	01/24/01	05/12/01
15:05	09/01/00	08/11/00	11/01/00	09/18/00	10/02/00	10/20/00	01/24/01	10/31/00	11/20/00	01/24/01	05/29/01
15:06	09/15/00	08/24/00	11/15/00	10/02/00	10/16/00	10/20/00	01/24/01	11/14/00	11/20/00	01/24/01	06/12/01
15:07	10/02/00	09/11/00	12/01/00	10/17/00	11/01/00	11/20/00	01/24/01	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	01/24/01	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.

IN ADDITION

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

STATE OF NORTH CAROLINA

**BEFORE THE
TAX REVIEW BOARD**

COUNTY OF WAKE

IN THE MATTER OF:

The Proposed Assessment of Additional)
Income Tax for the Taxable Year 1997)
by the Secretary of Revenue of North)
Carolina)
)
vs.)
)
)
Leslie John Stage, Taxpayer)

ADMINISTRATIVE DECISION

Number: 362

This matter was heard before the Regular Tax Review Board in the City of Raleigh, Wake County, North Carolina, on Tuesday, August 15, 2000, upon Taxpayer's petition for administrative review of the Final Decision of the Secretary of Revenue entered on February 12, 1999, sustaining the proposed assessment of additional income tax and interest for the taxable year 1997.

The Taxpayer did not appear at the hearing. George W. Boylan, Special Deputy Attorney General appeared at the hearing on behalf of the Secretary of Revenue.

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

Pursuant to G.S. 105-241.1, a Notice of Individual Income Tax Assessment for the taxable year 1997 was mailed to the taxpayer on June 28, 1998, assessing additional income tax and interest. The auditor determined that taxpayer's North Carolina income tax liability based on taxpayer's wages and tax statement. Taxpayer reported zero taxable income on his return. Taxpayer objected to the proposed assessment and timely requested a hearing before the Secretary of Revenue. On February 12, 1999, the Assistant Secretary entered his decision sustaining the proposed assessment of additional individual income tax and interest for the taxable year 1997. Pursuant to G.S. 105-241.2, Taxpayer timely filed a notice of intent and petition for administrative review of the Assistant Secretary's final decision with the Tax Review Board.

ISSUE

The issue to be decided by the Board on review of this matter is as follows:

1. Is the proposed assessment against the taxpayer for taxable year 1997 lawful and proper?

EVIDENCE

The evidence presented at hearing before the Secretary of Revenue and included in the record for the Board's review is stated as follows:

1. Memorandum dated April 18, 1996, from the Secretary of Revenue to the Assistant Secretary of Revenue, designated as Exhibit PT-1.
2. Taxpayer's North Carolina income tax return for taxable year 1997, designated as PT-2.
3. Notice of Individual Income Tax Assessment for taxable year 1997 dated June 28, 1998, designated as Exhibit PT-3.
4. Letter from the taxpayer to Secretary of Revenue dated July 18, 1998, designated as Exhibit PT-4.
5. Letter from Michael A. Hannah to the Taxpayer dated August 26, 1998, designated Exhibit PT-5.

IN ADDITION

6. Letter from Taxpayer to Michael A. Hannah dated September 18, 1998, designated as Exhibit PT-6.
7. Letter from Michael A. Hannah to Taxpayer dated September 29, 1998, designated as Exhibit PT-7.

At the hearing, the Assistant Secretary allowed the Taxpayer time to submit additional information for the record to support his objection to the proposed assessment. The following evidence was subsequently entered into the record:

1. Letter from Michael A. Hannah to the Taxpayer dated October 27, 1998, designated as Exhibit S-1.
2. Letter from the Taxpayer to Michael A. Hannah dated November 25, 1998, designated as Exhibit TP-1.
3. Letter from the Taxpayer to Michael A. Hannah dated December 14, 1998, designated as Exhibit TP-2.
4. Letter from Michael A. Hannah to the Taxpayer dated December 22, 1998, designated as Exhibit S-2.
5. Letter from the Taxpayer to Michael A. Hannah dated January 4, 1999, designated as Exhibit TP-3.
6. Letter from Michael A. Hannah to the Taxpayer dated January 26, 1999, designated as Exhibit S-3.

FINDINGS OF FACT

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

1. Taxpayer is and at all times was a natural person, sui juris, and a citizen and resident of North Carolina.
2. Taxpayer was employed by Lambie Incorporated during the taxable year 1997. His wage and tax statement reflects wages tips, and other compensation of \$28,735.88.
3. The employer withheld State income tax of \$1,245.36.
4. Taxpayer timely filed his North Carolina individual income tax return for tax year 1997. The return reflected federal taxable income of \$ -0-, North Carolina taxable income of -0-, North Carolina income tax withheld of \$1,245.00, and an overpayment of \$1,245.00 which the taxpayer requested to be refunded to him.
5. The Department calculated Taxpayer's North Carolina taxable income based upon the wages reported on the wage and tax statement allowing the standard deduction for a single person and one personal exemption.
6. The corrected North Carolina taxable income resulted in North Carolina income tax of \$1,498.00. The Taxpayer was assessed the difference in the tax of \$1,498.00 and the State tax withheld of \$1,245.00 for additional tax of \$253.00 plus interest of \$6.40.
7. Taxpayer objected to the proposed assessment and timely requested a hearing before the Secretary of Revenue.

CONCLUSIONS OF LAW

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

1. Division II of Article 4 in Chapter 105 of the North Carolina General Statutes imposes an individual income tax upon the taxable income of (1) every resident of this State and (2) every nonresident individual deriving income from North Carolina sources attributable to the ownership of any interest in real and tangible personal property in this State or deriving income from a business, trade, profession, or occupation carried on in this State.
2. For residents of this State, "North Carolina taxable income" is defined as the taxpayer's taxable income as determined under the Internal Revenue Code, adjusted for differences in State and federal law.
3. Federal taxable income is defined in section 63 of the Internal Revenue Code as gross income less deductions and personal exemptions. Gross income is defined in section 61 of the Code as all income from whatever source derived unless specifically excepted. Gross income includes compensation for services rendered. Wages, salaries, commissions paid salesmen, compensation for services on the basis of a percentage of profits, tips, and bonus are all includable in gross income. A taxpayer may elect to claim

IN ADDITION

itemized nonbusiness deductions such as medical expenses, taxes, interest expense, charitable contributions, etc., if he does not claim itemized deductions, he is entitled to a standard deduction. The standard deduction for a single taxpayer is \$3,000 for tax years prior to 1989 and is increased each year for inflation. For tax year 1997, the allowable standard deduction for federal income tax purposes was \$4,150. A single taxpayer with no dependents is entitled to one personal exemption. The deduction for each exemption was established as \$2,000 for tax years prior to 1990 and is increased each year for inflation. For tax year 1997, the allowable deduction for each exemption for federal income tax purposes was \$2,650.

4. An addition to federal taxable income is required for the amount by which a taxpayer's standard deduction has been increased for inflation and for the amount by which the taxpayer's personal exemption has been increased for inflation.
5. Adjustments proposed by the Department must be based on the best information available and are presumed to be correct.
6. The Secretary of Revenue, or her designated agent, has the power to examine any records relevant to the purpose of ascertaining the correctness of an income tax return or the proper amount of income tax liability.
7. The Secretary of Revenue's duties include administering the laws enacted by the General Assembly relating to the assessment and collection of individual income taxes. As an official of the Executive Branch of the government, the Secretary lacks the authority to determine the constitutionality of legislative acts. The question of constitutionality of a statute is for the judicial branch.
8. The Notice of Individual Income Tax Adjustment for the taxable year 1997 was properly issued and, under the facts, is lawful and proper.

DECISION

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

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

Assessments of tax are presumed to be correct and the taxpayer has the burden to show that the assessment is not proper. In his Petition, the Taxpayer contends in part that the assessment was "unlawful" because the Secretary never formally delegated to anyone the authority under G.S. 105-258 to act on her behalf for purposes of proposing an assessment. Section 258 specifically empowers the Secretary to appoint agents to determine liabilities of all persons for any tax imposed under The Revenue Act. The "correctness of tax" assessments, Riggs v. Coble, 27 N.C. App. 266, 269 (1978), "the good faith" of tax officials and the "validity of their actions are presumed." In re McElwel, 304 N.C. 68, 75 (1981). From a review of the record, Taxpayer failed to offer any evidence to show that the proposed assessment for additional income tax is not proper. The Board having conducted an administrative hearing in this matter, and having considered Taxpayer's petition and the record, concludes that there exist sufficient evidence to confirm the Assistant Secretary's final decision. WHEREFORE, the Board Orders that the Assistant Secretary's final decision be confirmed in every respect.

Made and entered into the _____ day of _____ 2000.

Signature _____
Harlan E. Boyles, Chairman
State Treasurer

Signature _____
Jo Anne Sanford, Member
Chair, Utilities Commission

Signature _____
Noel L. Allen, Appointed Member

STATE OF NORTH CAROLINA

BEFORE THE
TAX REVIEW BOARD

COUNTY OF WAKE

IN THE MATTER OF:

The denial of refunds for the taxable)
years 1993 and 1994 and the proposed)
assessments of additional income tax)
for the taxable Years 1995 and 1996)
by the Secretary of Revenue of North)
Carolina)
vs.)
David M. and Tammy K. Sinnott,)
Taxpayers)

ADMINISTRATIVE DECISION
Number: 363

This matter was heard before the Regular Tax Review Board in the City of Raleigh, Wake County, North Carolina, on Tuesday, August 15, 2000, upon Taxpayers' petition for administrative review of the Final Decision of the Secretary of Revenue entered on December 21, 1999, sustaining the denial of refunds for the taxable years 1993 and 1994 and the proposed assessment of additional income tax for taxable years 1995 and 1996.

The Taxpayers did appear at the hearing. George W. Boylan, Special Deputy Attorney General appeared at the hearing on behalf of the Secretary of Revenue.

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

Pursuant to G.S. 105-241.1, Notices of Individual Income Tax Assessments reflecting the Department's adjustments for the taxable years 1995 and 1996 were mailed to the Taxpayers on March 13, 1999 and June 7, 1999, respectively. The Taxpayers filed amended North Carolina individual income tax returns for the taxable years 1993 and 1994 to decrease their North Carolina taxable income to zero and requested refunds of the net tax paid. The Department denied the refunds. Taxpayers objected to the proposed assessment and denial of the refunds and timely requested a hearing before the Secretary of Revenue. On December 21, 1999, the Assistant Secretary entered a final decision sustaining the denial of refunds for the taxable years 1993 and 1994 and the proposed assessment of additional income tax for taxable years 1995 and 1996. Pursuant to G.S. 105-241.2, the Taxpayers timely filed a notice of intent and petition for administrative review of the Assistant Secretary's final decision with the Tax Review Board.

ISSUE

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

1. Are the individual income tax assessments proposed against the Taxpayers for taxable years 1995 and 1996 and the denial of Taxpayers' request for refunds for the taxable years 1993 and 1994 lawful and proper?

EVIDENCE

The evidence presented at the hearing before the Secretary of Revenue and included in the record for the Board's review is stated as follows:

1. Memorandum dated April 18, 1996, from the Muriel K. Offerman, Secretary of Revenue to Michael A. Hannah, Assistant Secretary of Revenue, designated as Exhibit PT-1.
2. Taxpayers' North Carolina individual income tax return for taxable year 1993, designated as PT-2.
3. Taxpayers' North Carolina individual income tax return for taxable year 1994, designated as PT-3.
4. Taxpayers' North Carolina individual income tax return for taxable year 1995, designated as PT-4.

IN ADDITION

5. Taxpayers' North Carolina individual income tax return for taxable year 1996, designated as PT-5.
6. Taxpayers' amended North Carolina individual income tax return for taxable year 1993, designated as PT-6.
7. Taxpayers' amended North Carolina individual income tax return for taxable year 1994, designated as PT-7.
8. Notice of Individual Income Tax Assessment for taxable year 1995 dated March 13, 1999, designated as Exhibit PT-8.
9. Amended Notice of Individual Income Tax Assessment for taxable year 1995 dated June 7, 1999, designated as Exhibit PT-9.
10. Notice of Individual Income Tax Assessment for taxable year 1996 dated June 7, 1999, designated as Exhibit PT-10.
11. Letter from L.E. Davis, Jr., Tax Auditor in the Office of Examination Division to the Taxpayers, dated March 21, 1997, designated as Exhibit PT-11.
12. Letter from Taxpayers to L. E. Davis, Jr., dated April 4, 1997, designated Exhibit PT-12.
13. Letter from Taxpayers to Governor James B. Hunt, Jr., dated April 4, 1997, designated as Exhibit PT-13.
14. Letter from Taxpayers to Muriel K. Offerman, Secretary of Revenue, dated April 4, 1997, designated as Exhibit PT-14.
15. Letter from Muriel K. Offerman, Secretary of Revenue to Taxpayers, dated April 30, 1997, designated as Exhibit PT-15.
16. Letter from Taxpayers to Muriel K. Offerman, Secretary of Revenue, dated May 14, 1997, designated as Exhibit PT-16.
17. Letter from Taxpayers to Muriel K. Offerman, Secretary of Revenue, dated April 19, 1999, designated as Exhibit PT-17.
18. Letter from W. Edward Finch, Jr., to the Taxpayers, dated June 3, 1999, designated as Exhibit PT-18.
19. Letter from Taxpayers to W. Edward Finch, Jr., dated June 15, 1999, designated as Exhibit PT-19.
20. Letter from W. Edward Finch, Jr., to the Taxpayers, dated June 29, 1999, designated as Exhibit PT-20.
21. Letter from Michael A. Hannah to the Taxpayers, dated July 18, 1999, designated as Exhibit PT-21.

At the hearing, the Assistant Secretary allowed the Taxpayers time to submit additional information for the record to support their objection to the proposed assessments and denial of refunds. The following evidence was subsequently entered into the record:

1. Letter from Michael A. Hannah to the Taxpayers dated September 21, 1999, designated as Exhibit TP-1.
1. Letter and related attachments from the Taxpayers to Michael A. Hannah dated October 25, 1999, designated as Exhibit TP-2.

FINDINGS OF FACT

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

1. Taxpayers are and at all material times were natural persons, sui juris, and citizens and residents of North Carolina.
2. Taxpayers timely filed their North Carolina individual income tax returns for the taxable years 1993 and 1994. Taxpayers' 1993 return reflected North Carolina taxable income of \$39,883.00 and an overpayment of \$519.00, which was refunded to Taxpayers on February 18, 1994. Taxpayers' 1994 return reflected North Carolina taxable income of \$47,669.00 and an overpayment of \$939.17, which was refunded to them on March 27, 1995. On February 23, 1997, Taxpayers filed amended North Carolina individual income tax returns for the taxable years 1993 and 1994 to decrease their North Carolina taxable income to zero and to request refunds of the net tax paid. The Department denied the refunds.
3. Taxpayers' individual income tax return for the taxable year 1995 was received by the Department on February 11, 1997. The return reflected North Carolina taxable income of zero and a credit for North Carolina income tax withheld of \$6,273.82, which Taxpayers requested to be refunded. Taxpayers included with the 1995 return wage and tax statements showing total wages of

IN ADDITION

\$105,776.00. Upon examination, the auditor calculated Taxpayers' North Carolina tax income based on their total wages of \$105,776.00, allowing the standard deduction and two personal exemptions.

4. A Notice of Individual Income Tax Assessment reflecting the auditor's adjustments for the taxable year 1995 was mailed to Taxpayers on March 13, 1999. Taxpayers objected to the proposed assessment and requested a hearing before the Secretary of Revenue.
5. Subsequent to receiving Taxpayers hearing request, it was determined that the auditor incorrectly determined the personal exemption inflation adjustment when computing North Carolina taxable income for the taxable year 1995. An addition is required on the North Carolina return for the difference in the State and federal personal exemption amounts. For the taxable year 1995, the addition for Taxpayers filing jointly with federal adjusted gross income of \$100,000.00 or more is \$500.00 for each exemption. Because the Taxpayers were allowed two exemptions, the correct addition for the personal exemption inflation adjustment is \$1,000.00 rather than \$500.00 computed by the auditor. Also, in error, the auditor did not assess the 25 percent negligence penalty as required by G.S. 105-236(5)b. An amended Notice of Individual Income Tax Assessment for taxable year 1995 reflecting these corrections was mailed to Taxpayers on June 7, 1999.
6. Taxpayers timely filed their North Carolina individual income tax return for the taxable year 1996. The return reflected North Carolina taxable income of zero and a credit for North Carolina income tax withheld of \$808.23, which Taxpayers requested to be refunded. Subsequent to receiving Taxpayers' hearing request for the taxable year 1995, the Department calculated Taxpayers' North Carolina taxable income for the taxable year 1996 based on information obtained from the Internal Revenue Service allowing the standard deduction and two personal exemptions. A Notice of Individual Income Tax Assessment reflecting the Department's adjustments was mailed to the Taxpayers on June 7, 1999.
7. The Department will consider Taxpayers' hearing request for the taxable year 1995 to also include taxable years 1993, 1994, and 1996 since the same issues are involved.

CONCLUSIONS OF LAW

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

1. An individual income tax is imposed upon the taxable income of (1) every resident of this State and (2) every nonresident individual deriving income from North Carolina sources attributable to the ownership of any interest in real and tangible personal property in this State or deriving income from a business, trade, profession, or occupation carried on in this State.
2. For the purposes of the general administration of the Revenue Laws, "Taxpayer" is defined as an individual subject to the tax. "Individual" is defined as a human being.
3. "Resident" is defined as an individual who is domiciled in this State at any time during the taxable year or who resides in this State during the taxable year for other than temporary or transitory purpose. In the absence of convincing proof to the contrary, an individual who is present within the State for more than 183 days during the taxable year is presumed to be a resident, but the absence of an individual from the State for more than 183 days raises no presumption that the individual is not a resident. "Nonresident individual" is defined as an individual who is not a resident of this State.
4. For residents of this State, "North Carolina taxable income" is defined as the taxpayer's taxable income as determined under the Internal Revenue Code, adjusted for differences in State and federal law. For nonresidents, "North Carolina taxable income" is defined as federal taxable income, as adjusted, multiplied by a fraction, the denominator of which is the taxpayer's federal gross income, as adjusted, that is derived from North Carolina sources and is attributable to the ownership of any interest in real or tangible personal property in this State or is derived from a business, trade, profession, or occupation carried on in this State.
5. Federal taxable income is defined in section 63 of the Internal Revenue Code as gross income less deductions and personal exemptions. Gross income is defined in section 61 of the Code as all income from whatever source derived unless specifically excepted. Gross income includes compensation for services rendered. (Section 61(a)(1).) Wages, salaries, commissions paid salesmen, compensation for services on the basis of a percentage of profits, tips, and bonuses are all includable in gross income. (Reg. Section 1.61-2(a)(1).)
6. The Secretary of Revenue's duties include administering the laws enacted by the General Assembly relating to the assessment and collection of individual income taxes. As an official of the Executive Branch of the government, the Secretary lacks the authority to determine the constitutionality of legislative acts. The question of the constitutionality of a statute is for the judicial branch. (See Great Am. Ins. Co. v. Gold, 254 N.C. 168, 118 S.E.2d 792 (1961).)

IN ADDITION

7. Taxpayers' contend that they "... are non-resident aliens, not deriving any income from the State of North Carolina, domicile (ed) in the county of Franklin." (sic) We note that while Franklin is a county, it is nevertheless part of North Carolina and Franklin County residents are also residents of North Carolina and are subject to taxation. Further, the question of whether Taxpayers are residents or nonresidents of North Carolina is not relevant in this case because all of the income earned by Taxpayers was derived from an occupation carried on in this State and is taxable to North Carolina.

8. A taxpayer is required to file a North Carolina individual income tax return specifically showing the items of gross income and deductions when the gross income of the taxpayer exceeds his basic personal exemption. If the taxpayer does not provide adequate and reliable information upon which to compute his tax liability, an assessment may be made upon the basis of the best information available; and in the absence of information to the contrary; such assessment is deemed to be correct.

9. A penalty of 5 percent of the tax is required for each month (maximum 25 percent) the return is late. Because Taxpayers filed the 1995 return on February 11, 1997, the 25 percent late-filing penalty is properly due.

10. If a taxpayer understates taxable income, by any means, by an amount equal to 25 percent or more of gross income, a negligence penalty of 25 percent of the deficiency must be assessed. Therefore, the 25 percent negligence penalty asserted for the taxable years 1995 and 1996 is proper.

11. The Notices of Individual Income Tax Assessments for the taxable years 1995 and 1996 were properly issued and, under the facts, is lawful and proper.

DECISION

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

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

Assessments of tax are presumed to be correct and the taxpayer has the burden to show that the assessment is not proper. From a review of the record, Taxpayers failed to furnish any evidence to show an error in the denial of their refund claims or the proposed assessments against them. Instead, the Taxpayers challenge the fundamental legal authority of the State to impose income taxes upon their wages and other forms of income. Their constitutional challenge of a statute is not within the authority or discretion of this Board to consider. The issue of the fundamental legal authority of this State to impose taxes upon their wages and other forms of income is properly within the jurisdiction of the courts. Thus, the Board having conducted an administrative hearing in this matter, and having considered the petition, the brief, the record and the Assistant Secretary's final decision, concludes that there exist sufficient evidence in the record to confirm the Assistant Secretary's final decision that sustained the denial of refunds requested for the taxable years 1993 and 1994 and the proposed assessments of additional individual income tax for the taxable years 1995 and 1996.

WHEREFORE, the Tax Review Board Orders that the Assistant Secretary's final decision be confirmed in every respect.

Made and entered into the _____ day of _____ 2000.

Signature _____
Harlan E. Boyles, Chairman
State Treasurer

Signature _____
Jo Anne Sanford, Member
Chair, Utilities Commission

Signature _____
Noel L. Allen, Appointed Member

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

TITLE 10 – DEPARTMENT OF HEALTH AND HUMAN SERVICES

CHAPTER 14 – MENTAL HEALTH: GENERAL

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

Citation to Existing Rule Affected by this Rule-making: 10 NCAC 14G; 14J; 14P; 14Q; 14R; 14S. Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 143B-147

Statement of the Subject Matter: Seclusion & Restraint – Human Rights for Clients in State Facilities; Client Rights in Community MHDDSA Services

Reason for Proposed Action: The bill requires the Commission for MHDDSA to adopt rules requiring a facility that employs physical restraint or seclusion of a client, to collect data on the use of the restraints and seclusion including each incidence, the type of procedure used, the length of time employed, alternatives considered or employed and the effectiveness of the procedure or alternative employed. The data shall be analyzed on at least a quarterly basis to monitor the effectiveness, determine trends and take corrective action where necessary.

Comment Procedures: Written comments should be submitted to Mary Eldridge, Chief, Advocacy, Client Rights and Quality Improvement Section, 3009 Mail Service Center, Raleigh, NC 27699-3009.

TITLE 10 – DEPARTMENT OF HEALTH AND HUMAN SERVICES

CHAPTER 14 – MENTAL HEALTH: GENERAL

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

Citation to Existing Rule Affected by this Rule-making: 10 NCAC 14V .7000. Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 122C-112

Statement of the Subject Matter: House Bill 1840 gives the Secretary of Health and Human Services the authority to repeal rules regarding Willie M. or Eligible Violent and Assaultive Children.

Reason for Proposed Action: Governor Hunt's initiative requires the agency to implement measures to improve the health, safety and welfare of clients. House Bill 1140, Sections 11.21(a) requires the Secretary to eliminate formerly court-mandated Willie M. or Eligible Violent and Assaultive Children Program administration, categorical funding destination, and eligibility determination process at the State and local level.

Comment Procedures: Written comments should be submitted to Cindy Kornegay, Program Accountability Section, 3012 Mail Service Center, Raleigh, NC 27699-3012.

TITLE 10 – DEPARTMENT OF HEALTH AND HUMAN SERVICES

CHAPTER 14 – MENTAL HEALTH: GENERAL

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

Citation to Existing Rule Affected by this Rule-making: 10 NCAC 14V .7100. Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 122C-112

Statement of the Subject Matter: House Bill 1840 gives the Secretary of Health and Human Services the authority to repeal rules regarding Thomas S. Services.

Reason for Proposed Action: Governor Hunt's initiative requires the agency to implement measures to improve the health, safety and welfare of clients. House Bill 1140, Sections 11.22(a) requires the Secretary to eliminate formerly court-mandated Thomas S. Program administration, categorical

RULE-MAKING PROCEEDINGS

funding designation, and eligibility determination process at the State and local level.

Comment Procedures: *Written comments should be submitted to Cindy Kornegay, Program Accountability Section, 3012 Mail Service Center, Raleigh, NC 27699-3012.*

TITLE 10 – DEPARTMENT OF HEALTH AND HUMAN SERVICES

CHAPTER 14 – MENTAL HEALTH: GENERAL

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

Citation to Existing Rule Affected by this Rule-making: *10 NCAC 14V. Other rules may be proposed in the course of the rule-making process.*

Authority for the Rule-making: *G.S. 122C-112*

Statement of the Subject Matter: *House Bill 1840 gives the Secretary of Health & Human Services the authority to adopt temporary rules regarding Residential Services For Children.*

Reason for Proposed Action: *Governor Hunt's initiative requires the agency to implement measures to improve the health, safety and welfare of clients. House Bill 1840 requires the Department of Health and Human Services to establish Residential Services for Children. It further requires that the Program be implemented in consultation with the Office of Juvenile Justice and other affected State agencies. The purpose of the Program is to provide appropriate and medically necessary residential treatment alternatives for children at risk of institutionalization or other out-of-home placement.*

Comment Procedures: *Written comments should be submitted to Cindy Kornegay, Program Accountability Section, 3012 Mail Service Center, Raleigh, NC 27699-3012.*

TITLE 21 – OCCUPATIONAL LICENSING BOARDS

CHAPTER 36 – BOARD OF NURSING

Notice of Rule-making Proceedings *is hereby given by the North Carolina Board of Nursing in accordance with G.S. 150B-21.2. The agency shall subsequently publish in the Register the text of the rule 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: *21 NCAC 36 .0404 - .0405 - Other rules may be proposed in the course of the rule-making process.*

Authority for the Rule-making: *G.S. 90-171.19; 90-171.20(2)(4)(7)d,e,g; 90-171.34; 90-171.39; 90-171.43(4); 90-171.55; 90-171.83; 42 U.S.C.S. 1395i-3 (1987)*

Statement of the Subject Matter:

21 NCAC 36 .0404 - Listing requirements on the Nurse Aide II Registry.

21 NCAC 36 .0405 - Admission requirements for NA II Education Programs.

Reason for Proposed Action:

21 NCAC 36 .0404 - Revision to the Rule will allow high school students or others prior to completion of GED or high school diploma to enter a NA II training program.

21 NCAC 36 .0405 - Revision to the Rule will require a GED/high school diploma prior to listing on the NA II Registry.

Comment Procedures: *Comments regarding these actions should be directed to Jean H. Stanley, APA Coordinator, North Carolina Board of Nursing, PO Box 2129, Raleigh, North Carolina 27602-2129.*

PROPOSED RULES

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

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Marine Fisheries Commission intends to adopt the rules cited as 15A NCAC 3O .0501, .0503; amend the rules cited as 15A NCAC 3J .0107, .0301; 3K .0206, .0303; 3M .0301; 3O .0302, and repeal the rules cited as 15A NCAC 3I .0106, .0111. Notice of Rule-making Proceedings was published in the Register on September 1, 2000.

Proposed Effective Date: August 1, 2002

Public Hearing:

Date: December 6, 2000

Time: 7:00 p.m.

Location: Days Inn, 901 Albemarle Rd., Asheboro, NC

Public Hearing:

Date: December 11, 2000

Time: 7:00 p.m.

Location: DENR/DMF Office, 127 Cardinal Dr. Ext., Wilmington, NC

Public Hearing:

Date: January 4, 2001

Time: 7:00 p.m.

Location: NC Aquarium, Roanoke Island, Airport Rd., Manteo, NC

Public Hearing:

Date: January 8, 2001

Time: 7:00 p.m.

Location: Greenville Hilton, 207 SW Greenville Blvd., Greenville, NC

Reason for Proposed Action:

15A NCAC 3I .0106, .0111; 3J .0107, .0301; 3K .0206, .0303; 3O .0501, .0503 – The Fisheries Reform Act of 1997 (House Bill 1097) and the 1998 amendments to the Fisheries Reform Act (House Bill 1448) required a complete review of Marine Fisheries laws. G.S. 113-169.1, as adopted, authorizes the Marine Fisheries Commission to adopt permits. Section 6.10 of House Bill 1097 and Section 5.1 of House Bill 1448 state: "This act constitutes a recent act of the General Assembly within the meaning of G.S. 150B-21.1". House Bill 1218 deleted authorization for fees for permits.

15A NCAC 3M .0301 – Changes to the bag limit for Spanish mackerel by the National Marine Fisheries Service, in accordance with recent amendments to the fishery management plan for Coastal Migratory Pelagic Resources, increases the bag

limit from 10 to 15 fish per person per day. If the limit for North Carolina does not mirror the limit for the EEZ, North Carolina fishermen would not be able to land more than 10 fish while fishermen landing in other States, could take 15 fish.

15A NCAC 3O .0302 – House Bill 1562 amended the amount of gill net authorized for use under a Recreational Commercial Gear License. The amended rule allows for that increase in gill net.

Comment Procedures: Written comments are encouraged and may be submitted to the MFC, Juanita Gaskill, PO Box 769, Morehead City, NC 28557, through January 8, 2001. The MFC will consider these rules for action at a Business Meeting on January 9-10, 2001 at the Greenville Hilton, 207 SW Greenville Blvd., Greenville, NC.

Fiscal Impact

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

CHAPTER 3 – MARINE FISHERIES

SUBCHAPTER 3I – GENERAL RULES

SECTION .0100 – GENERAL RULES

15A NCAC 03I .0106 SCIENTIFIC, EDUCATIONAL, OR OFFICIAL COLLECTING PERMIT

(a) It is unlawful to take any marine or estuarine species for scientific purposes which is out of season or otherwise protected without first securing a scientific collecting permit from the Secretary. If the Secretary determines that the request is for a valid scientific purpose and will not result in a significant adverse effect on fisheries management, the permit may be issued. Such permit will be subject to any restrictions concerning areas, times, and sampling methods as the Secretary deems appropriate.

(b) It is unlawful for persons who have been issued an educational, scientific, or official collecting permit to fail to keep records according to the conditions of the permit. This information shall be submitted to the Division of Marine Fisheries on an annual basis unless otherwise specified on the permit.

Authority G.S. 113-134; 113-169.3; 113-182; 113-261; 143B-289.52.

15A NCAC 03I .0111 PERMITS FOR AQUACULTURE OPERATIONS

PROPOSED RULES

~~(a) It is unlawful to conduct aquaculture operations without first obtaining a permit. Such permit will be issued on a calendar-year basis. All aquaculture operations not required to be permitted by the Wildlife Resources Commission must be permitted by the Fisheries Director.~~

~~(b) It is unlawful:~~

~~(1) To take fisheries resources from coastal waters for aquaculture purposes during closed seasons without first obtaining a permit from the Fisheries Director. The Fisheries Director may impose any or all of the following restrictions on the taking of fisheries resources for aquaculture purposes:~~

- ~~(A) Specify species,~~
- ~~(B) Specify quantity and/or size,~~
- ~~(C) Specify time period,~~
- ~~(D) Specify location,~~
- ~~(E) Specify gear and/or vendors,~~
- ~~(F) Specify harvest conditions.~~

~~(2) To sell, or use for any purpose not related to North Carolina aquacultural operations, fisheries resources taken under a permit issued in accordance with Subparagraph (b)(1) of this Rule.~~

~~(3) To fail to submit to the Fisheries Director an annual report specifying the amount and disposition of fisheries resources collected under authority of this permit.~~

~~(4) To refuse to allow agents of the Fisheries Director to inspect proposed or permitted aquaculture operations for compliance with Marine Fisheries rules and permits.~~

~~(c) Lawfully permitted shellfish relaying activities authorized by 15A NCAC 3K .0103 and .0104 are exempt from requirements of this Rule.~~

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

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

SECTION .0100 – NET RULES, GENERAL

15A NCAC 03J .0107 POUND NET SETS

~~(a) All initial, renewal or transfer applications for Pound Net Set Permits, and the operation of such pound net sets, shall comply with the general rules governing all permits in 15A NCAC 3O .0500. The procedures and requirements for obtaining permits are also found in 15A NCAC 3O .0500.~~

~~(b) It is unlawful to use pound or fyke nets-net sets in internal coastal fishing waters without the permittee's owner's identification being clearly printed on a sign no less than six inches square, securely attached to the outermost on an outside-corner stake of each end of each set,such-net. For pound net sets in the Atlantic Ocean using anchors instead of stakes, the set must be identified with a yellow buoy, which shall be of solid foam or other solid buoyant material no less than five inches in diameter and no less than 11 inches in length. The permittee's identification shall be clearly printed on the buoy. Such identification on signs or buoys must include one of the following:~~

- ~~(1) For pound nets, the pound net set permit number and the permittee's owner's last name and initials.~~
- ~~(2) For fyke nets, the owner's N.C. motorboat registration number or the owner's last name and initials.~~

~~Any pound or fyke net or any part thereof found set in internal coastal fishing waters without proper identification will be in violation and may be removed, and be disposed of in accordance with G.S. 113-137.~~

~~(c)(b) It is unlawful to use set pound net sets, -nets, or any part thereof thereof, except for one location identification stakestakes or identification buoy for pound nets used in the Atlantic Ocean at each end of proposed new locations, loeations without first obtaining a Pound Net Set Permit from the Fisheries Director.~~

~~The applicant must indicate on a base map provided by the Division the proposed set including an inset vicinity map showing the location of the proposed set with detail sufficient to permit on-site identification and location. The applicant must specify the type(s) of pound net set(s) requested and possess proper valid licenses and permits necessary to fish those type(s) of net. A pound net set will be deemed a flounder pound net set when the catch consists of 50% or more flounder by weight of the entire landed catch, excluding blue crabs. The type "other finfish pound net set" is for sciaenid (Atlantic croaker, red drum, weakfish, spotted seatrout, spot, for example) and other finfish, except flounder and herring or shad, taken for human consumption. Following are the type(s) of pound net fisheries that may be specified:~~

- ~~(1) Flounder pound net set;~~
- ~~(2) Herring/shad pound net set;~~
- ~~(3) Bait pound net set;~~
- ~~(4) Shrimp pound net set;~~
- ~~(5) Blue crab pound net set; and~~
- ~~(6) Other finfish pound net set.~~

~~(d)(4) For proposed new locations, the Fisheries Director shall issue a public notice of intent to consider issuance of a Pound Net Set Permit allowing for public comments for 20 days, and after the comment period, may hold public meetings to take comments on the proposed pound net set. The Fisheries Director shall approve or deny the permit within 60 days of application. If the Director does not approve or deny the application within 90 days of receipt of a complete and verified application, the application shall be deemed denied. The For new locations, transfers and renewals, the Fisheries Director may deny the permit application if it is determined that granting the permit will be inconsistent with one or more of the following permitting criteria, as determined by the Fisheries Director:eriteria:~~

- ~~(1)(A) The application is-must be in the name of an individual and cannot be granted to a corporation, partnership, organization or other entity;~~
- ~~(2)(B) The proposed pound net set, either alone or when considered cumulatively with other existing pound net sets in the area, will not unduly interfere with public navigation or with existing, traditional uses of the area other than navigation, and will not violate 15A NCAC 3J .0101 and .0102;~~
- ~~(C) The proposed pound net set, either alone or when considered cumulatively with other existing pound net sets in the area, will not unduly interfere with existing,~~

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~~traditional uses of the area other than navigation, as determined by the Fisheries Director.~~

~~(3)(D)~~ The proposed pound net set will not unduly interfere with the rights of any riparian or littoral landowner, including the construction or use of piers;

~~(4)(E)~~ The proposed pound net set will not, by its proximate location, unduly interfere with existing pound net sets in the area;

~~(5)(F)~~ The applicant has in the past complied with fisheries rules and laws ~~related to pound nets and does not currently have any licenses or privileges under suspension or revocation.~~ In addition, a history of habitual fisheries violations evidenced by eight or more convictions in ten years shall be grounds for denial of a pound net set permit;

~~(6)(G)~~ The proposed pound net set is in the public interest;

~~(7)(H)~~ The applicant has in the past complied with all permit conditions, rules and laws related to pound nets; and

~~(8)(I)~~ The proposed pound net set is consistent with appropriate fishery management plans.

Approval ~~may~~ shall be conditional based upon the applicant's continuing compliance with specific conditions contained ~~in~~ on the Pound Net Set Permit and the conditions that would ensure that the operation of the pound net is consistent with the criteria for permit denial set out in Parts (1)(A) through (8)(G) of this ~~Paragraph, Subparagraph.~~ The Fisheries Director's final decision to approve or deny the Pound Net Set Permit application may be appealed by the applicant by filing a petition for a contested case hearing, in writing, within 60 days from the date of mailing notice of such ~~action~~ final decision to the applicant, with the Office of Administrative Hearings.

~~(e)(2)~~ An application for renewal of an existing Pound Net Set Permit shall be filed not less than ~~40~~ 30 days prior to the date of expiration of the existing permit, and shall not be processed unless filed by the ~~prior~~ permittee. ~~When a written objection to a renewal has been received during the term of the existing permit, the~~ The Fisheries Director shall review the renewal application under the criteria for issuance of a new Pound Net Set Permit, and may decline to renew the permit accordingly. The Fisheries Director may hold public meetings and may conduct such investigations necessary to determine if the permit should be renewed.

~~(f)(3)~~ A Pound Net Set Permit, whether a new or renewal permit, shall expire ~~365 days~~ one year from the date of issuance. The expiration date shall be stated on the permit.

~~(e)~~ It is unlawful to abandon an existing pound net set without completely removing from the public bottom or coastal waters all stakes and associated structures, gear and equipment within 10 days, or to fail within 10 days to completely remove from the public bottom or coastal waters all stakes and other structures, gear and equipment associated with any pound net set for which a permit is revoked or denied. Pound nets shall be subject to inspection at all times. Pound nets shall be fully operational and subject to a fishing season inspection during the peak of their respective fishing seasons. Consideration shall be given for unusually severe weather conditions which prevent the nets from being fully operational during the fishing season inspection period. For the fishing season inspections, herring pounds may

~~be inspected two weeks prior to or after April 1, sciaenid pounds two weeks prior to or after July 15, flounder pounds two weeks prior to or after October 15, bait pounds two weeks prior to or after April 15, and shrimp pounds two weeks prior to or after June 15. A violation under this Paragraph shall be grounds for the Fisheries Director to revoke any other Pound Net Permits held by the violator and for denial of any future pound net set proposed by the offender.~~

(g) Pound net sets, except herring/shad pound net sets in the Chowan River, shall be operational for a minimum period of 30 consecutive days during the permit period unless a season for the fishery for which the pound net set is permitted is ended earlier due to a quota being met. For purposes of this Rule, operational means with net attached to stakes or anchors for the lead and pound, including only a single pound in a multi-pound set, and a non-restricted opening leading into the pound such that the set is able to catch and hold fish. The permittee, including permittees of operational herring/shad pound net sets in the Chowan River, shall notify the Marine Patrol Communications Center by phone within 72 hours after the pound net set is operational. Notification shall include name of permittee, pound net set permit number, county where located, a specific location site, and how many pounds are in the set. It is unlawful to fail to notify the Marine Patrol Communications Center within 72 hours after the pound net set is operational or to make false notification when said pound net set is not operational. Failure to comply with this Paragraph shall be grounds for the Fisheries Director to revoke this and any other pound net set permits held by the permittee and for denial of any future pound net set permits.

~~(h)(d)~~ It is unlawful to transfer ownership of a pound net set permit without notification a completed application for transfer being submitted to the Division of Marine Fisheries within not less than 30 45 days of before the date of the transfer. Such notification application shall be made by the proposed new permittee owner in writing and shall be accompanied by a copy of the current previous permittee's owner's permit and an application for a pound net set permit in the new permittee's owner's name. Failure to do so shall result in revocation of the pound net permit. The Fisheries Director may hold a public meeting and may conduct such investigations necessary to determine if the permit should be transferred. No transfer is effective until approved and processed by the Division. The transferred permit shall expire on the same date as the initial permit. Upon death of the permittee, the permit may be transferred to the Administrator/Executor of the estate of the permittee if transferred within six months of the Administrator/Executor's qualification under Chapter 28A of the General Statutes. The Administrator/Executor must provide a copy of the deceased permittee's death certificate, a copy of the certificate of administration and a list of eligible immediate family members to the Morehead City Office of the Division of Marine Fisheries. Once transferred to the Administrator/Executor, the Administrator/Executor may transfer the permit(s) to eligible family members of the deceased permittee.

(i)(e) Every pound net set in coastal fishing waters shall have yellow light reflective tape or yellow light reflective devices on each pound. The light reflective tape or yellow light reflective

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~~devices shall be affixed to a stake of at least three inches in diameter on any outside corner of each pound, shall cover a vertical distance of not less than 12 inches, and shall be visible from all directions. In addition, every~~ Every pound net set shall have a marked navigational opening of at least 25 feet in width at the end of every third pound. Such opening shall be marked with yellow light reflective tape or yellow light reflective devices on each side of the opening. The yellow light reflective tape or yellow light reflective devices shall be affixed to a stake of at least three inches in diameter, shall cover a vertical distance of not less than 12 inches, and shall be visible from all directions. ~~directions by a vessel approaching the pound net set. In addition, every pound net in internal coastal fishing waters shall have yellow light reflective tape or devices on each pound. The light reflective tape or devices shall be affixed to a stake of at least three inches in diameter on the offshore end of each pound, shall cover a vertical distance of not less than 12 inches, and shall be visible from all directions by a vessel approaching the pound net set.~~ If a permittee notified of a violation under this Paragraph fails or refuses to take corrective action sufficient to remedy the violation within 15 10 days of receiving notice of the violation, the Fisheries Director shall revoke the permit.

~~(j)(f)~~ In Core Sound, it is unlawful to use pound net sets nets in the following areas except that only those persons holding a valid pound net set permits valid permit within the specified area as of March 1, 1994, may be renewed or transferred renew their permits subject to the requirements of this Rule:

- (1) That area bounded by a line beginning at Green Day Marker #3 near Hog Island Point running 124° (M) to Green Flasher #13; thence 026° (M) to Green Flasher #11; thence 294°(M) to a point on shore north of Great Ditch 34° 58' 54" N - 76° 15' 06" W; thence following the shoreline to Hog Island Point 34° 58' 27" N - 76° 15' 49" W; thence 231° (M) back to Green Day Marker #3.
- (2) That area bounded by a line beginning at Green Day Marker #3 near Hog Island Point running 218° (M) to Cedar Island Point 34° 57' 33" N - 76° 16' 34" W; thence 156° (M) to Red Flasher #18; thence 011° (M) to Red Flasher #2; thence 302° (M) back to Green Marker #3.
- (3) That area bounded by a line beginning on Long Point 34° 56' 52" N - 76° 16' 42" W; thence running 105° (M) to Red Marker #18; thence running 220° (M) to Green Marker #19; thence following the six foot contour past the Wreck Beacon to a point at 34° 53' 45" N - 76° 18' 11" W; thence 227° (M) to Red Marker #26; thence 229° (M) to Green Marker #27; thence 271° (M) to Red Flasher #28; thence 225° (M) to Green Flasher #29; thence 256° (M) to Green Flasher #31; thence 221° (M) to Green Flasher #35; thence 216° (M) to Green Flasher #37; thence 291° (M) to Bells Point 34° 43' 42" N - 76° 29' 59" W; thence north following the shoreline of Core Sound across the mouth of Jarrett Bay, Oyster Creek, Fulcher Creek, Willis Creek, Nelson Bay, Styron Bay, East Thorofare Bay and Rumley Bay, back to Long Point.

~~(g) In Pamlico Sound and the Atlantic Ocean, it is unlawful to set a pound net, pound net stakes, or any other related equipment without radar reflective metallic material and yellow light reflective tape or devices on each end of the pound net set. The radar reflective material and the light reflective tape or devices must be affixed to a stake of at least three inches in diameter, must cover a vertical distance of not less than 12 inches, and must be detectable by radar and light from a vessel when approached from all directions. Light reflective tape or devices may be affixed to the radar reflective material.~~

~~(k)(h)~~ Escape Panels:

- (1) The Fisheries Director may, by proclamation, require escape panels in pound net sets nets and may impose any or all of the following requirements or restrictions on the use of escape panels:
 - (A) Specify size, number, and location;
 - (B) Specify mesh length, but not more than six inches;
 - (C) Specify time or season; and
 - (D) Specify areas.
- (2) It is unlawful to use flounder pound net sets nets without four unobstructed escape panels in each pound south and east of a line beginning at a point on Long Shoal Point at 35° 57' 23.7" N-76° 00' 49"W; thence running 116.5° (T) 2,764 yards to Green Marker No. 5 east of the Intracoastal Waterway in the Alligator River at 35° 56' 43.9" N-75° 59' 18"W; thence following Route #1 of the Intracoastal Waterway in Albemarle Sound to Green Marker No. 171 at 36° 09' 18.2" N-75° 53' 29.5" W; thence running 299° (T) 2,160 yards to a point on Camden Point at 36° 09' 52.5" N - 75° 54' 39.9" W. The escape panels must be fastened to the bottom and corner ropes on each wall on the side and back of the pound opposite the heart. The escape panels must be a minimum mesh size of five and one-half inches, hung on the diamond, and must be at least six meshes high and eight meshes long.

(l) Pound net sets are subject to inspection at all times.

(m) Daily reporting may be a condition of the permit for pound net sets for fisheries under a quota.

(n) It is unlawful to fail to remove all pound net stakes and associated gear within 30 days after expiration of the permit or notice by the Fisheries Director that an existing pound net set permit has been revoked or denied.

(o) It is unlawful to abandon an existing pound net set without completely removing from the coastal waters all stakes and associated gear within 30 days.

Authority G.S. 113-134; 113-182; 113-221; 143B-289.52; 150B-23.

SECTION .0300 – POTS, DREDGES, AND OTHER FISHING DEVICES

15A NCAC 03J .0301 POTS

(a) It is unlawful to use pots except during time periods and in areas specified herein:

- (1) From November 1 through April 30, except that all pots shall be removed from internal waters from January 24 through February 7. Fish pots upstream of U.S. 17

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- Bridge across Chowan River and upstream of a line across the mouth of Roanoke, Cashie, Middle and Eastmost Rivers to the Highway 258 Bridge are exempt from the January 24 through February 7 removal requirement. The Fisheries Director may, by proclamation, reopen various waters to the use of pots after January 28 if it is determined that such waters are free of pots.
- (2) From May 1 through October 31, north and east of the Highway 58 Bridge at Emerald Isle:
- (A) In areas described in 15A NCAC 3R .0107(a);
- (B) To allow for the variable spatial distribution of crustacea and finfish, the Fisheries Director may, by proclamation, specify time periods for or designate the areas described in 15A NCAC 3R .0107(b); or any part thereof, for the use of pots.
- (3) From May 1 through October 31 in the Atlantic Ocean and west and south of the Highway 58 Bridge at Emerald Isle in areas and during time periods designated by the Fisheries Director by proclamation.
- (b) It is unlawful to use pots:
- (1) in any navigation channel marked by State or Federal agencies; or
- (2) in any turning basin maintained and marked by the North Carolina Ferry Division.
- (c) It is unlawful to use pots in a commercial fishing operation unless each pot is marked by attaching a floating buoy which shall be of solid foam or other solid buoyant material and no less than five inches in diameter and no less than five inches in length. Buoys may be of any color except yellow or hot pink. The owner shall always be identified on the attached buoy by using engraved buoys or by engraved metal or plastic tags attached to the buoy. Such identification shall include one of the following:
- (1) gear owner's current motorboat registration number; or
- (2) owner's U.S. vessel documentation name; or
- (3) owner's last name and initials.
- (d) Pots attached to shore or a pier shall be exempt from Subparagraphs (a)(2) and (a)(3) of this Rule.
- (e) It is unlawful to use shrimp pots with mesh lengths smaller than one and one-fourth inches stretch or five-eighths inch bar.
- (f) It is unlawful to use eel pots with mesh sizes smaller than one inch by one-half inch unless such pots contain an escape panel that is at least four inches square with a mesh size of 1 inch x one-half inch located in the outside panel of the upper chamber of rectangular pots and in the rear portion of cylindrical pots, except that not more than two eel pots per fishing operation with a mesh of any size may be used to take eels for bait.
- (g) It is unlawful to use crab pots in coastal waters unless each pot contains no less than two unobstructed escape rings that are at least 2 5/16 inches inside diameter and located in the opposite outside panels of the upper chamber of the pot. Peeler pots with a mesh size less than 1 1/2 inches shall be exempt from the escape ring requirement. The Fisheries Director may, by proclamation, exempt the escape ring requirement in order to allow the harvest of peeler crabs or mature female crabs and may impose any or all of the following restrictions:
- (1) Specify areas, and
- (2) Specify time.
- (h) It is unlawful to use more than 150 pots per vessel in Newport River.
- (i) It is unlawful to remove crab pots from the water or remove crabs from crab pots between one hour after sunset and one hour before sunrise.
- (j) User Conflicts:
- (1) The Fisheries Director may, with the prior consent of the Marine Fisheries Commission, by proclamation close any area to the use of pots in order to resolve user conflict. The Fisheries Director shall hold a public meeting in the affected area before issuance of such proclamation.
- (2) Any person(s) desiring to close any area to the use of pots may make such request in writing addressed to the Director of the Division of Marine Fisheries. Such requests shall contain the following information:
- (A) A map of the proposed closed area including an inset vicinity map showing the location of the proposed closed area with detail sufficient to permit on-site identification and location;
- (B) Identification of the user conflicts causing a need for closing the area to the use of pots;
- (C) Recommended method for resolving user conflicts; and
- (D) Name and address of the person(s) requesting the closed area.
- (3) Person(s) making the requests to close an area shall present their request at the public meeting.
- (4) The Fisheries Director shall deny the request or submit a proposed proclamation granting the request to the Marine Fisheries Commission for their approval.
- (5) Proclamations issued closing or opening areas to the use of pots under Paragraph (j) of this Rule shall suspend appropriate rules or portions of rules under 15A NCAC 3R .0107 as specified in the proclamation. The provisions of 15A NCAC 3I .0102 terminating suspension of a rule as of the next Marine Fisheries Commission meeting and requiring review by the Marine Fisheries Commission at the next meeting shall not apply to proclamations issued under Paragraph (j) of this Rule.
- (k) It is unlawful to use pots to take crabs unless the line connecting the pot to the buoy is non-floating.

Authority G. S. 113-134; 113-173; 113-182; 113-221; 143B-289.52.

SUBCHAPTER 3K – OYSTERS, CLAMS, SCALLOPS AND MUSSELS

SECTION .0200 – OYSTERS

15A NCAC 03K .0206 PERMITS TO USE MECHANICAL METHODS FOR OYSTERS OR CLAMS ON SHELLFISH LEASES OR FRANCHISES

(a) Permits to Use Mechanical Methods for Oysters or Clams on Shellfish Leases or Franchises shall be issued in compliance with the general rules governing all permits in 15A NCAC 3O

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.0500. The procedures and requirements for obtaining permits are also found in 15A NCAC 30 .0500.

~~(b)(a) It is unlawful to harvest oysters by the use of mechanical methods from shellfish leases or franchises public or private bottom without first obtaining a Permit to Use Mechanical Methods for Oysters or Clams on Shellfish Leases or Franchises permit. Permits are valid only in the areas, at times, and under conditions specified by the Fisheries Director based on concerns for other fisheries resources in the vicinity of the areas within which such activity is permitted. Such permit may impose conditions and requirements reasonably necessary for management and enforcement purposes.~~

~~(b) The permit will be revoked or suspended under the following conditions:~~

- ~~(1) If any permit holder refuses to provide oyster harvest information upon contact by Division staff, either by telephone or in person, his permit shall be suspended. Permits may be reinstated 10 days after requested information is provided.~~
- ~~(2) Upon conviction of violation of marine fisheries law, rule, or proclamation involving the use of mechanical methods, the owner's permit will be suspended for no less than the following time periods: first conviction — 10 days; second conviction within three years — 30 days; third conviction within three years — 60 days; and upon the fourth conviction within a three-year period, the permit will be permanently revoked.~~
- ~~(3) Upon conviction of violation of 15A NCAC 3K .0101 or conviction of taking oysters with the use of mechanical methods from coastal waters that are closed by proclamation because of pollution, the owner's permit will be suspended for 30 days for the first conviction, and upon the second conviction within a three-year period, the permit will be permanently revoked.~~
- ~~(4) In the event the person makes application for a new permit during the period of suspension, no new permit will be issued during the time specified in this Rule. In cases of permanent revocation, the minimum waiting period before application for a new permit will be considered will be six months; then only after a hearing before the Fisheries Director or his agent and a finding that issuance of the permit will be in the best interest of fisheries management may a new permit be issued.~~

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

SECTION .0300 – HARD CLAMS (MERCENARIA)

15A NCAC 03K .0303 PERMITS TO USE MECHANICAL METHODS FOR OYSTERS OR CLAMS ON SHELLFISH LEASES OR FRANCHISES REQUIREMENT

(a) Permits to Use Mechanical Methods for Oysters or Clams on Shellfish Leases or Franchises shall be issued in compliance with the general rules governing all permits in 15A NCAC 30 .0500. The procedures and requirements for obtaining permits are also found in 15A NCAC 30 .0500.

~~(b)(a) It is unlawful to harvest hard clams by the use of mechanical methods from shellfish leases or franchises public or private bottom without first obtaining a Permit to Use Mechanical Methods for Oysters or Clams on Shellfish Leases of Franchises permit. Permits are valid only in areas, at times, and under conditions specified by the Fisheries Director based on concerns for other fisheries resources in the vicinity of the areas within which such activity is permitted. Such permit may impose conditions and requirements reasonably necessary for management and enforcement purposes.~~

~~(b) The permit will be revoked or suspended under the following conditions:~~

- ~~(1) If any permit holder refuses to provide clam harvest information upon contact by division staff, either by telephone or in person, his permit shall be suspended. Permits may be reinstated ten days after requested information is provided.~~
- ~~(2) Upon conviction of violation of marine fisheries law, rule, or proclamation involving the use of mechanical methods, the owner's permit will be suspended for no less than the following time periods: first conviction — 10 days; second conviction within three years — 30 days; third conviction within three years — 60 days; and upon the fourth conviction within a three-year period, the permit will be permanently revoked.~~
- ~~(3) Upon conviction of violation of 15A NCAC 3K .0101 or conviction of taking clams with the use of mechanical methods from coastal waters that are closed by proclamation because of pollution, the owner's permit will be suspended for 30 days for the first conviction, and after the second conviction within a three-year period the permit will be permanently revoked.~~
- ~~(4) In the event the person makes application for a new permit during the period of suspension, no new permit will be issued during the time specified in this Rule. In cases of permanent revocation the minimum waiting period before application for a new permit will be considered will be six months; then only after a hearing before the Fisheries Director or his agent and a finding that issuance of the permit will be in the best interest of fisheries management may a new permit be issued.~~

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

SUBCHAPTER 3M – FINFISH

SECTION .0300 – SPANISH AND KING MACKEREL

15A NCAC 03M .0301 SPANISH AND KING MACKEREL

(a) The Fisheries Director may, by proclamation, impose any or all of the following restrictions on the taking of Spanish or king mackerel:

- (1) Specify areas.
- (2) Specify seasons.
- (3) Specify commercial quantity.
- (4) Specify means/methods.

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- (5) Specify size for fish taken by commercial fishing operations.
- (b) King mackerel and Spanish mackerel taken for recreational purposes or by hook and line:
 - (1) It is unlawful to possess king mackerel less than 24 inches fork length.
 - (2) It is unlawful to possess more than three king mackerel per person per day.
 - (3) It is unlawful to possess Spanish mackerel less than 12 inches fork length.
 - (4) It is unlawful to possess more than ~~15~~ **10** Spanish mackerel per person per day.
- (c) King mackerel and Spanish mackerel taken by commercial fishing operations, exclusive of hook and line:
 - (1) It is unlawful to possess king mackerel less than 20 inches fork length.
 - (2) It is unlawful to possess Spanish mackerel less than 12 inches fork length.
- (d) Persons in possession of a valid National Marine Fisheries Service Coastal Migratory Pelagic (Mackerel) Permit to fish on the commercial mackerel quotas are exempt from the mackerel creel restrictions established in Paragraph (b) of this Rule.
- (e) Persons in possession of a valid National Marine Fisheries Service Federal Coastal Migratory Pelagic (Mackerel) Permit must comply with the mackerel creel restrictions established in Paragraph (b) of this Rule when fishing with more than three persons (including the captain and mate) on board.
- (f) It is unlawful to possess aboard or land from a vessel, or combination of vessels that form a single operation, more than 3,500 pounds of Spanish or king mackerel, in the aggregate, in any one day.

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

SUBCHAPTER 30 – LICENSES, LEASES, AND FRANCHISES

SECTION .0300 – LICENSE APPEAL PROCEDURES

15A NCAC 30 .0302 AUTHORIZED GEAR

- (a) The following are the only commercial fishing gear authorized (including restrictions) for use under a valid Recreational Commercial Gear License:
 - (1) One seine 30 feet or over in length but not greater than 100 feet with a mesh length less than 2 ½ inches when deployed or retrieved without the use of a vessel or any other mechanical methods. A vessel may only be used to transport the seine;
 - (2) One shrimp trawl with a headrope not exceeding 26 feet in length per vessel. Mechanical methods for retrieving the trawl are not authorized for recreational purposes, including but not limited to, hand winches and block and tackle;
 - (3) With or without a vessel, five eel, fish, shrimp, or crab pots in any combination, except only two pots of the five may be eel pots. Peeler pots are not authorized for recreational purposes;
 - (4) One multiple hook or multiple bait trotline up to 100 feet in length;

- (5) Gill Nets:
 - (A) Not more than 100 yards of gill nets with a mesh length equal to or greater than 2 ½ inches except as provided in Part (5)(C) of this Rule. Attendance is required at all times;
 - (B) Not more than 100 yards of gill nets with a mesh length equal to or greater than 5 ½ inches except as provided in Part (5)(C) of this Rule. Attendance is required when used from one hour after sunrise through one hour before sunset; and
 - (C) Not more than 100 yards of gill net may be used at any one time, except that when two or more Recreational Commercial Gear License holders are on board, a maximum of 200 yards may be used from a vessel; ~~time~~;
 - (D) It is unlawful to possess aboard a vessel more than 100 yards of gill nets with a mesh length less than 5 ½ inches and more than 100 yards of gill nets with a mesh length equal to or greater than 5 ½ inches identified as recreational commercial fishing equipment when only one Recreational Commercial Gear License holder is on board. It is unlawful to possess aboard a vessel more than 200 yards of gill nets with a mesh length less than 5 ½ inches and more than 200 yards of gill nets with a mesh length equal to or greater than 5 ½ inches identified as recreational commercial fishing equipment when two or more Recreational Commercial Gear License holders are on board.
- (6) A hand-operated device generating pulsating electrical current for the taking of catfish in the area described in 15A NCAC 3J .0304.

- (b) It is unlawful to use more than the quantity of authorized gear specified in Subparagraphs (a)(1) – (a)(6) of this Rule, regardless of the number of individuals aboard a vessel possessing a valid Recreational Commercial Gear License.
- (c) It is unlawful for a person to violate the restrictions of or use gear other than that authorized by Paragraph (a) of this Rule.
- (d) Unless otherwise provided, this Rule does not exempt Recreational Commercial Gear License holders from the provisions of other applicable rules of the Marine Fisheries Commission or provisions of proclamations issued by the Fisheries Director as authorized by the Marine Fisheries Commission.

Authority G.S. 113-134; 113-173.

SECTION .0500 – PERMITS

15A NCAC 030 .0501 PROCEDURES AND REQUIREMENTS TO OBTAIN PERMITS

- (a) To obtain any Marine Fisheries permit, the following information is required for proper application from the permittee, a responsible party or person holding a power of attorney:
 - (1) Full name, physical address, mailing address, date of birth, and signature of the permittee on the application. If the permittee is not appearing before a license agent

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or the designated Division contact, the permittee's signature on the application must be notarized;

- (2) Current picture identification of permittee, responsible party and, when applicable, person holding a power of attorney; acceptable forms of picture identification are driver's license, state identification card, military identification card, resident alien card (green card) or passport or if applying by mail, a copy thereof;
- (3) Full names and dates of birth of designees of the permittee who will be acting under the requested permit where that type permit requires listing of designees;
- (4) Certification that the permittee and their designees do not have four or more marine or estuarine resource convictions during the previous three years;
- (5) For permit applications from business entities, the following documentation is required:
 - (A) Business Name;
 - (B) Type of Business Entity: Corporation, partnership, or sole proprietorship;
 - (C) Name, address and phone number of responsible party and other identifying information required by this Subchapter or rules related to a specific permit;
 - (D) For a corporation, current articles of incorporation and a current list of corporate officers when applying for a permit in a corporate name;
 - (E) For a partnership, if the partnership is established by a written partnership agreement, a current copy of such agreement shall be provided when applying for a permit;
 - (F) For business entities, other than corporations, copies of current assumed name statements if filed and copies of current business privilege tax certificates, if applicable.
- (6) Additional information may also be required by the Division for specific permits.
- (b) A permittee must hold a valid Standard or Retired Standard Commercial Fishing License in order to hold a:
 - (1) Pound Net Permit;
 - (2) Permit to Waive the Requirement to Use Turtle Excluder Devices in the Atlantic Ocean.
- (c) A permittee and their designees must hold a valid Standard or Retired Standard Commercial Fishing License with a Shellfish Endorsement or a Shellfish License in order to hold a:
 - (1) Permit to Transplant (Prohibited) Polluted Shellfish;
 - (2) Permit to Transplant Oysters from Seed Management Areas;
 - (3) Permit to Use Mechanical Methods for Oysters or Clams on Shellfish Leases or Franchises;
 - (4) Permit to Harvest Rangia Clams from Prohibited (Polluted) Areas.
- (d) A permittee must hold a valid Fish Dealer License in the proper category in order to hold Dealer Permits for Monitoring Fisheries Under a Quota/Allocation for that category.

(e) Aquaculture Operations/Collection Permits:

- (1) A permittee must hold a valid Aquaculture Operation Permit issued by the Fisheries Director to hold an Aquaculture Collection Permit.**
- (2) The permittee or designees must hold appropriate licenses from the Division of Marine Fisheries for the**

species harvested and the gear used under the Aquaculture Collection Permit.

- (f) Applications submitted without complete and required information shall be considered incomplete and shall not be processed until all required information has been submitted. Incomplete applications will be returned to the applicant with deficiency in the application so noted.
- (g) A permit will be issued only after the application has been deemed complete by the Division of Marine Fisheries and the permittee certifies to fully abide by the permit general and specific conditions established under 15A NCAC 3J .0107, 3K .0103, 3K .0104, 3K .0107, 3K .0206, 3K .0303, 3K .0401, 3O .0502, and 3O .0503 as applicable to the requested permit.
- (h) The Fisheries Director, or his agent may evaluate the following in determining whether to issue, modify or renew a permit:
 - (1) Potential threats to public health or marine and estuarine resources regulated by the Marine Fisheries Commission;
 - (2) Applicant's demonstration of a valid justification for the permit and a showing of responsibility as determined by the Fisheries Director;
 - (3) Applicant's history of habitual fisheries violations evidenced by eight or more violations in 10 years.
- (i) The applicant shall be notified in writing of the denial or modification of any permit request and the reasons therefor. The applicant may submit further information, or reasons why the permit should not be denied or modified.
- (j) Permits are valid from the date of issuance through the expiration date printed on the permit. This timeframe may be based on calendar year, fiscal year, or other as deemed appropriate by the Division.
- (k) To renew a permit, the permittee shall file a certification that the information in the original application is still currently correct, or a statement of all changes in the original application and any additional information required by the Division of Marine Fisheries.
 - (l) For initial or renewal permits, processing time for permits may be up to 30 days unless otherwise specified in 15A NCAC 3.
 - (m) It is unlawful for a permit holder to fail to notify the Division of Marine Fisheries within 30 days of a change of name or address.
 - (n) It is unlawful for a permit holder to fail to notify the Division of Marine Fisheries of a change of designee prior to use of the permit by that designee.
 - (o) Permit applications shall be available at all Division Offices.
 - (p) Any permit which is valid at time of adoption of this Rule will be valid until the expiration date stated on the permit.

Authority G.S. 113-134; 113-169.1; 113-169.3; 113-182; 143B-289.52.

15A NCAC 030 .0503 PERMIT CONDITIONS; SPECIFIC

- (a) Horseshoe Crab Biomedical Use Permit:
 - (1) It is unlawful to use horseshoe crabs for biomedical purposes without first securing a permit.

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- (2) It is unlawful for persons who have been issued a Horseshoe Crab Biomedical Use Permit to fail to submit a report on the use of horseshoe crabs to the Division of Marine Fisheries due on February 1 of each year unless otherwise specified on the permit. Such reports will be filed on forms provided by the Division and will include but not be limited to a monthly account of the number of crabs harvested, statement of percent mortality up to the point of release, and a certification that harvested horseshoe crabs are solely used by the biomedical facility and not for other purposes.
 - (3) It is unlawful for persons who have been issued a Horseshoe Crab Biomedical Use Permit to fail to comply with the Atlantic States Marine Fisheries Commission Horseshoe Crab Fisheries Management Plan monitoring and tagging requirements for horseshoe crabs. Copies of this plan are available from the Atlantic States Marine Fisheries Commission, 1444 Eye Street, NW, 6th Floor, Washington, DC 20005, (202) 289-6400, or the Division of Marine Fisheries? Morehead City Office.
- (b) Dealers Permits for Monitoring Fisheries under a Quota/Allocation:
- (1) During the commercial season opened by proclamation or rule for the fishery for which a Dealers Permit for Monitoring Fisheries under a Quota/Allocation permit is issued, it is unlawful for fish dealers issued such permit to fail to:
 - (A) Fax or send via electronic mail by noon daily, on forms provided by the Division, the previous day's landings for the permitted fishery to the dealer contact designated on the permit. Landings for Fridays or Saturdays may be submitted on the following Monday. If the dealer is unable to fax or electronic mail the required information, the permittee may call in the previous day's landings to the dealer contact designated on the permit but must maintain a log furnished by the Division;
 - (B) Submit the required log to the Division upon request or no later than five days after the close of the season for the fishery permitted;
 - (C) Maintain faxes and other related documentation in accordance with 15A NCAC 3I .0114;
 - (D) Contact the dealer contact daily regardless of whether or not a transaction for the fishery for which a dealer is permitted occurred;
 - (E) Record the permanent dealer identification number on the bill of lading or receipt for each transaction or shipment from the permitted fishery.
 - (2) Striped Bass Dealer Permit:
 - (A) It is unlawful for a fish dealer to possess, buy, sell or offer for sale striped bass taken from the following areas without first obtaining a Striped Bass Dealer Permit validated for the applicable harvest area:
 - (i) Atlantic Ocean;
 - (ii) Albemarle Sound Management Area for Striped Bass which is defined as Albemarle Sound and all its joint water tributaries including Roanoke River, up to the Hwy. 258 bridge; Eastmost and Middle Rivers, and Cashie River below Sans Souci Ferry; Currituck Sound and all its joint water tributaries; Roanoke and Croatan Sounds and all their joint water tributaries, including Oregon Inlet, east of a line from Baum Point 34° 55' 09" N - 75° 39' 34" W; running 336° M to Rhodoms Point 36° 00' 10" N - 75° 43' 42" W and east of a line from Eagleton Point 36° 01' 18" N - 75° 43' 42" W; running 352° to Long Point 36° 02' 30" N - 75° 44' 18" W at the mouth of Kitty Hawk Bay and north of a line from Roanoke Marshes Point 35° 48' 12" N - 75° 43' 06" W, running 122° (M) to the north point of Eagle Nest Bay 35° 44' 12" N - 75° 31' 09" W; Croatan Sound south of a line at the Highway 64/264 bridge at Manns Harbor and north of a line from Roanoke Marshes Point 35° 48' 12" N - 75° 43' 06" W; running 122° M across to the north point of Eagle Nest Bay 35° 44' 12" N - 75° 31' 09" W;
 - (iii) Central Area which is defined as all internal coastal waters of Carteret, Craven, Beaufort, and Pamlico counties; Pamlico and Pungo rivers; and Pamlico Sound south of a line from Roanoke Marshes Point 35° 48' 12"N- 75° 43' 06" W, running 122° (M) to the north point of Eagle Nest Bay 35° 44' 12" N- 75° 31' 09" W (southern boundary of the Albemarle Sound Management Area for Striped Bass) to the county boundaries;
 - (iv) Southern Area which is defined as all internal coastal waters of Pender, Onslow, New Hanover, and Brunswick counties.
 - (B) No permittee may possess, buy, sell or offer for sale striped bass taken from the harvest areas opened by proclamation without having a North Carolina Division of Marine Fisheries issued valid tag for the applicable area affixed through the mouth and gill cover, or, in the case of striped bass imported from other states, a similar tag that is issued for striped bass in the state of origin. North Carolina Division of Marine Fisheries striped bass tags may not be bought, sold, offered for sale, or transferred. Tags shall be obtained at the North Carolina Division of Marine Fisheries Offices. The Division of Marine Fisheries shall specify the quantity of tags to be issued based on historical striped bass landings. It is unlawful for the permittee to fail to surrender unused tags to the Division upon request.
- (3) Albemarle Sound Management Area for River Herring Dealer Permit: It is unlawful to possess, buy, sell or

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offer for sale river herring taken from the following area without first obtaining an Albemarle Sound Management Area for River Herring Dealer Permit: Albemarle Sound Management Area for River Herring is defined as Albemarle Sound and all its joint water tributaries including Roanoke River, up to the Hwy. 258 bridge; Eastmost and Middle Rivers, and Cashie River below Sans Souci Ferry; Currituck Sound and all its joint water tributaries; Roanoke and Croatan Sounds and all their joint water tributaries, including Oregon Inlet, east of a line from Baum Point 34° 55' 09" N - 75° 39' 34" W; running 336° M to Rhodoms Point 36° 00' 10" N - 75° 43' 42" W and east of a line from Eagleton Point 36° 01' 18" N - 75° 43' 42" W; running 352° to Long Point 36° 02' 30" N - 75° 44' 18" W at the mouth of Kitty Hawk Bay and north of a line from Roanoke Marshes Point 35° 48' 12" N - 75° 43' 06" W, running 122° (M) to the north point of Eagle Nest Bay 35° 44' 12" N - 75° 31' 09" W; Croatan Sound south of a line at the Highway 64/264 bridge at Manns Harbor and north of a line from Roanoke Marshes Point 35° 48' 12" N - 75° 43' 06" W; running 122° M across to the north point of Eagle Nest Bay 35° 44' 12" N - 75° 31' 09" W.

(4) Atlantic Ocean Flounder Dealer Permit:

(A) It is unlawful for a Fish Dealer to allow vessels holding a valid License to Land Flounder from the Atlantic Ocean to land more than 100 pounds of flounder from a single transaction at their licensed location during the open season without first securing an Atlantic Ocean Flounder Dealer Permit. The licensed location must be specified on the Atlantic Ocean Flounder Dealer Permit and only one location per permit will be allowed.

(B) It is unlawful for a Fish Dealer to possess, buy, sell, or offer for sale more than 100 pounds of flounder from a single transaction from the Atlantic Ocean without first securing an Atlantic Ocean Flounder Dealer Permit.

(5) Atlantic Ocean American Shad Dealer Permit: It is unlawful for a Fish Dealer to possess, buy, sell or offer for sale American Shad taken from the Atlantic Ocean without first obtaining an Atlantic Ocean American Shad Dealer Permit.

(c) Blue Crab Shedding Permit: It is unlawful to possess more than 50 blue crabs in a shedding operation without first obtaining a Blue Crab Shedding Permit from the Division of Marine Fisheries.

(d) Permit to Waive the Requirement to Use Turtle Excluder Devices in the Atlantic Ocean:

(1) It is unlawful to trawl for shrimp in the Atlantic Ocean without Turtle Excluder Devices installed in trawls within one nautical mile of the shore from Browns Inlet (34° 17.6" N latitude) to Rich's Inlet (34° 35.7" N latitude) without a valid Permit to Waive the Requirement to Use Turtle Excluder Devices in the Atlantic Ocean when allowed by proclamation from April 1 through November 30.

(2) It is unlawful to tow for more than 55 minutes from April 1 through October 31 and 75 minutes from November 1 through November 30 in this area when working under this permit. Tow time begins when the doors enter the water and ends when the doors exit the water.

(3) It is unlawful to fail to empty the contents of each net at the end of each tow.

(4) It is unlawful to refuse to take observers upon request by the Division of Marine Fisheries or the National Marine Fisheries Service.

(5) It is unlawful to fail to report any sea turtle captured. Reports must be made within 24 hours of the capture to the Marine Patrol Communications Center by phone. All turtles taken incidental to trawling must be handled and resuscitated in accordance with requirements specified in 50 CFR 223.206, copies of which are available via the Internet at www.nmfs.gov and at the Division of Marine Fisheries, 127 Cardinal Drive Extension, Wilmington, North Carolina 28557.

(e) Pound Net Set Permits. Rules setting forth specific conditions for pound net sets are found in 15A NCAC 3J .0107.

(f) Aquaculture Operations/Collection Permits:

(1) It is unlawful to conduct aquaculture operations utilizing marine and estuarine resources without first securing an Aquaculture Operation Permit from the Fisheries Director.

(2) It is unlawful:

(A) To take marine and estuarine resources from coastal waters for aquaculture purposes without first obtaining an Aquaculture Collection Permit from the Fisheries Director.

(B) To sell, or use for any purpose not related to North Carolina aquaculture, marine and estuarine resources taken under an Aquaculture Collection Permit.

(C) To fail to submit to the Fisheries Director an annual report due on December 1 of each year on the form provided by the Division the amount and disposition of marine and estuarine resources collected under authority of this permit.

(3) Lawfully permitted shellfish relaying activities authorized by 15A NCAC 3K .0103 and .0104 are exempt from requirements to have an Aquaculture Operation or Collection Permit issued by the Fisheries Director.

(4) Aquaculture Operations/Collection Permits shall be issued or renewed on a calendar year basis.

(5) It is unlawful to fail to provide the Division of Marine Fisheries with a listing of all designees who will be acting under an Aquaculture Collection Permit at the time of application.

(g) Scientific or Educational Collection Permit:

(1) It is unlawful for individuals or agencies seeking exemptions from license, rule, proclamation or statutory requirements to collect for scientific or educational purposes as approved by the Division of Marine Fisheries any marine and estuarine species without first securing a Scientific or Educational Collection Permit.

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(2) It is unlawful for persons who have been issued a Scientific or Educational Collection Permit to fail to submit a report on collections to the Division of Marine Fisheries due on December 1 of each year unless otherwise specified on the permit. Such reports will be filed on forms provided by the Division. Scientific or Educational Collection Permits shall be issued on a calendar year basis.

(3) It is unlawful to sell marine and estuarine species taken under a Scientific or Educational Collection Permit:
(A) without the required license(s) for such sale;
(B) to anyone other than a licensed North Carolina fish dealer; and
(C) without authorization stated on the permit for such sale.

(4) It is unlawful to fail to provide the Division of Marine Fisheries a listing of all designees who will be acting under Scientific or Educational Collection Permits at the time of application.

(5) The permittee or designees utilizing the permit must call or fax the Division of Marine Fisheries Communications Center not later than 24 hours prior to use of the permit, specifying activities and location.

Authority G.S. 113-134; 113-169.1; 113-169.3; 113-182; 143B-289.52.

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Wildlife Resources Commission intends to amend the rules cited as 15A NCAC 10B .0105, .0202-.0203, .0208-.0209; 10C .0211, 0402, .0407; 10D .0103-.0104; 10H .0301, .0901. Notice of Rule-making Proceedings was published in the Register on September 1, 2000.

Proposed Effective Date: July 1, 2002

Public Hearing:

Date: January 16, 2001

Time: 7:00 p.m.

Location: Southwestern Community College, Sylva, NC

Date: January 17, 2001

Time: 7:00 p.m.

Location: City of Morganton Municipal Auditorium, Morganton, NC

Date: January 18, 2001

Time: 7:00 p.m.

Location: Starmount High School, Boonville, NC

Date: January 23, 2001

Time: 7:00 p.m.

Location: Courthouse, Elizabethtown, NC

Date: January 24, 2001

Time: 7:00 p.m.

Location: Courthouse Annex, Graham, NC

Date: January 25, 2001

Time: 7:00 p.m.

Location: Central Davidson Middle School, Lexington, NC

Date: January 30, 2001

Time: 7:00 p.m.

Location: John A. Holmes High School, Edenton, NC

Date: January 31, 2001

Time: 7:00 p.m.

Location: Courthouse, New Bern, NC

Date: February 1, 2001

Time: 7:00 p.m.

Location: Courthouse, Nashville, NC

Reason for Proposed Action:

15A NCAC 10B .0105 – To set/amend rules that address the taking of migratory game birds. The Wildlife Resources Commission may adopt this rule as a temporary rule pursuant to G.S. 150B-21.1(a1) following the abbreviated notice as indicated in the Notice of Rule-Making Proceedings or following the public hearing and public comment period as indicated in this notice.

15A NCAC 10B .0202 – To set/amend rules that address the hunting of bear. The Wildlife Resources Commission may adopt this rule as a temporary rule pursuant to G.S. 150B-21.1(a1) following the abbreviated notice as indicated in the Notice of Rule-Making Proceedings or following the public hearing and public comment period as indicated in this notice.

15A NCAC 10B .0203 – To set/amend rules that address the hunting of deer. The Wildlife Resources Commission may adopt this rule as a temporary rule pursuant to G.S. 150B-21.1(a1) following the abbreviated notice as indicated in the Notice of Rule-Making Proceedings or following the public hearing and public comment period as indicated in this notice.

15A NCAC 10B .0208 – To set/amend rules that address the hunting of quail. The Wildlife Resources Commission may adopt this rule as a temporary rule pursuant to G.S. 150B-21.1(a1) following the abbreviated notice as indicated in the Notice of Rule-Making Proceedings or following the public hearing and public comment period as indicated in this notice.

15A NCAC 10B .0209 – To set/amend rules that address the hunting of turkey.

15A NCAC 10C .0211 – The North Carolina Wildlife Resources Commission has authority under G.S. 113-134 and 113-292 to establish rules that regulate inland fishing, including the possession of certain fishes.

15A NCAC 10C .0402, .0407 – To set/amend inland fishing regulations necessary to manage and preserve the resource. The Wildlife Resources Commission may adopt this rule as a temporary rule pursuant to G.S. 150B-21.1(a1) following the abbreviated notice as indicated in the Notice of Rule-Making Proceedings or following the public hearing and public comment period as indicated in this notice.

15A NCAC 10D .0103 – To set/amend seasons including the addition of waterfowl hunting opportunities on the game lands,

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and regulate the manner of hunting on game lands which are necessary to manage and conserve the resource. The Wildlife Resources Commission may adopt this rule as a temporary rule pursuant to G.S. 150B-21.1(a1) following the abbreviated notice as indicated in the Notice of Rule-Making Proceedings or following the public hearing and public comment period as indicated in this notice.

15A NCAC 10D .0104 – To set/amend rules that address fishing on game lands. The Wildlife Resources Commission may adopt this rule as a temporary rule pursuant to G.S. 150B-21.1(a1) following the abbreviated notice as indicated in the Notice of Rule-Making Proceedings or following the public hearing and public comment period as indicated in this notice.

15A NCAC 10H .0301 – G.S. 113-134; 113-272.5; 113-274 and 113-292 give the NC Wildlife Resources Commission authority to adopt rules that address the holding of wildlife in captivity.

15A NCAC 10H .0901 – G.S. 106-549.94, 113-134 and 113-273 give the NC Wildlife Resources Commission authority to adopt rules that address the Game Bird Propagators.

Comment Procedures: Interested persons may present their views either orally or in writing at the hearing. In addition, the record of hearing will be open for receipt of written comments until February 16, 2001. Such written comments must be delivered or mailed to the NC Wildlife Resources Commission, 512 N. Salisbury St., Raleigh, NC 27604-1188.

Fiscal Impact

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

CHAPTER 10 – WILDLIFE RESOURCES AND WATER SAFETY

SUBCHAPTER 10B – HUNTING AND TRAPPING

SECTION .0100 – GENERAL REGULATIONS

15A NCAC 10B .0105 MIGRATORY GAME BIRDS

(a) Cooperative State Rules:

- (1) The taking of sea ducks (scoter, eider and old squaw) during any special federally-announced season for these species shall be limited to the waters of the Atlantic Ocean, and to those coastal waters south of US 64 which are separated by a distance of at least 800 yards of open water from any shore, island or marsh.
- (2) The extra daily bag and possession limits allowed by the federal regulations on scaup apply in all coastal waters east of US Highway 17, except Currituck Sound north of US 158.
- (3) Tundra swans may be taken during the open season by permit only subject to annual limitations imposed by the U. S. Fish and Wildlife Service. Based upon the annual limitations imposed by the U.S. Fish and Wildlife Service, nontransferable swan permits will be issued by the Wildlife Resources Commission to applicants who will be selected at random by computer,

and only one swan may be taken under each permit which must be cancelled at the time of the kill by cutting out the month and day of the kill. Accompanying the permit is a tag which must be affixed to the swan at the time and place of the kill. The tag must be affixed in accordance with instructions provided with the permit. In addition, a preaddressed post-paid card is supplied to each permittee on which to report the number of days hunted and the details of the kill if made. It is unlawful to hunt swans without having the permit and the tag in possession or to possess a swan without the cancelled permit in possession and the tag properly affixed to the swan. It is unlawful to possess a swan permit or tag while hunting that was assigned to another person or to alter the permit or tag in any way other than cutting out the proper month and day of kill.

(4) Canada geese may be taken during the open season by permit holders only subject to limitations imposed by the U.S. Fish and Wildlife Service. Permits will be issued by the North Carolina Wildlife Resources Commission. It is unlawful to hunt or possess Canada geese without having the permit in possession. It is unlawful to possess a Canada goose permit while hunting that was assigned to another person or to alter the permit in any way.

(b) Notwithstanding the provisions of G.S. 113-291.1(a) and (b), the following restrictions apply to the taking of migratory game birds:

- (1) No migratory game bird may be taken:
 - (A) With a rifle;
 - (B) With a shotgun of any description capable of holding more than three shells, unless it is plugged with a one-piece filler, incapable of removal without disassembling the gun, so as to limit its total capacity to not more than three shells.
- (2) No migratory game bird may be taken:
 - (A) From or by the use of a sinkbox or any other type of low floating device affording the hunter a means of concealment beneath the surface of the water;
 - (B) With the aid of bait, or on, over or within 300 yards of any place where any grain, salt or other feed is exposed so as to constitute an attraction to migratory game birds or has been so exposed during any of the 10 consecutive days preceding the taking, except that this Part shall not apply to standing crops, flooded croplands, grain crops properly shocked on the field where grown, or grains found scattered solely as the result of normal agricultural planting or harvesting;
 - (C) With the aid of live decoys, or on, over or within 300 yards of any place where tame or captive migratory game birds are present, unless such birds are and have been for a period of 10 consecutive days prior to such taking confined within an enclosure which substantially reduces the audibility of their calls and totally conceals them from the sight of wild migratory game birds.

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- (3) Waterfowl hunting and harassment and other unauthorized activities shall be prohibited on posted waterfowl management areas established by the Wildlife Resources Commission for Canada Geese and ducks restoration.
- (4) In that area of Roanoke Sound adjacent to and immediately Northeast of Roanoke Island as marked by buoys designating the waterfowl rest area, it shall be unlawful to harass or take any waterfowl.
- (5) The area east of US 17 shall be designated as an experimental September teal season zone as referenced by the Federal frameworks calling for state rules designating experimental areas.
- (6) Waterfowl may be taken only on Mondays, Wednesdays, Saturdays; on Thanksgiving, Christmas and New Year's Days; and on the opening and closing days of the applicable waterfowl seasons on that area within 100 yards of Pee Dee River from Blewett Falls dam downstream to the South Carolina state line. Waterfowl shall not be taken after 1:00 PM in this area.

Authority G.S. 113-134; 113-274; 113-291.1; 113-291.2; 50 C.F.R. 20.21; 50 C.F.R. 20.105.

SECTION .0200 – HUNTING

15A NCAC 10B .0202 BEAR

- (a) Open Seasons for bear shall be from the:
 - (1) Monday–Saturday on or nearest October 15 to the Saturday–Friday before Thanksgiving and the third Monday after Thanksgiving to January 1 in and west of the boundary formed by NC 113 from the Virginia State line to the intersection with NC 18 and NC 18 to the South Carolina State line.
 - (2) Second Monday–Saturday in November to the following Saturday–Friday and the third Monday after Thanksgiving to the following Wednesday in all of Hertford County; and in the following parts of counties:
 - Halifax: that part east of US 301.
 - Martin: that part east of US 17.
 - Northampton: that part east of US 301.
 - (3) Second Monday–Saturday in November to January 1 in all of Bladen, Carteret, Duplin, New Hanover, Onslow and Pender counties; and in the following parts of counties:
 - Cumberland: that part south of NC 24 and east of the Cape Fear River.
 - Sampson: that part south of NC 24.
 - (4) Second Monday–Saturday in December to January 1 in Brunswick and Columbus counties.
 - (5) Second Monday–Saturday in November to the following Saturday–Friday and the third Monday after Thanksgiving to the fifth Saturday after Thanksgiving in all of Beaufort, Bertie, Camden, Craven, Dare, Gates, Hyde, Jones, Pamlico, Pasquotank, Tyrrell, and Washington counties, and in the following parts of counties:
 - Chowan: that part north of a line formed by SR 1002, SR 1222, and SR 1220.

Currituck: except Knotts Island and the Outer Banks.
(b) No Open Season. There is no open season in any area not included in Paragraph (a) of this Rule or in those parts of counties included in the following posted bear **sanctuaries:** sanctuaries, except as noted below:

- Avery, Burke and Caldwell counties--Daniel Boone bear sanctuary
- Beaufort, Bertie and Washington counties--Bachelor Bay bear sanctuary
- Beaufort and Pamlico counties--Gum Swamp bear sanctuary
- Beaufort Washington counties--Van Swamp bear sanctuary
- Bladen County--Suggs Mill Pond bear sanctuary
- Brunswick County--Green Swamp bear sanctuary
- Buncombe, Haywood, Henderson and Transylvania counties--Pisgah bear sanctuary
- Carteret, Craven and Jones counties--Croatan bear sanctuary
- Clay County--Fires Creek bear sanctuary
- Columbus County--Columbus County bear sanctuary
- Currituck County--North River bear sanctuary
- Dare County--Bombing Range bear **sanctuary** sanctuary. Notwithstanding seasons listed in Paragraph (a) of this Rule, bear hunting will be allowed by special permit.
- Haywood County--Harmon Den bear sanctuary
- Haywood County--Sherwood bear sanctuary
- Hyde County--Gull Rock bear sanctuary
- Hyde County--Pungo River bear sanctuary
- Jackson County--Panthertown-Bonas Defeat bear sanctuary
- Jones and Onslow counties--Hofmann bear sanctuary
- Macon County--Standing Indian bear sanctuary
- Macon County--Wayah bear sanctuary
- Madison County--Rich Mountain bear sanctuary
- McDowell and Yancey counties--Mt. Mitchell bear sanctuary
- Mitchell and Yancey counties--Flat Top bear sanctuary
- Wilkes County--Thurmond Chatham bear sanctuary

- (c) Bag limits shall be:
 - (1) daily, one;
 - (2) possession, one;
 - (3) season, one.
- (d) Kill Reports. The carcass of each bear shall be tagged and the kill reported as provided by 15A NCAC 10B .0113.

Authority G.S. 113-134; 113-291.2; 113-291.7; 113-305.

15A NCAC 10B .0203 DEER (WHITE-TAILED)

- (a) Closed Season. All counties and parts of counties not listed under the open seasons in Paragraph (b) in this Rule shall be closed to deer hunting.
- (b) Open Seasons (All Lawful Weapons)
 - (1) Deer With Visible Antlers. Deer with antlers or spikes protruding through the skin, as distinguished from knobs or buttons covered by skin or velvet, may be taken during the following seasons:

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- (A) ~~Monday-Saturday~~ on or nearest October 15 through January 1 in all of Beaufort, Bertie, Bladen, Brunswick, Camden, Carteret, Chowan, Columbus*, Craven, Currituck, Dare, Duplin, Edgecombe, Franklin, Gates, Greene, Halifax, Hertford, Hoke, Hyde, Johnston, Jones, Lenoir, Martin, Nash, New Hanover, Northampton, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Pitt, Richmond**, Robeson, Sampson, Scotland**, Tyrrell, Vance, Wake, Warren, Washington, Wayne, and Wilson counties, and the following parts of counties:
Cumberland: All of the county except that part east of US 401, north of NC 24, and west of I-95;
Harnett: That part west of NC 87;
Moore**: All of the county except that part north of NC 211 and west of US 1;
*Unlawful to hunt or kill deer in Lake Waccamaw or within 50 yards of its shoreline.
**Refer to 15A NCAC 10D .0103(f) (54)(B) for seasons on Sandhills Game Land.
- (B) ~~Monday of Saturday before~~ Thanksgiving week through the third Saturday after Thanksgiving Day in all of Alexander, Alleghany, Ashe, Catawba, Davie, ~~Forsythe~~ Forsyth, Iredell, Stokes, Surry, Watauga, Wilkes, and Yadkin counties.
- (C) ~~Monday of Saturday before~~ Thanksgiving week through the third Saturday after Thanksgiving Day in all of Avery, Buncombe, Burke, Caldwell, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, Macon, Madison, McDowell, Mitchell, Polk, Swain, Transylvania, and Yancey counties.
- (D) ~~Monday—before Two Saturdays before~~ Thanksgiving week through January 1 in all of Alamance, Anson, Cabarrus, Caswell, Chatham, Davidson, Durham, Granville, Guilford, Lee, Mecklenburg, Montgomery, Orange, Person, Randolph, Rockingham, Rowan, Stanly, and Union counties, and in the following parts of counties:
Cumberland: That part east of US 401, north of NC 24 and west of I-95;
Harnett: That part east of NC 87;
Moore: That part north of NC 211 and west of US 1;
- (E) ~~Monday-Saturday~~ on or nearest September 10 through January 1 in those parts of Camden, Gates and Pasquotank counties known as the Dismal Swamp National Wildlife Refuge, in those parts of Hyde, Tyrrell and Washington counties known as the Pocosin Lakes National Wildlife Refuge, in those parts of Anson and Richmond counties known as the Pee Dee National Wildlife Refuge, and in that part of Currituck County known as the Mackay Island National Wildlife Refuge;
- (F) ~~Monday of Saturday before~~ Thanksgiving week through the fifth Saturday after Thanksgiving Day in all of Cleveland, Gaston, Lincoln, and Rutherford counties.
- (2) Deer of Either Sex. Except on Game Lands, deer of either sex may be taken during the open seasons and in the counties and portions of counties listed in this Subparagraph (Refer to 15A NCAC 10D .0103 for either sex seasons on Game Lands):
- (A) The open either-sex deer hunting dates established by the U.S. Fish and Wildlife Service during the period from the ~~Monday-Saturday~~ on or nearest September 10 through January 1 in those parts of Camden, Gates and Pasquotank counties known as the Dismal Swamp National Wildlife Refuge, in those parts of Hyde, Tyrrell and Washington counties known as the Pocosin Lakes National Wildlife Refuge, in those parts of Anson and Richmond counties known as the Pee Dee National Wildlife Refuge, and in that part of Currituck County known as the Mackay Island National Wildlife Refuge.
- (B) The open either-sex deer hunting dates established by the appropriate military commands during the period from ~~Monday-Saturday~~ on or nearest October 15 through January 1 in that part of Brunswick County known as the Sunny Point Military Ocean Terminal, in that part of Craven County known and marked as Cherry Point Marine Base, in that part of Onslow County known and marked as the Camp Lejeune Marine Base, on Fort Bragg Military Reservation, and on Camp Mackall Military Reservation.
- (C) Youth either sex deer hunts. First Saturday in October for youth either sex deer hunting by permit only on a portion of Belews Creek Steam Station in Stokes County designated by agents of the Commission and the third Saturday in October for youth either-sex deer hunting by permit only on Mountain Island State Forest in Lincoln and Gaston counties.
- (D) The last open day of the Deer with Visible Antlers season described in Subparagraph (b)(1) of this Rule in all of Avery, Buncombe, Haywood, Henderson, Madison, Mitchell, Polk, Transylvania, and Yancey counties and the following parts of counties:
Robeson: That part south of NC 211 and west of I-95.
Scotland: That part south of US 74.
- (E) The last six open days of the Deer With Visible Antlers season described in Subparagraph (b)(1) of this Rule in all of Burke, Caldwell, Catawba, Gaston, Lincoln, McDowell, and Watauga and the following parts of counties:
Camden: That part south of US 158.
Dare: Except the Outer Banks north of Whalebone.
- (F) The first six open days and the last six open days of the Deer with Visible Antlers season described in Subparagraph (b)(1) of this Rule in all of Carteret, Cleveland, ~~Harnett~~, Hoke, Richmond, Rutherford, counties and in the following parts of counties:

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Columbus: That part west of US 74, SR 1005, and SR 1125.

Cumberland: That part west of I-95.

~~Harnett: That part west of NC 87.~~

Moore: All of the county except that part north of NC 211 and west of US 1.

Robeson: ~~That All of the county except that part south of NC 211 and east-west~~ of I-95.

Scotland: That part north of US 74.

~~(G) The first six open days, open days the week of Thanksgiving, and the last six open days of the Deer with Visible Antlers season described in Subparagraph (b)(1) of this Rule in all of Pasquotank, Tyrrell, Wayne and Wilson counties and in the following parts of counties:~~

~~Camden: That part north of US 158.~~

~~Chowan: That part north of US 17 and west of NC 32.~~

~~Currituck: All of the county except the Outer Banks.~~

~~Nash: That part south of NC 97.~~

~~Johnston: That part north of US 70 or west of I-95.~~

~~In addition, one antlerless deer may be taken anytime during the Deer With Visible Antlers season in the counties listed in this Part.~~

~~(H)(G)~~ All the open days of the Deer With Visible Antlers season described in Subparagraph (b)(1) of this Rule in all of Alamance, Alexander, Alleghany, Anson, Ashe, Beaufort, Bertie, Bladen, Brunswick, Cabarrus, Caswell, Chatham, Chowan, Craven, Davidson, Davie, Duplin, Durham, Edgecombe, Forsyth, Franklin, Gates, Granville, Greene, Guilford, Halifax, Hertford, Hyde, Iredell, Johnston, Jones, Lee, Lenoir, Martin, Mecklenburg, Montgomery, Nash, New Hanover, Northampton, Onslow, Orange, Pamlico, Pasquotank, Pender, Perquimans, Person, Pitt, Randolph, Rockingham, Rowan, Sampson, Stanly, Stokes, Surry, Tyrrell, Union, Vance, Wake, Warren, Washington, ~~Wilkes-Wilkes~~, Wayne, Wilson, and Yadkin counties, and in the following parts of counties:

Buncombe: That part east of NC 191, south of the French Broad and Swannanoa Rivers, west of US 25, and north of NC 280.

~~Camden: That part north of US 158.~~

~~Chowan: That part south of US 17 or east of NC 32.~~

Columbus: That part east of a line formed by US 74, SR 1005, and SR 1125.

Cumberland: That part east of I-95.

Currituck: All of the county except the Outer Banks.

Dare: That part of the Outer Banks north of Whalebone.

Harnett: That part east of NC 87.

Henderson. That part east of NC 191 and north and west of NC 280.

~~Johnston: That part south of US 70 and east of I 95.~~

Moore: That part north of NC 211 and west of US 1.

~~Nash: That part north of NC 97.~~

(c) Open Seasons (Bow and Arrow)

(1) Authorization. Subject to the restrictions set out in Subparagraph (2) of this Paragraph and the bag limits set out in Paragraph (e) of this Rule, deer of either sex may be taken with bow and arrow during the following seasons:

(A) ~~Monday-Saturday~~ on or nearest September 10 to the fourth ~~Saturday-Friday~~ thereafter in the counties and parts of counties having the open season for Deer With Visible Antlers specified by Part (A) of Subparagraph (b)(1) of this Rule, except on the Sandhills Game Land and the area known as the Outer Banks in Currituck County.

(B) ~~Monday-Saturday~~ on or nearest September 10 to the second ~~Saturday-Friday~~ before Thanksgiving in the counties and parts of counties having the open seasons for Deer with Visible Antlers specified by Part (B) of Subparagraph (b)(1) of this Rule and in Gaston and Lincoln Counties.

(C) ~~Monday-Saturday~~ on or nearest September 10 to the fourth ~~Saturday-Friday~~ thereafter, and ~~Monday-Saturday~~ on or nearest October 15 to the ~~Saturday-Friday~~ before Thanksgiving in the counties and parts of counties having the open seasons for Deer With Visible Antlers specified by Part (C) of Subparagraph (b)(1) of this Rule and in Cleveland and Rutherford counties.

(D) ~~Monday-Saturday~~ on or nearest September 10 to the third ~~Saturday-Friday~~ before Thanksgiving in the counties and parts of counties having the open season for Deer With Visible Antlers specified by Part (D) of Subparagraph (b)(1) of this Rule, and on Sandhills Game Land.

(2) Restrictions

(A) Dogs may not be used for hunting deer during the bow and arrow season.

(B) It is unlawful to carry any type of firearm while hunting with a bow during the bow and arrow deer hunting season.

(C) Only bows and arrows of the types authorized in 15A NCAC 10B .0116 for taking deer may be used during the bow and arrow deer hunting season.

(d) Open Seasons (Muzzle-Loading Rifles and Shotguns)

(1) Authorization. Subject to the restrictions set out in Subparagraph (2) of this Paragraph, deer may be taken only with muzzle-loading firearms (except that bow and arrow may be used on designated and posted game land Archery Zones) during the following seasons:

(A) ~~Monday-The Saturday~~ on or nearest October 8 to the following ~~Saturday-Friday~~ in Cleveland and Rutherford counties and in the counties and parts of counties having the open seasons for Deer With Visible Antlers specified by Parts (A) and (C) of Subparagraph (b)(1) of this Rule, except on

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Sandhills Game Land and the area known as the Outer Banks in Currituck County.

(B) ~~Monday to Saturday of the week~~ The second Saturday preceding Thanksgiving ~~week until the following Friday~~ in the counties and parts of counties having the open seasons for Deer With Visible Antlers specified by Part (B) of Subparagraph (b)(1) of this Rule and in Gaston and Lincoln counties.

(C) ~~Monday to Saturday of the second week before~~ The third Saturday preceding Thanksgiving ~~week until the following Friday~~ in the counties and parts of counties having the open season for Deer With Visible Antlers specified by Part (D) of Subparagraph (b)(1) of this Rule, and on Sandhills Game Land.

(2) Restrictions

(A) Deer of either sex may be taken during muzzle-loading firearms season in and east of the following counties: Rutherford, McDowell, Burke, Caldwell, Wilkes, and Ashe. Deer of either sex may be taken on the last day of muzzle-loading firearms season in all other counties.

(B) Dogs shall not be used for hunting deer during the muzzle-loading firearms seasons.

(C) Pistols shall not be carried while hunting deer during the muzzle-loading firearms seasons.

(e) In those counties or parts of counties listed in Part (b)(1)(A) of Subparagraph (b)(1) of this Rule and those counties or parts of counties listed in Part (b)(1)(D) of this Rule in which hunting deer with dogs is allowed, the daily bag limit shall be two and the possession limit six, two of which shall be antlerless. The season limit shall be six, two of which shall be antlerless. In all other counties or parts of counties, the daily bag limit shall be two and the possession limit six, four of which shall be antlerless. The season limit shall be six, four of which shall be antlerless. Antlerless deer include males with knobs or buttons covered by skin or velvet as distinguished from spikes protruding through the skin. The antlerless bag limits described above do not apply to antlerless deer harvested in areas covered in the Deer Management Assistance Program as described in G.S. 113-291.2(e). Individual daily antlerless bag limits on these areas shall be determined by the number of special tags, issued by the Division of Wildlife Management as authorized by the Executive Director, that shall be in the possession of the hunter. Season antlerless bag limits shall be set by the number of tags available. All antlerless deer harvested on these areas, regardless of the date of harvest, shall be tagged with these special tags but the hunter does not have to validate the Big Game Harvest Report Card provided with the hunting license.

(f) Kill Reports. The kill shall be validated at the site of kill and the kill reported as provided by 15A NCAC 10B .0113.

Authority G.S. 113-134; 113-270.3; 113-276.1; 113-291.1; 113-291.2.

15A NCAC 10B .0208 QUAIL

(a) The open season for quail shall be the Saturday next preceding Thanksgiving to the last day of February.

(b) The daily bag Limit shall be ~~8-six~~ per day and the possession limit shall be ~~16-12 per day~~. There shall be no season limit.

Authority G.S. 113-134; 113-291.2.

15A NCAC 10B .0209 WILD TURKEY (BEARDED TURKEYS ONLY)

(a) Open Season for wild turkey shall be from the: Second Saturday in April to Saturday of the fourth week thereafter on bearded turkeys in the following counties: Alamance, Alexander, Alleghany, Anson, Ashe, Avery, ~~**Bladen,~~ Brunswick, Buncombe, Burke, Caldwell, Caswell, Catawba, ~~**Chatham~~, Cherokee, Chowan, Clay, Cleveland, Craven, Davie, Duplin, ~~**Durham~~, Edgecombe, Forsyth, Franklin, Gaston, Gates, Graham, ~~**Granville~~, Halifax, Harnett, Haywood, Henderson, Hertford, Iredell, Jackson, Jones, Lee, Lenoir, Lincoln, Macon, Madison, ~~**Martin,~~ McDowell, Mecklenburg, Mitchell, Montgomery, Moore, Northampton, Onslow, ~~**Orange~~, Person, Pitt, Polk, ~~**Richmond~~, Rockingham, Rowan, Rutherford, Sampson, ~~**Scotland~~, Stokes, Surry, Swain, Transylvania, Vance, Wake, Washington, Warren, Watauga, Wilkes, Yadkin, Yancey and in the following portions of counties:

Beaufort: That part south of the ~~Pamlico River Tar/Pamlico River, and east of US 17.~~

~~**Bertie: All of the county except that part bounded on the west by NC 11, on the south by NC 308, on the east by NC 45, and on the north by NC 42 and the Hertford County line.~~

~~Brunswick: That part west of NC 211 and that part east of NC 87.~~

Cabarrus: That part south of I85, east of US 601 Business, and north of NC 49.

Camden: That part west of US 17.

Carteret: That part west of US 70 and north of NC 24.

Columbus: ~~That part north of NC 87 and that part east of NC 905 and south of NC 130. All of the county except that part east of NC 701 and west of SR 1005.~~

Cumberland: That part west of NC 53 or I-95.

Currituck: That part north of US 158 and west of the Intracoastal Waterway.

Davidson: That part south of I-85.

Guilford: That part north of I-40.

Hoke: That part south and west of NC 211 and that part known as Fort Bragg.

Hyde: Starting at the Tyrrell County line, that part west of a line formed by NC 94, US 264 West, SR1124 to Judges Quarter then Quarter Canal to Juniper Bay.

~~Iredell: That part north of US 70.~~

Johnston: That part east of I-95.

~~**Martin: All of the county except that part west of US 17 and south of US 64.~~

Nash: All of the county except that part east of NC 581 and south of US 64.

New Hanover: Starting at the Brunswick County line, that part north and west of a line formed by NC-133 and SR 1002.

Pamlico: That part west of NC 306.

~~**Pender: All of the county except that part west of I-40, north of NC 53, and east of US 421.~~

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Perquimans: All of the county except that part south of US 17 and east of the Perquimans River.

Randolph: That part west of US 220.

Robeson: That part east of I-95 and north of US 74.

~~Rowan: That part southeast of I-85.~~

~~Sampson: All of the county except that part east of NC 242, south of NC 411, and west of US 701.~~

Stanly: That part east of a line formed by US 52 from the Cabarrus County line to NC 138 in Albemarle, NC 138 from Albemarle to NC 742 in Oakboro, and NC 742 from Oakboro to the Union County line.

Union: That part south of US 74.

Wayne: That part south of US 70.

****The Sandhills Game Land in Richmond, Scotland, and Moore counties, the Bladen Lakes State Forest Game Lands in Bladen County, the Northeast Cape Fear Wetlands Game Lands in Pender County, the Jordan Game Land in Chatham, Durham, Orange, and Wake counties, the Butner-Falls of the Neuse Game Land in Durham, Granville, and Wake counties, the Roanoke River Wetlands in Bertie, Halifax, and Martin counties, and the Shearon-Harris Game Land in Chatham and Wake counties are closed to turkey hunting except by holders of special permits authorizing turkey hunting as provided in G.S. 113-264(d).**

(b) Bag Limits shall be:

- (1) daily, one;
- (2) possession, two; and
- (3) season, two.

(c) Dogs Prohibited. It is unlawful to use dogs for hunting turkeys.

(d) Kill Reports. The kill shall be validated at the site of kill and the kill reported as provided by 15A NCAC 10B .0113.

Authority G.S. 113-134; 113-270.3; 113-276.1; 113-291.2.

SUBCHAPTER 10C – INLAND FISHING REGULATIONS

SECTION .0200 – GENERAL REGULATIONS

15A NCAC 10C .0211 POSSESSION OF CERTAIN FISHES

It is unlawful to transport, purchase, possess, or sell any species of piranha, ~~the~~-walking catfish" (*Clarias batrachus*), ~~or black carp (*Mylopharyngodon piceus*) or the~~-white amur or "grass carp" (*Ctenopharyngodon idellus*), or to stock any of them in the public or private waters of North Carolina, except that the triploid grass carp certified to be sterile as such by competent authority may be bought, possessed and stocked locally for control of aquatic vegetation under a permit issued by the Executive Director and containing such conditions and limitations as he may deem necessary or advisable under the circumstances.

Authority G.S. 113-134; 113-292.

SECTION .0400 – NONGAME FISH

15A NCAC 10C .0402 TAKING NONGAME FISHES FOR BAIT

(a) It is unlawful to take nongame fish for bait in the inland waters of North Carolina using equipment other than:

- (1) a net of dip net design not greater than six feet across;
- (2) a seine of not greater than 12 feet in length (except in Lake Waccamaw where there is no length limitation) and with a bar mesh measure of not more than one-fourth inch;
- (3) a cast net;
- (4) minnow traps not exceeding 12 inches in diameter and 24 inches in length, with funnel openings not exceeding one inch in diameter, and which are under the immediate control and attendance of the individual operating them.

(b) It is unlawful to sell nongame fishes or aquatic animals taken under this Subchapter.

(c) Game fishes and their young taken while netting for bait shall be immediately returned unharmed to the water. No person shall take or possess more than 50 eels or 200 nongame fish of other species for bait pursuant to this Subchapter from inland fishing waters during one day. It is unlawful to take nongame fish for bait or any other fish bait from designated public mountain trout waters and:

- (1) Chatham County
Deep River
Rocky River
Bear Creek
- (2) Lee County
Deep River
- (3) Moore County
Deep River
- (4) Randolph County
Deep River below the Coleridge Dam
Fork Creek

(d) In the waters of ~~the~~ Little Tennessee River, the Catawba River upstream of Lookout Shoals Dam, including all the tributaries and impoundments thereof, and on adjacent shorelines, docks, access ramps and bridge crossings, it is unlawful to transport, possess or release live alewife or live blueback herring.

Authority G.S. 113-134; 113-35; 113-272; 113-272.3; 113-292.

15A NCAC 10C .0407 PERMITTED SPECIAL DEVICES AND OPEN SEASONS

Except in designated public mountain trout waters, and in impounded waters located on the Sandhills Game Land, there is a year-round open season for the licensed taking of nongame fishes by bow and arrow. The use of special fishing devices in impoundments located entirely on game lands is prohibited. All fixed and drift gill nets must be attended when fished in the designated inland waters of the counties listed in 15A NCAC 10C .0404(b)(3). Attended as used in this Rule and in 15A NCAC 10C .0404(b)(3) requires that fisherman be within 100 yards of all sets of nets at all times. Seasons and waters in which the use of other special devices is authorized are indicated by counties below:

- (1) Alamance:

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- (a) July 1 to August 31 with seines in Alamance Creek below NC 49 bridge and Haw River;
- (b) July 1 to June 30 with gigs in all public waters;
- (2) Alexander: July 1 to June 30 with traps and gigs in all public waters; and with spear guns in Lake Hickory and Lookout Shoals Reservoir;
- (3) Alleghany: July 1 to June 30 with gigs in New River, except designated public mountain trout waters;
- (4) Anson:
 - (a) July 1 to June 30 with traps and gigs in all public waters;
 - (b) December 1 to June 5 with dip and bow nets in Pee Dee River below Blewett Falls Dam, and with gill nets in Pee Dee River below the lower end of Goat Island;
 - (c) July 1 to August 31 with seines in all running public waters, except Pee Dee River from Blewett Falls downstream to the Seaboard Coast Line Railroad trestle;
- (5) Ashe: July 1 to June 30 with gigs in New River (both forks), except designated public mountain trout waters;
- (6) Beaufort:
 - (a) July 1 to June 30 with traps in the Pungo River, and in the Tar and Pamlico Rivers above Norfolk and Southern Railroad bridge; and with gigs in all inland public waters;
 - (b) December 1 to June 5 with dip and bow nets in all inland public waters;
- (7) Bertie:
 - (a) July 1 to June 30 with traps in the Broad Creek (tributary of Roanoke);
 - (b) December 1 to June 5 with dip and bow nets in all inland public waters, excluding public lakes, ponds, and other impounded waters;
- (8) Bladen: December 1 to June 5 with dip and bow nets in Black River;
 - ~~(a) December 1 to March 1 with attended gill nets in all inland public waters, except Jones, Salters, White, Singletary and Baytree (Black) Lakes;~~
 - ~~(b) December 1 to May 1 with attended gill nets in Black River;~~
 - ~~(c) December 1 to June 5 with dip and bow nets in Black River;~~
- (9) Brunswick: December 1 to May 1 with dip and bow nets in Alligator Creek, Hoods Creek, Indian Creek, Orton Creek below Orton Pond, Rices Creek, Sturgeon Creek and Town Creek;
 - ~~(a) December 1 to March 1 with attended gill nets in all inland public waters, except Waccamaw River and its tributaries;~~
 - ~~(b) December 1 to May 1 with dip, bow, and attended gill nets in Alligator Creek, Hoods Creek, Indian Creek, Orton Creek below Orton Pond, Rices Creek, Sturgeon Creek and Town Creek;~~
- (10) Buncombe: July 1 to June 30 with gigs in all public waters, except designated public mountain trout waters;
- (11) Burke:
 - (a) July 1 to August 31 with seines in all running public waters, except Johns River and designated public mountain trout waters;
 - (b) July 1 to June 30 with traps, gigs, and spear guns in all public waters, except designated public mountain trout waters and Lake James;
- (12) Cabarrus:
 - (a) July 1 to August 31 with seines in all running public waters,
 - (b) July 1 to June 30 with traps and gigs in all public waters;
- (13) Caldwell: July 1 to June 30 with traps, gigs, and spear guns in all public waters, except designated public mountain trout waters;
- (14) Camden:
 - (a) July 1 to June 30 with traps in all inland public waters;
 - (b) December 1 to June 5 with dip and bow nets in all inland public waters, excluding public lakes, ponds, and other impounded waters;
- (15) Carteret: December 1 to June 5 with dip and bow nets in all inland public waters except South River and the tributaries of the White Oak River;
- (16) Caswell:
 - (a) July 1 to June 30 with gigs in all public waters;
 - (b) July 1 to August 31 with seines in all running public waters, except Moons Creek;
 - (c) July 1 to June 30 with traps in Hycro Reservoir;
- (17) Catawba:
 - (a) July 1 to August 31 with seines in all running public waters, except Catawba River below Lookout Dam;
 - (b) July 1 to June 30 with traps, spear guns, and gigs in all public waters;
- (18) Chatham:
 - (a) December 1 to April 15 with dip and gill nets in the Cape Fear River, Deep River, Haw River and Rocky River (local law);
 - (b) July 1 to August 31 with seines in the Cape Fear River, and Haw River;
 - (c) July 1 to June 30 with traps in Deep River; and with gigs in all public waters;
- (19) Cherokee: July 1 to June 30 with gigs in all public waters, except designated public mountain trout waters;
- (20) Chowan:
 - (a) December 1 to June 5 with dip and bow nets in all inland public waters, excluding public lakes, ponds, and other impounded waters;
 - (b) July 1 to June 30 with traps in all inland public waters, excluding public lakes, ponds, and other impounded waters;
- (21) Clay: July 1 to June 30 with gigs in all public waters, except designated public mountain trout waters;
- (22) Cleveland:
 - (a) July 1 to August 31 with seines in all running public waters;
 - (b) July 1 to June 30 with gigs, traps and spear guns in all public waters;
- (23) Columbus:

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- ~~(a) December 1 to March 1 with attended gill nets in all inland public waters, except Lake Waccamaw and its tributaries and Waccamaw River and its tributaries;~~
- ~~(b)(a) December 1 to March 1 with gigs in all inland public waters, except Lake Waccamaw and its tributaries;~~
- ~~(c)(b) December 1 to June 5 with dip, bow, and attended gill dip and bow nets in Livingston Creek;~~
- (24) Craven:
- (a) July 1 to June 30 with traps in the main run of the Trent and Neuse Rivers;
 - (b) December 1 to June 5 with dip and bow nets in all inland public waters, except Pitch Kettle, Grindle, Slocum (downstream of the US 70 bridge), Spring and Hancock Creeks and their tributaries; and with seines in the Neuse River;
- ~~(25) Cumberland: December 1 to March 1 with attended gill nets in all inland public waters;~~
- ~~(26)(25) Currituck:~~
- (a) July 1 to June 30 with traps in Tulls Creek and Northwest River;
 - (b) December 1 to June 5 with dip and bow nets in all inland public waters, excluding public lakes, ponds, and other impounded waters;
- ~~(27)(26) Dare:~~
- (a) July 1 to June 30 with traps in Mashoes Creek, Milltail Creek, East Lake and South Lake;
 - (b) December 1 to June 5 with dip and bow nets in all inland public waters, excluding public lakes, ponds, and other impounded waters;
- ~~(28)(27) Davidson:~~
- (a) July 1 to August 31 with seines in all running public waters,
 - (b) July 1 to June 30 with gigs in all public waters, and with traps in all public waters except Leonard's Creek, Abbott's Creek below Lake Thom-A-Lex dam, and the Abbott's Creek arm of High Rock Lake upstream from the NC 8 bridge;
- ~~(29)(28) Davie:~~
- (a) July 1 to June 30 with traps and gigs in all public waters;
 - (b) July 1 to August 31 for taking only carp and suckers with seines in Dutchmans Creek from US 601 to Yadkin River and in Hunting Creek from SR 1338 to South Yadkin River;
- ~~(30)(29) Duplin: December 1 to June 5 with dip and bow nets and seines in the main run of the Northeast Cape Fear River downstream from a point one mile above Serecta Bridge;~~
- ~~(31)(30) Durham:~~
- (a) July 1 to August 31 with seines in Neuse River,
 - (b) July 1 to June 30 with gigs in all public waters;
- ~~(32)(31) Edgecombe: December 1 to June 5 with dip and bow nets in all public waters;~~
- ~~(a) December 1 to March 15 with gill nets in Noble Mill Pond and Wiggins Lake;~~
 - ~~(b) December 1 to June 5 with dip and bow nets in all public waters; and with drift gill nets in Tar River below the bridge at Old Sparta to the Pitt County line;~~
- ~~(33)(32) Forsyth: July 1 to June 30 with traps and gigs in all public waters, except traps may not be used in Belews Creek Reservoir;~~
- ~~(34)(33) Franklin:~~
- ~~(a) December 1 to March 1 with gill nets in Clifton Pond, Parrish Pond, Jackson Pond and Lake Royale;~~
 - ~~(b)(a) July 1 to August 31 with seines in Tar River;~~
 - ~~(c)(b) July 1 to June 30 with gigs in all public waters, except Parrish, Laurel Mill, Jackson, Clifton, Moore's and Perry's Ponds, and in the Franklinton City ponds;~~
- ~~(35)(34) Gaston:~~
- (a) July 1 to August 31 with seines in all running public waters;
 - (b) July 1 to June 30 with gigs, traps and spear guns in all public waters;
- ~~(36)(35) Gates: December 1 to June 5 with dip and bow nets in all inland public waters, excluding public lakes, ponds, and other impounded waters;~~
- ~~(37)(36) Graham: July 1 to June 30 with gigs in all public waters, except designated public mountain trout waters;~~
- ~~(38)(37) Granville:~~
- (a) July 1 to June 30 with gigs in all public waters, except Kerr Reservoir;
 - (b) July 1 to August 31 with seines in the Neuse River and the Tar River below US 158 bridge;
 - (c) July 1 to June 30 with dip and cast nets in Kerr Reservoir;
 - (d) July 1 to June 30 with cast nets in all public waters;
- ~~(39)(38) Greene: December 1 to June 5 with dip and bow nets and reels in Contentnea Creek;~~
- ~~(40)(39) Guilford:~~
- (a) July 1 to August 31 with seines in Haw River, Deep River below Jamestown Dam, and Reedy Fork Creek below US 29 bridge;
 - (b) July 1 to June 30 with gigs in all public waters;
- ~~(41)(40) Halifax:~~
- ~~(a) December 1 to March 1 with gill nets in White's Mill Pond;~~
 - ~~(b)(a) December 1 to June 5 with dip and bow nets in Beech Swamp, Clarks Canal, Conoconnara Swamp, Fishing Creek below the Fishing Creek Mill Dam, Kehukee Swamp, Looking Glass Gut, Quankey Creek, and White's Mill Pond Run;~~
 - ~~(c)(b) July 1 to June 30 with dip and cast nets in Gaston Reservoir and Roanoke Rapids Reservoir;~~
- ~~(42)(41) Harnett:~~
- ~~(a) December 1 to March 1 with attended gill nets in all inland public waters;~~
 - ~~(b)(a) January 1 to May 31 with gigs in Cape Fear River and tributaries;~~
 - ~~(c)(b) December 1 to June 5 with dip and bow nets in Cape Fear River;~~

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~~(43)~~(42) Haywood: July 1 to June 30 with gigs in all public waters, except Lake Junaluska and designated public mountain trout waters;

~~(44)~~(43) Henderson: July 1 to June 30 with gigs in all public waters, except designated public mountain trout waters;

~~(45)~~(44) Hertford:

- (a) July 1 to June 30 with traps in Wiccacon Creek;
- (b) December 1 to June 5 with dip and bow nets in all inland public waters, excluding public lakes, ponds, and other impounded waters;

~~(46) Hoke: December 1 to March 1 with attended gill nets in all inland public waters;~~

~~(47)~~(45) Hyde:

- (a) July 1 to June 30 with traps in all inland waters;
- (b) December 1 to June 5 with dip and bow nets in all inland public waters, excluding public lakes, ponds, and other impounded waters;

~~(48)~~(46) Iredell: July 1 to June 30 with traps and gigs in all public waters; and with spear guns in Lookout Shoals Reservoir and Lake Norman;

~~(49)~~(47) Jackson: July 1 to June 30 with gigs in all public waters, except designated public mountain trout waters;

~~(50)~~(48) Johnston: December 1 to June 5 with dip and bow nets in Black Creek, Little River, Middle Creek, Mill Creek, Neuse River and Swift Creek;

~~(a) December 1 to March 1 with gill nets in Cattails Lake, Holts Lake, Holts Pond, and Wendell Lake;~~

~~(b) December 1 to June 5 with dip and bow nets in Black Creek, Little River, Middle Creek, Mill Creek, Neuse River, and Swift Creek;~~

~~(51)~~(49) Jones:

- (a) July 1 to June 30 with traps in the Trent River below US 17 bridge and White Oak River below US 17 bridge;
- (b) December 1 to June 5 with dip and bow nets in all inland public waters, except the tributaries to the White Oak River;

~~(52)~~(50) Lee:

- (a) December 1 to April 15 with dip and gill nets (local law) in Cape Fear River and Deep River; and with gill nets in Morris Pond;
- (b) July 1 to August 31 with seines in Cape Fear River;
- (c) July 1 to June 30 with traps in Deep River, and with gigs in all public waters;

~~(53)~~(51) Lenoir:

- (a) July 1 to June 30 with traps in Neuse River below US 70 bridge at Kinston;
- (b) December 1 to June 5 with dip and bow nets in Neuse River and Contentnea Creek upstream from NC 118 bridge at Grifton; and with seines in Neuse River;

~~(54)~~(52) Lincoln:

- (a) July 1 to August 31 with seines in all running public waters;
- (b) July 1 to June 30 with traps, gigs and spear guns in all public waters;

~~(55)~~(53) McDowell:

(a) July 1 to August 31 with seines in all running public waters, except designated public mountain trout waters;

(b) July 1 to June 30 with traps, gigs, and spear guns in all public waters, except designated public mountain trout waters and Lake James;

~~(56)~~(54) Macon: July 1 to June 30 with gigs in all public waters, except designated public mountain trout waters;

~~(57)~~(55) Madison: July 1 to June 30 with gigs in all public waters, except designated public mountain trout waters;

~~(58)~~(56) Martin: December 1 to June 5 with dip and bow nets in all inland public waters, excluding public lakes, ponds, and other impounded waters;

~~(59)~~(57) Mecklenburg:

(a) July 1 to August 31 with seines in all running public waters;

(b) July 1 to June 30 with traps, gigs and spear guns in all public waters except Freedom Park Pond and Hornet's Nest Ponds;

~~(60)~~(58) Montgomery:

(a) July 1 to August 31 with seines in all running public waters, except that part of the Pee Dee River between the Lake Tillery dam at Hydro and the mouth of Rocky River;

(b) July 1 to June 30 with traps and gigs in all public waters;

~~(61)~~(59) Moore:

(a) December 1 to April 15 with gill nets in Deep River and all tributaries;

(b) July 1 to August 31 with seines in all running public waters except in Deep River;

(c) July 1 to June 30 with gigs in all public waters, except lakes located on the Sandhills Game Land; and with traps in Deep River and its tributaries;

~~(62)~~(60) Nash:

~~(a) December 1 to March 1 with gill nets in Boddies Pond and Camp Charles Lake;~~

~~(b)~~(a) July 1 to June 30 with gigs in all public waters, except Tar River;

~~(c)~~(b) December 1 to June 5 with dip and bow nets in the Tar River below Harris' Landing and Fishing Creek below the Fishing Creek Mill Dam;

~~(63)~~(61) New Hanover: December 1 to June 5 with dip and bow nets in all inland public waters, except Sutton (Catfish) Lake;

~~(64)~~(62) Northampton:

(a) July 1 to June 30 with gigs in all public waters, except Gaston and Roanoke Rapids Reservoirs and the Roanoke River above the US 301 bridge;

(b) December 1 to June 5 with dip and bow nets in Oconeechee Creek, Old River Landing ~~Gut, and with dip, bow and gill nets in Gut and~~ Vaughans Creek below Watsons Mill;

(c) July 1 to June 30 with dip and cast nets in Gaston Reservoir and Roanoke Rapids Reservoir;

~~(65)~~(63) Onslow:

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- (a) July 1 to June 30 with traps in White Oak River below US 17 bridge;
- (b) August 1 to March 31 with eel pots in the main run of New River between US 17 bridge and the mouth of Hawkins Creek;
- (c) December 1 to June 5 with dip and bow nets in the main run of New River and in the main run of the White Oak River;
- (d) March 1 to April 30 with dip and bow nets in Grant's Creek;
- ~~(66)~~(64) Orange:
 - (a) July 1 to August 31 with seines in Haw River,
 - (b) July 1 to June 30 with gigs in all public waters;
- ~~(67)~~(65) Pamlico: December 1 to June 5 with dip and bow nets in all inland public waters, except Dawson Creek;
- ~~(68)~~(66) Pasquotank:
 - (a) July 1 to June 30 with traps in all inland waters;
 - (b) December 1 to June 5 with dip and bow nets in all inland public waters, excluding public lakes, ponds, and other impounded waters;
- ~~(69)~~(67) Pender:
 - (a) December 1 to June 5 with dip and bow nets in the Northeast Cape Fear River, Long Creek and Black River; and with seines in the main run of Northeast Cape Fear River;
 - (b) December 1 to May 1 with dip and bow nets in Moore's Creek approximately one mile upstream to New Moon Fishing Camp;
- ~~(70)~~(68) Perquimans:
 - (a) July 1 to June 30 with traps in all inland waters;
 - (b) December 1 to June 5 with dip and bow nets in all inland public waters, excluding public lakes, ponds, and other impounded waters;
- ~~(71)~~(69) Person:
 - (a) July 1 to August 31 with seines in Hyco Creek and Mayo Creek;
 - (b) July 1 to June 30 with gigs in all public waters.
- ~~(72)~~(70) Pitt:
 - (a) July 1 to June 30 with traps in Neuse River and in Tar River below the mouth of Hardee Creek east of Greenville;
 - (b) December 1 to June 5 with dip and bow nets in all inland public waters, except Grindle Creek, and Contentnea Creek between NC 118 bridge at Grifton and the Neuse River;
 - (c) December 1 to June 5 with seines in Tar River;
- ~~(73)~~(71) Polk: July 1 to June 30 with gigs in all public waters, except designated public mountain trout waters;
- ~~(74)~~(72) Randolph:
 - (a) December 1 to March 1 with gill nets in Deep River and Uwharrie River;
 - (b) July 1 to August 31 with seines in Deep River above the Coleridge Dam and Uwharrie River;
 - (c) July 1 to June 30 with gigs in all public waters;
- ~~(75)~~(73) Richmond:
 - (a) July 1 to August 31 with seines in all running public waters, except Pee Dee River from Blewett Falls downstream to the Seaboard Coast Line Railroad trestle;
- (b) July 1 to June 30 with traps and gigs in all public waters, except lakes located on the Sandhills Game Land;
- (c) December 1 to June 5 with dip and bow nets in Pee Dee River below Blewett Falls Dam, and with gill nets in Pee Dee River below the mouth of Cartledge Creek;
- ~~(76)~~Robeson: ~~December 1 to March 1 with attended gill nets and gigs in all inland public waters;~~
- ~~(77)~~(74) Rockingham:
 - (a) July 1 to August 31 with seines in Dan River and Haw River;
 - (b) July 1 to June 30 with traps in Dan River; and with gigs in all public waters;
- ~~(78)~~(75) Rowan:
 - (a) July 1 to August 31 with seines in all running public waters,
 - (b) July 1 to June 30 with traps and gigs in all public waters;
- ~~(79)~~(76) Rutherford:
 - (a) July 1 to August 31 with seines in all running public waters, except designated public mountain trout waters;
 - (b) July 1 to June 30 with traps, gigs, and spear guns in all public waters, except designated public mountain trout waters;
- ~~(80)~~(77) Sampson: December 1 to June 5 with dip and bow nets in Big Coharie Creek, Black River and Six Runs Creek;
 - ~~(a) December 1 to March 1 with attended gill nets in all inland public waters;~~
 - ~~(b) December 1 to May 1 with attended gill nets in Big Coharie Creek, Black River, and Six Runs Creek;~~
 - ~~(c) May 2 to June 5 with attended gill nets of no less than five and one-half inch stretch measure in Big Coharie Creek, Black River, and Six Runs Creek;~~
 - ~~(d) December 1 to June 5 with dip and bow nets in Big Coharie Creek, Black River, and Six Runs Creek;~~
- ~~(81)~~Scotland: ~~December 1 to March 1 with attended gill nets in all inland public waters, except lakes located on the Sandhills Game Land;~~
- ~~(82)~~(78) Stanly:
 - (a) July 1 to August 31 with seines in all running public waters, except that part of the Pee Dee River between the Lake Tillery dam at Hydro and the mouth of Rocky River;
 - (b) July 1 to June 30 with traps and gigs in all public waters;
- ~~(83)~~(79) Stokes: July 1 to June 30 with traps and gigs in all public waters, except designated public mountain trout waters, and traps may not be used in Belews Creek Reservoir;
- ~~(84)~~(80) Surry: July 1 to June 30 with gigs in all public waters, except designated public mountain trout waters; and with traps in the main stem of Yadkin River;

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~~(85)~~(81) Swain: July 1 to June 30 with gigs in all public waters, except designated public mountain trout waters;

~~(86)~~(82) Transylvania: July 1 to June 30 with gigs in all public waters, except designated public mountain trout waters;

~~(87)~~(83) Tyrrell:

(a) July 1 to June 30 with traps in Scuppernong River, Alligator Creek, and the drainage canals of Lake Phelps;

(b) December 1 to June 5 with dip and bow nets in all inland public waters, excluding Lake Phelps, public lakes, ponds and other impounded waters;

~~(88)~~(84) Union:

(a) July 1 to August 31 with seines in all running public waters,

(b) July 1 to June 30 with traps and gigs in all public waters;

~~(89)~~(85) Vance:

~~(a) December 1 to March 1 with gill nets in Southerlands Pond and Ellis Pond;~~

~~(b)~~(a) July 1 to August 31 with seines in the Tar River;

~~(c)~~(b) July 1 to June 30 with gigs in all public waters, except Rolands, Faulkners, Southerlands, and Weldon Ponds, City Lake, and Kerr Reservoir;

~~(d)~~(c) July 1 to June 30 with dip and cast nets in Kerr Reservoir;

~~(e)~~(d) July 1 to June 30 with cast nets in all public waters;

~~(90)~~(86) Wake:

(a) July 1 to June 30 with gigs in all public waters, except Sunset, Benson, Wheeler, Raleigh, and Johnson Lakes;

(b) December 1 to June 5 with dip and bow nets in the Neuse River below Milburnie Dam, and Swift Creek below Lake Benson Dam;

~~(91)~~(87) Warren:

(a) July 1 to August 31 with seines in Fishing Creek, Shocco Creek, and Walker Creek; excluding Duck and Hammes Mill Ponds;

(b) July 1 to June 30 with gigs in all public waters, except Duck and Hammes Mill Ponds, Kerr Reservoir, and Gaston Reservoir;

(c) July 1 to June 30 with dip and cast nets in Kerr Reservoir and Gaston Reservoir;

(d) July 1 to June 30 with cast nets in all public waters;

~~(92)~~(88) Washington:

(a) July 1 to June 30 with traps in the drainage canals of Lake Phelps;

(b) December 1 to June 5 with dip and bow nets in all inland public waters, excluding Lake Phelps, public lakes, ponds and other impoundments;

~~(93)~~(89) Wayne: December 1 to June 5 with dip and bow nets in Little River, Mill Creek and Neuse River, except from Quaker Neck Dam downstream to SR 1008 (Tolar) bridge;

~~(a) December 1 to March 1 with gill nets in Sasser's Mill Pond and Sleepy Creek Lake;~~

~~(b) December 1 to June 5 with dip and bow nets in Little River, Mill Creek, and Neuse River, except from Quaker Neck Dam downstream to SR 1008 (Tolar) bridge;~~

~~(94)~~(90) Wilkes: July 1 to June 30 with traps in Yadkin River below W. Kerr Scott Reservoir; and with gigs and spear guns in all public waters, except designated public mountain trout waters;

~~(95)~~(91) Wilson:

(a) July 1 to June 30 with gigs in Contentnea Creek (except Buckhorn Reservoir), including unnamed tributaries between Flowers Mill and SR 1163 (Deans) bridge;

(b) December 1 to June 5 with dip and bow nets in Contentnea Creek below US 301 bridge and in Toisnot Swamp downstream from the Lake Toisnot Dam;

~~(c) January 1 to March 1 with gill nets in Silver Lake;~~

~~(96)~~(92) Yadkin: July 1 to June 30 with gigs in all public waters, and with traps in the main stem of Yadkin River.

Authority G.S. 113-134; 113-276; 113-292.

SUBCHAPTER 10D – GAME LANDS REGULATIONS

SECTION .0100 – GAME LAND REGULATIONS

15A NCAC 10D .0103 HUNTING ON GAME LANDS

(a) Safety Requirements. No person while hunting on any designated game land shall be under the influence of alcohol or any narcotic drug, or fail to comply with special restrictions enacted by the National Park Service regarding the use of the Blue Ridge Parkway where it adjoins game lands listed in this Rule.

(b) Traffic Requirements. No person shall park a vehicle on game lands in such a manner as to block traffic, gates or otherwise prevent vehicles from using any roadway.

(c) Tree Stands. It is unlawful to erect or to occupy, for the purpose of hunting, any tree stand or platform attached by nails, screws, bolts or wire to a tree on any game land designated herein. This prohibition shall not apply to lag-screw steps or portable stands that are removed after use with no metal left remaining in or attached to the tree.

(d) Time and Manner of Taking. Except where closed to hunting or limited to specific dates by this Chapter, hunting on game lands is permitted during the open season for the game or furbearing species being hunted. On managed waterfowl impoundments, hunters shall not enter the posted impoundment areas earlier than 4:00 a.m. on the permitted hunting dates, and hunting is prohibited after 1:00 p.m. on such hunting dates; decoys shall not be set out prior to 4:00 a.m. and must be removed by 3:00 p.m. each day. No person shall operate any vessel or vehicle powered by an internal combustion engine on a managed waterfowl impoundment. No person shall attempt to obscure the sex or age of any bird or animal taken by severing the head or any other part thereof, or possess any bird or animal which has been so mutilated. No person shall place, or cause to be placed on any game land, salt, grain, fruit, or other foods

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without prior written authorization of the commission or its agent. A decision to grant or deny authorization shall be made based on the best management practices for the wildlife species in question. No person shall take or attempt to take any game birds or game animals attracted to such foods. No live wild animals or wild birds shall be removed from any game land.

(e) Definitions:

- (1) For purposes of this Section "Eastern" season refers to seasons set for those counties or parts of counties listed in 15A NCAC 10B .0203(b)(1)(A); "Central" season refers to seasons set for those counties or parts of counties listed in 15A NCAC 10B .0203(b)(1)(D); "Northwestern" season refers to seasons set for those counties or parts of counties listed in 15A NCAC 10B .0203(b)(1)(B); "Western" season refers to seasons set for those counties or parts of counties listed in 15A NCAC 10B .0203(b)(1)(C).
- (2) For purposes of this Section, "Dove Only Area" refers to a Game Land on which doves may be taken and dove hunting is limited to Mondays, Wednesdays, Saturdays and to Thanksgiving, Christmas and New Year's Days within the federally-announced season.
- (3) For purposes of this Section, "Three Days per Week Area" refers to a Game Land on which any game may be taken during the open seasons and hunting is limited to Mondays, Wednesdays, Saturdays and Thanksgiving, Christmas and New Year's Days. These "open days" also apply to either-sex hunting seasons listed under each game land. Raccoon and opossum hunting may continue until 7:00 a.m. on Tuesdays, until 7:00 a.m. on Thursdays, and until midnight on Saturdays.
- (4) For purposes of this Section, "Six Days per Week Area" refers to a Game Land on which any game may be taken during the open seasons, except that:
 - (A) Bears shall not be taken on lands designated and posted as bear sanctuaries;
 - (B) Wild boar shall not be taken with the use of dogs on such bear sanctuaries, and wild boar may be hunted only during the bow and arrow seasons, the muzzle-loading deer season and the regular gun season on male deer on bear sanctuaries;
 - (C) On game lands open to deer hunting located in or west of the counties of Rockingham, Guilford, Randolph, Montgomery and Anson, the following rules apply to the use of dogs during the regular season for hunting deer with guns:
 - (i) Except for the counties of Cherokee, Clay, Graham, Jackson, Macon, Madison, Polk, and Swain, game birds may be hunted with dogs.
 - (ii) In the counties of Cherokee, Clay, Graham, Jackson, Macon, Madison, Polk, and Swain, small game in season may be hunted with dogs on all game lands except on bear sanctuaries.
 - (D) On bear sanctuaries in and west of Madison, Buncombe, Henderson and Polk counties dogs shall not be trained or allowed to run unleashed

between March 1 and the Monday on or nearest October 15;

(f) Game Lands Seasons and Other Restrictions:

- (1) Alcoa Game Land in Davidson, Davie, Montgomery, Rowan and Stanly counties
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season in that portion in Montgomery county and deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season in those portions in Davie, Davidson, Rowan and Stanly counties.

- (2) Angola Bay Game Land in Duplin and Pender counties
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.

~~(3) Anson Game Land in Anson County~~

~~(A) Six Days per Week Area~~

~~(B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.~~

~~(4)(3) Bachelor Bay Game Land in Bertie and Washington counties~~

~~(A) Six Days per Week Area~~

~~(B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.~~

~~(5)(4) Bertie County Game Land in Bertie County~~

~~(A) Six Days per Week Area~~

~~(B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.~~

~~(6)(5) Bladen Lakes State Forest Game Land in Bladen County~~

~~(A) Three Days per Week Area~~

~~(B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season. Deer of either sex may also be taken the Saturday preceding Eastern bow season with bow and arrow and the Friday preceding the Eastern muzzle-loading season with any legal weapon (with weapons exceptions described in this Paragraph) by participants in the Disabled Sportsman Program.~~

~~(C) Handguns shall not be carried and, except for muzzle-loaders, rifles larger than .22 caliber rimfire shall not be used or possessed.~~

~~(D) On the Breece Tract and the Singletary Tract deer and bear may be taken only by still hunting.~~

~~(E) Wild turkey hunting is by permit only.~~

~~(6) Brunswick County Game Land in Brunswick County~~

~~(A) Six Days per Week Area~~

~~(B) Permit Only Area~~

~~(7) Brushy Mountains Game Land in Caldwell County~~

~~(A) Six Days per Week Area~~

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~~(B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.~~

~~(8)(7)~~ Bullard and Branch Hunting Preserve Game Lands in Robeson County

- (A) Three Days per Week Area
- (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.

~~(9)(8)~~ Butner - Falls of Neuse Game Land in Durham, Granville and Wake counties

- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.

(C) Waterfowl may be taken only on Tuesdays, Thursdays and Saturdays, Christmas and New Year's Days, and on the opening and closing days of the applicable waterfowl seasons. Waterfowl shall not be taken after 1:00 p.m. On the posted waterfowl impoundments a special permit is required for all waterfowl hunting after November 1.

(D) Horseback riding, including all equine species, is prohibited.

(E) Target shooting is prohibited

(F) Wild turkey hunting is by permit only.

~~(10)(9)~~ Cape Fear Game Land in Pender County

- (A) Six Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (C) Turkey Hunting is by permit only on that portion known as the Roan Island Tract.

~~(11)(10)~~ Caswell Game Land in Caswell County

- (A) Three Days per Week Area
- (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season. Deer of either sex may also be taken the Friday preceding the Central muzzle-loading season by participants in the Disabled Sportsman Program.

(C) Horseback riding is allowed only during June, July, and August and on Sundays during the remainder of the year except during open turkey and deer seasons. Horseback riding is allowed only on roads opened to vehicular traffic. Participants must obtain a game lands license prior to engaging in such activity.

~~(12)(11)~~ Caswell Farm Game Land in Lenoir County-Dove-Only Area: Dove hunting is by permit only during the first two open days of the first segment of dove season.

~~(13)(12)~~ Catawba Game Land in Catawba ~~and Iredell~~ Counties County

- (A) Three Days per Week Area
- (B) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season.

(C) Deer may be taken with bow and arrow only from the tract known as Molly's Backbone.

~~(14)(13)~~ Chatham Game Land in Chatham and Harnett counties

- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.

~~(15)(14)~~ Cherokee Game Land in Ashe County

- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.

~~(16) Cherry Farm Game Land in Wayne County~~

~~(A) Three Days per Week Area~~

~~(B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.~~

~~(C) The use of centerfire rifles and handguns is prohibited.~~

~~(17)(15)~~ Chowan Game Land in Chowan County

- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the first six open days, open days the week of Thanksgiving, and the last six open days of the applicable Deer With Visible Antlers Season. In addition, one antlerless deer may be taken anytime during the Deer With Visible Antlers season.

~~(18)(16)~~ Chowan Swamp Game Land in Gates County

- (A) Six Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.

~~(17) Cold Mountain Game Land in Haywood County~~

~~(A) Six Days per Week Area~~

~~(B) Horseback riding is prohibited except on designated trails May 16 through August 31 and all horseback riding is prohibited from September 1 through May 15. This Rule includes all equine species.~~

~~(19)(18)~~ Columbus County Game Land in Columbus County.

- (A) Three Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.

~~(20)(19)~~ Croatan Game Land in Carteret, Craven and Jones counties

- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.

(C) Waterfowl may be taken only on Mondays, Wednesdays, Saturdays; on Thanksgiving, Christmas and New Year's Days; and on the opening and closing days of the applicable waterfowl seasons.

(D) On Catfish Lake Waterfowl Impoundment, when the statewide duck hunting seasons exceed 45 days,

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waterfowl may be taken only on Wednesday; Saturday; Thanksgiving; Christmas and New Year's Day; and the opening and closing days of the duck hunting seasons.

~~(21)~~(20) Currituck Banks Game Land in Currituck County

- (A) Six Days per Week Area
- (B) Permanent waterfowl blinds in Currituck Sound adjacent to these game lands shall be hunted by permit only after November 1.
- (C) Licensed hunting guides may accompany the permitted individual or party provided the guides do not possess or use a ~~fire arm~~ firearm.
- (D) The boundary of the Game Land shall extend 5 yards from the edge of the marsh or shoreline.
- (E) Dogs shall be allowed only for waterfowl hunting by permitted waterfowl hunters on the day of their hunt.
- (F) No screws, nails, or other objects penetrating the bark will be used to attach a tree stand or blind to a tree.

~~(22)~~(21) Dare Game Land in Dare County

- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.
- (C) No hunting on posted parts of bombing range.
- (D) The use and training of dogs is prohibited from March 1 through June 30.
- (E) Black bear hunting is by special permit only.

~~(23)~~(22) Dupont State Forest Game Lands in Henderson and Transylvania counties

- (A) Hunting is by Permit only.
- (B) The training and use of dogs for hunting except during scheduled small game permit hunts for squirrel, grouse, rabbit, or quail is prohibited.
- (C) Participants of the Disabled Sportsman Program may also take deer of either sex with any legal weapon on the Saturday prior to the first segment of the Western-bow and arrow season.

~~(24)~~(23) Dysartsville Game Land in McDowell and Rutherford counties

- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.

~~(25)~~(24) Elk Knob Game Land in Ashe and Watauga counties

- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.

~~(26)~~(25) Gardner-Webb Game Land in Cleveland County

- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.

~~(27)~~(26) Goose Creek Game Land in Beaufort and Pamlico counties

- (A) Six Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (C) On posted waterfowl impoundments waterfowl may be taken only on Mondays, Wednesdays, Saturdays; on Thanksgiving, Christmas and New Year's Days; and on the opening and closing days of the ~~applicable waterfowl~~ statewide duck hunting seasons except when such seasons exceed 45 days. When duck seasons exceed 45 days, waterfowl may be taken only on Wednesday; Saturday; Thanksgiving; Christmas and New Year's Day; and the opening and closing days of the duck hunting seasons. After November 1, on the Pamlico Point, Campbell Creek, Hunting Creek and Spring Creek impoundments, a special permit is required for hunting on opening and closing days of the duck seasons, Saturdays of the duck seasons, and on Thanksgiving and New Year's day.

~~(28)~~(27) Green River Game Land in Henderson, Polk and Rutherford counties

- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season in that portion in Rutherford County; and deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season in that portion in Polk and Henderson counties.
- (C) Horseback riding is prohibited except on designated trails May 16 through-August 31 and all horseback riding is prohibited from September 1 through May 15. This rule includes all equine species.

~~(29)~~(28) Green Swamp Game Land in Brunswick County

- (A) Six Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.

~~(30)~~(29) Gull Rock Game Land in Hyde County

- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
- (C) On the posted waterfowl impoundments of Gull Rock Game Land hunting of any species of wildlife is limited to Mondays, Wednesdays, Saturdays; Thanksgiving, Christmas, and New Year's Days; and the opening and closing days of the applicable ~~waterfowl-duck~~ seasons except when such seasons exceed 45 days. When duck seasons exceed 45 days, waterfowl may be taken only on Wednesday; Saturday; Thanksgiving; Christmas and New Year's Day; and the opening and closing days of the duck hunting seasons.

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- ~~(34)~~(30) Hickorynut Mountain Game Land in McDowell County
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.
- ~~(32)~~(31) Hofmann Forest Game Land in Jones and Onslow counties
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
- ~~(33)~~(32) Holly Shelter Game Land in Pender County
- (A) Three Days per Week Area
 - (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season. Deer of either sex may also be taken the Friday preceding the Eastern muzzle-loading season with any legal weapon and the Saturday preceding Eastern bow season with bow and arrow by participants in the Disabled Sportsman Program
 - (C) Waterfowl may be taken on the opening and closing days of the applicable waterfowl seasons regardless of the day of the week on which they occur.
- (D) When the statewide duck hunting seasons exceed 45 days, waterfowl may be taken only on Wednesday; Saturday; Thanksgiving; Christmas and New Year's Day; and the opening and closing days of the duck hunting seasons.
- ~~(34)~~~~Huntsville Community Farms Game Land in Yadkin County~~
- ~~(A) Three Days per Week Area~~
 - ~~(B) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season.~~
- ~~(35)~~(33) Hyco Game land in Person County
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
- ~~(36)~~(34) Jordan Game Land in Chatham, Durham, Orange and Wake counties
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
 - (C) Waterfowl may be taken only on Mondays, Wednesdays, Saturdays; on Thanksgiving, Christmas and New Year's Days; and on the opening and closing days of the applicable waterfowl seasons.
 - (D) Horseback riding, including all equine species, is prohibited.
 - (E) Target shooting is prohibited.
 - (F) Wild turkey hunting is by permit only.
- ~~(37)~~(35) Lantern Acres Game Land in Tyrrell and Washington counties
- (A) Six Days per Week Area

- (B) Deer of either sex may be taken the first six open days, open days the week of Thanksgiving, and the last six open days of the applicable Deer With Visible Antlers Season. In addition, one antlerless deer may be taken anytime during the Deer With Visible Antlers season.
- ~~(38)~~(36) Lee Game Land in Lee County
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
- ~~(39)~~(37) Linwood Game Land in Davidson County
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six on all of the open days of the applicable Deer With Visible Antlers Season.
- ~~(40)~~(38) Little Alligator River Game Land in Tyrrell County, Permit Only Area
- ~~(41)~~(39) Nantahala Game Land in Cherokee, Clay, Graham, Jackson, Macon, Swain and Transylvania counties
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season in that portion located in Transylvania County.
 - (C) Raccoon and opossum may be hunted only from sunset Friday until sunrise on Saturday and from sunset until 12:00 midnight on Saturday on Fires Creek Bear Sanctuary in Clay County and in that part of Cherokee County north of US 64 and NC 294, east of Persimmon Creek and Hiwassee Lake, south of Hiwassee Lake and west of Nottely River; in the same part of Cherokee County dog training is prohibited from March 1 to the Monday on or nearest October 15.
- ~~(42)~~(40) Neuse River Game Land in Craven County
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
- ~~(43)~~(41) New Lake Game Land in Hyde County
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
- ~~(44)~~(42) North River Game Land in Currituck County
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days, open days the week of Thanksgiving, and the last six open days of the applicable Deer With Visible Antlers Season. In addition, one antlerless deer may be taken anytime during the Deer With Visible Antlers season.
 - (C) The boundary of the Game Land shall extend 5 yards from the edge of the marsh or shoreline.
- ~~(45)~~(43) Northwest River Marsh Game Land in Currituck County
- (A) Six Days per Week Area

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- (B) Deer of either sex may be taken the first six open days, open days the week of Thanksgiving, and the last six open days of the applicable Deer With Visible Antlers Season. In addition, one antlerless deer may be taken anytime during the Deer With Visible Antlers season.
- (C) The boundary of the Game Land shall extend 5 yards from the edge of the marsh or shoreline.
- ~~(46)~~(44) Pee Dee River Game Land in Anson, Montgomery, Richmond and Stanly counties
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
- (C) Use of centerfire rifles prohibited in that portion in Anson and Richmond counties North of US-74.
- (D) Waterfowl may be taken only on Mondays, Wednesdays, Saturdays; on Thanksgiving, Christmas and New Year's Days; and on the opening and closing days of the applicable waterfowl seasons. Waterfowl shall not be taken after 1:00 PM.
- ~~(47)~~(45) Perkins Game Land in Davie County
- (A) Three Days per Week Area
- (B) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season.
- ~~(48)~~(46) Person Game Land in Person County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
- (C) Waterfowl may be taken only on Tuesdays, Thursdays and Saturdays, Christmas and New Year's Days, and on the opening and closing days of the applicable waterfowl seasons.
- ~~(49)~~(47) Pisgah Game Land in Avery, Buncombe, Burke, Caldwell, Haywood, Henderson, Madison, McDowell, Mitchell, Transylvania, Watauga and Yancey counties
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season except on that portion in Avery and Yancey counties and that portion in Haywood County encompassed by US 276 on the north, US 74 on the west, and the Blue Ridge Parkway on the south and east.
- (C) Harmon Den and Sherwood Bear Sanctuaries in Haywood County are closed to hunting raccoon, opossum and wildcat. Training raccoon and opossum dogs is prohibited from March 1 to the Monday on or nearest October 15 in that part of Madison County north of the French Broad River, south of US 25-70 and west of SR 1319.
- ~~(50)~~(48) Pungo River Game Land in Hyde County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
- ~~(51)~~(49) Roanoke River Wetlands in Bertie, Halifax and Martin counties-Hunting is by Permit only. Vehicles are prohibited on roads or trails except those operated on official Commission business or by permit holders.
- (50) Roanoke Sound Marshes Game Land in Dare County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.
- ~~(52)~~(51) Robeson Game Land in Robeson County
- (A) Three Days per Week Area
- (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.
- ~~(53)~~(52) Sampson Game Land in Sampson County
- (A) Three Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- ~~(54)~~(53) Sandhills Game Land in Moore, Richmond and Scotland counties
- (A) Three Days per Week Area
- (B) The Deer With Visible Antlers season for deer consists of the open hunting ~~dates-days~~ from the second ~~Monday-Saturday~~ before Thanksgiving through the third Saturday after Thanksgiving except on the field trial grounds where the gun season is open days from the second ~~Monday-Saturday~~ before Thanksgiving through the Saturday following Thanksgiving. Deer may be taken with bow and arrow on all open hunting ~~dates-days~~ during the bow and arrow season, as well as during the regular gun season. Deer may be taken with muzzle-loading firearms on ~~Monday, Wednesday and Saturday of the second week before Thanksgiving week open days beginning the third Saturday before Thanksgiving through the following Wednesday~~, and during the Deer With Visible Antlers season.
- (C) Deer of either-sex may be taken during the first 3 open days of the Deer With Visible Antlers season. For participants in the Disabled Sportsman Program, either-sex deer hunting with any legal weapon is permitted on all areas the Thursday and Friday prior to the muzzle-loading season described in the preceding paragraph. Except for the deer and rabbit seasons specifically indicated for the field trial grounds in in the preceding paragraph this Rule and Disabled Sportsman Program hunts, the field trial grounds are closed to all hunting during the period October 22 to March 31.
- (D) In addition to the regular hunting days, waterfowl may be taken on the opening and closing days of the applicable waterfowl seasons

PROPOSED RULES

- (E) Wild turkey hunting is by permit only.
- (F) Dove hunting on the field trial grounds will be prohibited from the second Sunday in September through the remainder of the hunting season.

(G) Rabbit hunting on the field trial grounds will be allowed open days from the second Saturday before Thanksgiving through the Saturday following Thanksgiving.

(H) Horseback riding, including all equine species, is prohibited on the field trial grounds during the period of October 22 through March 31 except by participants in authorized field trials.

~~(55)~~(54) Sauratown Plantation Game Land in Stokes County

- (A) Three Days per Week Area
- (B) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season.

~~(56)~~(55) Scuppernong Game Land in Tyrrell and Washington counties

- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the first six open days, open days the week of Thanksgiving, and the last six open days of the applicable Deer With Visible Antlers Season. In addition, one antlerless deer may be taken anytime during the Deer With Visible Antlers season.

~~(57)~~(56) Shearon Harris Game Land in Chatham and Wake counties

- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
- (C) Waterfowl may be taken only on Tuesdays, Fridays, Saturdays; on Thanksgiving, Christmas and New Year's Days; and on the opening and closing days of the applicable waterfowl seasons.
- (D) The use or construction of permanent hunting blinds is prohibited.
- (E) Wild turkey hunting is by permit only.

~~(58)~~(57) South Mountains Game Land in Burke, Cleveland, McDowell and Rutherford counties

- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.
- (C) Horseback riding is prohibited except on designated trails May 16 through August 31 and all horseback riding is prohibited from September 1 through May 15. This Rule includes all equine species.

~~(59)~~(58) Suggs Mill Pond Game Land in Bladen County; Hunting is by Permit only: Entry during the period of September 1 - February 28, and April 1 - May 31 without a Special Hunt Permit is prohibited. Entry during other periods shall be restricted to the following uses: fishing, hiking, wildlife observation, research and boating (no internal combustion motors), and to

Fridays, Saturdays, and Sundays during the hours of sunrise to sunset.

~~(60)~~(59) Sutton Lake Game Land in New Hanover County

- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.

~~(C) Horseback riding is prohibited except on designated trails May 16 through August 31 and all horseback riding is prohibited from September 1 through May 15. This Rule includes all equine species.~~

~~(61)~~(60) Three Top Mountain Game Land in Ashe County

- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.

~~(C) Horseback riding is prohibited except on designated trails May 16 through August 31 and all horseback riding is prohibited from September 1 through May 15. This Rule includes all equine species.~~

~~(62)~~(61) Thurmond Chatham Game Land in Wilkes County

- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season. Participants of the Disabled Sportsman Program may also take either-sex deer with bow and arrow on the Saturday prior to Northwestern bow and arrow season.

~~(C) Horseback riding is only allowed during June, July, and August and on Sundays during the remainder of the year except during open turkey and deer seasons. Horseback riding is allowed only on roads opened to vehicular traffic. Horseback riding is prohibited except on designated trails May 16 through August 31 and all horseback riding is prohibited from September 1 through May 15. This Rule includes all equine species. Participants must obtain a game lands license prior to horseback riding on this area.~~

~~(63)~~(62) Toxaway Game Land in Transylvania County

- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season. Participants of the Disabled Sportsman Program may also take deer of either sex with any legal weapon on the Saturday prior to the first segment of the Western bow and arrow season.

~~(C) Horseback riding is prohibited except on designated trails May 16 through August 31 and all horseback riding is prohibited from September 1 through May 15. This Rule includes all equine species.~~

~~(64)~~(63) Uwharrie Game Land in Davidson, Montgomery and Randolph counties

PROPOSED RULES

- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the first six open days and the last open six days of the applicable Deer With Visible Antlers Season.

(65)(64) Vance Game Land in Vance County

- (A) Six Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (C) The use of dogs, centerfire rifles and handguns for hunting deer is prohibited on the Nutbush Peninsula tract.

(65) Van Swamp Game Land in Beaufort and Washington counties

- (A) Six Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.

(66) White Oak River Impoundment Game Land in Onslow County

- (A) Three Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (C) Waterfowl may be taken only on Mondays, Wednesdays, Saturdays; on Thanksgiving, Christmas and New Year's Days; and on the opening and closing days of the statewide duck hunting seasons except when such seasons exceed 45 days. When duck seasons exceed 45 days, waterfowl may be taken only on Wednesday; Saturday; Thanksgiving; Christmas and New Year's Day; and the opening and closing days of the duck hunting seasons. After October 1, a special permit is required for hunting waterfowl on opening and closing days of the duck seasons, Saturdays of the duck seasons, and on Thanksgiving and New Year's day. Waterfowl may be taken on the opening and closing days of the applicable waterfowl seasons regardless of the day of the week on which they occur.

(67) Yadkin Game Land in Caldwell County

- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.

(g) On permitted type hunts deer of either sex may be taken on the hunt dates indicated on the permit. Completed applications must be received by the Commission not later than the first day of September next preceding the dates of hunt. Permits shall be issued by random computer selection, shall be mailed to the permittees prior to the hunt, and shall be nontransferable. A hunter making a kill must validate the kill and report the kill to a wildlife cooperator agent or by phone.

(h) The following game lands and refuges shall be closed to all hunting except to those individuals who have obtained a valid and current permit from the Wildlife Resources Commission:

Bertie, Halifax and Martin counties--Roanoke River Wetlands

Bertie County--Roanoke River National Wildlife Refuge

Bladen County—Suggs Mill Pond Game Lands

Burke County—John's River Waterfowl Refuge

Dare County--Dare Game Lands (Those parts of bombing range posted against hunting)

Davie--Hunting Creek Swamp Waterfowl Refuge

Gaston, Lincoln and Mecklenburg counties--Cowan's Ford Waterfowl Refuge

Henderson and Transylvania counties--Dupont State Forest Game Lands

Authority G.S. 113-134; 113-264; 113-291.2; 113-291.5; 113-305.

15A NCAC 10D .0104 FISHING ON GAME LANDS

(a) Generally. Except as otherwise indicated herein, fishing on game lands which are open to fishing shall be in accordance with the statewide rules. All game lands are open to public fishing except restocked ponds when posted against fishing, Hunting Creek Swamp Waterfowl Refuge, Grogan Creek in Transylvania County, and in the case of private ponds where fishing may be prohibited by the owners thereof. No trotline or set-hook or any net, trap, gig, bow and arrow or other special fishing device of a type mentioned in 15A NCAC 10C .0403 may be used in any of the impounded waters located entirely on the Sandhills Game Land on game lands.

(b) Designated Public Mountain Trout Waters

(1) Fishing Hours. It is unlawful to fish in designated public mountain trout waters on any game land from one-half hour after sunset to one-half hour before sunrise, except in Hatchery Supported Trout waters as stated in 15A NCAC 10C .0305(a), Delayed Harvest waters as stated in 15A NCAC 10C .0205(a)(5), game lands sections of the Nantahala River located downstream from the Swain County line, and in the sections of Green River in Polk County located on Green River Game Lands from Cove Creek downstream to Brights Creek.

(2) Location. All waters located on the game lands listed in this Subparagraph are designated public mountain trout waters except Cherokee Lake, Grogan Creek, and Big Laurel Creek downstream from the US 25-70 bridge to the French Broad River, Pigeon River downstream of Waterville Reservoir to Tennessee line, Nolichucky River, and Mill Ridge Pond and Cheoah River downstream of Santeetlah Reservoir.

Dupont State Forest Game Lands in Henderson and Transylvania counties
Three Top Mountain Game Land, Ashe County
Nantahala National Forest Game Lands in the Counties of Cherokee, Clay, Graham, Jackson, Macon, Swain and Transylvania
Pisgah National Forest Game Lands in the Counties of Avery, Buncombe, Burke, Caldwell, Haywood,

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Henderson, Madison, McDowell, Mitchell, Transylvania and Yancey Thurmond Chatham Game Land in Wilkes County
Toxaway Game Land in Transylvania County

(3) All designated public mountain trout waters located on the game lands listed in Subparagraph (b)(2) of this Rule are wild trout waters unless classified otherwise. [See 15A NCAC 10C .0205(a)(1)].

(c) Ponds. In all game lands ponds, it is unlawful to take channel, white or blue catfish (forked tail catfish) by means other than hook and line and the daily creel limit for forked tail catfish is six fish in aggregate.

Authority G.S. 113-134; 113-264; 113-272; 113-292; 113-305.

SUBCHAPTER 10H – REGULATED ACTIVITIES

SECTION .0300 – HOLDING WILDLIFE IN CAPTIVITY

15A NCAC 10H .0301 GENERAL REQUIREMENTS

(a) Captivity Permit

(1) Requirement. The possession of any species of wild animal which is or once was native to this State or any species of wild bird which naturally occurs or historically occurred in this State, being native or migratory, is unlawful unless the institution or individual in possession thereof has first obtained from the Wildlife Resources Commission a captivity permit or a captivity license as required by this Rule.

(2) Injured, Crippled or Orphaned Wildlife. Notwithstanding the preceding Subparagraph (1), a crippled, injured or orphaned wild animal or wild bird, except wild turkey, deer or black bear may be taken and kept in possession for no longer than five days, provided that during such five-day period the individual in possession thereof shall apply to the Wildlife Resources Commission, or a wildlife enforcement officer of officer of the Commission, for a captivity permit.

Deer-Deer, Wild Turkey, and Black Bear. Captivity permits will not be issued for crippled, injured or orphaned black bear. No person shall keep a crippled, injured or orphaned black bear in possession for longer than a 24 hour period. Captivity permits for crippled, injured, or orphaned deer will only be issued to certain rehabilitators predesignated by the Commission to provide temporary care for fawn deer. No captivity permits will be issued for holding wild turkeys.

(3) Application and Term. A captivity permit will be issued without charge and may be issued upon informal request by mail, telephone, or other means of communication; but such permit shall authorize possession of the animal or bird only for such period of time as may be required for the rehabilitation and release to the wild; or to obtain a captivity license as provided by Paragraph (b) of this Rule, if such a license is authorized, or to make a proper disposition of the

animal or bird, as determined by the Executive Director, if the application for such license is denied, or when an existing captivity license is not renewed or is terminated.

(b) Captivity License

(1) Requirement. Except as provided in Paragraph (a) of this Rule, no person shall keep any species of wild animal which is or once was native to this State or any deer, elk, or other member of the family Cervidae; or any coyote, wolf, or other nonindigenous member of the family Canidae; or any species of wild bird which naturally occurs or historically occurred in this State, either resident or migratory, without first having obtained from the Wildlife Resources Commission a license to hold the particular species of animal or bird in captivity. No wildlife captivity license will be issued for exotic wild animals, non-indigenous wild animals, or native big game species when the reason for holding such wild animals is release for hunting. No captivity license will be issued for holding wild turkeys.

Acquisition of Wildlife. Notwithstanding the provisions of Subparagraph (a)(2) of this Rule, captivity licenses may not be issued if the wild animal or wild bird was acquired unlawfully or merely as a pet.

(2) Required Facilities. No captivity license shall be issued until the applicant has constructed or acquired a facility for keeping the animal or bird in captivity which shall comply with the minimum standards set forth in Rule .0302 of this Section, and the adequacy of such facility has been verified on inspection by a representative of the Commission.

(3) Term of License

(A) Dependent Wildlife. If the wild animal or wild bird has been permanently rendered incapable of subsisting in the wild, the license authorizing its retention in captivity shall be an annual license terminating on December 31 of the year for which issued.

(B) Rehabilitable Wildlife. When the wild animal or wild bird is temporarily incapacitated, and may be rehabilitated for release to the wild, any captivity license which is issued shall be for a period less than one year as rehabilitation may require. Captivity licenses will not be issued for rehabilitation of deer and black bear.

(C) Concurrent Federal Permit. No State captivity license for an endangered or threatened species or a migratory bird shall be operative to authorize retention thereof for a longer period than is allowed by any concurrent federal permit that may be required for its retention.

(c) Nontransferability. No license or permit issued pursuant to this Rule shall be transferable, either as to the holder or the site of a holding facility.

(d) Sale or Transfer of Captive Wildlife. It is unlawful for any person to transfer or receive any wild animal or wild bird which is being held under a captivity permit issued under Paragraph (a) of this Rule, except that any such animal or bird may be surrendered to an agent of the Wildlife Resources Commission.

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It is unlawful for any person holding a captivity license issued under Paragraph (b) of this Rule to sell or transfer the animal or bird held under such license, except that such animal or bird may be surrendered to an agent of the Commission, and any such licensee may sell or transfer the animal or bird to another person who has obtained a license to hold it in captivity. Upon such a sale or transfer, the seller or transferor shall obtain a receipt for the animal or bird showing the name, address, and license number of the buyer or transferee, a copy of which shall be transmitted to the Wildlife Resources Commission. It is unlawful for any person to release into the wild for any purpose or allow to range free any species of deer, elk or other members of the family Cervidae or any wolf, coyote, or other nonindigenous member of the family Canidae.

(e) Applicability of Section. The following licenses include authority for incidental transportation and possession of wildlife covered under the license:

- (1) Wildlife and fish collection licenses (G.S. 113-272.4; 15A NCAC 10B .0119; 15A NCAC 10C .0214);
- (2) Controlled hunting preserve license [G.S. 113-273(g); 15A NCAC 10H .0100];
- (3) Commercial trout pond license [G.S. 113-273(c); 15A NCAC 10H .0400];
- (4) Fish propagation license [G.S. 113-273(e); 15A NCAC 10H .0700];
- (5) Falconry permit and license [G.S. 113-270.3(b)(5); 15A NCAC 10H .0800];

- (6) Game bird propagation license [G.S. 113-273(h); 15A NCAC 10H .0900].
- (7) Furbearer propagation license [G.S. 113-273(i); 15A NCAC 10H .1100].

Authority G.S. 113-134; 113-272.5; 113-274; 113-292.

SECTION .0900 – GAME BIRD PROPAGATORS

15A NCAC 10H .0901 GAME BIRD PROPAGATION LICENSE

The game bird propagation license authorizes the purchase, possession, propagation, sale, and transportation of propagated upland game ~~birds~~ birds, except wild turkey, and migratory game birds, and their eggs in accordance with the other rules of this Section, subject to the following limitations and conditions:

- (1) The sale of dead pen-raised quail for food is governed by the regulations of the North Carolina Department of Agriculture;
- (2) The possession, sale, and transfer of migratory game birds is subject to additional requirements contained in Title 50 of the Code of Federal Regulations.

(3) No propagation license will be issued for wild turkeys.

Authority G.S. 106-549.94; 113-134; 113-273; 50 C.F.R., Part 21.

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Wildlife Resources Commission intends to amend the rule cited as 15A NCAC 10C .0205. Notice of Rule-making Proceedings was published in the Register on September 1, 2000.

Proposed Effective Date: July 1, 2001

Public Hearings:

Date: November 30, 2000

Time: 3:00 p.m.

Location: Archdale Building, Third Floor Conference Room, 512 N. Salisbury St., Raleigh, NC

Date: January 16, 2001

Time: 7:00 p.m.

Location: Southwestern Community College, Sylva, NC

Date: January 17, 2001

Time: 7:00 p.m.

Location: City of Morganton Municipal Auditorium, Morganton, NC

Date: January 18, 2001

Time: 7:00 p.m.

Location: Starmount High School, Boonville, NC

Date: January 23, 2001

Time: 7:00 p.m.

Location: Courthouse, Elizabethtown, NC

Date: January 24, 2001

Time: 7:00 p.m.

Location: Courthouse Annex, Graham, NC

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Date: January 25, 2001

Time: 7:00 p.m.

Location: Central Davidson Middle School, Lexington, NC

Date: January 30, 2001

Time: 7:00 p.m.

Location: John A. Holmes High School, Edenton, NC

Date: January 31, 2001

Time: 7:00 p.m.

Location: Courthouse, New Bern, NC

Date: February 1, 2001

Time: 7:00 p.m.

Location: Courthouse, Nashville, NC

Reason for Proposed Action: *To set/amend rules that address inland fishing. The Wildlife Resources Commission may adopt this rule as a temporary rule pursuant to G.S. 150B-21.1(a1) following the abbreviated notice as indicated in the Notice of Rule-Making Proceedings or following the public hearing and public comment period as indicated in this notice.*

Comment Procedures: *Interested persons may present their views either orally or in writing at the hearing. In addition, the record of hearing will be open for receipt of written comments until February 16, 2001. Such written comments must be delivered or mailed to the NC Wildlife Resources Commission, 512 N. Salisbury St., Raleigh, NC 27604-1188.*

Fiscal Impact

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

CHAPTER 10 – WILDLIFE RESOURCES AND WATER SAFETY

SUBCHAPTER 10C – INLAND FISHING REGULATIONS

SECTION .0200 – GENERAL REGULATIONS

15A NCAC 10C .0205 PUBLIC MOUNTAIN TROUT WATERS

(a) Designation of Public Mountain Trout Waters. The waters listed herein or in 15A NCAC 10D .0104 are designated as Public Mountain Trout Waters and further classified as Wild Trout Waters or Hatchery Supported Waters. For specific classifications, see Subparagraphs (1) through (6) of this Paragraph. These waters are posted and lists thereof are filed with the clerks of superior court of the counties in which they are located:

- (1) Hatchery Supported Trout Waters. The listed waters in the counties in Subparagraphs (1)(A)-(Y) are classified as Hatchery Supported Public Mountain Trout Waters. Where specific watercourses or impoundments are listed, indentation indicates that the watercourse or impoundment listed is tributary to the next preceding watercourse or impoundment listed and not so indented. This classification applies to the entire watercourse or impoundment listed except as otherwise indicated in parentheses following the listing. Other clarifying information may also be included parenthetically. The tributaries of listed watercourses or impoundments are not included in the classification unless specifically set out therein. Otherwise, Wild Trout regulations apply to the tributaries.

(A) Alleghany County:

New River (not trout water)

Little River (Whitehead to McCann Dam)

Crab Creek

Brush Creek (except where posted against trespass)

Big Pine Creek

Laurel Branch

Big Glade Creek

Bledsoe Creek

Pine Swamp Creek

PROPOSED RULES

South Fork New River (not trout water)
Prather Creek
Cranberry Creek
Piney Fork
Meadow Fork

Yadkin River (not trout water)

Roaring River (not trout water)

East Prong Roaring River (that portion on Stone Mountain State Park) Delayed Harvest Waters regulations apply. See Subparagraph (5) of Paragraph (a) of this Rule.

(B) Ashe County:

New River (not trout waters)

North Fork New River (Watauga Co. line to Sharp Dam)

Helton Creek (Virginia State line to New River) [Delayed Harvest rules apply. See Subparagraph (5) of Paragraph (a) of this Rule.]

Big Horse Creek (~~SR 1361 bridge~~ [Mud Creek at SR1363](#) to Tuckerdale)

Buffalo Creek (headwaters to junction of NC 194-88 and SR 1131)

Big Laurel Creek

Three Top Creek (portion not on game lands)

Hoskins Fork (Watauga County line to North Fork New River)

South Fork New River (not trout waters)

Cranberry Creek (Alleghany County line to South Fork New River)

Nathans Creek

Peak Creek (headwaters to Trout Lake, except Blue Ridge Parkway waters)

Trout Lake (Delayed harvest regulations apply. See Subparagraph (5) of Paragraph (a) of this Rule.)

Roan Creek

North Beaver Creek

Pine Swamp Creek (all forks)

Old Fields Creek

Mill Creek (except where posted against trespasses)

(C) Avery County:

Nolichucky River (not trout waters)

North Toe River (headwaters to Mitchell County line, except where posted against trespass)

Squirrel Creek

Elk River (SR 1306 crossing to Tennessee State line, including portions of tributaries on game lands)

Catawba River (not trout water)

Johns River (not trout water)

Wilson Creek [not Hatchery Supported trout water, see Subparagraph (2) of Paragraph (a) of this Rule]

Lost Cove Creek [not Hatchery Supported trout water, see Subparagraph (4) of Paragraph (a) of this Rule]

Buck Timber Creek [not Hatchery Supported trout water, see Subparagraph (2) of Paragraph (a) of this Rule]

Cary Flat Branch [not Hatchery Supported trout water, see Subparagraph (2) of Paragraph (a) of this Rule]

Boyde Coffey Lake

Archie Coffey Lake

Linville River [Land Harbor line (below dam) to Blue Ridge Parkway boundary line, except where posted against trespass]

Milltimber Creek

(D) Buncombe County:

French Broad River (not trout water)

Big Ivy Creek (Ivy River) (Dillingham Creek to US 19-23 bridge)

Dillingham Creek (Corner Rock Creek to Big Ivy Creek)

Stony Creek

Mineral Creek (including portions of tributaries on game lands)

Corner Rock Creek (including tributaries, except Walker Branch)

Reems Creek (Sugar Camp Fork to US 19-23 bridge, except where posted against trespass)

Swannanoa River (SR 2702 bridge near Ridgecrest to Sayles Bleachery in Asheville, except where posted

PROPOSED RULES

- against trespass)
- Bent Creek (headwaters to N.C. Arboretum boundary line, including portions of tributaries on game lands)
- Lake Powhatan
- Cane Creek (headwaters to SR 3138 bridge)
- (E) Burke County:
 - Catawba River (not trout water)
 - South Fork Catawba River (not trout water)
 - Henry Fork (lower South Mountains State Park line downstream to SR 1919 at Ivy Creek)
 - Jacob Fork (Shinny Creek to lower South Mountain State Park boundary) Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.
 - Johns River (not trout water)
 - Parks Creek (portion not on game lands not trout water)
 - Carroll Creek (game lands portion above SR 1405 including tributaries)
 - Linville River (game lands portion below the Blue Ridge Parkway including portions of tributaries on game lands and from first bridge on SR 1223 below Lake James powerhouse to Muddy Creek)
- (F) Caldwell County:
 - Catawba River (not trout water)
 - Johns River (not trout water)
 - Wilson Creek (Phillips Branch to Browns Mountain Beach dam, except where posted against trespass)
 - Estes Mill Creek (not trout water)
 - Thorps Creek (falls to NC 90 bridge)
 - Mulberry Creek (portion not on game lands not trout water)
 - Boone Fork (not Hatchery Supported trout water. See Subparagraph (2) of Paragraph (a) of this Rule)
 - Boone Fork Pond
- (G) Cherokee County:
 - Hiwassee River (not trout water)
 - Shuler Creek (headwaters to Tennessee line, except where posted against trespass including portions of tributaries on game lands)
 - North Shoal Creek (Crane Creek) (headwaters to SR 1325, including portions of tributaries on game lands)
 - Persimmon Creek
 - Davis Creek (~~including portions of tributaries on game lands~~) (confluence of Bald and Dockery creeks to Hanging Dog Creek)
 - ~~Bald Creek (including portions of tributaries on game lands)~~
 - Beaver Dam Creek (headwaters to SR 1326 bridge, including portions of tributaries on game lands)
 - Valley River
 - Hyatt Creek (including portions of tributaries on game lands)
 - Webb Creek (including portions of tributaries on game lands)
 - Junaluska Creek (Ashturn Creek to Valley River, including portions of tributaries on game lands)
- (H) Clay County:
 - Hiwassee River (not trout water)
 - Fires Creek (first bridge above the lower game land line on US Forest Service road 442 to SR 1300)
 - Tusquitee Creek (headwaters to lower SR 1300 bridge, including portions of Bluff Branch on game lands)
 - Tuni Creek (including portions of tributaries on game lands)
 - Chatuge Lake (not trout water)
 - Shooting Creek (SR 1349 bridge to US 64 bridge at SR 1338)
 - Hothouse Branch (including portions of tributaries on gamelands)
 - Vineyard Creek (including portions of tributaries on game lands)
- (I) Graham County:
 - Little Tennessee River (not trout water)
 - Calderwood Reservoir (Cheoah Dam to Tennessee State line)
 - Cheoah River (not trout water)
 - Yellow Creek
 - Santeelah Reservoir (not trout water)
 - West Buffalo Creek
 - Huffman Creek (Little Buffalo Creek)
 - Santeelah Creek (Johns Branch to mouth including portions of tributaries within this section located on game lands, excluding Johns Branch)
 - (Big) Snowbird Creek (old railroad junction to mouth, including portions of tributaries on game lands)
 - Mountain Creek (game lands boundary to SR 1138 bridge)

PROPOSED RULES

Long Creek (portion not on game lands)
Tulula Creek (headwaters to lower bridge on SR 1275)
Franks Creek
Cheoah Reservoir
Fontana Reservoir (not trout water)
Stecoah Creek
Sawyer Creek
Panther Creek (including portions of tributaries on game lands)

(J) Haywood County:

Pigeon River (not trout water)
Hurricane Creek (including portions of tributaries on game lands)
Cold Springs Creek (including portions of tributaries on game lands)
Jonathans Creek - lower (concrete bridge in Dellwood to Pigeon River)
Jonathans Creek - upper [SR 1302 bridge (west) to SR 1307 bridge]
Hemphill Creek
West Fork Pigeon River (triple arch bridge on highway NC 215 to ~~Champion International property line Queen Creek~~, including portions of tributaries within this section located on game lands, except Middle Prong)
Richland Creek (Russ Avenue bridge to US 19A-23 bridge) Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.

(K) Henderson County:

(Rocky) Broad River (one-half mile north of Bat Cave to Rutherford County line)
Green River - upper (mouth of Bobs Creek to mouth of Rock Creek)
Green River - lower (Lake Summit Dam to I-26 bridge)
Camp Creek (SR 1919 to Polk County line)
(Big) Hungry River
Little Hungry River
French Broad River (not trout water)
Mills River (not trout water)
North Fork Mills River (game lands portion below the Hendersonville watershed dam). Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.

(L) Jackson County:

Tuckasegee River (confluence with West Fork Tuckasegee River to SR 1392 bridge at Wilmot) Delayed Harvest Regulations apply to that portion between NC 107 bridge at Love Field and the Dillsboro dam. See Subparagraph (a)(5) of this Rule.
Scott Creek (entire stream, except where posted against trespass)
Dark Ridge Creek (Jones Creek to Scotts Creek)
Buff Creek (SR 1457 bridge below Bill Johnson's place to Scott Creek)
Savannah Creek (Headwaters to Bradley's Packing House on NC 116)
Greens Creek (Greens Creek Baptist Church on SR 1730 to Savannah Creek)
Cullowhee Creek (Tilley Creek to Tuckasegee River)
Bear Creek Lake
Wolf Creek [not Hatchery Supported trout water, see Subparagraph (2) of Paragraph (a) of this Rule]
Wolf Creek Lake
Balsam Lake
Tanasee Creek [not Hatchery Supported trout water, see Subparagraph (2) of Paragraph (a) of this Rule]
Tanasee Creek Lake
West Fork Tuckasegee River (Shoal Creek to existing water level of Little Glenville Lake)
Shoal Creek (Glenville Reservoir pipeline to mouth)

(M) Macon County:

Little Tennessee River (not trout water)
Nantahala River (Nantahala Dam to Swain County line) Delayed Harvest Regulations apply to the portion from Whiteoak Creek to the Nantahala Power and Light powerhouse discharge canal. See Subparagraph (a)(5) of this Rule.
Queens Creek Lake
Burningtown Creek (including portions of tributaries on game lands)
Cullasaja River (Sequoah Dam to US 64 bridge near junction of SR 1672, including portions of tributaries on game lands, excluding those portions of Big Buck Creek and Turtle Pond Creek on game lands. Wild trout regulations apply. See Subparagraphs (2) and (6) of Paragraph (a) of this Rule.)

PROPOSED RULES

Ellijay Creek (except where posted against trespass, including portions of tributaries on game lands)
Skitty Creek
 Cliffside Lake
Cartoogechaye Creek (US 64 bridge to Little Tennessee River)
Tessentee Creek (Nichols Branch to Little Tennessee River, except where posted against trespassing)
Savannah River (not trout water)
Big Creek (base of falls to Georgia State line, including portions of tributaries within this Section located on game lands)

(N) Madison County:

French Broad River (not trout water)
 Shut-In Creek (including portions of tributaries on game lands)
 Spring Creek (junction of NC 209 and NC 63 to lower US Forest Service boundary line, including portions of tributaries on game lands)
 Meadow Fork Creek
 Roaring Fork (including portions of tributaries on game lands)
 Little Creek
 Max Patch Pond
 Mill Ridge Pond
Big Laurel Creek (Mars Hill Watershed boundary to Rice's Mill Dam)
Big Laurel Creek (NC 208 bridge to US 25-70 bridge) Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.
 Shelton Laurel Creek (~~headwaters~~ (confluence of Big Creek and Mill Creek to NC 208 bridge)bridge at Belva)
 Shelton Laurel Creek (NC 208 bridge at Belva to the confluence with Big Laurel Creek) Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.
 Big Creek (headwaters to lower game land boundary, including tributaries)
 Mill Creek (upper game lands boundary to confluence with Big Creek)
 Big Pine Creek
 Puncheon Fork (Hampton Creek to Big Laurel Creek)
 Big Pine Creek (SR 1151 bridge to French Broad River)

(O) McDowell County:

Catawba River (portion not on game lands, not trout water)
 Buck Creek (portion not on game lands, not trout water)
 Little Buck Creek (game land portion including portions of tributaries on game lands)
Curtis Creek game lands portion downstream of US Forest Service boundary at Deep Branch) Delayed Harvest regulations apply. See Subparagraph (a)(5) of this Rule.
North Fork Catawba River (headwaters to SR 1569 bridge)
 Armstrong Creek (Cato Holler line downstream to upper Greenlee line)
 Mill Creek (upper railroad bridge to U.S. 70 Bridge, except where posted against trespass)

(P) Mitchell County:

Nolichucky River (not trout water)
 Big Rock Creek (headwaters to NC 226 bridge at SR 1307 intersection)
 Little Rock Creek (Green Creek Bridge to Big Rock Creek, except where posted against trespass)
Cane Creek (SR 1219 to NC 226 bridge)
Cane Creek (NC 226 bridge to NC 80 bridge) Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.
Grassy Creek (East Fork Grassy Creek to mouth)
 East Fork Grassy Creek
North Toe River (Avery County line to SR 1121 bridge)

(Q) Polk County:

Broad River (not trout water)
North Pacolet River (Pacolet Falls to NC 108 bridge)
 Fork Creek (Fork Creek Church on SR 1100 to North Pacolet River)
 Big Fall Creek (portion above and below water supply reservoir)
Green River (Fishtop Falls Access Area to mouth of Brights Creek) Delayed Harvest regulations apply to the portion from Fishtop Falls Access Area to Cove Creek. See Subparagraph(a)(5) of this Rule.
 Little Cove Creek (including portions of tributaries on game lands)
 Cove Creek (including portions of tributaries on game lands)
 Camp Creek [Henderson County line (top of falls) to Green River]

PROPOSED RULES

- (R) Rutherford County:
 (Rocky) Broad River (Henderson County line to US 64/74 bridge, except where posted against trespass)
- (S) Stokes County:
 Dan River (SR 1416 bridge downstream to a point 200 yards below the end of SR 1421)
- (T) Surry County:
 Yadkin River (not trout water)
 Ararat River (SR 1727 ~~bridge~~ downstream to the NC 103 bridge) ~~Business US 52 bridge~~) Delayed Harvest regulations apply. See Subparagraph (5) of Paragraph (a) of this Rule.
 Stewarts Creek (not trout water)
 Pauls Creek (Virginia State line to 0.3 mile below SR 1625 bridge - lower Caudle property line)
 Fisher River (Cooper Creek) (Virginia State line to NC 89 bridge)
 Little Fisher River (Virginia State line to NC 89 bridge)
 Mitchell River (0.6 mile upstream of the end of SR 1333 to the SR 1330 bridge below Kapps Mill Dam) Delayed Harvest Regulations apply. See Subparagraph (5) of Paragraph (a) of this Rule.
- (U) Swain County:
 Little Tennessee River (not trout water)
 Calderwood Reservoir (Cheoah Dam to Tennessee State line)
 Cheoah Reservoir
 Fontana Reservoir (not trout water)
 Alarka Creek (game lands boundary to Fontana Reservoir)
 Nantahala River (Macon County line to existing Fontana Reservoir water level)
 Tuckasegee River (not trout water)
 Deep Creek (Great Smoky Mountains National Park boundary line to Tuckasegee River)
 Connelly Creek (including portions of tributaries on game lands)
- (V) Transylvania County:
 French Broad River (junction of west and north forks to US 276 bridge)
 Davidson River (Avery Creek to Ecusta intake)
 East Fork French Broad River (Glady Fork to French Broad River)
 Middle Fork French Broad River
 West Fork French Broad River (SR 1312 and SR 1309 intersection to junction of west and north forks, including portions of tributaries within this section located on game lands)
- (W) Watauga County:
 New River (not trout waters)
 North Fork New River (from confluence with Maine and Mine branches to Ashe County line)
 Maine Branch (headwaters to North Fork New River)
 South New Fork River (not trout water)
 Meat Camp Creek
 Norris Fork Creek
 Howards Creek (downstream from lower falls)
 Middle Fork New River (Lake Chetola Dam to South Fork New River)
 Yadkin River (not trout water)
 Stony Fork (headwaters to Wilkes County line)
 Elk Creek (headwaters to gravel pit on SR 1508, except where posted against trespass)
 Watauga River (~~Confluence of Boone Fork and Watauga River~~ (SR 1557 bridge to NC 105 bridge). Delayed Harvest Regulations apply. See Subparagraph (5) of Paragraph (a) of this Rule.
 Beech Creek
 Buckeye Creek Reservoir
 Coffee Lake
 Beaverdam Creek (SR 1209 bridge at Bethel to an unnamed tributary adjacent to the intersection of SR 1201 and SR 1203)
 Laurel Creek
 Cove Creek (SR 1233 bridge at Zionville to SR 1233 bridge at Amantha)
 Dutch Creek (second bridge on SR 1134 to mouth)
 Boone Fork (headwaters to SR 1562)
- (X) Wilkes County:
 Yadkin River (not trout water)
 Roaring River (not trout water)
 East Prong Roaring River (Bullhead Creek to Brewer's Mill on SR 1943) (Delayed harvest regulations

PROPOSED RULES

apply to portion on Stone Mountain State Park) See Subparagraph (5) of Paragraph (a) of this Rule.
Stone Mountain Creek (Delayed Harvest Regulations apply. See Subparagraph (5) of Paragraph (a) of this Rule.)

Middle Prong Roaring River (headwaters to second bridge on SR 1736)

Bell Branch Pond

Boundary Line Pond

West Prong Roaring River (not trout waters)

Pike Creek

Pike Creek Pond

Reddies River (not trout water)

Middle Fork Reddies River (Clear Prong) (headwaters to bridge on SR 1580)

South Fork Reddies River (headwaters to confluence with Middle Fork Reddies River)

North Fork Reddies River (Vannoy Creek) (headwaters to Union School bridge on SR 1559)

Darnell Creek (North Prong Reddies River) (downstream ford on SR 1569 to confluence with North Fork Reddies River)

Lewis Fork Creek (not trout water)

South Prong Lewis Fork (headwaters to Lewis Fork Baptist Church)

Fall Creek (except portions posted against trespass)

(Y) Yancey County:

Nolichucky River (not trout water)

Cane River [Bee Branch (SR 1110) to Bowlens Creek]

Bald Mountain Creek (except portions posted against trespass)

Indian Creek (not trout water)

Price Creek (junction of SR 1120 and SR 1121 to Indian Creek)

North Toe River (not trout water)

South Toe River (Clear Creek to lower boundary line of Yancey County recreation park except where posted against trespass)

(2) Wild Trout Waters. All waters designated as Public Mountain Trout Waters on the game lands listed in Subparagraph (b)(2) of 15A NCAC 10D .0104, are classified as Wild Trout Waters unless specifically classified otherwise in (A)(1) of this Rule. The trout waters listed in this Subparagraph are also classified as Wild Trout Waters.

(A) Alleghany County:

Big Sandy Creek (portion on Stone Mountain State Park)

Ramey Creek (entire stream)

Stone Mountain Creek (that portion on Stone Mountain State Park)

(B) Ashe County:

Big Horse Creek (Virginia State Line to ~~SR 1361 bridge~~ Mud Creek at SR 1363) Catch and Release/Artificial Lures Only Regulations apply. See Subparagraph (a)(3) of this Rule.

Unnamed tributary of Three Top Creek (portion located on Three Top Mountain Game Land) Catch and Release/Artificial Lures Only Regulations apply. See Subparagraph (a)(3) of this Rule.

(C) Avery County:

Birchfield Creek (entire stream)

Cow Camp Creek (entire stream)

Cranberry Creek (entire stream)

Gragg Prong (entire stream)

Horse Creek (entire stream)

Jones Creek (entire stream)

Kentucky Creek (entire stream)

North Harper Creek (entire stream)

Plumtree Creek (entire stream)

Roaring Creek (entire stream)

Rockhouse Creek (entire stream)

South Harper Creek (entire stream)

Webb Prong (entire stream)

Wilson Creek (Catch and Release/Artificial Lures Only Regulations apply. See Subparagraph (a)(3) of this Rule.)

(D) Buncombe County:

Carter Creek (game land portion) (Catch and Release/Artificial Lures only regulations apply. See Subparagraph (3) of Paragraph (a) of this Rule.)

(E) Burke County:

PROPOSED RULES

All waters located on South Mountain State Park, except the main stream of Jacob Fork between the mouth of Shinnay Creek and the lower park boundary where delayed harvest regulations, and Henry Fork and tributaries where catch and release/artificial lures only regulations apply. See Subparagraphs (3) and (5) of Paragraph (a) of this Rule.

Nettle Branch (game land portion)

(F) Caldwell County:

Buffalo Creek (Watauga County line to Long Ridge Branch)

Joes Creek (Watauga County line to first falls upstream of the end of SR 1574)

Rockhouse Creek (entire stream)

(G) Cherokee County:

Bald Creek (game land portions, including tributaries) [Wild Trout/Natural Bait Waters regulations apply. See Subparagraph (6) of Paragraph a of this Rule.]

Dockery Creek (game land portions, including tributaries) [Wild Trout/Natural Bait Waters regulations apply. See Subparagraph (6) of Paragraph a of this Rule.]

~~(G)~~(H) Cleveland County: Brier Creek and tributaries (game lands portions)

~~(H)~~(I) Graham County:

South Fork Squally Creek (entire stream)

Squally Creek (entire stream)

~~(I)~~(J) Henderson County:

Green River (I-26 bridge to Henderson/Polk County line)

~~(J)~~(K) Jackson County:

Gage Creek (entire stream)

North Fork Scott Creek (entire stream)

Tanasee Creek (entire stream)

Whitewater River (downstream from Silver Run Creek to South Carolina State line)

Wolf Creek (entire stream, except Balsam Lake and Wolf Creek Lake)

~~(K)~~(L) Madison County:

Spillcorn Creek (entire stream) [Wild Trout/Natural Bait Waters regulations apply. See Subparagraph (6) of Paragraph (a) of this Rule.]

~~(L)~~(M) Mitchell County:

Green Creek (headwaters to Green Creek Bridge, except where posted against trespass)

Little Rock Creek (headwaters to Green Creek Bridge, including all tributaries, except where posted against trespass)

Wiles Creek (game land boundary to mouth)

~~(M)~~(N) Polk County

Green River (Henderson County line to Fishtop Falls Access Area)

Pulliam (Fulloms) Creek and tributaries (game lands portions)

~~(N)~~(O) Rutherford County:

North Fork (First Broad River) and tributaries (game lands portion)

Brier Creek and tributaries (game lands portion)

~~(O)~~(P) Transylvania County:

Whitewater River (downstream from Silver Run Creek to South Carolina State line)

~~(P)~~(Q) Watauga County:

Dutch Creek (headwaters to second bridge on SR 1134)

Howards Creek (headwaters to lower falls)

Watauga River (Avery County line to ~~SR 1580~~steel bridge at Riverside Farm Road)

~~(Q)~~(R) Wilkes County:

Big Sandy Creek (portion on Stone Mountain State Park)

Garden Creek (portion on Stone Mountain State Park)

Harris Creek and tributaries [portions on Stone Mountain State Park] [Catch and Release Artificial Lures Only regulations apply. See Subparagraph (4) of Paragraph (a) of this Rule.]

Widow Creek (portion on Stone Mountain State Park)

~~(R)~~(S) Yancey County:

Lickskillet Creek (entire stream)

Middle Creek (game land boundary to mouth)

Rock Creek (game land boundary to mouth)

South Toe River (game land boundary downstream to Clear Creek)

PROPOSED RULES

- (3) Catch and Release/Artificial Lures Only Trout Waters. Those portions of designated wild trout waters as listed in this Subparagraph, including tributaries except as noted, are further classified as Catch and Release/Artificial Lures Only waters. Only artificial lures having one single hook may be used. No fish may be harvested or be in possession while fishing these streams:
- (A) Ashe County:
 - Big Horse Creek (Virginia State line to ~~SR 1361 bridge~~ Mud Creek at SR 1316 excluding tributaries)
 - Unnamed tributary of Three Top Creek (portion located on Three Top Mountain Game Lands)
 - (B) Avery County:
 - Wilson Creek (game land portion)
 - (C) Buncombe County:
 - Carter Creek (game land portion)
 - (D) Burke County:
 - Henry Fork (portion on South Mountains State Park)
 - (E) Jackson County:
 - Flat Creek
 - Tuckasegee River (upstream of Clarke property)
 - (F) McDowell County:
 - Newberry Creek (game land portion)
 - (G) Wilkes County:
 - Harris Creek (portion on Stone Mountain State Park)
 - (H) Yancey County:
 - Lower Creek
 - Upper Creek
- (4) Catch and Release/Artificial Flies Only Trout Waters. Those portions of designated wild trout waters as listed in this Subparagraph, including tributaries except as noted, are further classified as Catch and Release/Fly Fishing Only waters. Only artificial flies having one single hook may be used. No fish may be harvested or be in possession while fishing these streams:
- (A) Avery County:
 - Lost Cove Creek (game land portion, excluding Gragg Prong and Rockhouse Creek)
 - (B) Transylvania County:
 - Davidson River (headwaters to Avery Creek, excluding Avery Creek, Looking Glass Creek and Grogan Creek)
 - (C) Yancey County:
 - South Toe River (portion from the concrete bridge above Black Mountain Campgroup downstream to game land boundary, excluding Camp Creek and Big Lost Cove Creek)
- (5) Delayed Harvest Trout Waters. Those portions of designated Hatchery Supported Trout Waters as listed in this Subparagraph, excluding tributaries except as noted, are further classified as Delayed Harvest Waters. Between 1 October and one-half hour after sunset on the Friday before the first Saturday of the following June, inclusive, it is unlawful to possess natural bait and only artificial lures with one single hook may be used. No fish may be harvested or be in possession while fishing these streams during this time. These waters are closed to fishing between one-half hour after sunset on the Friday before the first Saturday in June and 6:00 a.m. on the first Saturday in June. At 6:00 a.m. on the first Saturday in June these streams open for fishing under Hatchery Supported Waters rules:
- (A) Ashe County:
 - Trout Lake
 - Helton Creek (Virginia state line to New River)
 - (B) Burke County:
 - Jacob Fork (Shinny Creek to lower South Mountains State Park boundary)
 - (C) Haywood County:
 - Richland Creek (Russ Avenue bridge to US 19A-23 bridge)
 - (D) Henderson County:
 - North Fork Mills River (game land portion below the Hendersonville watershed dam)
 - (E) Jackson County:
 - Tuckasegee River (NC 107 bridge at Love Field Downstream to the Dillsboro dam)
 - (F) Macon County:
 - Nantahala River (portion from Whiteoak Creek to the Nantahala Power and Light power house discharge canal)
 - (G) Madison County:
 - Big Laurel Creek (NC 208 bridge to the US 25-70 bridge)

PROPOSED RULES

Shelton Laurel Creek (NC 208 bridge at Belva to the confluence with Big Laurel Creek)

(H) McDowell County:

Curtis Creek (game lands portion downstream of U.S. Forest Service boundary at Deep Branch

(I) Mitchell County:

Cane Creek (NC 226 bridge to NC 80 bridge)

(J) Polk County:

Green River (Fishtop Falls Access Area to confluence with Cove Creek)

(K) Surry County:

~~Aarat River (SR 1727 downstream to Business US 52 bridge)~~

Mitchell River (0.6 mile upstream of the end of SR 1333 to the SR 1330 bridge below Kapps Mill Dam)

(L) Watauga County:

Watauga River (~~Confluence of Boone Fork and Watauga River (SR 1557 bridge~~ to NC 05 bridge)

(M) Wilkes County:

East Prong Roaring River (from Bullhead Creek downstream to the Stone Mountain State Park lower boundary)

Stone Mountain Creek (from falls at Allegheny County line to confluence with East Prong Roaring River and Bullhead Creek in Stone Mountain State Park)

(6) Wild Trout/Natural Bait Waters. Those portions of designated Wild Trout Waters as listed in this Subparagraph, including tributaries except as noted, are further classified as Wild Trout/Natural Bait Waters. All artificial lures and natural baits, except live fish, are allowed provided they are fished using only one single hook. The creel limit, size limit, and open season are the same as other Wild Trout Waters [see 15A NCAC 10C .0305(a)].

(A) Cherokee County:

Bald Creek (game land portions)

Dockery Creek (game land portions)

Tellico River (Fain Ford to Tennessee state line excluding tributaries)

(B) Clay County:

Buck Creek (game land portion downstream of US 64 bridge)

(C) Graham County:

Deep Creek

Long Creek (game land portion)

(D) Jackson County:

Chattooga River (SR 1100 bridge to South Carolina state line)

(lower) Fowler Creek (game land portion)

Scotsman Creek (game land portion)

(E) Macon County:

Chattooga River (SR 1100 bridge to South Carolina state line)

Jarrett Creek (game land portion)

Kimsey Creek

Overflow Creek (game land portion)

Park Creek

Tellico Creek (game land portion)

Turtle Pond Creek (game land portion)

(F) Madison County:

Spillcorn Creek (entire stream, excluding tributaries)

(G) Transylvania County:

North Fork French Broad River (game land portions downstream of SR 1326)

Thompson River (SR 1152 to South Carolina state line, except where posted against trespass, including portions of tributaries within this Section located on game lands)

(b) Fishing in Trout Waters

(1) Hatchery Supported Trout Waters. It is unlawful to take fish of any kind by any manner whatsoever from designated public mountain trout waters during the closed seasons for trout fishing. The seasons, size limits, creel limits and possession limits apply in all waters, whether designated or not, as public mountain trout waters. Except in power reservoirs and city water supply reservoirs so designated, it is unlawful to fish in designated public mountain trout waters with more than one line. Night fishing is not allowed in most hatchery supported trout waters on game lands [see 15A NCAC 10D .0104(b)(1)].

(2) Wild Trout Waters. Except as otherwise provided in Subparagraphs (3), (4), and (6) of Paragraph (a) of this Rule, the following rules apply to fishing in wild trout waters.

(A) Open Season. There is a year round open season for the licensed taking of trout.

(B) Creel Limit. The daily creel limit is four trout.

PROPOSED RULES

- (C) Size Limit. The minimum size limit is seven inches.
- (D) Manner of Taking. Only artificial lures having only one single hook may be used. No person shall possess natural bait while fishing wild trout waters except those waters listed in 15A NCAC 10C .0205(a)(6).
- (E) Night Fishing. Fishing on wild trout waters is not allowed between one-half hour after sunset and one-half hour before sunrise.

Authority G.S. 113-134; 113-272; 113-292.

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Wildlife Resources Commission intends to amend the rules cited as 15A NCAC 10C .0305, .0401, .0404. Notice of Rule-making Proceedings was published in the Register on September 1, 2000.

Proposed Effective Date: July 1, 2002

Public Hearing:

Date: November 30, 2000

Time: 3:00 p.m.

Location: Archdale Building, Third Floor Conference Room, 512 N. Salisbury St., Raleigh, NC

Reason for Proposed Action:

15A NCAC 10C .0305 - To set/amend inland fishing regulations necessary to manage and preserve the resource.

15A NCAC 10C .0401 - To set/amend rules that address the manner of taking nongame fishes for purchase and sale.

15A NCAC 10C .0404 - To set/amend inland fishing regulations necessary to manage and preserve the resource.

The Wildlife Resources Commission may adopt these rules as temporary rules pursuant to G.S. 150B-21.1(a1) following the abbreviated notice as indicated in the Notice of Rule-Making Proceedings or following the public hearing and public comment period as indicated in this notice.

Comment Procedures: *Interested persons may present their views either orally or in writing at the hearing. In addition, the record of hearing will be open for receipt of written comments until February 16, 2001. Such written comments must be delivered or mailed to the NC Wildlife Resources Commission, 1701 Mail Service Center, Raleigh, NC 27699-1701.*

Fiscal Impact

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

CHAPTER 10 – WILDLIFE RESOURCES AND WATER SAFETY

SUBCHAPTER 10C – INLAND FISHING REGULATIONS

SECTION .0300 – GAME FISH

15A NCAC 10C .0305 OPEN SEASONS: CREEL AND SIZE LIMITS IS PROPOSED FOR AMENDMENT AS FOLLOWS:

(a) Generally. Subject to the exceptions listed in Paragraph (b) of this Rule, the open seasons and creel and size limits are as indicated in the following table:

GAME FISHES	DAILY CREEL LIMITS	MINIMUM SIZE LIMITS	OPEN SEASON
Mountain Trout:			
Wild Trout Waters	4 <u>(exec. 2)</u>	7 in. <u>(exec. 2)</u>	ALL YEAR (exc. 2)
Hatchery Supported Trout Waters and undesignated waters	7	None	All year, except March 1 to 6:00 a.m. on first Saturday in April (exc. 2)
Muskellunge and Tiger Musky	2	30 in.	ALL YEAR
Chain Pickerel (Jack)	None	None	ALL YEAR
Walleye	8 (exc. 8)	None	ALL YEAR

PROPOSED RULES

Sauger	8	15 in.	ALL YEAR
Black Bass:			
Largemouth	5	14 in. (excs. 3, 7 & 9)	ALL YEAR (exc. 16)
Smallmouth and Spotted	5	12 in. (excs. 3, 7 & 9)	ALL YEAR
White Bass	25	None	ALL YEAR
Sea Trout (Spotted or Speckled)	10	12 in.	ALL YEAR
Flounder	None	13 in.	ALL YEAR
Red drum (channel bass, red fish, puppy drum)	2	18 in. (exc. 19)	ALL YEAR
Striped Bass and their hybrids (Morone Hybrids)	8 aggregate (excs. 1, 5 & 12)	16 in. (excs. 1, 5 & 10)	ALL YEAR (excs. 5, 12, & 14)
Shad: (American and hickory)	10 aggregate (exc. 17)	None	ALL YEAR (excs. 17 & 18)
Kokanee Salmon	7	None	ALL YEAR
Panfishes	None (excs. 4, 11 & 15)	None (exc. 11)	ALL YEAR (exc. 4)
NONGAME FISHES	None (exc. 13)	None (exc. 13)	ALL YEAR (excs. 6)

(b) Exceptions

- (1) In the Dan River upstream from its confluence with Bannister River to the Brantly Steam Plant Dam, and in John H. Kerr, Gaston, and Roanoke Rapids Reservoirs, and Lake Norman, the creel limit on striped bass and Morone hybrids is four in the aggregate and the minimum size limit is 20 inches.
- (2) In designated public mountain trout waters the season for taking all species of fish is the same as the trout fishing season. There is no closed season on taking trout from Nantahala River and all tributaries (excluding impoundments) upstream from Nantahala Lake, and the impounded waters of power reservoirs and municipally-owned water supply reservoirs open to the public for fishing. In Lake Lure the daily creel limit for trout is five fish and minimum size limit for trout is 15 inches.
- (3) Bass taken from Calderwood Reservoir may be retained without restriction as to size limit.
- (4) On Mattamuskeet Lake, special federal regulations apply-apply:
- (5) In the inland fishing waters of Cape Fear, Neuse, Pee-Dee, Pungo and Tar-Pamlico

~~rivers and their tributaries and the Roanoke River and its tributaries, including the Cashie, Middle and Eastmost rivers, extending upstream to the first impoundment, and Lake Mattamuskeet, the daily creel limit for striped bass and their hybrids is three fish in aggregate and the minimum length limit is 18 inches. In the Roanoke River and its tributaries, including the Cashie, Middle, and Eastmost rivers, in the Tar Pamlico River and its tributaries upstream of the Grimesland bridge and in the Neuse River and its tributaries upstream of the NC 55 bridge in Lenoir County no striped bass or striped bass hybrids between the lengths of 22 inches and 27 inches shall be retained during the period April 1 through May 31. The daily creel limit for~~

PROPOSED RULES

- (12) striped bass and their hybrids is two fish in aggregate, the minimum size limit is 18 inches and no striped bass or striped bass hybrids between the lengths of 22 inches and 27 inches may be possessed in the following waters:
 - (A) the inland (and joint fishing waters, pursuant to 15A NCAC 30 .0107(1)(e)) fishing waters of the Roanoke River Striped Bass Management Area which includes Roanoke, Cashie, Middle, and Eastmost rivers and their tributaries,
 - (B) Tar-Pamlico River upstream of the Norfolk & Southern railroad bridge at Washington,
 - (C) Neuse River upstream of Pitchkettle Creek,
 - (D) Trent River upstream of Wilson's Creek,
 - (E) White Oak River upstream of Grant's Creek,
 - (F) New River upstream of the US 17 bridge at Jacksonville,
 - (G) Cape Fear River upstream of Lock and Dam #1,
 - (H) Northeast Cape Fear River upstream of the NC 210 bridge,
 - (I) Black River upstream of the point where the Thoroughfare joins the Black River.

The open season for taking and possessing striped bass and their hybrids in the Roanoke River Striped Bass Management Area is March 1 through April 15 from the joint-coastal fishing waters boundary at Albemarle Sound upstream to the US 258 bridge and is March 15 through April 30 from the US 258 bridge upstream to Roanoke Rapids Lake dam. In all other waters specified in Subsections (b) through (i) of this Section, the open season for taking and possessing striped bass and their hybrids is March 1 through April 30. In inland fishing waters downstream of those waters specified in Subsections (b) through (i) of this Section, in inland fishing waters tributary to other coastal rivers not specified in Subsections (b) through (i) of this Section (excluding inland fishing waters of the Albemarle Sound Striped Bass Management Area as defined in 15A NCAC 10C .0110-.0111), in Lake Mattamuskeet, and in the Pee Dee River from the South Carolina line upstream to Blewitt Falls Lake dam, the daily creel limit for striped bass and their hybrids is three fish, the minimum size limit is 18 inches and the season is open year-round.

- (6) See 15A NCAC 10C .0407 for open seasons for taking nongame fishes by special devices.
- (7) The maximum combined number of black bass of all species that may be retained per day is five fish, no more than two of which may be smaller than the applicable minimum size limit. The minimum size limit for all species of black bass is 14 inches, with no exception in Lake Luke Marion in Moore County, in Reedy Creek Park lakes in Mecklenburg County, in Lake Rim in Cumberland County, in Currituck Sound

- and tributaries north of Wright Memorial Bridge, in North River and tributaries in Currituck and Camden Counties north of a line between Camden Point and the end of SR 1124, in High Rock Lake downstream of I-85, in Badin Lake, in Falls Lake, in Lake Tillery, in Blewett Falls Lake, in Tuckertown Lake and in the New River and its tributaries in Onslow County. In and west of Madison, Buncombe, Henderson and Polk Counties and in designated public mountain trout waters the minimum size limit is 12 inches. In B. Everett Jordan ~~Reservoir~~ Reservoir, in Falls of the Neuse Reservoir, east of SR 1004, and in Lake Lure a minimum size limit of 16 inches, with no exception, applies to largemouth bass. In W. Kerr Scott Reservoir there is no minimum size limit for spotted bass. In Lake Lure a minimum size limit of 14 inches, with no exception, applies to smallmouth bass.
- (8) A minimum size limit of 15 inches applies to walleye taken from Lake James and its tributaries, and the daily creel limit for walleye is four fish in Linville River upstream from the NC 126 bridge above Lake James.
- (9) The minimum size limit for all black bass, with no exception, is 18 inches in the following trophy bass lakes:
 - (A) Cane Creek Lake in Union County;
 - (B) Lake Thom-A-Lex in Davidson County; and
 - (C) Sutton Lake in New Hanover County.
- (10) In all impounded inland waters and their tributaries, except those waters described in Exceptions (1) and (5), the daily creel limit of striped bass and their hybrids may include not more than two fish of smaller size than the minimum size limit.
- (11) In Lake Tillery, Falls Lake, High Rock Lake, Badin Lake, Tuckertown Lake, Lake Hyco, Lake Ramseur, Cane Creek Lake and the Roanoke River downstream of the US 17 bridge in Williamston and its tributaries (including the Cashie, Middle and Eastmost rivers and their tributaries) a daily creel limit of 20 fish and a minimum size limit of 8 inches apply to crappie. In Lake ~~James~~ James, Lake Lure and Hiwassee Reservoir, a daily creel limit of 20 fish applies to crappie.
- (12) In designated inland fishing waters of Roanoke Sound, Croatan Sound, Albemarle Sound, Chowan River, Currituck Sound, Alligator River, Scuppernong River, and their tributaries (excluding the Roanoke River and Cashie River and their tributaries), striped bass fishing season, size limits and creel limits shall be the same as those established by duly adopted rules or proclamations of the Marine Fisheries Commission in adjacent joint or coastal fishing waters.
- (13) The daily creel and length limits for channel, white, and blue catfish in designated urban lakes are provided for in 15A NCAC 10C .0401(d).
- (14) The Executive Director may, by proclamation, suspend or extend the hook-and-line season for striped bass in the inland and joint waters of coastal rivers and their tributaries. It is unlawful to violate the provisions of any proclamation issued under this authority.

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- (15) In the entire Lumber River from the Camp MacKall bridge (SR 1225, at the point where Richmond, Moore, Scotland, and Hoke counties join) to the South Carolina state line and in all public fishing waters east of I-95, except Tar River Reservoir in Nash County, the daily creel limit for sunfish is 30 in aggregate, no more than 12 of which shall be redbreast sunfish.
- (16) In Sutton Lake, no largemouth bass may be retained from December 1 through March 31.
- (17) In the Pee Dee River downstream from the Blewett Falls dam, shad may be taken with special fishing devices without restriction to creel limits as provided for in 15A NCAC 10C .0404 (b) during the permitted special fishing device seasons specified in 15A NCAC 10C .0407. American and hickory shad taken under this Subparagraph may be sold as authorized under subsection 10C .0401.
- (18) The season for taking American and hickory shad with dip nets and bow nets is March 1 through April 30, except in Pee Dee River downstream from Blewett Falls dam where the season prescribed in 15A NCAC 10C .0407 (4) and (75) is in effect.
- (19) No red drum greater than 27 inches in length may be retained.

Authority G.S. 113-134; 113-292; 113-304; 113-305.

SECTION .0400 – NONGAME FISH

15A NCAC 10C .0401 MANNER OF TAKING NONGAME FISHES: PURCHASE AND SALE IS PROPOSED FOR AMENDMENT AS FOLLOWS:

- (a) Except as permitted by the rules in this Section, it is unlawful to take nongame fishes from the inland fishing waters of North Carolina in any manner other than with hook and line or grabbling. Nongame fishes may be taken by hook and line or grabbling at any time without restriction as to size limits or creel limits, except that no trotlines or set-hooks may be used in the impounded waters located on the Sandhills Game Land or in designated public mountain trout waters. In Lake Waccamaw, trotlines or set-hooks may be used only from October 1 through April 30. The season for taking nongame fishes by other hook and line methods in designated public mountain trout waters shall be the same as the trout fishing season.
- (b) Nongame fishes, except alewife and blueback herring (greater than six inches in length) and bowfin, alewife and blueback herring—taken by hook and line, grabbling or by licensed special devices may be sold. Alewife and blueback herring less than six inches in length may be sold except in those waters specified in 15A NCAC 10C .0402(d), where their possession is prohibited. Eels less than six inches in length may not be taken from inland waters for any purpose. may not be possessed and possession of eels 6 inches or larger in length is limited to 200 per day for bait.
- (c) Freshwater mussels may only be taken from impounded waters, except mussels shall not be taken in Lake Waccamaw and in University Lake in Orange County. It is unlawful to use boats powered by gasoline engines on impoundments located on the Barnhill Public Fishing Area.

(d) It is unlawful to use boats powered by gasoline engines on impoundments located on the Barnhill Public Fishing Area.

~~(d)~~(e) In the posted Community Fishing Program waters listed below it is unlawful to take channel, white or blue catfish (forked tail catfish) by means other than hook and line; the daily creel limit for forked tail catfish is six fish in aggregate:

- Cedarock Pond, Alamance County
- Lake Tomahawk, Buncombe County
- Frank Liske Park Pond, Cabarrus County
- Lake Rim, Cumberland County
- C.G. Hill Memorial Park Pond, Forsyth County
- Kernersville Lake, Forsyth County
- Winston Pond, Forsyth County
- Bur-Mil Park Ponds, Guilford County
- Oka T. Hester Pond, Guilford County
- San-Lee Park Ponds, Lee County
- Kinston Neuseway Park Pond, Lenoir County
- Freedom Park Pond, Mecklenburg County
- ~~Hornet's Nest Pond, Mecklenburg County~~
- McAlpine Lake, Mecklenburg County
- Lake Luke Marion, Moore County
- Lake Michael, Orange County
- River Park North Pond, Pitt County
- Big Elkin Creek, Surry County
- Apex Community Lake, Wake County
- Lake Crabtree, Wake County
- Shelley Lake, Wake County
- Simpkins Pond, Wake County
- Lake Toisnot, Wilson County
- Ellerbe Community Lake, Richmond County
- Indian Lake, Edgecombe County
- Harris Lake County Park Ponds, Wake County
- Park Road Pond, Mecklenburg County
- Etheridge Pond on the Barnhill Public Fishing Area, Edgecombe County
- Newbold Pond on the Barnhill Public Fishing Area, Edgecombe County

Authority G.S. 113-134; 113-272; 113-292.

15A NCAC 10C .0404 SPECIAL DEVICE FISHING

- (a) Bow and Arrow. The use of bow [as defined in 15A NCAC 10B .0116(a)] and arrow as a licensed special device is authorized for taking nongame fishes at any time from all inland fishing waters other than impounded waters located on the Sandhills Game Land and designated public mountain trout waters. Unless specifically prohibited, bow and arrow may be used in joint fishing waters. It is unlawful to take fish with crossbow and arrow in any inland fishing waters.
- (b) Nets. ~~Where authorized, Manually~~ manually operated nets, including seines and bow, cast, dip, gill, drift and fyke nets may be used under the special device fishing license.
 - (1) No fixed gill net or other stationary net which may be authorized as a special fishing device may be more than 100 yards in length, nor shall any such net be placed within 50 yards of any other fixed net. Fixed nets must be set so that they run parallel to the nearest shoreline. ~~shoreline, except in the Neuse, Trent, Northeast Cape Fear, Cape Fear, and Black Rivers and their tributaries.~~

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No anchored or fixed gill net or drift net shall be used unless such net is marked for the protection of boat operators. A net shall be deemed so marked when there is attached to it at each end two separate yellow buoys which shall be of solid foam or other solid buoyant material no less than five inches in its smallest dimensions. The owner shall always be identified on a buoy on each end either by using engraved buoys or by attaching engraved metal or plastic tags to the buoys. Such identification shall include one of the following: owner's N.C. motor boat registration number, or owner's U.S. vessel documentation name, or owner's last name and initials.

- (2) It is unlawful to attach gill nets to any wire, rope, or similar device extended across any navigable watercourse.
- (3) ~~All fixed or drift gill nets must be attended when fished in the designated inland waters of Beaufort, Bertie, Bladen, Brunswick, Camden, Carteret, Chowan, Columbus, Craven, Cumberland, Currituck, Dare, Duplin, Gates, Greene, Harnett, Hertford, Hoke, Hyde, Jones, Lenoir, Martin, New Hanover, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Pitt, Robeson, Sampson, Scotland, Tyrrell and Washington counties. Attended as used in this Rule, requires that fishermen be within 100 yards of all sets of nets at all times.~~

(c) Traps. Baskets and traps, including automobile tires, may be used under the special device fishing license. Such devices when set and left unattended shall be affixed with a card or tag furnished by the license holder and upon which his name and address shall be legibly and indelibly inscribed. No fish trap may exceed 60 inches in length or 30 inches in depth or width. No lead nets, wing nets, or other device designed to guide or herd fish may be attached to the trap or used or set within 25 feet of the trap.

(d) Spears. Manually operated gigs or under-water spear or harpoon guns may be used under the special fishing device license in the inland waters having a season for their use specified in Rule .0407 of this Section.

(e) Crab pots. It is unlawful to use crab pots in inland fishing waters, except by persons owning property adjacent to the inland fishing waters of coastal rivers and their tributaries who are permitted to set two crab pots to be attached to their property and not subject to special device license requirements.

(f) Eel pots. It is unlawful to use pots with mesh sizes smaller than one inch by one-half inch unless such pots contain an escape panel that is at least four inches square with a mesh size of one inch by one-half inch located in the outside panel of the upper chamber of rectangular pots and in the rear portion of cylindrical pots, ~~except that not more than two eel pots per fishing license with a mesh of any size may be used to take eels for bait pots.~~ Each pot must be marked by attaching a floating buoy which shall be of solid foam or other solid buoyant material and no less than five inches in diameter and no less than five inches in length. Buoys may be of any color except yellow. The owner shall always be identified on the attached buoy by using engraved buoys or by engraved metal or plastic tags attached to the buoy. Such identification shall include one of the following:

- (1) owner's N.C. motorboat registration number; or
- (2) owner's U.S. vessel documentation name; or
- (3) owner's last name and initials.

Authority G.S. 113-134; 113-272.2; 113-276; 113-292.

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Wildlife Resources Commission intends to amend the rule cited as 15A NCAC 10F .0339. Notice of Rule-making Proceedings was published in the Register on September 1, 2000.

Proposed Effective Date: July 1, 2002

Public Hearing:

Date: November 30, 2000

Time: 10:00 a.m.

Location: Archdale Building, Room 332, 512 N. Salisbury St., Raleigh, NC

Reason for Proposed Action: *The McDowell County Board of Commissioners initiated the no-wake zone pursuant to G.S. 75A-15, to protect public safety in the area by restricting vessel speed. The Wildlife Resources Commission may adopt this as a temporary rule pursuant to G.S. 150B-21.1(a1) following the public hearing and public comment period as indicated in the notice.*

Comment Procedures: *Interested persons may present their views either orally or in writing at the hearing. In addition, the record of hearing will be open for receipt of written comments through December 15, 2000. Such written comments must be mailed to the NC Wildlife Resources Commission, 1701 Mail Service Center, Raleigh, NC 27699-1701.*

Fiscal Impact

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

CHAPTER 10 – WILDLIFE RESOURCES AND WATER SAFETY

SUBCHAPTER 10F – MOTORBOATS AND WATER SAFETY

SECTION .0300 – LOCAL WATER SAFETY REGULATIONS

15A NCAC 10F .0339 MCDOWELL COUNTY

(a) Regulated Areas. This Rule applies to the following waters located on Lake James in McDowell County:

- (1) that area adjacent to the shoreline of the McDowell Wildlife Club property;
- (2) that area adjacent to the shoreline of the Marion Moose Club property;

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- (3) that area known as Morgan Cove;
(4) that area within 50 yards of the shoreline at the New Manna Baptist Youth Camp;
(5) that area within 50 yards of the shoreline at Burnett's Landing;
(6) the cove area adjacent to the State Park swimming area;
(7) the cove area adjacent to the State Park picnic area and dock;
(8) that area within 50 yards of camping areas in the Lake James State Park as designated by the appropriate markers;
(9) that area within 50 yards of the boat launching ramp at the Marion Lake Club;
(10) that area within 50 yards in either direction from the marina docks in Plantation Point Cove;
(11) that designated area of Goodman's Landing Cove within 50 yards of the swimming area and boat docks of Goodman's Campground;
(12) that area beginning at the rock shoals located at Deerfield Campground downstream for a distance of approximately 200 yards as delineated by appropriate markers;
(13) that area as delineated by appropriate markers along the shoreline of the development known as Lakeview Pointe;
(14) that area as delineated by appropriate markers at the Waterglyn Subdivision ~~Cove-Cove~~;
(15) that area as delineated by appropriate markers along the shoreline of the Lakeview Shores Subdivision Subdivision;
(16) that area as delineated by appropriate markers at the North Fork of the Catawba River where it enters Lake James.

- (b) Speed Limit. No person shall operate any motorboat or vessel at greater than no-wake speed within any of the regulated areas described in Paragraph (a) of this Rule.
(c) Restricted Swimming Areas. No person operating or responsible for the operation of any vessel, surfboard or waterskis shall permit the same to enter any marked swimming area located on the regulated area.
(d) Placement and Maintenance of Markers. The Board of Commissioners of McDowell County is designated a suitable agency for placement and maintenance of the markers implementing this Rule.

Authority G.S. 75A-3; 75A-15.

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Wildlife Resources Commission intends to amend the rule cited as 15A NCAC 10I .0105. Notice of Rule-making Proceedings was published in the Register on September 1, 2000.

Proposed Effective Date: July 1, 2002

Public Hearing:

Date: December 4, 2000

Time: 7:00 p.m.

Location: Bryson City Auditorium, Bryson City, NC

Reason for Proposed Action: This rule is intended to list elk as a species of "special concern," which offers protection to the species.

Comment Procedures: Interested persons may present their views either orally or in writing at the hearing. In addition, the record of hearing will be open for receipt of written comments until February 16, 2001. Such written comments must be mailed to the NC Wildlife Resources Commission, 1701 Mail Service Center, Raleigh, NC 27699-1701.

Fiscal Impact

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

SUBCHAPTER 10I - ENDANGERED AND THREATENED SPECIES

SECTION .0100 - ENDANGERED AND THREATENED SPECIES

15A NCAC 10I .0105 SPECIAL CONCERN SPECIES LISTED

The following species of resident wildlife are designated as state-listed special concern species:

- (1) Amphibians:
(a) Carolina crawfish frog (Rana areolata capito);
(b)(a) Crevice salamander (Plethodon longicrus);
(c)(b) Dwarf salamander [silver morph] (Eurycea quadridigitata);
(d)(c) Eastern hellbender (Cryptobranchus a. alleganiensis);
(e)(d) Four-toed salamander (Hemidactylum scutatum);
(f) Junaluska salamander (Eurycea junaluska);
(g)(e) Longtail salamander (Eurycea l. longicauda);
(h)(f) Mole salamander (Ambystoma talpoideum);
(i)(g) Mountain chorus frog (Pseudacris brachyphona);
(j)(h) Mudpuppy (Necturus maculosus);
(k)(i) Neuse River waterdog (Necturus lewisi);
(l)(j) River frog (Rana heckscheri);
(m)(k) Weller's salamander (Plethodon welleri);
(n)(l) Zigzag salamander (Plethodon dorsalis);
Ventralis).
(2) Birds:
(a) Bachman's sparrow (Aimophila aestivalis);
(b) Black-capped chickadee (Parus Poecile atricapillus);
(c) Black skimmer (Rynchops niger);
(d) Brown pelican (Pelecanus occidentalis);
(e)(d) Black vulture (Coragyps atratus);
(f) Brown creeper (Certhia americana nigrescens);
(g) Common tern (Sterna hirundo);

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- (~~f~~)(g) Cooper's hawk (*Accipiter cooperii*);
 (~~g~~)(h) Glossy ibis (*Plegadis falcinellus*);
 (h) ~~Golden-crowned kinglet (*Regulus satrapa*);~~
 (i) Least tern (*Sterna antillarum*);
 (~~i~~)(j) Little blue heron (*Egretta caerulea*);
 (~~j~~)(k) Loggerhead shrike (*Lanius ludovicianus*);
 (k) ~~Northern saw-whet owl (*Aegolius acadicus*);~~
 (~~k~~)(l) Olive-sided flycatcher (*Contopus borealis*);
cooperi);
 (m) Red crossbill (*Loxia curvirostra*);
 (~~m~~)(n) Snowy ~~Egret egret~~ (*Egretta thula*);
 (~~n~~)(o) Tricolored heron (*Egretta tricolor*);
tricolor);
 (p) Yellow-bellied sapsucker (*Sphyrapicus varius*
appalachiensis).
- (3) Crustacea:
 (a) Broad River spiny crayfish (*Cambarus spicatus*);
 (b) Chowanoke crayfish (*Orconectes virginienis*);
 (c) Greensboro burrowing crayfish (*Cambarus*
catagius);
 (d) Hiwassee headwaters crayfish (*Cambarus parrishi*);
 (e) Little Tennessee River crayfish (*Cambarus*
georgiae);
 (f) North Carolina spiny crayfish (*Orconectes*
carolinensis);
 (g) Oconee stream crayfish (*Cambarus chaugaensis*);
 (h) Waccamaw crayfish (*Procambarus braswelli*).
- (~~3~~)(4) Fish:
 (a) Atlantic ~~Sturgeon sturgeon~~ (*Acipenser*
oxyrhynchus);
 (b) ~~Bigeye Jumprock (*Moxostoma ariommum*)~~;
 (~~e~~)(b) Bluefin ~~Killifish killifish~~ (*Lucania goodei*);
 (~~d~~)(c) Blueside ~~Darter darter~~ (*Etheostoma jessiae*);
 (~~e~~)(d) Bridle ~~Shiner shiner~~ (*Notropis bifrenatus*);
 (~~f~~)(e) Broadtail ~~Madtom madtom~~ (*Noturus n. sp.*)
 (Lumber River and its tributaries and Cape Fear
 River and its tributaries);
 (~~g~~)(f) Carolina ~~Darter darter~~ (*Etheostoma collis*);
 (~~h~~)(g) Carolina ~~Madtom madtom~~ (*Noturus furiosus*)
 (Neuse River and its tributaries);
 (~~i~~)(h) Highfin ~~Carp sucker carp sucker~~ (*Carpiodes*
velifer);
 (~~j~~)(i) Kanawha ~~Minnow minnow~~ (*Phenacobius*
teretulus);
 (~~k~~)(j) Lake ~~Sturgeon sturgeon~~ (*Acipenser*
fulvescens);
 (l) ~~Least Brook Lamprey (*Lampetra aepyptera*)~~;
 (~~m~~)(k) Least ~~Killifish killifish~~ (*Heterandria formosa*);
 (~~n~~)(l) Longhead ~~Darter darter~~ (*Percina*
macrocephala);
 (~~o~~)(m) Mooneye (*Hiodon tergisus*);
 (~~p~~)(n) Mountain ~~Madtom madtom~~ (*Noturus*
eleutherus);
 (~~q~~)(o) Olive ~~Darter darter~~ (*Percina squamata*);
 (~~r~~)(p) Pinewoods ~~Darter darter~~ (*Etheostoma mariae*);
 (~~s~~)(q) River ~~Carp sucker carp sucker~~ (*Carpiodes*
carpio);
 (t) ~~River Redhorse (*Moxostoma carinatum*) (Pee-Dee~~
River and its tributaries);
- (~~u~~)(r) Riverweed ~~Darter darter~~ (*Etheostoma*
podostemone);
 (~~v~~)(s) Rosyside ~~Dace dace~~ (*Clinostomus funduloides*
 ssp.) (Little Tennessee River and its tributaries);
 (~~w~~)(t) Sandhills ~~Chub chub~~ (*Semotilus lumbee*);
 (~~x~~)(u) Sharpnose ~~Darter darter~~ (*Percina*
oxyrhyncha);
(Percina oxyrhynchus);
 (~~y~~)(v) Tennessee ~~Snubnose snubnose Darter darter~~
 (*Etheostoma simoterum*);
 (~~z~~)(w) Thinlip ~~Chub chub~~ (*Hybopsis sp.*) (*Cyprinella*
zanema) (Lumber River and its tributaries and
 Cape Fear River and its tributaries);
 (~~aa~~)(x) Turquoise ~~Darter darter~~ (*Etheostoma*
inscriptum);
 (~~bb~~)(y) Waccamaw ~~Killifish killifish~~ (*Fundulus*
waccamensis);
 (~~cc~~)(z) Wounded ~~Darter darter~~ (*Etheostoma*
vulneratum);
 (~~dd~~)(aa) Yellowfin ~~Shiner shiner~~ (*Notropis lutipinnis*)
 (Savannah River and its tributaries and Little
 Tennessee River and its tributaries).
- (4)(5) Mammals:
 (a) ~~Brazilian free-tailed bat (*Tadarida brasiliensis*~~
eynocephala);
 (b) ~~Eastern wood rat (*Neotoma floridana haemitora*~~
and *N.f. magister*);
 (a) Allegheny woodrat (*Neotoma magister*);
 (b) Elk (*Cervus elaphus*);
 (c) Keen's bat (*Myotis keenii septentrionalis*);
 (d) Long-tailed shrew (*Sorex dispar blitchi*);
 (e) Pungo white-footed mouse (*Peromyscus leucopus*
easti);
 (e) ~~Pygmy shrew (*Sorex hoyi winnemana*)~~;
 (f) ~~Rafinesque's big-eared bat (*Plecotus r. rafinesquii*~~
and *P.r. macrotis*);
 (~~g~~)(f) Rock vole (*Microtus chrotorrhinus*
carolinensis);
 (~~h~~)(g) Small-footed bat (*Myotis l. leibii*);
 (~~i~~)(h) Southeastern bat (*Myotis austroriparius*);
 (i) Southern Appalachian woodrat (*Neotoma floridana*
haematorea);
 (j) Star-nosed mole (*Condylura cristata parva*);
 (k) Water shrew (*Sorex palustris punctulatus*).
- (5)(6) Mollusks:
 (a) ~~Alabama rainbow (*Villosa nebulosa*)~~;
 (b) ~~Alewife floater (*Anodonta implicata*)~~;
 (~~e~~)(a) Appalachian gloss (*Zonitoides patuloides*);
 (~~d~~)(b) Bidentate dome (*Ventridens coelaxis*);
 (~~e~~)(c) Black mantleslug (*Pallifera hemphilli*);
 (~~f~~)(d) Blackwater ancyliid (*Ferrissia hendersoni*);
 (~~g~~)(e) Blue-foot lancetooth (*Haplotrema kendeighi*);
 (h) ~~Carolina creekshell (*Villosa vaughaniana*)~~;
 (f) Cape Fear spike (*Elliptio marsupiobesa*);
 (i) ~~Carolina elktoe (*Alasmidonta robusta*)~~;
 (j)(g) Dark glyph (*Glyphyalinia junaluskana*);
 (~~k~~)(h) Dwarf proud globe (*Mesodon clarki*);
 (l)(i) Dwarf threetooth (*Triodopsis fulciden*);
 (m) ~~Eastern lampmussel (*Lampsilis radiata*)~~;
 (n) ~~Eastern pondmussel (*Ligumia nasuta*)~~;

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- (~~o~~)(j) Fringed coil (*Helicodiscus fimbriatus*);
(~~p~~)(k) Glossy supercoil (*Paravitrea placentula*);
(~~q~~)(l) Great Smoky slitmouth (*Stenotrema depilatum*);
(~~r~~) ~~Greenfield rams horn (*Helisoma eucosmium*)~~;
(~~s~~)(m) High mountain supercoil (*Paravitrea andrewsae*);
(~~t~~)(n) Honey glyph (*Glyphyalinia vanattai*);
(~~u~~)(o) Lamellate supercoil (*Paravitrea lamellidens*);
(~~v~~)(p) Mirey Ridge supercoil (*Paravitrea clappi*);
(q) Notched rainbow (*Villosa constricta*);
(~~w~~)(r) Open supercoil (*Paravitrea umbilicaris*);
(~~x~~)(s) Pink glyph (*Glyphyalinia pentadelpia*);
(~~y~~)(t) Pod lance (*Elliptio folliculata*);
(~~z~~)(u) Queen crater (*Mesodon chilhoweensis*);
(v) Rainbow (*Villosa nebulosa*);
(~~aa~~)(w) Ramp Cove supercoil (*Paravitrea lacteodens*);
(~~bb~~)(x) Saw-tooth disc (*Discus bryanti*);
(~~cc~~)(y) Spike (*Elliptio dilatata*);
(~~dd~~)(z) Spiral coil (*Helicodiscus bonamicus*);
(~~ee~~) ~~Tidewater mucket (*Lampsilis ochracea*)~~;
(~~ff~~)(aa) Velvet covert (*Mesodon subpalliatum*);
(~~gg~~)(bb) Waccamaw amnicola (*Amnicola* sp.);
(~~hh~~)(cc) Waccamaw lampmussel (*Lampsilis crocata*);
(~~ii~~)(dd) Waccamaw siltsnail (*Cincinnatia* sp.);
(~~jj~~)(ee) Wavy-rayed lampmussel (*Lampsilis fasciola*).
(~~6~~)(7) Reptiles:
(a) Carolina pigmy rattlesnake (*Sistrurus m. miliarius*);
(~~a~~)(b) Carolina salt marsh snake (*Nerodia sipedon williamengelsi*);
(~~b~~)(c) Diamondback terrapin (*Malaclemys terrapin*);
(~~c~~)(d) Eastern smooth green snake (*Opheodrys v. vernalis*);
(~~d~~)(e) Eastern spiny softshell (*Apalone s. spinifera*);
(~~e~~)(f) Mimic glass lizard (*Ophisaurus mimicus*);
(~~f~~)(g) Northern pine snake (*Pituophis m. melanoleucus*);
(~~g~~)(h) Outer banks kingsnake (*Lampropeltis ~~getulus~~ getula sticticeps*);
(i) Southern hognose snake (*Heterodon simus*);
(~~h~~)(j) Stripeneck musk turtle (*Sternotherus minor ~~peltifer~~-peltifer*);
(k) Timber rattlesnake (*Crotalus horridus*).

Authority G.S. 113-134; 113-291.2; 113-292; 113-333.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Board of Dietetics/Nutrition intends to amend the rules cited as 21 NCAC 17 .0101, .0103-.0105, .0107-.0111, .0113-.0116, .0302-.0304, .0401-.0402 and repeal the rules cited as 21 NCAC 17 .0102, .0301. Notice of Rule-making Proceedings was published in the Register on September 15, 2000.

Proposed Effective Date: July 1, 2002

Public Hearing:

Date: January 3, 2001

Time: 10:00 am

Location: Law Offices of Jordan Price Wall Gray Jones & Carlton, 225 Hillsborough St., St. 200, Raleigh, NC 27603

Reason for Proposed Action: All amendments are to reflect changes in technology, changes in the national registration exam and the need for clarification in other portions of the rules to conform to changes in the practice of dietetics and nutrition.

Comment Procedures: Comments may be submitted to Ms. Kim M. Dove, R.D., LDN, NC Board of Dietetics/Nutrition, PO Box 1509, Garner, North Carolina 27529 by January 10, 2001.

Fiscal Impact

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

CHAPTER 17 - BOARD OF DIETETICS/NUTRITION

SECTION .0100 - LICENSURE

21 NCAC 17 .0101 DEFINITIONS

As used in this Chapter, the following terms and phrases, which have not already been defined in the Practice Act, G.S. 90-350 through 90-369, shall have the meanings specified:

- (1) "Act" means Dietetics/Nutrition Practice Act.
- (2) "ADA" means The American Dietetic Association.
- (3) "Applicant" means any person who has applied to the Board for a license to practice dietetics/nutrition in the State of North Carolina.
- (4) "Application" means a written request directed to and received by the Board, on forms supplied by the Board, for a license to practice dietetics/nutrition in the State of North Carolina, together with all information, documents and other materials ~~required by the Board.~~ necessary for the Board to act on that application.
- (5) "CDR" means the Commission on Dietetic Registration ~~that which is the national certifying agency for voluntary professional credentialing in dietetics and nutrition and is~~ a member of the National Commission for Health Certifying Agencies.
- (6) "CAADE" means the Commission on Accreditation/Approval for Dietetics Education. ~~that is the national accrediting/approval body for dietetics education and supervised practice programs and is recognized as an accrediting body by the U.S. Department of Education and the Commission on Recognition of Postsecondary Accreditation (CORPA).~~
- (7) "Degree" means a degree received from a college or university that was U.S. regionally accredited at the time the degree was conferred.
- (8) "Dietitian/nutritionist" means one engaged in dietetics/nutrition practice.
- (9) "Executive Secretary" means the person employed to carry out the administrative functions of the Board.

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- (10) "Health care ~~professional practitioner~~" shall include any individual ~~who, who~~ is licensed under G.S. 90, ~~is licensed to engage in the practice of medicine, nursing, dentistry, occupational therapy, pharmacy, physical therapy, and speech pathology. 90.~~
- (11) "~~Nutrition assessment~~" Medical nutrition therapy means the evaluation of the nutrition needs of individuals and groups based upon ~~appropriate~~ biochemical, anthropometric, physical, and food intake and diet history data to determine ~~nutrient nutritional~~ needs and recommend appropriate nutrition intake including enteral and parenteral nutrition.
- (12) "Nutrition counseling" means the advice and assistance provided by licensed dietitians/nutritionists to individuals or groups on ~~appropriate~~ nutrition intake by integrating information from the nutrition assessment with information on food and other sources of nutrient and meal preparation consistent with cultural background, socioeconomic status and therapeutic needs.
- (13) "Provisionally licensed dietitian/nutritionist" means a person provisionally licensed under this act.
- (14) "Equivalent major course of study" means one which meets the knowledge requirements of the ADA-Approved Didactic program in Dietetics as referenced in the most current edition of the "Accreditation/Approval Manual for Dietetic Education Programs". This standard includes any subsequent amendments and editions of the referenced material. Copies of this manual may be purchased from the ADA Sales Order Department, P.O. Box 97215, Chicago, IL 60678-7215 at a cost of twenty-nine dollars and ninety-five cents (\$29.95).
- (15) "Supervised practice program" means one which meets the standards of the ADA-approved/accredited supervised practice program in dietetics as referenced in the most current edition of the "Accreditation/Approval Manual for Dietetic Education Programs". This standard includes any subsequent amendments and editions of the referenced material. Copies of this manual may be purchased from the ADA Sales Order Department, P.O. Box 97215, Chicago, IL 60678-7215 at a cost of twenty-nine dollars and ninety-five cents (\$29.95).
- (16) "Supervision" means that a licensed dietitian/nutritionist shall:
 - (a) be available for consultation on medical nutrition services being performed by the unlicensed person being supervised;
 - (b) provide supervision that is characterized by a direct association with the unlicensed person being supervised; and
 - (c) directly and personally examine, evaluate and approve the acts or functions of the person supervised.

Authority G.S. 90-352; 90-356.

21 NCAC 17 .0102 REQUIREMENT OF LICENSE

~~A dietitian registered by the CDR shall have the right to use the title registered dietitian and the designation RD when the dietitian is currently licensed according to G.S. 90, Article 25. A dietitian certified by the American Society for Parenteral and Enteral Nutrition shall have the right to use the title certified nutrition support dietitian and the designation CNSD when the dietitian is currently licensed according to G.S. 90, Article 25.~~

Authority G.S. 90-356; 90-365.

21 NCAC 17 .0103 QUALIFICATIONS FOR LICENSURE

Each applicant for an initial license as a licensed dietitian/nutritionist shall meet the qualifications as set forth in G.S.90-352. ~~either:~~

- ~~(1) Provide evidence of current registration as a Registered Dietitian by the Commission on Dietetic Registration; or~~
- ~~(2) Provide evidence of having:~~
 - ~~(a) received a minimum of a baccalaureate degree with a major course of study in human nutrition, foods and nutrition, dietetics, community nutrition, public health nutrition, or an equivalent major course of study. Equivalent major course of study shall mean one which meets the current knowledge requirements of the ADA-Approved Didactic Program in Dietetics as referenced in the second edition of the "Accreditation/Approval Manual for Dietetic Education Programs". This standard includes any subsequent amendments and editions of the referenced material. Copies of this manual may be purchased for twenty one dollars and ninety five cents (\$21.95) plus three dollars and fifty cents (\$3.50) minimum shipping and handling from the ADA Sales Order Department, P.O. Box 97215, Chicago, IL 60678 7215; and~~
 - ~~(b) provide evidence of having successfully completed a planned, continuous program in approved dietetics practice of not less than 900 hours under the supervision of a state's licensed dietitian/nutritionist. Practice program shall mean one which meets the current standards of the ADA-approved/accredited supervised practice program in dietetics as referenced in the second edition of the "Accreditation/Approval Manual for Dietetic Education Programs". This standard includes any subsequent amendments and editions of the referenced material. Copies of this manual may be purchased for twenty one dollars and ninety five cents (\$21.95) plus three dollars and fifty cents (\$3.50) minimum shipping and handling from the ADA Sales Order Department, P.O. Box 97215, Chicago, IL 60678 7215; and~~
 - ~~(c) provide evidence of having passed an examination as referenced in 21 NCAC 17 .0005; or~~
- ~~(3) Provide evidence of having:~~
 - ~~(a) received a master's degree in human nutrition, nutrition education, foods and nutrition, public health nutrition or an equivalent major course of~~

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~~study. Equivalent major course of study shall mean one which meets the current knowledge requirements of the ADA-Approved Didactic Program in Dietetics as referenced in the second edition of the "Accreditation/Approval Manual for Dietetic Education Programs". This standard includes any subsequent amendments and editions of the referenced material. Copies of this manual may be purchased for twenty one dollars and ninety five cents (\$21.95) plus three dollars and fifty cents (\$3.50) minimum shipping and handling from the ADA Sales Order Department, P.O. Box 97215, Chicago, IL 60678-7215; and~~

~~(b) provide evidence of having successfully completed a documented supervised practice experience component in dietetics practice of not less than 900 hours under the supervision of a health care practitioner licensed in good standing by the state; and~~

~~(c) provide evidence of having passed an examination as defined by the Board; or~~

~~(4) Provide evidence of having received a doctorate degree in human nutrition, nutrition education, foods and nutrition, public health nutrition, or an equivalent major course of study, or have received a Doctor of Medicine degree. Equivalent major course of study shall mean one which meets the current knowledge requirements of the ADA-Approved Didactic Program in Dietetics as referenced in the second edition of the "Accreditation/Approval Manual for Dietetic Education Programs". This standard includes any subsequent amendments and editions of the referenced material. Copies of this manual may be purchased for twenty one dollars and ninety five cents (\$21.95) plus three dollars and fifty cents (\$3.50) minimum shipping and handling from the ADA Sales Order Department, P.O. Box 97215, Chicago, IL 60678-7215. Successful completion of minimum course requirements in G.S. 90-357(3)d may include teaching of equivalent course at an ADA-Approved Didactic Program in Dietetics or an ADA-Accredited Coordinated Program as referenced in the second edition of the "Accreditation/Approval Manual for Dietetic Education Programs" within the last five years.~~

Authority G.S. 90-356; 90-357.

21 NCAC 17 .0104 APPLICATIONS

(a) Each applicant for initial licensure or renewal shall file a completed application with the Board. ~~The application must be upon the forms and in the manner prescribed by the Board.~~

(b) Applications shall be typed or written in ink, signed under the penalty of perjury and accompanied by the appropriate nonrefundable fees and by such evidence, statements or documents showing to the satisfaction of the Board that applicant meets requirements.

(c) Applications are to be submitted to the address designated by the Board.

(d) ~~Approved~~ applications and all documents filed in support thereof shall become the property of the Board.

(e) The Board ~~will~~ shall not consider an application ~~as officially submitted~~ until the applicant pays the application fee. ~~in full.~~

(f) The Board must receive all required application materials from applicants seeking examination eligibility according to the following schedule:

(1) Applicant seeking examination eligibility from CDR must submit application materials at least ~~120~~ 30 days prior to the date the applicant wishes to take the examination.

(2) Applicant seeking examination eligibility from the Board must submit application at least ~~180~~ 60 days prior to the date the applicant wishes to take the examination.

(g) The Executive Secretary ~~will~~ shall send a notice to an applicant who does not complete the application which lists the additional materials required.

~~(h) The application for a license shall contain such information as the Board may reasonably require.~~

~~(i) The submission of an application for licensing to the Board shall constitute and operate as an authorization and consent by the applicant to the Board to disclose and release any information or documentation set forth in or submitted with the applicant's application or obtained by the Board from other sources as required.~~

~~(i)(h)~~ Applicants, who must provide evidence of current registration as a Registered Dietitian by the CDR in G.S. 90-357(3)a, shall submit a notarized photocopy of the applicant's signed registration identification card.

~~(j)(i)~~ Applicants, who must provide evidence of completing academic requirements in G.S. 90-357(3) b.1, c.1 and d, shall either:

(1) Submit ~~official~~ transcripts and a verification statement which includes the original signature of the Program Director of a college or university in which the course of study has been approved as meeting the current knowledge requirements of the ADA; or

(2) Request, complete and submit documents for the evaluation of an equivalent major course of study as referenced in 21 NCAC 17 ~~.0103~~ .0101 and submit submitting official transcripts from all colleges attended.

~~(k)(j)~~ Applicants, who must provide evidence of completing supervised practice requirements in G.S. 90-~~367~~ 357 (3)b.2 and c.2, shall either:

(1) Submit a verification statement which includes the original signature of the Program Director or Sponsor of a supervised practice program or plan which has been approved/accredited to meet the dietetic practice requirements of ADA; or

(2) Request, complete and submit documents for the evaluation of the supervised practice experience as referenced in 21 NCAC 17 ~~.0103~~ .0101.

~~(k)(k)~~ Applicants who have obtained their education outside of the United States and its territories must:

(1) Have their academic degree evaluated by an approved credentialing evaluation agency, as equivalent to the baccalaureate or higher degree conferred by a U.S.

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college or university accredited by the regional accrediting agencies recognized by the Council on Postsecondary Accreditation and the U.S. Department of Education; and

- (2) Have any diploma or other document required to be submitted to the Board which is not in the English language be accompanied by a certified translation thereof in English by an approved credentials evaluation service, service; and
- ~~(3) Demonstrate proficiency in the English language through passage of the Test of English as a Foreign Language (TOEFL) and the Test of Spoken English (TSE) which are administered by the Educational Testing Service (ETS).~~

Authority G.S. 90-356.

21 NCAC 17 .0105 EXAMINATION FOR LICENSURE

- ~~(a) The applicant shall meet the criteria established by the CDR for eligibility to take the examination for licensure purposes.~~
- ~~(a)(b) The Board approves the examination offered by the Commission on Dietetic Registration (CDR).~~
- ~~(b)(c) The examination shall be offered at least twice each year by ACT year round at designated ACT testing centers to qualified applicants for licensing.~~
- ~~(c)(d) The Board recognizes the passing score set by the CDR.~~
- ~~(d) The applicant shall meet the criteria established by the CDR for eligibility to take the examination for licensure purposes.~~
- ~~(e) If an applicant has failed three or more examinations, the Board shall recommend additional course work to be completed by the applicant prior to taking the examination again. The course work shall be in areas of weakness on the examination.~~

Authority G.S. 90-356; 90-359.

21 NCAC 17 .0107 PROVISIONAL LICENSE

- (a) Applicants for a provisional license shall provide evidence of completing academic requirements by:
 - (1) Submitting official transcripts and a verification statement which includes the original signature of the Program Director of a college or university in which the course of study has been approved as meeting the current knowledge requirements of the ADA; or
 - (2) Requesting, completing and submitting documents for the evaluation of an equivalent major course of study as referenced in 21 NCAC 17 .0103 and submitting official transcripts from all colleges attended.
- (b) Applicants shall provide evidence of completing supervised practice requirements by:
 - (1) Submitting a verification statement which includes the original signature of the Program Director or Sponsor of a supervised practice program or plan which has been approved/accredited approved by CDR to meet the dietetic practice requirements of ADA; or
 - (2) Requesting, completing and submitting documents for the evaluation of the supervised practice experience. as referenced in 21 NCAC 17 .0103.

(c) Applicants shall provide evidence of making application to take the examination.

(d) Provisional license may be issued for a period not exceeding one year ~~and may be renewed from year to year for a period not to exceed five years~~ upon completion of the following:

- (1) payment of annual issuance fees;
- (2) submission of completed application as prescribed by the Board;
- ~~(3) provision of documentation of having completed 15 hours of continuing education approved by the Board for a one year period;~~
- ~~(4) provision of evidence of making application to retake the examination;~~
- ~~(5)(3) provision of evidence of being under the supervision of licensed dietitian(s)/nutritionist(s).~~
- ~~(e) "Supervision" as referenced in G.S. 90-361 means that licensed dietitian(s)/nutritionist(s) shall:~~
 - ~~(1) be available for consultation on nutrition care activities being performed by the person being supervised;~~
 - ~~(2) directly and personally examine, evaluate and approve the acts or functions of the person supervised; and~~
 - ~~(3) provide supervision that is characterized by a direct, first hand association which is unrestricted by an intervening position of influence.~~

~~(f)(e)~~ Following the successful completion of the licensing examination, the provisionally licensed dietitian/nutritionist shall remit completed application for upgrading license, payment of fees, and evidence of passing examination referenced in 21 NCAC 17 .0105. If the provisionally licensed dietitian/nutritionist successfully completes the licensing examination and obtains a license pursuant to G.S. 90-357 within six months of the date that the provisional license became effective, the provisional license or renewal fee shall be deducted from the issuance fee.

~~(g) The Board will revoke a provisional license if the applicant fails to apply for the examination for licensure in a timely manner or does not take the examination.~~

Authority G.S. 90-356; 90-361.

21 NCAC 17 .0108 DISAPPROVED APPLICATION

The Board shall not approve an applicant for licensure if the applicant:

- (1) Has not completed the requirements in G.S. 90-350 through G.S. 90-369 including academic, experience and examination requirements.
- (2) Has failed to remit any applicable fees.
- (3) Has failed to comply with requests for supporting documentation, documentation prescribed by the Board.
- (4) Has deliberately presented false information on application documents required by the Board to verify applicant's qualifications for licensure.

Authority G.S. 90-356; 90-358.

21 NCAC 17 .0109 ISSUANCE AND RENEWAL OF LICENSE

(a) An applicant may shall be issued a license based on compliance with requirements stated in G.S. 90-357 and these

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Rules. The Board shall issue a license to any person who meets the requirements upon payment of the license fee prescribed.

~~The Executive Secretary shall send each licensee whose credentials have been approved a license.~~

(b) Licensee shall notify the Board of any change in the licensee's personal or professional address within 30 days of that change.

(c) Licenses ~~will~~ shall expire on March 31 of every year. Beginning in 1993, the licenses shall be issued for a period of one year beginning April 1 and ending March 31.

(d) At least ~~30~~ 60 days prior to the expiration date of the license, the licensee shall be sent written notice of the amount of renewal fee due, and a license renewal form which must be returned with the required fee.

(e) Licensee's renewal application must be postmarked prior to the expiration date in order to avoid the late renewal fee. Failure to receive renewal notice shall not be justification for late renewal.

(f) The Board ~~shall~~ may not renew the license of a person who is in violation of the Act, or Board rules at the time of application for renewal.

(g) Applicants for renewal of licenses ~~must~~ shall provide documentation of having met continuing education requirements by submitting either:

(1) Evidence of completing continuing education hours to maintain certification as a Registered Dietitian by the Commission on Dietetic Registration, ~~as referenced in "Continuing Professional Education: Guidelines for the Registered Dietitian" "Professional Development 2001 Portfolio". These standards are contained in the "Professional Development 2001 Portfolio", which is hereby incorporated by reference including subsequent amendments or additions of reference material. This standard includes any subsequent amendments and editions of the referenced material.~~ Copies of this standard may be obtained from the Commission on Dietetic Registration, the American Dietetic Association, 216 West Jackson Boulevard, Suite 800, Chicago, Illinois 60606-6995, at a cost of twenty-five dollars (\$25.00); or

(2) A ~~Summary of Continuing Education summary of continuing education~~ on the form ~~prescribed provided~~ by the Board documenting completion of 30 hours of continuing education ~~approved by the Board~~ for a two year period as referenced in the "Guidelines of Continuing Education for Licensed Dietitians/Nutritionists". ~~This standard includes any subsequent amendments and editions of the referenced material.~~ Copies of this standard may be obtained from the Executive Secretary of the Board.

(h) A renewal license shall be furnished to each licensee who meets all renewal requirements by the expiration date.

(i) The Board ~~may provide for the late renewal of~~ shall renew a license upon the payment of a late fee within 60 days of the expiration date of March 31. If the license has been expired for 60 days or less, the license may be renewed by returning the license renewal form with all appropriate fees and documentation to the Board, postmarked on or before the end of the 60-day grace period.

Authority G.S. 90-356; 90-362; 90-363.

21 NCAC 17 .0110 LICENSURE CERTIFICATE

(a) The Board shall prepare and provide to each licensee a license certificate and license identification card. The identification card shall contain the person's name, license number and date of expiration.

(b) ~~Official license~~ License certificates shall be signed by the ~~Chair~~ Chair, ~~and~~ Secretary ~~and~~ Treasurer and be affixed with the seal of the Board. ~~Official identification~~ Identification cards shall bear the signature of the Chair.

(c) Any certificate or identification card issued by the Board shall remain the property of the Board and shall be surrendered to the Board on demand.

(d) ~~Licenses shall comply with G.S. 90-640, of Article 37, which specifies the wearing of a name badge.~~ The license certificate must be displayed in ~~an appropriate and a~~ public manner as follows:

- (1) The license certificate shall be displayed in the primary place of employment of the licensee; or
- (2) In the absence of a primary place of employment or when the licensee is employed in multiple locations, the licensee shall carry a current, Board issued license identification card.

(e) Neither the licensee nor anyone else shall display a photocopy of a license identification card in lieu of the original license certificate or license identification card.

(f) Neither the licensee nor anyone else shall make any alteration on a license certificate or license identification card issued by Board.

(g) The Board shall replace a lost, damaged or destroyed license certificate or identification card upon receipt of a written request from the licensee and payment of the duplicate license fee.

(h) The licensee must submit a written request within 30 days of a name change to the Board who shall re-issue a license certificate ~~and~~ ~~and/or~~ license identification card. Requests shall be accompanied by duplicate license fee and ~~appropriate~~ documentation reflecting the change.

Authority G.S. 90-356; 90-362.

21 NCAC 17 .0111 INACTIVE STATUS

(a) A licensee may have a license placed in inactive status by written request to the Board, signed by the holder of the license or the holder's legal guardian.

(b) While a license is in an inactive status, the licensee shall meet the continuing education requirements each year as required by the Board's rules, but is not required to pay the ~~annual~~ renewal fee.

(c) A license may be withdrawn from inactive status by written request of the holder, completion of a renewal application, compliance with continuing education requirements and payment of the current licensing fee.

Authority G.S. 90-356; 90-362.

21 NCAC 17 .0113 FEES

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In accordance with the provisions of the Act, the following fees, where applicable, are payable to the Board by check or money order. Fees are nonrefundable, except for the Issuance Fee, if application is not approved.

Application Fee	\$ 25.00
Issuance Fee	100.00
License Renewal Fee	50.00
Late Renewal Fee	100.00
Examination Fee	150.00
Provisional License Fee	35.00
Provisional License Renewal Fee	35.00
Provisional License Late Renewal Fee	70.00
Duplicate License Certificate Fee	20.00
Duplicate License Identification Card Fee	10.00
Service Fee for Academic Program Approval by Board	50.00
Service Fee for Supervised Practice Program Approval by Board	75.00
Service Fee for Approval of License Requirements of Another State, Political Territory or Jurisdiction as Equivalent	50.00
Service Fee for Prior Approval by Board for Continuing Educational Programs	25.00
Service Fee for Annual Continuing Education Approval by Board for Licensee	25.00

Authority G.S. 90-356(2),(9); 90-361; 90-364.

21 NCAC 17.0114 CODE OF ETHICS FOR PROFESSIONAL PRACTICE AND CONDUCT

Licensees, under the Act, shall comply with the following Code of Ethics in their professional practice and conduct. The Code reflects the ethical principles of the dietetic/nutrition professional and outlines obligations of the licensee to self, client, society and the profession.

- (1) The licensee shall provide professional services with objectivity and with respect for the unique needs and values of individuals as determined through the nutritional assessment.
- (2) The licensee shall ~~avoid discrimination against other not deny services or employment to individuals based on that individuals, on the basis of~~ race, creed, religion, sex, age, national origin or handicap.
- (3) The licensee shall conduct all practices of dietetics/nutrition with honesty and integrity.
- (4) The licensee shall ~~fulfill professional commitments present substantiated information and interpret controversial information without personal bias, recognizing that legitimate differences of opinion exist. The licensee shall make all reasonable effort to avoid bias of any kind in the professional evaluation of others.~~
- (5) The licensee shall practice dietetics/nutrition based on scientific principles and current information.
- (6) The licensee shall assume responsibility and accountability for personal competence in practice.
- (7) The licensee shall inform the public ~~and colleagues of dietetic/nutrition services or products by use of factual information that will not mislead the public. of his/her~~

- (8) The licensee shall not exercise undue influence on a client, including the promotion of the sale of services or ~~products, products, for financial gain of the licensee or of a third party. The licensee shall be alert to any conflicts of interest and shall provide full disclosure when a real or potential conflict of interest arises.~~
- (9) The licensee shall not reveal ~~confidential data or~~ information about a client obtained in a professional capacity, without prior consent of the client, except as authorized or required by law and make full disclosure about any limitations on his/her ability to guarantee this.
- (10) The licensee shall recognize and exercise professional judgment within the limits of the licensee's qualifications and shall not accept or perform professional responsibilities which the licensee knows or has reason to know that he or she is not qualified to perform.
- (11) The licensee shall take reasonable action, with prior consent of the client, to inform a client's physician or other allied health care practitioner in cases where a client's nutritional status indicates a change in health status.
- (12) The licensee shall give sufficient information based on the client's ability to process information such that the client can make his or her own informed decisions.
- (13) The licensee shall accurately present professional qualifications and credentials according to G.S. 90-640 of Article 37 and as follows:
 - (a) The licensee shall use "LDN" when license is current and authorized by the North Carolina Board of Dietetics/Nutrition.
 - (b) The licensee shall provide accurate information and comply with all requirements of the North Carolina Board of Dietetics/Nutrition when seeking continued credentials from the North Carolina Board of Dietetics/Nutrition.
 - (c) The licensee shall not aid another person in violating any North Carolina Board of Dietetics/Nutrition requirements or aid another person in representing himself/herself as an "LD", "LN" or "LDN" when he/she is not.
- (14) The licensee shall permit use of that licensee's name for the purpose of certifying that dietetic/nutrition services have been rendered only if the licensee has provided or supervised those services.
- (15) When providing ~~direct~~ supervision to a student, trainee, provisional licensee, or person aiding the practice of dietetics/nutrition, the licensee shall assume responsibility ~~for the supervision for the person being supervised.~~
- ~~(16) When licensee approves a weight control program, the licensee shall assume responsibility for the general program of weight control including the diet and the guidelines for instruction of customers.~~
- (16) The licensee shall comply with all laws and regulations rules concerning the profession.

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~~(18)~~(17) The licensee shall ~~accept the obligation to protect society and the profession by upholding uphold~~ the Code of Ethics for professional practice and conduct ~~and~~ by reporting ~~alleged-suspected~~ misrepresentations and violations of the Code and the Act to the Board.

(19)(18) The licensee shall not interfere with an investigation of disciplinary proceeding by willful misrepresentation of facts to the Board or its ~~authorized~~ representative or by the use of threats or harassment against any person.

~~(20)~~(19) The licensee ~~or legal representative shall notify the Board and~~ may be subject to disciplinary action by the Board under the following circumstances:

- (a) The licensee is a chronic or persistent user of intoxicants, drugs or narcotics to the extent that the same impairs ~~his/hers his other~~ ability to practice dietetics/nutrition.
- (b) The licensee has been adjudged to be mentally incompetent in a court of competent jurisdiction or a determination thereof by other lawful means. This adjudication of mental incompetency shall be conclusive proof of unfitness to practice dietetics/nutrition unless or until such person shall have been subsequently lawfully declared to be mentally competent.
- (c) The licensee is mentally, emotionally, or physically unfit to practice dietetics/nutrition and is afflicted with such a mental, emotional or physical disability as to be ~~deemed~~ dangerous to the health and welfare of ~~the a~~ client.
- (d) The licensee has been convicted of or entered a plea of guilty or nolo contendere to any felony charge or to any misdemeanor charge involving moral turpitude under the laws of the United States or any of the states.
- (e) The licensee has been disciplined by ~~a~~ another state and at least one of the grounds for the discipline is the same or substantially equivalent to the grounds for discipline in this state.
- (f) The licensee has committed an act of misfeasance or malfeasance in the practice of dietetics/nutrition as determined by a court of competent jurisdiction, a licensing board, or an agency of a governmental body.
- (g) The licensee has violated any provisions of the act or any of these Rules.

~~(21)~~(20) The licensee shall not ~~engage in kissing, fondling, touching or engaging in any activities, advances, or comments of a sexual nature with any person with whom the licensee interacts within the professional setting, intentionally engage in any unauthorized, offensive bodily contact with a client while responsible for the care of that individual.~~

Authority G.S. 90-356(3).

21 NCAC 17.0115 EXEMPTIONS

~~(a) No person shall engage in the practice of dietetics/nutrition in the State of North Carolina unless he/she possesses a current~~

~~license or provisional license duly issued by the Board under the provisions of General Statutes Chapter 90, Article 25, unless exempted as defined in G.S. 90-368 of the Act.~~

(b) A student or trainee in pursuit of fulfilling the academic and experience requirements for licensure shall be exempt from ~~Chapter 90, Article 25 G.S. 90, Article 25~~ when:

- (1) The student or trainee submits evidence of enrollment and forward progress toward fulfillment of requirements to the Board on an annual basis;
- (2) The student or trainee is under the ~~direct~~ supervision of licensed dietitians/nutritionists for at least 70 percent of the supervised practical experience; and
- ~~(3) "Direct supervision" shall mean that licensed dietitians/nutritionists:
(A) must be physically present in the facility or institution when an act or function is being performed by the person supervised; and
(B) must provide supervision that is characterized by a direct, first-hand association which is unrestricted by an intervening influence; and
(C) must directly and personally examine, evaluate and approve the acts or functions of the person supervised; and~~
- ~~(4)~~(3) The student or trainee is designated by a title which clearly indicates his/her status as a student or trainee.

Authority G.S. 90-356; 90-368.

21 NCAC 17.0116 VIOLATIONS, COMPLAINTS, SUBSEQUENT BOARD ACTION, AND HEARINGS

(a) The definitions contained in G.S. 150B-2(1), (2), (2b), (4a), (4b), (5), (8), (8a), (8b) are incorporated by reference within this Rule. In addition, the following definitions apply:

- (1) "Administrative Law Counsel" means an attorney whom the Board has retained to serve as procedural counsel to advise the hearing officer concerning questions of procedure for contested cases.
 - (2) "Prosecuting Attorney" means the attorney retained by the Board to prepare and prosecute contested cases.
- (b) Before the North Carolina Board of Dietetics/Nutrition makes a final decision in any contested case, the person, applicant or licensee affected by such decision shall be afforded an administrative hearing pursuant to the provisions of Article 3A, Chapter 150B of the North Carolina General Statutes.
- (1) The paragraphs contained in this Rule shall apply to the conduct of all contested cases heard before or for the North Carolina Board of Dietetics/Nutrition.
 - (2) The following general statutes, rules, and procedures apply and are incorporated by reference within this Rule, unless another specific statute or rule of the North Carolina Board of Dietetics/Nutrition provides otherwise: the Rules of Civil Procedure as contained in G.S. 1A-1, the Rules of Evidence pursuant to G.S. Chapter 8C; 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 and Canons 1, 2 and 3 of the

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Code of Judicial Conduct adopted in accordance with G.S. 7A-10.1.

- (3) Every document filed with the Board shall be signed by the person, applicant, licensee, or the attorney who prepared the document, if it was prepared by an attorney, and shall contain his name, title/position, address, and telephone number. If the individual involved is a licensed dietitian/nutritionist, the license number shall appear on all correspondence with the Board. An original and one copy of each document shall be filed.
- (c) Anyone may complain to the Board alleging that a person, applicant or licensee has committed an action prohibited by G.S. 90-350 through G.S. 90-369 or the rules of the Board.
- (1) A person wishing to complain about an alleged violation of G.S. 90-350 through G.S. 90-369 or the rules of the Board may notify the Executive Secretary. A complaint regarding the Executive Secretary, the staff or the Board may be directed to the chair of the Board or any Board member.
- (2) The initial notification of a complaint may be in writing, by telephone, or by personal visit to the Executive Secretary's office.
- (3) Upon receipt of a complaint, the Executive Secretary, unless the health and safety of the public otherwise requires, shall send to the complainant an acknowledgement letter, and request the complainant complete and file a complaint form before further action shall be taken.
- (d) An Investigator or other authorized Board staff shall investigate a complaint and may take one or more of the following actions:
- (1) determine that an allegation is groundless and dismiss the complaint;
- (2) determine that the complaint does not come within the Board's jurisdiction, advise the complainant and, if possible, refer the complainant to the appropriate governmental agency for handling such complaints;
- (3) determine that a nonlicensed person has committed a prohibited action and take appropriate legal action against the violator; and
- (4) determine that a licensee has violated the Act or the rules of the Board and propose ~~denial of renewal of license, revocation or suspension of license, reprimand, or imposition of probationary conditions on a licensee~~ **an enforcement action authorized by law.**
- (e) Whenever a complaint is dismissed or a complaint file closed, the Executive Secretary shall give a summary report of the final action to the Board, the complainant, and the accused party.
- (f) In accordance with G.S. 150B-3(c), a license may be summarily suspended if Board finds that the public health, safety, or welfare requires emergency action. Such a finding shall be incorporated with the order of the Board and the order shall be effective on the date specified in the order or on service of the certified copy of the order at the last known address of the licensee, whichever is later, and shall continue to be effective during the proceedings. Failure to receive the order because of

refusal of service or unknown address does not invalidate the order. Proceedings shall be promptly commenced.

- (g) The Board, through its staff, shall issue a Letter of Charges only upon completion of an investigation of a written complaint and review with legal counsel or prosecuting attorney.
- (1) Subsequent to an investigation and validation of a complaint, a Letter of Charges shall be sent on behalf of the Board to the person, applicant or licensee who is the subject of the complaint.
- (A) The Letter of Charges shall be served in accordance with G.S. 1A-1, Rule 4, Rules of Civil Procedure.
- (B) The Letter of Charges shall serve as the Board's formal notification to the person that an allegation of possible violation(s) of the Act or the rules of the Board has been initiated.
- (C) The Letter of Charges shall not in and of itself constitute a contested case.
- (2) The Letter of Charges shall include the following:
- (A) a short and plain statement of the factual allegations;
- (B) a citation of the relevant sections of the statutes or rules involved;
- (C) notification that a settlement conference will be scheduled upon request;
- (D) explanation of the procedure used to govern the settlement conference;
- (E) notification that if a settlement conference is not requested, or if held, does not result in resolution of the case, a contested case hearing will be scheduled; and
- (F) if applicable, an offer of voluntary surrender or reprimand also may be included for specified types of alleged violations of the Act in accordance with Board-adopted policy.
- (3) A case becomes a contested case after the agency and the person, applicant or licensee do not agree to a resolution of the dispute through a settlement conference or either the agency or the person, applicant or licensee requests a contested case hearing.
- (h) No Board member shall discuss with any party the merits of any case pending before the Board. If a party files in good faith a timely and sufficient affidavit of personal bias or other reason for disqualification of any member of the Board, the Board shall determine the matter as part of the record in the case. This determination shall be subject to judicial review at the conclusion of the proceeding.
- (i) A settlement conference, if requested by the **person applicant or licensee**, shall be held for the purpose of attempting to resolve a dispute through informal procedures prior to the commencement of formal administrative proceedings.
- (1) The conference shall be held in the offices of the Board, unless another site is designated by mutual agreement of all involved parties.
- (2) All parties shall attend or be represented at the settlement conference. The parties will be prepared to discuss the alleged violations and the incidents on which these are based.

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- (3) At the conclusion of the day during which the settlement conference is held, a form must be signed by all parties which indicates whether the settlement offer is accepted or rejected. Subsequent to this decision:
- (A) if a settlement is reached, the Board will forward a written settlement agreement containing all conditions of the settlement to the other party(ies); or
- (B) if a settlement cannot be reached, the case will proceed to a contested case hearing by filing a petition with the Board.
- (j) Informal disposition may be made of a contested case or an issue in a contested case by stipulation, agreement or consent order at any time prior to or during the hearing of a contested case.
- (k) The Board shall give the parties in a contested case a Notice of Hearing not less than 15 calendar days before the hearing. The Notice shall be given in accordance with G.S. 150B-38(b) and (c). The Notice shall include:
- (1) acknowledgement of service, or attempted service, of the Letter of Charges in compliance with Paragraph (g) of this Rule;
 - (2) date, time, and place of the hearing;
 - (3) a short and plain statement of the factual allegations;
 - (4) a citation of the relevant sections of the statutes or rules involved;
 - (5) notification of the right of a party to represent himself or to be represented by an attorney;
 - (6) a statement that, pursuant to Paragraph (n) of this Rule, subpoenas may be requested by the licensee to compel the attendance of witnesses or the production of documents;
 - (7) a statement advising the licensee that a notice of representation, containing the name of licensee's counsel, if any, shall be filed with the Board not less than 10 calendar days prior to the scheduled date of the hearing;
 - (8) a statement advising the licensee that a list of witnesses for the licensee shall be filed with the Board not less than 10 calendar days prior to the scheduled date of the hearing; and
 - (9) a statement advising the licensee that failure to appear at the hearing may result in the allegations of the Letter of Charges being taken as true and that the Board may proceed on that assumption.
- (l) Prehearing conferences may be held to simplify the issues to be determined, to obtain stipulations in regards to foundations for testimony or exhibits, to obtain stipulations of agreement on nondisputed facts or the application of particular laws, to consider the proposed witnesses for each party, to identify and exchange documentary evidence intended to be introduced at the hearing, and to consider such other matters that may be necessary or advisable for the efficient and expeditious conduct of the hearing.
- (1) The prehearing conference will be conducted in the offices of the Board, unless another site is designated by mutual agreement of all parties.
 - (2) The prehearing conference shall be an informal proceeding and shall be conducted by a Board-designated member.
 - (3) All agreements, stipulations, amendments, or other matters resulting from the prehearing conference shall be in writing, signed by all parties, and introduced into the record at the beginning of the formal administrative hearing.
 - (m) Prehearing conferences or administrative hearings conducted before a majority of Board members shall be held in the county where the Board maintains its principal office, or by mutual consent in another location which will better promote the ends of justice or better serve the convenience of witnesses or the Board. For those proceedings conducted by an Administrative Law Judge, the venue will be determined in accordance with G.S. 150B-38(e). All hearings conducted by the Board shall be open to the public.
 - (n) The Board may issue subpoenas for the Board or a licensee, in preparation for, or in the conduct of, a contested case.
 - (1) Subpoenas for the attendance and testimony of witnesses or the production of documents or information, either at the hearing or for the purposes of discovery, shall be issued in accordance with G.S. 150B-39 and G.S. 1A-1, Rule 45.
 - (2) Requests by a licensee for subpoenas shall be made in writing to the Board and shall include the following:
 - (A) the full name and home or business address of all persons to be subpoenaed; and
 - (B) the identification, with specificity, of any documents or information being sought.
 - (3) Subpoenas shall include the date, time, and place of the hearing and the name and address of the party requesting the subpoena. In the case of subpoenas for the purpose of discovery, the subpoena shall include the date, time, and place for responding to the subpoena.
 - (4) Subpoenas shall be served as in the manner provided by G.S. 150B-39 and G.S. 1A-1, Rule 45. The cost of service, fees, and expenses of any witnesses or documents subpoenaed shall be paid in accordance with G.S. 150B-39(c) and G.S. 7A-314.
 - (5) Objections to subpoenas shall be heard in accordance with G.S. 150B-39 and G.S. 1A-1, Rule 45.
 - (o) All motions related to a contested case, except motions for continuance and those made during the hearing, shall be in writing and submitted to the Board at least 10 calendar days before the hearing, if any, is to be held either on the motion or the merits of the case. Prehearing motions will be heard at a prehearing conference or at the contested case hearing prior to the commencement of testimony. The Board-designated hearing officer will hear the motions and the response from the non-moving party pursuant to Rule 6 of the General Rules of Practice for the Superior and District Courts and rule on such motions. If the prehearing motions are heard by an Administrative Law Judge from Office of Administrative Hearings, the provisions of G.S. 150B-40(e) shall govern the proceedings.
 - (p) Motions for a continuance of a hearing may be granted upon a showing of good cause.
 - (1) Unless time does not permit, a request for a continuance of a hearing shall be made in writing and received by

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the office of the Board no less than seven calendar days before the hearing date. In determining whether good cause exists, consideration will be given to the ability of the party requesting a continuance to proceed effectively without a continuance. A motion for a continuance filed less than seven calendar days from the date of the hearing shall be denied unless the reason for the motion could not have been ascertained earlier. Motions for continuance filed prior to the date of the hearing shall be ruled on by the hearing officer or the Administrative Law Judge. All other motions for continuance will be ruled on by the majority of the Board members or Administrative Law Judge sitting at the hearing.

(A) "Good cause" includes: death or incapacitating illness of a party, representative, or attorney of a party; a court order requiring a continuance; lack of proper notice of the hearing; a substitution of the representative or attorney of a party if the substitution is shown to be required; a change in the parties or pleadings requiring postponement; and agreement for a continuance by all parties if either more time is clearly necessary to complete mandatory preparation for the case, such as authorized discovery, and the parties and the administrative law judge have agreed to new hearing date or parties have agreed to a settlement of the case that has been or is likely to be approved by the final decision maker.

(B) "Good cause" shall not include: intentional delay; unavailability of counsel or other representative because of engagement in another judicial or administrative proceeding unless all other members of the attorney's or representative's firm familiar with the case are similarly engaged; unavailability of a witness if the witness testimony can be taken by deposition, and failure of the attorney or representative to properly utilize the statutory notice period to prepare for the hearing.

(2) During a hearing, if it appears in the interest of justice that further testimony should be received and sufficient time does not remain to conclude the testimony, the Board shall either order the additional testimony taken by deposition or continue the hearing to a future date for which oral notice on the record is sufficient. In such situations and to such extent as possible, the seated members of the Board and the Board-designated hearing officer shall receive the additional testimony. In the event that new members of the Board or a different hearing officer must participate, a copy of the transcript of the hearing will be provided to them prior to the receipt of the additional testimony.

(3) A continuance shall not be granted when to do so would prevent the case from being concluded within any statutory or regulatory deadline.

(q) All hearings by the Board will be conducted by a majority of members of the Board, except as provided in Subparagraph (1) of this Paragraph. The Board shall designate one of its members to preside at the hearing. The Board shall designate an

administrative law counsel as procedural officer to conduct the proceedings of the hearing. The seated members of the Board shall hear all evidence, make findings of fact and conclusions of law, and issue an order reflecting a majority decision of the Board.

(1) When a majority of the members of the Board is unable or elects not to hear a contested case, the Board shall request the designation of an administrative law judge from the Office of Administrative Hearings to preside at the hearing. The provisions of Article 3A, Chapter 150B and 21 NCAC 17 .0116 shall govern a contested case in which an administrative law judge is designated as the Hearing Officer.

(2) In the event that any party or attorney at law or other representative of a party engages in behavior that obstructs the orderly conduct of proceedings or would constitute contempt if done in the General Court of Justice, the Board may apply to the applicable superior court for an order to show cause why the person(s) should not be held in contempt of the Board and its processes.

(r) All parties have the right to present evidence, rebuttal testimony, and argument with respect to the issues of law and policy, and to cross-examine witnesses. The North Carolina Rules of Evidence as found in Chapter 8C of the General Statutes shall apply to contested case proceedings, except as provided otherwise in this Rule and G.S. 150B-41.

(1) Sworn affidavits may be introduced by mutual agreement from all parties.

(2) All oral testimony shall be under oath or affirmation and shall be recorded. Unless otherwise stipulated by all parties, witnesses are excluded from the hearing room until such time that they have completed their testimony and have been released.

(s) Upon compliance with the provisions of G.S. 150B-40(e), if applicable, and G.S. 150B-42, and review of the official record, as defined in G.S. 150B-42(b) and (c), the Board shall make a written final decision or order in a contested case.

(1) The final decision or order will be rendered by the Board meeting in quorum and by a majority of those present and voting.

(2) The decision or order shall be made based on:

(A) competent evidence and arguments presented during the hearing and made a part of the official record in accordance with G.S. 150B-41 and Paragraph (r) of this Rule;

(B) stipulations of fact;

(C) matters officially noticed;

(D) other items in the official record that are not excluded by G.S. 150B-41 and Paragraph (r) of this Rule.

(3) All final decisions or orders shall be signed by the Executive Secretary and the Chair of the Board.

(4) A copy of the decision or order shall be served as in the manner provided by G.S. 150B-41(a). The cost of service, fees, and expenses of any witnesses or documents subpoenaed shall be paid in accordance with G.S. 150B-39(c) and G.S. 7A-314.

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(t) The official record of a contested case is available for public inspection upon reasonable request.

- (1) The official record shall be prepared in accordance with G.S. 150B-42(b) and (c).
- (2) Contested case hearings shall be recorded either by a magnetic type recording system or a professional court reporter using stenomask or stenotype.
- (3) Transcripts of proceedings during which oral evidence is presented will be made only upon request of a party. Transcript costs shall include the cost of an original for the Board. Cost of the transcript or part thereof or copy of said transcript or part thereof which a party requests shall be divided equally among the party(ies) requesting a transcript. Cost shall be determined under supervision of the Executive Secretary.

Authority G.S. 90-356; 90-363.4.

SECTION .0300 - DIETETIC/NUTRITION STUDENTS OR TRAINEES

21 NCAC 17 .0301 DEFINITIONS

~~As used in this Section, the following terms and phrases, which have not already been defined in G.S. 90, Article 25, shall have the meanings specified:~~

~~"Direct supervision" as referenced in G.S. 90-368(2) means that a licensed dietitian/nutritionist shall:~~

- ~~(1) be physically present in the facility or institution when an act or function is being performed by the person supervised; and~~
- ~~(2) provide supervision that is characterized by a direct, first-hand association which is unrestricted by an intervening position of influence; and~~
- ~~(3) directly and personally examine, evaluate and approve the acts or functions of the person supervised.~~

Authority G.S. 90-356(2); 90-368(2).

21 NCAC 17 .0302 REQUIREMENTS

A person who is enrolled in a course of study to complete the academic requirements in G.S. 90-357(3)b.1., c.1. or d, or who is fulfilling a supervised practice program to complete the experience requirements in G.S. 90-357(3)b.2. or c.2. shall be in compliance with G.S. 90-368 provided that:

- (1) The person is designated by a title which clearly indicates his/her status as a student or trainee and the person does not hold himself/herself out to be a dietitian or nutritionist or imply orally or in writing or indicate in any way that he/she is a dietitian/nutritionist;
- (2) The student or trainee submits evidence of enrollment and forward progress toward fulfillment of requirements to the Board on an annual basis;
- (3) The course of study is approved by the ADA or the Board as referenced in Rule ~~.0103(2)(a), (3)(a) and (4) .0101(13)~~ of this Chapter, and the supervised practice program is accredited by the ADA or approved by the Board as referenced in Rule ~~.0103(2)(b) and (3)(b) .0101(14)~~ of this Chapter; and

(4) The student or trainee is under the ~~direct~~ supervision of a licensed dietitian(s)/nutritionist(s) for at least 70% of the practical experience or supervised practice program. ~~program; and~~

~~(5) The student or trainee is enrolled in a course of study for a period not to exceed five years and in a supervised practice program for a period not to exceed two years. A student or trainee may submit a written request for Board approval of an extension of the period of time.~~

Authority G.S. 90-356(2); 90-368(2).

21 NCAC 17 .0303 SUPERVISION

(a) Each CAADE-accredited/approved or Board-approved dietetics/nutrition program shall designate a Program Director who:

- (1) shall be currently licensed in good standing according to G.S. 90, Article 25;
- (2) ~~may shall~~ meet the qualifications of the current standards of education as referenced in the ~~third most current~~ edition of the "Accreditation/Approval Manual for Dietetic Education Programs". This standard includes any subsequent amendments and editions of the referenced material. Copies of this manual may be purchased ~~for twenty-one dollars and ninety-five cents (\$21.95) plus three dollars and fifty cents (\$3.50) minimum shipping and handling~~ from the ADA Sales Order Department, P.O. Box 97215, Chicago, IL 60678-7215;
- (3) shall meet the employment qualifications of the sponsoring institution.

(b) In accordance with the current standards of education referenced in this Rule, a Program Director shall:

- (1) provide student/trainee advisement, evaluation, counseling and supervision;
- (2) provide academic or supervised practice program assessment, planning, implementation and evaluation;
- (3) inform student(s)/trainee(s) of laws, regulations and standards affecting the practice of dietetics/nutrition, including but not limited to the Dietetics/Nutrition Practice Act and its Rules; and
- (4) advise student(s)/trainee(s) on meeting the requirements to be licensed to practice dietetics/nutrition.

(c) The students/trainees shall be ~~directly~~ supervised by licensed dietitians/nutritionists for 70% of the practical experience or supervised practice program.

(d) The faculty/staff who are not licensed according to G.S. 90, Article 25 must have ~~appropriate~~ academic and experiential qualifications for the program areas in which they provide direct supervision of the student/trainee.

Authority G.S. 90-356(2); 90-368(2).

21 NCAC 17 .0304 RECORDS AND REPORTS

(a) Permanent and current records shall be available for review by representatives of the Board. The Board may make use of facts supplied in determining compliance with G.S. 90-368 and in approving applications for a license.

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(b) The record for each enrolled student shall contain up-to-date and complete information, including:

- (1) documentation of admission criteria met by the student;
- (2) transcript of credit hours achieved in the classroom, laboratory and practical experience that reflects progression consistent with program policies.

(c) The Program Director of the dietetics/nutrition program shall document the completion of the academic or supervised practice program requirements for each student or trainee on the forms prescribed by the Board and shall submit the forms to the student or trainee for inclusion in the license application. Each form verifying the completion of the requirements shall include the original signature of the Program Director and shall include a signature date on or following the date of the program completion.

(d) The Program Director of the dietetics/nutrition program shall file with the Board such records, data, and reports as may be required in order to furnish information concerning operation of the program and concerning any student or graduate of the program. These records, data and reports include but are not necessarily limited to:

- (1) an Annual Report giving all data requested on the form provided by the Board for the period beginning fall term through summer term and submitted to the Board office ~~within 20 business days after the initiation by the end;~~ of the fall term ~~but no later than October 1 of the current year;~~
- (2) a Supplementary Report giving all data requested on the form provided by the Board for any changes that have occurred on the current Annual Report and submitted to the Board office no later than ~~20~~ 30 business days after the occurrence of that change;
- (3) a Graduation Report giving all data requested on the form provided by the Board for the current graduation period no later than ~~20~~ 30 business days after the date of the graduation;
- (4) a Supervised Practice Program Completion Report giving all data requested on the form provided by the Board for the current program period no later than ~~20~~ 30 business days prior to the completion date of the program; ~~and~~
- (5) notification of any change in employment of the Program Director within ~~20~~ 30 business days of the effective date of the ~~change.~~ change;
- ~~(6) notification of any change in the person(s) providing direct supervision of the student(s)/trainee(s) within 20 business days of the effective date of the change;~~

(e) The Board may require additional records and reports for review at any time to provide evidence and substantiate compliance with standards of education, the law and the rules of the Board.

Authority G.S. 90-356(2); 90-368(2).

SECTION .0400 - UNLICENSED INDIVIDUALS

21 NCAC 17 .0401 INDIVIDUALS AIDING THE PRACTICE OF DIETETICS/NUTRITION

(a) As used in this Section, the following terms and phrases, which have not already been defined in G.S. 90, Article 25, shall have the meanings specified:

(1) "Certified Dietary Manager" means an individual who is certified by the Certifying Board of the Dietary ~~Managers. Managers and meets the standards and qualifications as referenced in the "Dietary Manager Training Program Requirements". These standards include any subsequent amendments and editions of the referenced manual. Copies of the "Dietary Managers Training Program Requirements" may be purchased for fifteen dollars (\$15.00) from the Dietary Managers Association One Pierce Place, 1120W, Itasca, Illinois 60143.~~

(2) "Dietetic Technician Registered" or "DTR" means an individual who is registered by the Commission on Dietetic Registration of the American Dietetic Association. ~~according to the standards and qualifications as referenced in the third edition of the "Accreditation/Approval Manual for Dietetic Education Programs". This standard includes any subsequent amendments and editions of the referenced material. Copies of this manual may be purchased for twenty-one dollars and ninety-five cents (\$21.95) plus three dollars and fifty cents (\$3.50) minimum shipping and handling from the ADA Sales Order Department, P.O. Box 97215, Chicago, IL 60678-7215.~~

(3) "Direct supervision" as referenced in G.S. 90-368(4) means that a licensed dietitian/nutritionist shall:

- (A) be available for consultation on delegated nutrition care activities being performed by the person being supervised; and
- (B) directly and personally examine, evaluate and approve the acts or functions of the person supervised; and
- (C) provide supervision that is characterized by a ~~direct,~~ first-hand ~~association~~ association, ~~which is unrestricted by an intervening position of influence.~~

(4) "Nutrition care activities" means activities performed by unlicensed personnel which are delegated by licensed dietitians/nutritionists in accordance with Paragraphs (c) and (d) of this Rule and which support the provision of nutrition care services as referenced in G.S. 90-352(4). Nutrition care activities include the provision of nutrition care to prevent a medical condition, illness or injury and the provision of weight control programs or services.

(b) Unlicensed personnel aiding the practice of dietetics/nutrition may include but are not limited to the following:

- (1) a Certified Dietary Manager;
- (2) a Dietetic Technician Registered; or
- (3) an individual who has met the academic requirements as referenced in G.S. 90-357(3)b.1, c.1 and d.

(c) The licensed dietitian/nutritionist may delegate nutrition care activities to unlicensed personnel that are appropriate to the level of knowledge and skill of the unlicensed personnel. The licensed dietitian/nutritionist is responsible for supervision of the

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nutrition care activities of the unlicensed personnel and maintains responsibility for nutrition care activities performed by all personnel to whom the care is delegated. The acts and functions included in the scope of employment or contract of persons providing nutrition care services include, but are not limited to, community nutrition, food service, nutrition care activities, weight control services and nutrition information or education and shall be documented in writing.

(d) The following variables are to be considered by the licensed dietitian/nutritionist in determining whether or not an activity may be delegated to unlicensed personnel: ~~personnel and in determining the amount of direct supervision which is required on site:~~

- (1) knowledge and skills of the unlicensed personnel which include both basic educational and experience preparation and continuing education and experience;
- (2) verification of competence of the unlicensed personnel;
- (3) the variables in each service setting which include but are not limited to:
 - (A) the complexity and frequency of nutrition care needed by a given client population;
 - (B) the acuity and stability of the client's condition;
 - (C) the accessible resources; and
 - (D) established policies, procedures, practices, and channels of communication which lend support to the types of nutrition care activities being delegated, or not delegated, to unlicensed personnel.

Authority G.S. 90-356(2); 90-368(4).

21 NCAC 17 .0402 INDIVIDUALS PROVIDING NUTRITION INFORMATION

(a) The following terms and phrases shall have the meanings specified:

- (1) "Nutrition information" means nonfraudulent nutrition information related to food, food materials, or dietary supplements which is designed for one or more healthy population groups and is based on valid scientific evidence, reports and studies. Nutrition information is not based on an individual nutrition assessment as referenced in G.S. 90-352 and 21 NCAC 17 .0101~~(9)~~**(11)** and is not individualized to provide nutrition care services to prevent, manage, treat, cure or rehabilitate a medical condition, illness, or injury for a specific person or group as referenced in G.S. 90-352 and 21 NCAC 17 .0101 ~~(10)~~ **(12)**.
- (2) "Reported or historical use" means information about food, food materials or dietary supplements which is based on the following:
 - (A) historical or methodological studies or research conducted by qualified experts in the field using sound scientific methods with randomized controlled clinical trials; or
 - (B) reports on valid scientific studies published in peer-reviewed medical or dietetics and nutrition journals or publications.

(b) The Board shall deem an individual who provides nutrition information or education to be in compliance with G.S. 90-368 when:

- (1) The person does not hold himself/herself out to be a dietitian or nutritionist or imply orally or in writing or indicate in any way that he/she is a dietitian/nutritionist;
- (2) The person does not provide nutrition care services or nutrition care activities which have not been delegated to him/her by a licensed dietitian/nutritionist;
- (3) The person provides nutrition information on or about food, food materials or dietary supplements, and does not provide nutrition information on the nutritional needs of the consumer;
- (4) The person provides nutrition information in connection with the marketing and distribution of the food, food materials, dietary supplements or other goods to be provided or sold, and does not provide nutrition information in connection with the marketing and distribution of nutrition services;
- (5) The person provides nonfraudulent nutrition information which is based on valid scientific reports and studies, is not false or misleading, and is safe; and
- (6) The person provides the nutrition information on food, food materials, nutraceuticals, dietary supplements or other goods in accordance with federal, state and local laws, regulations and ordinances, including but not limited to G.S. 90, Article 25.

Authority G.S. 90-356(2); 90-368.

TITLE 23 – DEPARTMENT OF COMMUNITY COLLEGES

Notice is hereby given in accordance with G.S. 150B-21.2 that the State Board of Community Colleges intends to adopt the rule cited as 23 NCAC 2C .0308 and amend the rules cited as 23 NCAC 2D .0202 - .0203. Notice of Rule-making Proceedings was published in the Register on June 15, 2000.

Proposed Effective Date: August 1, 2002

Public Hearing:

Date: December 5, 2000

Time: 10:00 am

Location: State Board Room, Caswell Building, 200 W. Jones St., Raleigh, NC

Reason for Proposed Action: 23 NCAC 2D .0202-.0203 – *These rule-making proceedings were initiated to regulate tuition and fees for curriculum programs and fees for extension courses for specific students and to regulate tuition and extension fee refunds and program completions for certain military personnel. 23 NCAC 2C .0308 – This rule-making proceeding was initiated as a result of legislation enacted by the 1999 General Assembly which required the State Board of Community Colleges to regulate issuance of driver's eligibility certificates at community colleges.*

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Comment Procedures: Written comments may be submitted to Clay T. Hines from the date of this notice until 12/18/00 by delivery to 200 W. Jones St., Raleigh, NC or mail to NC Community College System Office, 5004 Mail Service Center, Raleigh, NC 27699. Written or oral comments on the action proposed may be made at the public hearing. In order to stay within the allotted time, oral comments may be limited to ten minutes, and the number of persons making oral comments may be limited. In order to help with organization and reporting to the State Board of Community Colleges, oral comments should be submitted in writing to the hearing officer.

Fiscal Impact

- State 23 NCAC 2C .0308
Local
Substantive (>=\$5,000,000)
None 23 NCAC 2D .0202 - .0203

CHAPTER 2 – COMMUNITY COLLEGES

SUBCHAPTER 2C – COLLEGES: ORGANIZATION AND OPERATIONS

SECTION .0300 - STUDENTS

23 NCAC 2C.0308 DRIVERS ELIGIBILITY CERTIFICATE

(a) Local Boards of Trustees shall be responsible for the issuance of driving eligibility certificates, the timely reporting of dropouts and students unable to make adequate progress toward graduation, and the provision of grievance procedures associated with the issuance of driving eligibility certificates. Local Boards of Trustees shall provide a program which meets the following requirements:

- (1) The president or the presidents designee shall issue a driving eligibility certificate if it is determined that:
(A) The student seeking the certificate is currently enrolled in a basic skills program and is making progress toward obtaining a high school diploma or its equivalent. "Making progress toward obtaining a high school diploma" for a person enrolled in a community college basic skills program is defined as:
(i) Attending a basic skills class a minimum of 60 hours per month for a period of six consecutive months; and
(I) Demonstrating progress in GED at the end of each six month period by passing a minimum of two GED tests with a score of 40 or higher.
(II) Demonstrating progress in Adult High School at the end of each six month period by passing a minimum of two Adult High School units.
(III) Demonstrating progress in Adult Basic Education or English as a Second Language at the end of each six month period by one of the following: increase scores on each

subsequent standardized test or make progress as documented by teacher assessment.

(ii) If a student does not meet the criteria for making progress and attendance during any month, the president or the presidents designee shall notify the Division of Motor Vehicles the following month that the student no longer meets the requirements for the driving eligibility certificate.

(B) A substantial hardship would be placed on the person seeking the certificate or the persons family if the person does not receive the certificate. Examples of a substantial hardship include:

(i) A parents inability to drive due to sickness or other impairment and the student is the only person of driving age in the household.

(ii) The student requires transportation to and from a job that is necessary to the welfare of his family and is unable by any other means to do so.

(C) The person seeking the certificate cannot make progress toward obtaining a high school diploma or its equivalent. The president or the presidents designee shall determine, along with input from other basic skills staff, if a student is unable to make progress toward obtaining a high school diploma or its equivalent.

(2) The President or his designee shall not issue a driving eligibility certificate if it is determined that either after the first day of July before the school year which the student enrolled in the eighth grade or after the student's fourteenth birthday, whichever event occurred first, the student was subjected to disciplinary action for the enumerated conduct. Disciplinary action is defined as:

- (A) An expulsion;
(B) Suspension for more than ten consecutive days; or
(C) An assignment to an alternative educational setting for more than ten consecutive days, which resulted from any of the enumerated conduct. Enumerated conduct is defined as:

(i) The possession or sale of an alcoholic beverage or an illegal controlled substance on school property.

(ii) The possession or use on school property of a weapon or firearm that resulted in disciplinary action under G.S. 115C-391(d1), or that could have resulted in that disciplinary action if the conduct had occurred in a public school.

(iii) The physical assault on a teacher or other school personnel on school property

(3) A student who was ineligible for a certificate under Subparagraph (a)(2) of this Rule, is eligible for a certificate when the president or president's designee determines that the student has exhausted all

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administrative appeals connected to the disciplinary action and that one of the following conditions is met:

- (A) The conduct which resulted in the disciplinary action occurred before the student reached the age of 15, and the student is now at least 16 years old.
 - (B) The conduct which resulted in the disciplinary action occurred before the student reached the age of 15, and is at least one year after the date the student exhausted all administrative appeals connected to the disciplinary action.
 - (C) The student needs the certificate in order to drive to and from school, a drug or alcohol treatment counseling program, or a mental health treatment program, and no other transportation is available.
- (4) A student who was ineligible for a certificate under Subparagraph (a)(2) of this Rule may otherwise be eligible for a certificate if, after six months from the date of the ineligibility, the president or the president's designee determines that:
- (A) The student has displayed exemplary behavior; or
 - (B) The ineligibility was based on a disciplinary action for the possession or sale of an alcoholic beverage or a controlled substance on school property and the president or the president's designee determines that the student has attended and successfully completed a drug or alcohol treatment program.

(i) Exemplary behavior is defined as: the student having no further incidents of misconduct where expulsion, suspension, or an assignment to an alternative educational setting is required. Students found in violation of local school board policies addressing related behaviors (i.e., attendance, dress code, or other behaviors that result in an official disciplinary action by the president, etc.) would not qualify for having exemplary behavior.

(ii) Attending and successfully completing a drug or alcohol treatment program is defined as: a minimum of 12 hours of drug or alcohol treatment counseling, a mental health treatment program, or other appropriate intervention programs recognized by the college. While a minimum of 12 hours is recommended, each college can decide this based on available resources. In addition, the treatment counseling program should have a strong parental involvement focus.

(b) Any person denied a driving eligibility certificate may appeal that decision through the colleges student grievance procedure.

(c) The president or the presidents designee shall notify the Division of Motor Vehicles when a student is no longer exhibiting exemplary behavior or attending and successfully completing a drug or alcohol treatment program as determined above, or when a student officially drops out of school. The presidents designee shall be the Basic Skills Director.

(1) The State Board shall provide to the Basic Skills Director a form for the appropriate individuals to provide their written irrevocable consent for a community college to disclose to the Division of Motor Vehicles that the student no longer meets the conditions for a driving eligibility certificate under Subparagraphs (a)(1) through (a)(4) of this Rule.

(2) This form shall only identify the student, and under which Subsection of this Rule the student is no longer eligible. No other details or information concerning the student's school record shall be released pursuant to this request.

Authority G.S. 115D-5(a3).

SUBCHAPTER 2D – COMMUNITY COLLEGES: FISCAL AFFAIRS

SECTION .0200 – STANDARD STUDENT FEES

23 NCAC 2D .0202 TUITION AND FEES FOR CURRICULUM PROGRAMS

(a) Tuition:

- (1) Student Residence Classification. The classification of students for tuition purposes shall be made pursuant to [G.S. 115-D-39](#), G.S. 116-143.1, [G.S. 116.43.3](#), and [G.S. 116-143.5](#).
- (2) Tuition Rates In-State:
 - (A) A general and uniform tuition rate is established by the State Board as set by the Legislature for full-time curriculum students per semester for North Carolina residents.
 - (B) A North Carolina resident who is a part-time student shall pay a per credit hour rate for curriculum instruction, as established by the State Board, for such tuition in any semester as set by the Legislature.
- (3) Learning Laboratory. No tuition fees charged.
- (4) Tuition Creditable Upon Transfer of Student. When a student has paid the required tuition at a college and is given permission to transfer to another college within the system during the academic semester for which the tuition was paid, the college from which the student transfers shall issue to him a statement certifying the amounts of tuition that have been paid, and the college to which he is transferring shall accept such certificate in lieu of requiring payment again. [Also, see 23 NCAC 2D .0323(b)(2) which provides information regarding reporting student hours in membership.]
- (5) Tuition Student Enrolled in More Than One College. Where a student desires to enroll for the same semester at two or more colleges of the system, the total amount of tuition and fees may be paid to the student's "home" college. "Home" college is defined as the college which the student initially registers for classes. The home college shall, in that case, assume responsibility for arranging with the other college or colleges for enrolling the student in appropriate classes without further charge. Such arrangement shall be made by

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exchange of letters between the colleges involved. Student membership hours for instruction received shall, in any event, be reported by the college in which the respective instruction occurred.

(6) Tuition Rates Out-of-State:

(A) Any full-time curriculum student who is an out-of-state resident shall pay tuition fees as established by the State Board for each semester as set by the Legislature.

(B) An out-of-state resident who is a part-time student shall pay a per credit hour rate for curriculum instruction as established by the State Board as set by the Legislature.

(7) Tuition Exemptions:

(A) Individuals taking courses in the categories set forth in G.S. 115D-5(b) shall be exempt from tuition.

(B) College Staff Members. Full-time college staff members may enroll in one curriculum or extension course per semester, as well as the summer academic period, in the system without payment of tuition or registration fee.

(C) Basic Law Enforcement Training Program (BLET) for law enforcement officers. All law enforcement officers employed by a municipal, county, state, or federal law enforcement agency when taking courses in a state-mandated BLET training program, are exempt from tuition payment. Also, trainees may be exempt from BLET class tuition if a letter of sponsorship from an appropriate law enforcement agency is on file at the college.

(D) Individuals meeting the criteria set forth in G.S. 115B-2.

(E) High school students taking courses pursuant to Paragraphs (c) (concurrent enrollment) and Paragraph (e) (cooperative high school programs) of 23 NCAC 2C .0305.

(b) Pre-Enrollment Deposit. When a prospective student has made application for admission and has been accepted, the student may be required to pay an advance deposit up to a maximum of fifteen dollars (\$15.00). This advance payment is not refundable unless the class(es) fails to materialize. This advance payment shall be deposited to the State Treasurer and credited against the full tuition due from the student during the regular registration period.

(c) Late Enrollment Fee. A late enrollment fee up to five dollars (\$5.00) may be charged curriculum students registering after the specific closing date of registration, with such fees becoming state funds.

(d) Student Activity Fee. Colleges may establish a student activity fee which may include a parking fee or a scheduled vehicle registration fee for those students who require parking facilities. The maximum amount that may be charged for the student activity fee shall not exceed thirty-eight dollars (\$38.00) per student per fiscal year. Students may be assessed a parking fee, vehicle registration fee, or similar fee separate from the student activity fee; however, when such a fee is added to the student activity fee, the sum shall not exceed thirty-eight dollars (\$38.00) per student per fiscal year. Funds derived from

collection of a student activity fee shall be accounted for and expended under standing procedures and regulations adopted by the local ~~governing~~ board of ~~trustees~~ the college. Any expenditure from the fund must directly benefit students.

(e) Tuition Refunds.

(1) A refund shall not be made except under the following circumstances:

(A) A 100 percent refund shall be made if the student officially withdraws prior to the first day of class(es) of the academic semester as noted in the college calendar. Also, a student is eligible for a 100 percent refund if the class in which the student is officially registered fails to "make" due to insufficient enrollment.

(B) A 75 percent refund shall be made if the student officially withdraws from the class(es) prior to or on the official 10 percent point of the semester.

(C) For classes beginning at times other than the first week (seven calendar days) of the semester a 100 percent refund shall be made if the student officially withdraws from the class prior to the first class meeting. A 75 percent refund shall be made if the student officially withdraws from the class prior to or on the 10 percent point of the class.

(D) For contact hour classes, apply as Part Subparagraph(e)(1) of this Rule except use 10 calendar days from the first day of the class(es) as the determination date.

(2) To comply with applicable federal regulations regarding refunds, federal regulations will supersede the state refund regulations stated in this Rule.

(3) Where a student, having paid the required tuition for a semester, dies during that semester (prior to or on the last day of examinations of the college the student was attending), all tuition and fees for that semester may be refunded to the estate of the deceased.

(4) For a class(es) which the college collects receipts which are not required to be deposited into the State Treasury account, the college shall adopt appropriate local refund policies.

(f) Military Tuition Refund. - Upon request of the student, each college shall:

(1) Grant a full refund of tuition and fees to military reserve and national Guard personnel called to active duty or active duty personnel who have received temporary or permanent reassignments as a result of military operations then taking place outside the state of North Carolina that make it impossible for them to complete their course requirements; and

(2) Buy back textbooks through the colleges' bookstore operations to the extent possible. Colleges shall use distance learning technologies and other appropriate educational methodologies to help these students, under the guidance of faculty and administrative staff, complete their course requirements.

Authority G.S. 115D-5; 115D-39; 116-143.1;
P.L. 93-508; S.L. 1995, c. 625.

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23 NCAC 2D .0203 FEES FOR EXTENSION PROGRAMS

(a) Registration fees for Non-Curriculum Extension Instruction. For purposes of administration of this Rule, non-curriculum extension instruction means all instruction organized, supervised, or delivered outside the regular curriculum programs offered by the college.

- (1) A registration fee, as established by the State Board, as set by the Legislature shall be charged for each occupational extension class.
(2) Each local board shall establish registration fees for Community Service Programs.
(3) All recreational courses shall be self-supporting. Colleges shall collect and deposit to a local account fees and other contributions to support entirely the costs of all recreational extension courses taught. Also note Paragraph (e) of Rule .0325 of this Subchapter regarding the reporting of student membership hours for this area.
(4) A registration fee shall be charged for each extension class of 21 weeks or less. A registration fee shall be charged each 16 weeks for extension classes lasting longer than 21 weeks.
(5) Registration Fee Exemptions:
(A) Special Extension Training Programs. No registration fees shall be charged students enrolling for special extension training programs that directly relate to job performance set forth in G.S. 115D-5(b).
(B) College Staff Members. Full-time college staff members may enroll in one extension or curriculum course per semester in the system without registration fee or tuition charges.
(C) Individuals meeting the criteria set forth in G.S. 115B-2.
(D) Prison inmates.
(E) Elementary and secondary school teachers who take CPR or first aid classes.
(F) Members of the North Carolina Civil Air Patrol and individuals engaged in civil preparedness who take special extension training courses that directly relate to their job performance.

(b) Self-Supported Classes. A college may sponsor self-supporting classes, [see 23 NCAC 2E .0101], deposit income (if any) to a local account, and pay all expenses from such the local account. Each student is required to pay a pro-rata share of the cost of a self-supporting class. Since the pro-rata share assumed cost for a self-supporting class is not considered a registration fee, no the pro-rata cost for any individual or group is exempt not waived under G.S. 115D-5(b) or G.S. 115B-2. G.S. 115D-5(b) from paying a proportional share of the identified cost of the class.

(1) To promote uniformity in determining cost of the self-supporting classes, direct and indirect costs for these classes are defined as follows:

- (A) Direct Costs
(i) Instructor(s) salary including FICA, travel, and course development costs;
(ii) Instructional supplies and materials;

- (iii) Rental of buildings;
(iv) Advertising, printing, postage, and mailing;
(v) Equipment;
(vi) Refreshments; and
(vii) Administrative or clerical costs.

(B) Indirect Costs. Indirect costs are the charges for activities and services that support self-supporting classes which cannot be directly and exclusively assigned to a self-supporting class. Examples of indirect costs shall include utilities, custodial and security services, coordination, administration, or clerical, salary and fringe benefits.

(2) If self-supporting receipts (all categories: e.g., curriculum, community service) exceed expenditures for the fiscal year the following provisions apply:

(A) Surplus funds shall be expended for student financial aid, scholarships, or program improvement. All expenditures shall directly benefit students.

(B) Funds derived from self-supporting classes shall not be used for:

- (i) Supplemental salaries of any personnel;
(ii) Administrative support of the college, other than noted above, and only for activities that directly benefit students; and
(iii) College entertainment expense. (Educational activities for non-college personnel or college personnel to enhance student success would not be entertainment. Functions in which the primary purpose is fundraising would be entertainment.)

(3) Each local board of trustees shall adopt a policy regulating the amount of mark-up the college may charge for a self-supporting class and how surplus funds derived from these classes may be used. Each local board of trustees shall review its policy on self-supporting classes at least once every three years. All expenditures must be consistent with the mission and purpose of the community college system.

(c) Driver Education. Colleges shall collect a student fee as established by the local board of trustees for the adult driver education training course offered through the community service program.

(d) Registration Fee Refunds. A refund shall not be made except under the following circumstances:

- (1) A student who officially withdraws from an extension class(es) prior to the first class meeting shall be eligible for a 100 percent refund. Also, a student is eligible for a 100 percent refund if an applicable class fails to "make" due to insufficient enrollment.
(2) After the respective class begins, a 75 percent refund shall be made upon the request of the student if the student officially withdraws from the class prior to or on the 10 percent point of the scheduled hours of the class. Note: This Rule is applicable regardless of the

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number of times the class meets or the number of hours the class is scheduled to meet.

- (3) For contact hour classes, apply Subparagraphs (d)(1) and (d)(2) of this Rule except use 10 calendar days from the first day of the class(es) as the determination date.
- (4) For a class(es) which the college collects receipts which are not required to be deposited into the State Treasury account, the college shall adopt appropriate local refund policies.
- (5) If a student, having paid the required registration fee for a semester, dies during that semester (prior to or on the last day of examinations of the college the student was attending), all registration fees for that semester may be refunded to the estate of the deceased.

(e) Military Registration Fee Refund - Upon request of the student, each college shall:

- (1) Grant a full refund of registration fees to military reserve and national Guard personnel called to active duty or active duty personnel who have received temporary or permanent reassignments as a result of military operations then taking place outside the state of North Carolina that make it impossible for them to complete their course requirements; and
- (2) Buy back textbooks through the colleges' bookstore operations to the extent possible. Colleges shall use distance learning technologies and other appropriate educational methodologies to help these students, under the guidance of faculty and administrative staff, complete their course requirements.

Authority G.S. 115D-5; 115D-39; S.L. 1995, c. 625.

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 1- DEPARTMENT OF ADMINISTRATION

Rule-making Agency: *Department of Administration*

Rule Citation: *1 NCAC 17 .0701-.0713*

Effective Date: *October 17, 2000*

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

Authority for the rulemaking: *S.L. 2000-67, Section 21.5*

Reason for Proposed Action: *Under recently enacted legislation, judges in the General Court of Justice now have the authority to order a person responsible for domestic violence to attend and complete an abuser treatment program that has been approved by the Department of Administration. This authority first was granted in civil action under Chapter 50B of the General Statutes and then as a special condition of probation in criminal matters in G.S. 15A-1343. With the grant of rulemaking authority in SL 2000-67, Section 21.5, the Department of Administration proposes these rules as procedures it will use to determine which programs it approves for this purpose.*

Comment Procedures: *Written comments are encouraged and may be submitted to R. Glen Peterson, Rulemaking Coordinator, Department of Administration, 1301 Mail Service Center, Raleigh, NC 27699-1301, Email: Glen.Peterson@ncmail.net.*

CHAPTER 17 – NORTH CAROLINA COUNCIL FOR WOMEN

SECTION .0700 – ABUSER TREATMENT PROGRAMS

01 NCAC 17 .0701 RESPONSIBILITY

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

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

01 NCAC 17 .0702 ORGANIZATION

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

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

01 NCAC 17 .0703 ABUSER TREATMENT PROGRAM OVERSIGHT COMMITTEE

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

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

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

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

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50B-3(a)(12);

Temporary Adoption Eff. October 17, 2000.

01 NCAC 17 .0704 ABUSER TREATMENT PROGRAM APPROVAL

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

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

(c) The Council will review applications semi-annually in February and August, and each application must be received by the Council 60 days prior to initial review.

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

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

(f) Before approving an abuser treatment program, the Council may perform a site visit.

(g) Each program submitting an application for approval shall receive a notice from the Council indicating whether or not it has been approved and if so, its approval status. There shall be two categories of approval:

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

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

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

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

50B-3(a)(12);

Temporary Adoption Eff. October 17, 2000.

01 NCAC 17 .0705 PROGRAM RULES: ABUSER ASSESSMENT

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

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

Results of this assessment shall not preclude other recommended interventions except that in no case shall "couples counseling" be allowed as a permissible intervention.

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

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

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

50B-3(a)(12);

Temporary Adoption Eff. October 17, 2000.

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

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

- (1) The program shall not accept participants into the program in lieu of the termination of any criminal or civil proceedings pending against the applicant.
- (2) The program shall assess and verify the safety of the victim, which shall include contact with the victim to inform the victim about the program and its limitations.
- (3) The program shall offer the victim referral and assistance information.
- (4) The program shall conduct safety checks, which shall include direct contact with the victim, either directly or in cooperation with the local domestic violence program, in order to keep the victim informed of the program participant's status in the program.

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- (5) All information about or from the victim shall be kept confidential from the program participant unless the victim has agreed to disclosure of any such information through a written release. The victim must be advised of the risk associated with such disclosure prior to obtaining the release. Notice of such advice must be documented.
- (6) The program shall not provide "couples counseling" to program participants.
- (7) The program shall not allow victims groups and abuser treatment groups to occur simultaneously at the same facility.
- (8) The abuser treatment program must network with its local domestic violence program and have a current memorandum of understanding regarding cooperation with that program in place.

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

01 NCAC 17 .0707 PROGRAM STRUCTURE

- (a) All abuser treatment programs must have written policies and procedures for the establishment and collection of locally determined abuser program fees and to ensure participant responsibility for payment of the fees. All programs shall discourage local judges from waiving abuser program fees.
- (b) All abuser treatment programs must have written policies and procedures regarding required attendance, punctuality, and criteria for absences and participation. All abuser treatment programs must also have written policies that establish criteria to determine non-compliance by the participant and its consequences. These procedures shall establish methods for notifying victims and the judicial system regarding each participant's compliance status.
- (c) All abuser treatment programs must last at least 26 sessions, which shall include any intake, orientation, and psycho-educational group sessions.
- (d) Each abuser treatment program shall have at least two group facilitators per session, preferably male and female, and culturally diverse.
- (e) Each group session held in an abuser treatment program shall last at least one and one-half hours.
- (f) The size of each group in an abuser treatment program's group session shall not exceed 15 members.
- (g) Program participants and persons who have been victimized by those participants may receive direct services from the same agency; however, services shall not be provided to both a participant and that person's victim by the same staff person or volunteer.
- (h) Female participants who are referred to the program shall not attend or be enrolled in groups with male participants.
- (i) Attendance must be taken at each group session.
- (j) Abuser treatment program professional staff must have documented education, training and experience in the domestic violence field. Programs must require that professional staff participate in at least six hours of annual in-service training in domestic violence and document that training on an annual basis.

(k) All staff, consultants, or volunteers involved in direct services in an abuser treatment program must not have had any criminal convictions related to personal offenses, nor be the subject of or the plaintiff in a protective order action, for a period of 5 years prior to working at the program. Other criminal history, including crimes related to alcohol or drugs shall be evaluated by the program, and decided on a case-by-case basis.

(l) All abuser treatment programs shall be involved in efforts to provide information and awareness to the community, criminal justice personnel and service agencies, along with local victim programs. In addition to documenting those efforts, abuser treatment programs must have documented participation in local, state or national coalitions that work to prevent and eliminate domestic violence.

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

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

(a) All abuser treatment programs must have written policies and procedures for terminating participants from further participation in the program. Without limiting a program's ability to make more stringent requirements, termination shall occur:

(1) When a participant:

(A) Has a recurrence of violence or arrest;

(B) Fails to abide by the rules and regulations of the program, including absences and any other matter set forth in these standards;

(C) Fails to participate and attend sessions, according to the criteria of the program; or

(D) Fails to comply with the alcohol and drug policy of the program and;

(2) When the program completes a risk assessment that the safety of the victim is not negatively impacted by the participant's termination.

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

(1) Document clearly and specifically the reasons for the termination without jeopardizing the safety of the victim;

(2) Make specific recommendations to probation or the court, including any alternatives such as weekend incarceration, community service hours, restitution, probation violation or return to the program;

(3) Attempt to inform the victim of the participant's termination within two days; and

(4) Inform the referring judge (or the chief district court judge in the absence of the referring judge) of the participant's termination within five days.

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

01 NCAC 17 .0709 ABUSER TREATMENT

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PROGRAM COMPLAINTS AND INVESTIGATIONS

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

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

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

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

(e) If the program does not respond to or denies the violations, the Coordinator shall investigate the allegations contained in the complaint. The Coordinator may dismiss the complaint as unfounded, frivolous or trivial, or may refer the complaint, evidence and investigative findings to the Committee for review. A notice of the meeting at which the Committee will review the matter shall be sent by the Coordinator to the program.

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

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

(h) If the Coordinator determines that the program is still not in compliance at the end of the time set forth in the Second Notice

of Violation, the Coordinator shall refer the matter to the Committee for action. A notice of the meeting at which the Committee will again review the matter shall be sent by the Coordinator to the program.

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

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

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

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

01 NCAC 17 .0710 RIGHT TO ACCESS

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

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

01 NCAC 17 .0711 REPORTS

(a) Each abuser treatment program shall comply with any reporting requirements and requests for information regarding statistics and other data as may be requested by Council.

(b) Failure to comply with reporting deadlines and requests for information shall result in a program being deemed noncompliant, which shall lead to termination and removal from the approved abuser treatment program list.

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

01 NCAC 17 .0712 EQUAL OPPORTUNITY

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

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

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50B-3(a)(12);

Temporary Adoption Eff. October 17, 2000.

01 NCAC 17 .0713 TRANSITION

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

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

50B-3(a)(12);

Temporary Adoption Eff. October 17, 2000.

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Rule-making Agency: DENR – Environmental Management Commission

Rule Citation: 15A NCAC 2D .1401-.1404, .1406-.1421

Effective Date: November 1, 2000

Findings Reviewed and Approved by: Julian Mann & James Conner

Authority for the rulemaking: G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(5), (7), (10)

Reason for Proposed Action: 40 CFR Part 51, Subpart G mandates that North Carolina adopt and implement rules to meet the Environmental Protection Agency's (EPA) Nitrogen Oxide State Implementation Plan Call (NOx SIP Call). The EPA has required North Carolina to submit a State Implementation Plan complying with NOx SIP Call by October 31, 2000. Permanent rules, identical to these temporary rules, will proceed through the normal hearing and adoption process.

Comment Procedures: None

CHAPTER 2 – ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 2D – AIR POLLUTION CONTROL REQUIREMENTS

SECTION .1400 – NITROGEN OXIDES

15A NCAC 2D .1401 DEFINITIONS

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

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

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

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

(4) "Combined cycle system" means a system consisting of one or more combustion turbines, heat recovery steam generators, and steam turbines configured to improve overall efficiency of electricity generation or steam production.

(4)(5) "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.

(5)(6) "Emergency use internal combustion engines" means a 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.

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

(8) "Fossil Fuel" means:

(a) For sources that began operation before January 1, 1996, the combination of fossil fuel, alone or in combination with any other fuel, where fossil fuel actually combusted comprises more than 50 percent of the annual heat input on a Btu basis during 1995, or, if a source had no heat input in 1995, during the last year of operation of the unit before 1995;

(b) For sources that began operation on or after January 1, 1996 and before January 1, 1997, the combination of fossil fuel, alone or in combination with any other fuel, where fossil fuel actually combusted comprises more than 50 percent of the annual heat input on a Btu basis during 1996; or

(c) For units that began operation on or after January 1, 1997:

(i) The combination of fossil fuel, alone or in combination with any other fuel, where fossil fuel actually combusted comprises more than 50 percent of the annual heat input on a Btu basis during any year; or

(ii) The combination of fossil fuel, alone or in combination with any other fuel, where fossil fuel is projected to comprise more than 50 percent of the annual heat input on a Btu basis during any year, provided that the unit shall be

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~~"fossil fuel-fired" as of the date, during such year, on which the unit begins combusting fossil fuel.~~

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

(8)(10) "NO_x" means nitrogen oxides.

(11) "Ozone season" means the period beginning May 1 through September 30.

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

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

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

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

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

(14)(15) "Reasonable effort" means the proper installation of technology designed to meet the requirements ~~for RACT of Rule .1407, .1408, or .1409 of this Section~~ and the optimization of ~~such this~~ technology, ~~in accordance~~ according to the manufacturer's recommendations or other similar guidance ~~for a period of not less than six months, in an effort to meet the applicable RACT limitation for a source.~~

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

(16)(17) "Shutdown" means the cessation of operation of a source or its emission control equipment. ~~For utility boilers, shutdown means the cessation of operation of a source beginning with the time the unit's megawatt output falls below Reliable Minimum Load.~~

(17)(18) "Startup" means the commencement of operation of any source ~~which that~~ has ~~shut-down~~

shutdown or ceased operation for a period of ~~time~~ sufficient to cause temperature, pressure, process, chemical, or pollution control device imbalance ~~which that~~ would result in excess emissions.

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

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

History Note: Authority G.S. 143-215.3(a)(1);

143-215.107(a)(5), (7), (10);

Eff. April 1995;

Temporary Amendment Eff. November 1, 2000.

15A NCAC 2D .1402 APPLICABILITY

(a) The requirements of this Section shall only apply ~~from April 1~~ beginning May 1 through September 30. ~~October 31.~~

(b) Effective November 1, 2000, Rules .1416 through .1420 of this Section apply statewide.

(c) Effective November 1, 2000, Rules .1407 through .1414 of this Section apply statewide to sources permitted after October 31, 2000.

(b)(d) With the exceptions stated in Paragraph (f) (i) of this Rule, this Section shall apply to:

(1) Charlotte/Gastonia, consisting of Mecklenburg and Gaston Counties ~~in accordance with~~ according to Paragraph (e) (e) of this Rule;

(2) Greensboro/Winston-Salem/High Point, consisting of Davidson, Forsyth, and Guilford Counties and the part of Davie County bounded by the Yadkin River, Dutchmans Creek, North Carolina Highway 801, Fulton Creek and back to Yadkin River ~~in accordance with~~ according to Paragraph (d) (f) of this Rule; or

(3) Raleigh/Durham, consisting of Durham and Wake Counties and Dutchville Township in Granville County ~~in accordance with~~ according to Paragraph (e) (g) of this Rule.

(e)(e) If a violation of the ambient air quality standard for ozone is measured ~~in accordance with~~ according to 40 CFR 50.9 in Cabarrus, Gaston, Iredell, Lincoln, Mecklenburg, Rowan, or Union County, North Carolina or York County, South Carolina, the Director shall initiate analysis to determine the control measures needed to attain and maintain the ambient air quality standard for ozone. By the following May 1, the Director shall implement the specific stationary source control measures contained in this Section that are required as part of the control strategy necessary to bring the area into compliance and to maintain compliance with the ambient air quality standard for ozone. The Director shall implement the rules in this Section identified as ~~being~~ necessary by the analysis by notice in the North Carolina Register. The notice shall identify the rules that are to be implemented and shall identify whether the rules implemented are to apply in Gaston or Mecklenburg County or in both counties. At least one week before the scheduled publication date of the North Carolina Register containing the Director's notice implementing rules in this Section, the Director

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shall send written notification to all permitted facilities within the county in which the rules are being implemented that are or may be subject to the requirements of this Section informing them that they are or may be subject to the requirements of this Section. (For Mecklenburg County, "Director" means for the purpose of notifying permitted facilities in Mecklenburg County, the Director of the Mecklenburg County local air pollution control program.) Compliance shall be ~~in accordance with~~ according to Rule .1403 of this Section.

~~(d)~~(f) If a violation of the ambient air quality standard for ozone is measured ~~in accordance with~~ according to 40 CFR 50.9 in Davidson, Forsyth, or Guilford County or that part of Davie County bounded by the Yadkin River, Dutchmans Creek, North Carolina Highway 801, Fulton Creek and back to Yadkin River, the Director shall initiate analysis to determine the control measures needed to attain and maintain the ambient air quality standard for ozone. By the following May 1, the Director shall implement the specific stationary source control measures contained in this Section that are required as part of the control strategy necessary to bring the area into compliance and to maintain compliance with the ambient air quality standard for ozone. The Director shall implement the rules in this Section identified as ~~being~~ necessary by the analysis by notice in the North Carolina Register. The notice shall identify the rules that are to be implemented and shall identify whether the rules implemented are to apply in Davidson, Forsyth, or Guilford County or that part of Davie County bounded by the Yadkin River, Dutchmans Creek, North Carolina Highway 801, Fulton Creek and back to Yadkin River or any combination thereof. At least one week before the scheduled publication date of the North Carolina Register containing the Director's notice implementing rules in this Section, the Director shall send written notification to all permitted facilities within the county in which the rules are being implemented that are or may be subject to the requirements of this Section informing them that they are or may be subject to the requirements of this Section. (For Forsyth County, "Director" means for the purpose of notifying permitted facilities in Forsyth County, the Director of the Forsyth County local air pollution control program.) Compliance shall be ~~in accordance with~~ according to Rule .1403 of this Section.

~~(e)~~(g) If a violation of the ambient air quality standard for ozone is measured ~~in accordance with~~ according to 40 CFR 50.9 in Durham or Wake County or Dutchville Township in Granville County, the Director shall initiate analysis to determine the control measures needed to attain and maintain the ambient air quality standard for ozone. By the following May 1, the Director shall implement the specific stationary source control measures contained in this Section that are required as part of the control strategy necessary to bring the area into compliance and to maintain compliance with the ambient air quality standard for ozone. The Director shall implement the rules in this Section identified as ~~being~~ necessary by the analysis by notice in the North Carolina Register. The notice shall identify the rules that are to be implemented and shall identify whether the rules implemented are to apply in Durham or Wake County or Dutchville Township in Granville County or any combination thereof. At least one week before the scheduled publication date of the North Carolina Register containing the Director's notice

implementing rules in this Section, the Director shall send written notification to all permitted facilities within the county in which the rules are being implemented that are or may be subject to the requirements of this Section informing them that they are or may be subject to the requirements of this Section. Compliance shall be ~~in accordance with~~ according to Rule .1403 of this Section.

~~(h)~~(h) This Section does not apply to: to any:

- (1) ~~any source~~ source not required to obtain an air permit under 15A NCAC 2Q .0102 or is an insignificant activity as defined at 15A NCAC 2Q .0103(19):
- (2) ~~any incinerator,~~ incinerator or thermal or catalytic oxidizer used primarily for the control of air pollution;
- (3) emergency ~~generator;~~ generators;
- (4) emergency use internal combustion ~~engine;~~ engines;
- (5) stationary combustion ~~turbine—turbines~~ constructed before January 1, 1979, ~~operate no more than 16 hours from April 1 through October 31;~~ that has a federally enforceable permit that restricts:
 - (A) its potential emissions of nitrogen oxides to no more than 25 tons between May 1 and September 30;
 - (B) it to burning only natural gas or oil;
 - (C) its hours of operation as described in 40 CFR 96.4 (b)(ii) and (iii);
- (6) ~~facilities~~ source that is not covered under Rules .1416, .1417, or .1418, of this Section that is permitted before November 1, 2000, and that is at a facility with a federally enforceable potential to emit nitrogen oxides of:
 - (A) less than 100 tons per year; and
 - (B) less than 560 pounds per calendar day ~~from April 1 beginning May 1 through October 31.~~ September 30 of any year.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5), (7), (10);

Eff. April 1, 1995;

Amended Eff. April 1, 1997; July 1, 1995; April 1, 1995;

Temporary Amendment Eff. November 1, 2000.

15A NCAC 2D .1403 COMPLIANCE SCHEDULES

(a) This Rule applies to all sources covered by Rules .1416, .1417, or Paragraph ~~(b)~~ (d) of Rule .1402 of this Section.

(b) The owner or operator of a source subject to this Rule because of the applicability of Paragraphs ~~(c), (d), or (e)~~ (e), (f), or (g) of Rule .1402 of this Section, shall adhere to the following increments of progress and schedules:

- (1) If compliance with this Section is to be achieved through a demonstration to certify compliance without source modification:
 - (A) The owner or operator shall notify the Director in writing within six months after the Director's notice in the North Carolina Register that the source is in compliance with the applicable ~~RACT~~ limitation or ~~RACT~~ standard;
 - (B) The owner or operator shall perform any required testing within 12 months after the Director's notice in the North Carolina Register to demonstrate

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- compliance with the applicable ~~RACT~~ limitation ~~in accordance with~~ according to Rule ~~.1404~~ .1415 of this Section; and
- (C) The owner or operator shall implement any required recordkeeping and reporting requirements within 12 months after the Director's notice in the North Carolina Register to demonstrate compliance with the applicable ~~RACT~~ standard ~~in accordance with~~ according to Rule .1404 of this Section.
- (2) If compliance with this Section is to be achieved through the installation of combustion modification technology or other source modification:
- (A) The owner or operator shall submit a permit application and a compliance schedule within six months after the Director's notice in the North Carolina Register.
- (B) The compliance schedule shall contain the following increments of progress:
- a date by which contracts for installation of the modification shall be awarded or orders shall be issued for purchase of component parts;
 - a date by which installation of the modification shall begin;
 - a date by which installation of the modification shall be completed; and
 - if the source is subject to a ~~RACT~~ limitation, a date by which compliance testing shall be completed.
- (C) Final compliance shall be achieved within three years after the Director's notice in the North Carolina Register unless the owner or operator of the source petitions the Director for an alternative ~~RACT~~ limitation ~~in accordance with~~ according to Rule .1412 of this Section. If such a petition is made, final compliance shall be achieved within four years after the Director's notice in the North Carolina Register.
- (3) If compliance with this Section is to be achieved through the implementation of an emissions averaging plan as provided for in Rule .1410 of this Section:
- (A) The owner or operator shall abide by the applicable requirements of Subparagraphs (b)(1) and (b)(2) of this Rule for certification or modification of each source to be included under the averaging plan;
- (B) The owner or operator shall submit a plan to implement an emissions averaging plan ~~in accordance with~~ according to Rule .1410 of this Section within six months after the Director's notice in the North Carolina Register.
- (C) Final compliance shall be achieved within one year after the Director's notice in the North Carolina Register unless implementation of the emissions averaging plan requires the modification of one or more of the averaging sources. If modification of one or more of the averaging sources is required, final compliance shall be achieved within three years.
- (4) If compliance with this Section is to be achieved through the implementation of a seasonal fuel switching program as provided for in Rule .1411 of this Section:
- (A) The owner or operator shall make all necessary modifications ~~in accordance with~~ according to Subparagraph (b)(2) of this Rule.
- (B) The owner or operator shall include a plan for complying with the requirements of Rule .1411 of this Section with the permit application required under Part (A) of this Subparagraph.
- (C) Final compliance shall be achieved within three years after the Director's notice in the North Carolina Register.
- (c) The owner or operator shall certify to the Director, within five days after the deadline for each increment of progress in Paragraph (b) of this Rule, whether the required increment of progress has been met.
- (d) The owner or operator of a source subject to this Rule because of Rule .1416 of this Section shall submit to the Director before October 1, 2003, a description of how the source will comply. The description shall include an estimate of the number of tons of nitrogen oxides per season, which may be a range, that will be obtained to show compliance if the owner or operator of the source anticipates participating in the nitrogen oxide budget trading program under Rule .1419 of this Section. If a permit is needed for source modifications or control device installation or modification, the owner or operators shall submit the permit application early enough to receive the permit and make the modification or construct and begin operating the control device before the final compliance dates in Rule .1416 of this Section. The source shall be in compliance with Rule .1416 of this Section and shall install and implement any required monitoring, recordkeeping, and reporting requirements before May 1, 2004. If a permit application is not submitted pursuant to this Rule, the Director shall modify the source's permit by January 1, 2004, to insert the monitoring, recordkeeping, and reporting requirements necessary to show compliance with this Section.
- (e) The owner or operator of a source subject to this Rule because of Rule .1417 of this Section shall submit to the Director before October 1, 2003, a description of how the source will comply. The description shall include an estimate of the number of tons of nitrogen oxides per season, which may be a range, that will be obtained to show compliance if the owner or operator of the source anticipates participating in the nitrogen oxide budget trading program under Rule .1419 of this Section. If a permit is needed for source modifications or control device installation or modification, the owner or operators shall submit the permit application early enough to receive the permit and make the modification or construct and begin operating the control device before the final compliance dates in Rule .1417 of this Section. The source shall be in compliance with Rule .1417 of this Section and shall install and implement any required monitoring, recordkeeping, and reporting requirements before May 1, 2004. If a permit application is not submitted pursuant to this Rule, the Director shall modify the source's permit by January 1, 2004, to insert the monitoring, recordkeeping, and reporting requirements necessary to show compliance with this Section.

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

- (1) testing of combustion control modifications; or
- (2) adding or testing equipment or methods for the application of ~~RACT~~ a requirement in this Section.

~~(e)(g)~~ The owner or operator of any new source of nitrogen oxides not ~~in existence or under construction~~ permitted as of the date the Director notices in the North Carolina Register ~~in accordance with~~ according to Paragraphs ~~(e), (d), or (e)~~ (e), (f), or (g) of Rule .1402 of this Section, shall comply with all applicable rules in this Section upon start-up of the source. The owner or operator of any new source covered under Rule .1418 of this Section shall comply with all applicable rules in this Section upon start-up of the source.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.107(a)(5), (7), (10); Eff. April 1, 1995; Amended Eff. April 1, 1997; Temporary Amendment Eff. November 1, 2000.

15A NCAC 2D .1404 RECORDKEEPING: REPORTING: MONITORING:

(a) General requirements. The owner or operator of any source subject to the requirements of this Section shall comply with the monitoring, recordkeeping and reporting requirements in Section .0600 of this Subchapter and shall maintain all records necessary for determining compliance with all applicable ~~RACT~~ limitations and standards of this Section for at least five ~~years after~~ years.

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

(c) Excess emissions reporting. The owner or operator shall report excess emissions following the procedures under Rule .0535 of this Subchapter. This Paragraph does not apply to the allowable seasonal emission rates in Rules .1416, .1417, or .1418 of this Section. Emissions in excess of the allowable seasonal emission rates in Rules .1416, .1417, or .1418 of this Section shall be included in the final annual report for the ozone season. Within 30 days of becoming aware of an occurrence of excess emissions from a source subject to the requirements of this Section, the owner or operator shall notify the Director and provide the following information:

- (1) ~~the name and location of the facility;~~
- (2) ~~the source that caused the excess emissions;~~
- (3) ~~the time and date the excess emissions were discovered;~~
- (4) ~~the cause and duration of the excess emissions;~~
- (5) ~~for sources subject to a RACT limitation, the estimated rate of emissions and the data and calculations used to determine the magnitude of the excess emissions; and~~

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

(d) Continuous emissions monitors:

(1) The owner or operator of a source covered under Rules .1416, .1417, or .1418 of this Section that participates in the nitrogen oxide budget trading program under Rule .1419 of this Section shall install, operate, and maintain a continuous emission monitoring system according to 40 CFR Part 75, Subpart H.

(2) ~~When required, the~~ The owner or operator of a source that is ~~sources~~ subject to the requirements of this Section but not covered under Subparagraph (1) of this Paragraph and that uses a continuous emissions monitoring system to measure emissions of nitrogen oxides shall operate and maintain a continuous emission monitoring system ~~in accordance with~~ according to 40 CFR Part 60, Appendix B, Specification 2, and Appendix F, F or Part 75, Subpart H. If diluent monitoring is required, 40 CFR Part 60, Appendix B, Specification 3, shall be used. If flow monitoring is required, 40 CFR Part 60, Appendix B, Specification 6, shall be used.

(e) Missing data. Data from continuous emissions monitoring systems shall be available for at least 95 percent of the emission sources operating hours for the applicable averaging period, where four equally spaced readings constitute a valid hour. If data from continuous emission monitoring systems is not available for at least 95 percent of the time that the source is operated, the procedures in 40 CFR 75.33 shall ~~apply.~~ apply to both monitors meeting the requirements of 40 CFR Part 60, Appendix F and Part 75, Subpart H.

(f) Quality assurance for continuous emissions monitors:

(1) The owner or operator of a continuous emissions monitor that meets the requirements of 40 CFR Part 75, Subpart H, shall follow the quality assurance and quality control requirements of 40 CFR Part 75, Subpart H.

(2) The owner or operator of a continuous emissions monitor that meets the requirements of 40 CFR Part 60, Appendix F, shall follow the quality assurance and quality control requirements of 40 CFR Part 60, Appendix F, if the monitor is required to be operated annually under another rule. If a continuous emissions monitor meeting the requirements of 40 CFR Part 60, Appendix F is being operated only to satisfy the requirements of this Section, then the quality assurance and quality control requirements of 40 CFR Part 60, Appendix F, shall apply except that:

(A) A relative accuracy test audit shall be conducted after January 1 and before May 1 of each year;

(B) One of the following shall be conducted at least once between May 1 and September 30 of each year:

(i) a linearity test, according to 40 CFR Part 75, Appendix A, Section 3.2, 6.2, and 7.1;

(ii) a relative accuracy audit, according to 40 CFR Part 60, Appendix F, Section 5 and 6; or

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- (iii) a cylinder gas audit according to 40 CFR Part 60, Appendix F, Section 5 and 6; and
(C) A daily calibration drift test shall be conducted according to 40 CFR Part 60, Appendix F, Section 4.0.

(g) Reporting for large sources. The owner or operator of a source covered under Rules .1416, .1417, or .1418 of this Section shall report to the Director no later than July 31 the tons of nitrogen oxides emitted during the previous May and June. No later than October 31, the owner or operator shall report to the Director the tons of nitrogen oxides emitted during the previous ozone season. The Division of Air Quality shall make this information publicly available.

(h) Averaging time for continuous emissions monitors. When compliance with a RACT limitation established for a source subject to the requirements of this Section is determined using a continuous emissions monitoring system, a 24-hour block average as described under Rule .0606 of this Subchapter shall be recorded for each day rolling average computed and recorded each hour from April 1 beginning May 1 through September 30 October 31 shall be used, unless a specific rule requires a different averaging time or procedure. Sources participating in the nitrogen oxide budget trading program under Rule .1419 of this Section shall comply with the averaging time requirements of 40 CFR Part 75.

(i) Heat input. Heat input shall be determined:

- (1) for sources using a monitoring system meeting the requirements of 40 CFR Part 75, using the procedures in 40 CFR Part 75; or
- (2) for sources not using a monitoring system meeting the requirements of 40 CFR Part 75, using the best available heat input data.

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

(k) Alternative monitoring and reporting procedures. The owner or operator of a source covered under this Rule may request alternative monitoring or reporting procedures under 15A NCAC 2D .0612 of this Subchapter, Alternative Monitoring and Reporting Procedures.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(5), (7), (10); Eff. April 1, 1995; Amended Eff. April 1, 1999; Temporary Amendment Eff. November 1, 2000.

15A NCAC 2D .1406 UTILITY BOILERS

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

- ~~(1) emissions averaging under Rule .1410 of this Section, or~~
- ~~(2) seasonal fuel switching under Rule .1411 of this Section.~~

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

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

~~Firing Method~~

~~Fuel/Boiler Type Tangential Wall~~

~~Coal (Dry Bottom) 0.45 0.50~~

~~Oil and/or Gas 0.20 0.30~~

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

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

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5); Eff. April 1, 1995; Temporary Repeal Eff. November 1, 2000.

15A NCAC 2D .1407 BOILERS AND PROCESS HEATERS

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

(b) The owner or operator of a ~~non-utility~~ fossil fuel-fired boiler or ~~process heater~~ with a maximum heat input rate less than or equal to 250 million Btu per hour but greater than 50 million Btu per hour, hour-a boiler with a maximum heat input greater than 50 million Btu per hour that is not a fossil fuel-fired boiler, or a process heater with a maximum heat input greater than 50 million Btu per hour shall apply RACT by comply by: either:

- (1) installation ~~of~~ of, if necessary, combustion modification technology or other NO_x control technology and maintenance, including annual tune-ups and recordkeeping; ~~or~~ and

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- (2) demonstration through annual source testing to the satisfaction of the Director or continuous emissions monitoring that the source complies with the applicable RACT following applicable limitation: limitation listed in Paragraph (c) of this Rule.
- (e) Unless the owner or operator chooses the option of:

- (1) ~~emissions averaging under Rule .1410 of this Section, or~~
- (2) ~~seasonal fuel switching under Rule .1411 of this Section, emissions of NO_x from a non-utility boiler or process heater with a maximum heat input rate greater than 250 million Btu per hour shall not exceed the following RACT limitations:~~

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

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

If necessary, the owner or operator shall install combustion modification technology or other NO_x control technology in an effort to comply with the applicable RACT limitation set forth in this Paragraph.

(c) If this Rule becomes applicable to a boiler or process heater permitted before November 1, 2000, pursuant to Rule .1402(d), then after reasonable effort as defined in Rule .1401 of this Section, the emissions from the a non-utility boiler or process heater are greater than the applicable RACT limitation, limitation in Paragraph (b) of this Rule, or if the requirements of this Rule is are not RACT for the particular non-utility boiler or process heater, the owner or operator may petition the Director for an alternative RACT limitation or standard in accordance with Rule .1412 of this Section.

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

- (1) using a continuous emissions monitoring system for non-utility boilers or process heaters with a maximum heat input rate greater than 250 million Btu per hour; or
- (2) using annual source testing in accordance with according to Rule .1415 of this Section for non-utility boilers or process heaters with a maximum heat input rate less than or equal to 250 million Btu per hour but greater than 50 million BTU per hour, hour that elect to satisfy RACT through Subparagraph (b)(2) of this Rule.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.66; 143-215.107(a)(5), (7), (10); Eff. April 1, 1995; Temporary Amendment Eff. November 1, 2000.

15A NCAC 2D .1408 STATIONARY GAS TURBINES

(a) The Unless the owner or operator chooses the option of emission averaging under Rule .1410 of this Section, the owner or operator of a stationary gas turbine with a heat input rate greater than 100 million Btu/hr but less than or equal to 250 million Btu/hr and subject to the requirements of this Section as determined by Rule .1402 of this Section shall comply with the following limitations apply RACT according to Paragraph (b) of

this Rule unless the owner or operator chooses the option of emissions averaging under Rule .1410 of this Section.

- (b)(1) Emissions of NO_x from a stationary gas turbine shall not exceed 75 ppm by volume corrected to 15 percent oxygen for gas-fired turbines or and
- (2) Emissions of NO_x shall not exceed 95 ppm by volume corrected to 15 percent oxygen for oil-fired turbines.

(e) If necessary, the owner or operator shall install combustion modification technology or other NO_x control technology ~~in~~ order to comply with the applicable RACT limitation set forth in this Paragraph.

(b) If this Rule becomes applicable to a stationary gas turbine permitted before November 1, 2000, pursuant to Rule .1402(d) of this Section, then after reasonable effort as defined in Rule .1401 of this Section, the emissions from a stationary gas turbine are greater than the applicable RACT limitation, limitation in Paragraph (a) of this Rule, or if the requirements of this Rule is are not RACT for the particular stationary gas turbine, the owner or operator may petition the Director for an alternative RACT limitation or standard in accordance with according to Rule .1412 of this Section.

(d)(c) Compliance with the RACT limitation established for a stationary gas turbine under this Rule shall be ~~determined:~~ determined:

- (1) using a continuous emissions monitoring system; or system, or NO_x emission estimation protocol as allowed under the 40 CFR Part 75 Appendix E for compliance with the Acid Rain Program where Administrator is replaced by Director and the correlation for NO_x emission rate is performed for the NO_x concentration at 15 percent oxygen, for stationary gas turbines with a maximum heat input rate greater than 250 million Btu per hour; or
- (2) using annual source testing in accordance with according to Rule .1415 of this Section. for stationary gas turbines with a maximum heat input rate less than or equal to 250 million Btu per hour.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.66, 143-215.107(a)(5), (7), (10);

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Eff. April 1, 1995;

Temporary Amendment Eff. November 1, 2000.

15A NCAC 2D .1409 STATIONARY INTERNAL COMBUSTION ENGINES

(a) The owner or operator of a stationary internal combustion engine having a rated capacity of 650 horsepower or more that is

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

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

(~~e~~) If necessary, the owner or operator shall install NO_x control technology ~~in order~~ to comply with the applicable RACT limitation set forth in this Paragraph ~~Paragraph (b) of this Rule.~~

(~~b~~) If this Rule becomes applicable to a stationary internal combustion engine permitted before November 1, 2000, pursuant to Rule .1402(d) of this Section, then after reasonable effort as defined in Rule .1401 of this Section, the emissions from a stationary internal combustion engine are greater than the applicable RACT limitation, limitation in Paragraph (a) of this Rule or if the requirements of this Rule ~~is~~ are not RACT for the particular stationary internal combustion engine, the owner or operator shall may petition the Director for an alternative RACT limitation or standard ~~in accordance with~~ according to Rule .1412 of this Section.

(~~d~~) (c) Compliance with the RACT limitation established for a stationary internal combustion engine under Paragraph (a) of this Rule shall be determined using annual source testing according to Rule .1415 of this Section ~~testing.~~

History Note: Authority G.S. 143-215.3(a)(1); 143-215.66; 143-215.107(a)(5), (7), (10);

Eff. April 1, 1995;

Temporary Amendment Eff. November 1, 2000.

15A NCAC 2D .1410 EMISSIONS AVERAGING

(a) This Rule shall not apply to sources participating in the nitrogen oxide budget trading program under Rule .1419 of this Section. Sources that have obtained an alternative limitation as provided by Rule .1412 of this Section or that apply seasonal fuel switching as provided by Rule .1411 of this Section are not eligible to participate in an emissions averaging plan under this Rule.

(~~a~~) (b) With the exceptions in Paragraph (~~d~~) (e) of this Rule, the owner or operator of a facility with two or more sources with comparable plume rise and subject to the requirements of this Section for all such sources as determined by Rule .1402 of this Section may elect to apply RACT through the implementation of an emissions averaging plan ~~in accordance with~~ according to Paragraph (~~c~~) (b) of this Rule. An emission averaging plan may be used if the total NO_x emissions from the averaged set of sources based on the total heat input are equal to or less than the

not covered under Rules .1417 or .1418 of this Section shall not allow emissions and subject to the requirements of this Section as determined by Rule .1402 of this Section shall apply RACT in accordance with Paragraph (b) of this Rule.

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

NO_x emissions that would have occurred if each source complied with the applicable RACT limitation.

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

- (1) the name and location of the facility;
- (2) information identifying each source to be included under the averaging plan;
- (3) the maximum heat input rate for each source;
- (4) the fuel or fuels combusted in each source;
- (5) the maximum allowable NO_x emission rate proposed for each averaging source;
- (6) a demonstration that the nitrogen oxide emissions of the averaging set of sources, operating sources being averaged when operated together at the maximum daily heat input rate, will be less than or equal to the NO_x emissions if each source complied with the applicable RACT ~~limitation;~~ limitation of this Section individually;
- (7) an ~~operation~~ operational plan to provide reasonable assurance that the ~~averaging set of sources~~ being averaged will satisfy Subparagraph (5) of this Paragraph when the ~~set is not operated at~~ combined the maximum daily heat input rate is less than the permitted maximum heat input rate; and
- (8) the method to be used to determine the actual NO_x emissions from each source.

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

History Note: Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.107(a)(5), (7), (10);

Eff. April 1, 1995;

Temporary Amendment Eff. November 1, 2000.

15A NCAC 2D .1411 SEASONAL FUEL SWITCHING

(a) This Rule shall not apply to facilities covered under Rule .1416, .1417, or .1418 of this Section.

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~~(a)(b)~~ The owner or operator of a ~~utility or non-utility~~ coal-fired boiler subject to the requirements of ~~this Section as determined by Rule .1407 .1402~~ of this Section may elect to comply by applying ~~apply~~ RACT through the seasonal combustion of natural gas ~~in accordance with~~ according to Paragraph ~~(b)~~ (c) of this Rule. This option is not available to a boiler that used natural gas as its primary fuel in 1990 or has used natural gas as its primary fuel during any year since 1990. Compliance with this Section ~~in accordance with~~ according to this Rule does not remove or reduce any applicable requirement of the Acid Rain Program.

~~(b)(c)~~ The owner or operator electing to comply with the requirements of this Section through the seasonal combustion of natural gas shall establish a NO_x emission limit ~~for November 1 beginning October 1~~ through ~~March 31~~ April 30 that will result in annual NO_x emissions of less than or equal to the NO_x that would have been emitted if the source complied with the applicable RACT limitation for the combustion of coal for the entire calendar year. Compliance with this Section ~~in accordance with~~ according to this Rule does not remove or reduce any applicable requirement of the Acid Rain Program.

~~(c)(d)~~ To comply with the requirements of this Section through the seasonal combustion of natural gas, the owner or operator shall submit to the Director the following information:

- (1) the name and location of the facility;
- (2) information identifying the source to use seasonal combustion of natural gas for compliance;
- (3) the maximum heat input rate for each source;
- (4) a demonstration that the source will comply with the applicable RACT limitation for the combustion of coal ~~from April 1 beginning May 1~~ through ~~October 31~~; September 30;
- (5) a demonstration that the source will comply with the NO_x emission limitation established under Paragraph ~~(b)~~ (c) of this Rule ~~from November 1 beginning October 1~~ through ~~March 31~~; April 30; and
- (6) a written statement from the natural gas supplier providing reasonable assurance that the fuel will be available ~~from April 1 beginning May 1~~ through ~~October 31~~; September 30.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.107(a)(5), (7), (10);
Eff. April 1, 1995;
Temporary Amendment Eff. November 1, 2000.

15A NCAC 2D .1412 PETITION FOR ALTERNATIVE LIMITATIONS

(a) If the owner or operator of a source subject to the requirements of Rules .1407, .1408, or .1409 of this Section permitted before October 31, 2000 ~~as determined by Rule .1402 of this Section~~:

- (1) cannot achieve compliance with the applicable RACT limitation after the installation and optimization of combustion modification technology or other NO_x control technology to satisfy the requirements ~~for RACT~~, of Rules .1407, .1408, or .1409 of this Section or if the requirements of ~~this Section~~ ~~is these rules~~

Rules .1407, .1408, or .1409 of this Section are not RACT for the particular source; and

- (2) cannot provide reasonable assurance for overall compliance at a facility through the implementation of an emissions averaging plan as provided for in Rule .1410 of this Section; the owner or operator may petition the Director for an alternative RACT limitation ~~in accordance with~~ according to Paragraph (b) of this Rule.

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

- (1) the name and location of the facility;
- (2) information identifying the source for which an alternative RACT limitation is being requested;
- (3) the maximum heat input rate for the source;
- (4) the fuel or fuels combusted in the source;
- (5) the maximum allowable NO_x emission rate proposed for the source; source for each fuel;
- (6) a demonstration that the source has satisfied the requirements to apply for an alternative RACT limitation under Paragraph (a) of this Rule; and
- (7) a demonstration that the proposed alternative RACT limitation satisfies the requirements for RACT.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.107(a)(5), (7), (10);
Eff. April 1, 1995;
Temporary Amendment Eff. November 1, 2000.

15A NCAC 2D .1413 SOURCES NOT OTHERWISE LISTED IN THIS SECTION

(a) The owner or operator of any source of nitrogen oxides at a facility that has the potential to emit 100 tons per year or more nitrogen oxides or 560 pounds per calendar day or more beginning May 1 through September 30 except boilers, process heaters, stationary gas turbines, or stationary internal combustion engines ~~that is not listed in this Section but is subject to the requirements of this Section as determined in Rule .1402 of this Section~~ shall apply RACT ~~in accordance with~~ according to Paragraph (b) of this Rule.

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

- (1) the name and location of the facility;
- (2) information identifying the source for which a RACT ~~limitation or standard~~ is being proposed;
- (3) a demonstration that shows the proposed RACT ~~limitation or standard~~ satisfies the requirements for RACT; and
- (4) a proposal for demonstrating compliance with the proposed RACT. ~~RACT limitation or standard.~~

History Note: Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.65; 143-215.107(a)(5), (7), (10);
Eff. April 1, 1995;
Temporary Amendment Eff. November 1, 2000.

15A NCAC 2D .1414 TUNE-UP REQUIREMENTS

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(a) This Rule applies to ~~non-utility~~ boilers and process heaters subject to the requirements of Rule .1407 of this Section that are complying with Rule .1407 of this Section through an annual tune-up.

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

- (1) inspect each burner and clean or replace any component of the burner as necessary to improve boiler efficiency;
- (2) inspect the flame pattern and make any adjustments to the burner, or burners, necessary to optimize the flame pattern to minimize total emissions of NO_x and carbon monoxide;
- (3) inspect the combustion control system to ensure that the air-to fuel ratio is correctly calibrated and operating properly;
- (4) inspect any other component of the boiler and make adjustments or repairs as necessary to improve boiler efficiency; and
- (5) adjust the air-to-fuel ratio to minimize excess air and maximize boiler efficiency. The owner or operator shall perform the tune-up ~~in accordance with~~ according to a unit specific protocol approved by the Director. ~~Director before the tune-up is performed.~~ The Director shall approve the protocol if it meets the requirements of this Rule.

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

(1) identification of the source:

- ~~(1)~~(2) the date and time the tune-up started and ended;
- ~~(2)~~(3) the person responsible for performing the tune-up;
- ~~(3)~~(4) the checklist for inspection of the burner, flame pattern, combustion control system, and all other components of the boiler identified in the protocol, noting any repairs or replacements made;
- ~~(4)~~(5) the oxygen or carbon dioxide concentration of the stack gas, the carbon monoxide concentration of the stack gas or smoke spot number, stack gas temperature, and any additional information necessary to specify the operating conditions of the boiler after each adjustment for minimizing excess air; and
- ~~(5)~~(6) any other information requested by the Director as a condition of approval of a RACT standard.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(5), (7), (10);
Eff. April 1, 1995;
Temporary Amendment Eff. November 1, 2000.

15A NCAC 2D .1415 TEST METHODS AND PROCEDURES

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

Section. For stationary gas turbines, Method 20 at 40 CFR Part 60, Appendix A or other equivalent method approved by Director shall be used when source testing is used to demonstrate compliance with a limitation established according to this Section.

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

(c) Before conducting a source test, the owner or operator of the sources to be tested shall submit to the Director a testing protocol describing what is to be tested and the test method or methods that will be used. The Director shall approve or disapprove the protocol within 45 days after receipt.

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

- (1) a statement of the purpose of the proposed test;
- (2) the location and a description of the facility where the test is to take place;
- (3) the proposed test method and a description of the test procedures, equipment, and sampling points; and
- (4) a schedule setting forth the dates that:
 - (A) the test will be conducted and data collected;
 - (B) the final test report will be submitted.

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

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

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

History Note: Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(5), (7), (10);
Eff. April 1, 1995;
Temporary Amendment Eff. November 1, 2000.

15A NCAC 2D .1416 SEASONAL EMISSION RATES FOR BOILERS AT UTILITY COMPANIES

(a) Before the EPA promulgation of revisions to 40 CFR Part 51, Subpart G, revising the nitrogen oxide budget for North Carolina, the following limits apply:

- (1) Carolina Power & Light. The total emissions from all the coal-fired boilers at Carolina Power & Light Company's Asheville, Cape Fear, Lee, Mayo, Roxboro, Sutton, and Weatherspoon facilities shall not exceed:
 - (A) 15,863 tons per ozone season for 2004;
 - (B) 15,566 tons per ozone season for 2005;

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- (C) 14,355 tons per ozone season for 2006 and each year thereafter until revised according to Rule .1420 of this Section; and
- (D) after revising the allowable emission rates according to Rule .1420 of this Section, the allowable emission rates calculated under Rule .1420 of this Section (When a revision is made under Rule .1420 of this Section, each boiler shall be given a specific allowable emission rate under Rule .1420 of this Section. The allowable emission rates of these boilers shall be summed, and this sum shall be the allowable emission rate for the coal-fired boilers at the Carolina Power & Light Company facilities named in this Paragraph.).
- (2) Duke Power. The total emissions from all the coal-fired boilers at Duke Power Company's Allen, Belews Creek, Buck, Cliffside, Dan River, Marshall, and Riverbend facilities shall not exceed:
- (A) 23,514 tons per season for 2004;
- (B) 23,072 tons per season for 2005;
- (C) 21,278 tons per ozone season for 2006 and each year thereafter until revised according to Rule .1420 of this Section; and
- (D) after revising the allowable emission rates according to Rule .1420 of this Section, the allowable emission rates calculated under Rule .1420 of this Section (When a revision is made under Rule .1420 of this Section, each boiler shall be given a specific allowable emission rate under Rule .1420 of this Section. The allowable emission rates of these boilers shall be summed, and this sum shall be the allowable emission rate for the coal-fired boilers at the Duke Power Company facilities named in this Paragraph.).
- (b) After the EPA promulgates revisions to 40 CFR Part 51, Subpart G, revising the nitrogen oxide budget for North Carolina, the following limits apply:
- (1) Carolina Power & Light. The total emissions from all the coal-fired boilers at Carolina Power & Light Company's Asheville, Cape Fear, Lee, Mayo, Roxboro, Sutton, and Weatherspoon facilities shall not exceed:
- (A) 15,024 tons per ozone season for 2004 and 2005;
- (B) 11,320 tons per ozone season for 2006 and each year thereafter until revised according to Rule .1420 of this Section; and
- (C) after revising the allowable emission rates according to Rule .1420 of this Section, the allowable emission rates calculated under Rule .1420 of this Section (When a revision is made under Rule .1420 of this Section, each boiler shall be given a specific allowable emission rate under Rule .1420 of this Section. The allowable emission rates of these boilers shall be summed, and this sum shall be the allowable emission rate for the coal-fired boilers at the Carolina Power & Light Company facilities named in this Paragraph.).
- (2) Duke Power. The total emissions from all the coal-fired boilers at Duke Power Company's Allen, Belews Creek, Buck, Cliffside, Dan River, Marshall, and Riverbend facilities shall not exceed:
- (A) 22,270 tons per season for 2004 and 2005;
- (B) 16,780 tons per ozone season for 2006 and each year thereafter until revised according to Rule .1420 of this Section; and
- (C) after revising the allowable emission rates according to Rule .1420 of this Section, the allowable emission rates calculated under Rule .1420 of this Section (When a revision is made under Rule .1420 of this Section, each boiler shall be given a specific allowable emission rate under Rule .1420 of this Section. The allowable emission rates of these boilers shall be summed, and this sum shall be the allowable emission rate for the coal-fired boilers at the Duke Power Company facilities named in this Paragraph.).
- (c) Posting of allowable emissions. The Director shall post the allowable emission rates for sources covered under this Rule on the Division's web page.
- (d) Trading. Sources may comply with the requirements of this Rule using the nitrogen oxide budget trading program set out in Rule .1419 of this Section or obtaining offsets under Rule .1420(f) or (g) of this Section.
- (e) Monitoring. The owner or operator of a source subject to this Rule shall use continuous emission monitors to show compliance.
- (f) Operation of control devices. All emission control devices and techniques installed to comply with this Rule shall be operated beginning May 1 through September 30 in the manner in which they are designed and permitted to be operated.
- (g) Violations. If, at the end of the ozone season, the owner or operator of the company whose actual emissions of nitrogen oxides exceed the limit in Paragraph (a) or (b) of this Rule cannot obtain enough credits under Rule .1419 of this Section to offset these excess emissions, then that company shall be considered in violation for each day that the aggregate emissions of nitrogen oxides exceeded the allowable emissions in Paragraph (a) or (b) of this Rule beginning May 1 through September 30 of that ozone season. If the company complies with the applicable emission limit under Paragraph (a) or (b) of this Rule, then all coal-fired boilers at facilities listed under Paragraph (a) or (b) of this Rule, as applicable, shall be deemed in compliance with this Rule.
- (h) Modification and reconstruction. The modification or reconstruction of a source covered under this Rule shall not make that source a "new" source under this Rule. A source that is modified or reconstructed shall retain its allowable emission rate under Paragraph (a) or (b) of this Rule.
- (i) Additional controls. The Environmental Management Commission may specify through rulemaking a specific emission limit lower than that established under this Rule for a specific source if compliance with the lower emission limit is required as part of the State Implementation Plan to attain or maintain the ambient air quality standard for ozone.
- (j) Contingency provision. At the time of the adoption of this Rule by the Commission on October 12, 2000, challenges have been filed to the requirement (adopted by the United States Environmental Protection Agency and codified in 40 CFR Part

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51, Subpart G, hereinafter referred to as the "federal SIP requirements") that North Carolina submit additions or changes to the provisions in North Carolina's State Implementation Plan ("NC SIP") relating to the control of nitrogen oxide (NO_x) emissions from air emission sources within North Carolina. In addition, certain identified stationary sources are required to implement NO_x controls pursuant to the Section 126 regulations codified in 40 CFR 52.34 and Part 97, which requirements are stayed if the State has adopted a SIP compliant with the 40 CFR Part 51, Subpart G. These Section 126 regulations are also the subject of legal challenge. The Commission recognizes that such challenges could result in some or all of those provisions in the federal SIP or Section 126 requirements being repealed, vacated, reversed, set aside, or remanded by a court of competent jurisdiction, or alternatively withdrawn or otherwise changed by EPA or affected in a way that results in portions of these Rules being no longer mandated by the federal SIP or Section 126 requirements and the EPA. Consequently, it is the desire of the Commission to adopt, simultaneously with the adoption of this Rule, a second rule (the "NO_x SIP Repeal Rules") that would be made effective only in the event of a such an action by a court or by EPA that repeals, vacates, reverses, sets aside, remands, withdraws or otherwise results in these Rules being no longer mandated by the federal SIP or the Section 126 requirements and the EPA. These NO_x SIP Repeal Rules, which were also adopted by the Commission on October 12, 2000, would, if made effective, amend these Rules (which will be codified at 15A NCAC 2D .1402 through .1421), in response to the actions by the court and/or the EPA, by deleting the amendments that these Rules make in existing rules to meet the supplemental requirements for the Hour ozone standard adopted by EPA in the NO_x SIP call regulations. Because of the reliance being placed on these Rules by the regulated community and the lead times required to implement the changes mandated by these Rules, the Commission finds it both appropriate and beneficial to adopt those NO_x SIP Repeal Rules at the same time as these Rules, even though the NO_x SIP Repeal Rules would not be made immediately effective, in order to provide guidance and clarity on what the rules will be should the federal SIP requirements be affected by a court order or EPA action in the manner discussed in this Subsection. Consequently, if the federal SIP and the Section 126 requirements are repealed, vacated, reversed, set aside, or remanded by a final order by a court of competent jurisdiction, or alternatively withdrawn or otherwise changed by EPA or affected in a way that results in these Rules being no longer mandated by the federal NO_x SIP or Section 126 requirements, the Director shall, within five business days of learning of any such decision, submit to the Codifier of Rules (the "Codifier") at the Office of Administrative Hearings a copy of the NO_x SIP Repeal Rules, in order that the Codifier may conduct the review of those NO_x SIP Repeal Rules as provided under G.S. 150B-21.1(b) prior to entering the rule into the North Carolina Administrative Code, thereby making it effective as a temporary rule. In addition, the Commission understands that, even with this procedure, there may be a time between the time of action by a court or EPA and the entering of the NO_x SIP Repeal Rules into the North Carolina Administrative Code if the Codifier of Rules determines the rules cannot be entered into the Code. In order to provide

guidance to the regulated community during this time, the Commission adopts in this Rule the following conditional transition provision, to be utilized in the event that the Commission submits the NO_x SIP Repeal Rules to the Codifier: for the period of time starting five business days after an action resulting in the determination by the Director to submit the NO_x SIP Repeal Rules to the Codifier and until they become effective as temporary rules, activities regulated by these Rules shall be considered in compliance if they conform to the provisions in the NO_x SIP Repeal Rules relating to the control of NO_x emissions. The actions by the Director in filing the NO_x SIP Repeal Rules under the circumstances described herein are solely ministerial and, as such, are subject to a mandamus action to require that they be filed with the Codifier as specified in this Rule. Alternatively, if the federal SIP requirements are repealed, vacated, reversed, set aside, or remanded by a final order by a court of competent jurisdiction, or alternatively withdrawn or otherwise changed by EPA, in any manner other than that described in the previous sentence, but the Section 126 requirements have not been acted on in this manner, the Director shall, within five business days of learning of any such decision, submit to the Commission a written report regarding such action or actions and the Commission shall act on that recommendation at its next regular meeting.

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5), (7), (10);
Temporary Adoption Eff. November 1, 2000.*

15A NCAC 2D .1417 SEASONAL EMISSION RATE FOR LARGE COMBUSTION SOURCES

(a) Applicability. This Rule applies to the sources listed in Paragraph (b) of this Rule and to the following types of sources that are permitted before November 1, 2000, and are not covered under Rule .1416 of this Section:

- (1) fossil fuel-fired stationary boilers, combustion turbines, or combined cycle systems serving a generator with a nameplate capacity greater than 25 megawatts electrical and selling any amount of electricity;
- (2) fossil fuel-fired stationary boilers, combustion turbines, or combined cycle systems having a maximum design heat input greater than 250 million Btu per hour that are not covered under Subparagraph (1) of this Paragraph; and
- (3) the following types of reciprocating internal combustion engines:
 - (A) rich burn stationary internal combustion engines rated at equal or greater than 2,400 brake horsepower;
 - (B) lean burn stationary internal combustion engines rated at equal or greater than 2,400 brake horsepower;
 - (C) diesel stationary internal combustion engines rated at equal or greater than 3,000 brake horsepower; or
 - (D) dual fuel stationary internal combustion engines rated at equal or greater than 2,400 brake horsepower.

(b) Initial allowable emission rates.

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(1) Before the EPA promulgation of revisions to 40 CFR Part 51, Subpart G, revising the nitrogen oxide budget for North Carolina, the following limits apply:

limits in the table beginning May 1 through September 30 (the ozone season), 2004 and each year thereafter until revised according to Rule .1420 of this Section:

(A) Sources named in the table in this Subparagraph shall not exceed the nitrogen oxide (NO_x) emission

<u>FACILITY</u>	<u>SOURCE</u>	<u>ALLOWABLE SEASONAL NO_x EMISSIONS (tons/season) 2004 and 2005</u>	<u>ALLOWABLE SEASONAL NO_x EMISSIONS (tons/season) 2006 and later</u>
<u>Butler Warner Generating, Cumberland Co.</u>		<u>33</u>	<u>49</u>
		<u>33</u>	<u>49</u>
		<u>33</u>	<u>49</u>
		<u>33</u>	<u>52</u>
		<u>33</u>	<u>49</u>
		<u>33</u>	<u>49</u>
		<u>86</u>	<u>126</u>
<u>Cogentrix-Rocky Mount, Edgecombe Co.</u>	<u>Boiler</u>	<u>398</u>	<u>351</u>
<u>Cogentrix-Elizabethtown, Bladen Co.</u>	<u>Coal boiler</u>	<u>143</u>	<u>126</u>
<u>Cogentrix-Kenansville, Duplin Co.</u>	<u>Stoker boiler</u>	<u>128</u>	<u>113</u>
<u>Cogentrix-Lumberton, Robeson Co.</u>	<u>Coal boiler</u>	<u>142</u>	<u>125</u>
<u>Cogentrix-Roxboro, Person Co.</u>		<u>218</u>	<u>192</u>
<u>Cogentrix-Southport, Brunswick Co.</u>		<u>443</u>	<u>391</u>
<u>Ed Generators</u>		<u>0.15</u>	<u>0.15</u>
		<u>0.15</u>	<u>0.15</u>
<u>Fayetteville, Cumberland Co.</u>		<u>565</u>	<u>565</u>
<u>Kitty Hawk, Dare Co.</u>		<u>0.5</u>	<u>0.5</u>
		<u>0.4</u>	<u>0.4</u>
<u>Duke Power, Lincoln</u>	<u>Simple-Cycle</u>	<u>19</u>	<u>20</u>
	<u>Simple-Cycle</u>	<u>19</u>	<u>20</u>
	<u>Simple-Cycle</u>	<u>19</u>	<u>20</u>
	<u>Simple-Cycle</u>	<u>19</u>	<u>19</u>
	<u>Simple-Cycle</u>	<u>19</u>	<u>19</u>
	<u>Simple-Cycle</u>	<u>19</u>	<u>19</u>
	<u>Simple-Cycle</u>	<u>19</u>	<u>19</u>
	<u>Simple-Cycle</u>	<u>19</u>	<u>19</u>
	<u>Simple-Cycle</u>	<u>19</u>	<u>19</u>
	<u>Simple-Cycle</u>	<u>19</u>	<u>19</u>
	<u>Simple-Cycle</u>	<u>19</u>	<u>19</u>
	<u>Simple-Cycle</u>	<u>19</u>	<u>19</u>
	<u>Simple-Cycle</u>	<u>19</u>	<u>19</u>
	<u>Simple-Cycle</u>	<u>19</u>	<u>19</u>
	<u>Simple-Cycle</u>	<u>19</u>	<u>19</u>
	<u>Simple-Cycle</u>	<u>19</u>	<u>19</u>
<u>Panda-Rosemary, Halifax Co.</u>		<u>43</u>	<u>32</u>
		<u>31</u>	<u>23</u>
<u>Roanoke Valley, Halifax Co.</u>		<u>557</u>	<u>492</u>
		<u>178</u>	<u>167</u>
<u>Tobbaccoville</u>	<u>Boiler 1</u>	<u>243</u>	<u>64</u>
	<u>Boiler 2</u>	<u>273</u>	<u>64</u>
	<u>Boiler 3</u>	<u>223</u>	<u>64</u>
	<u>Boiler 4</u>	<u>238</u>	<u>64</u>

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<u>FACILITY</u>	<u>SOURCE</u>	<u>ALLOWABLE SEASONAL NO_x EMISSIONS (tons/season) 2004 and 2005</u>	<u>ALLOWABLE SEASONAL NO_x EMISSIONS (tons/season) 2006 and later</u>
<u>UNC-CH, Orange Co.</u>	<u>Boiler no. 5, 6, and 7</u>	<u>145</u>	<u>128</u>
	<u>Boiler no. 8</u>	<u>150</u>	<u>113</u>
<u>Wiccacon</u>		<u>1</u>	<u>1</u>
<u>CP&L, Lee Plant, Wayne County</u>	<u>Simple-Cycle</u>	<u>31</u>	<u>31</u>
	<u>Simple-Cycle</u>	<u>31</u>	<u>31</u>
	<u>Simple-Cycle</u>	<u>115</u>	<u>115</u>
	<u>Simple-Cycle</u>	<u>115</u>	<u>115</u>
<u>Dynegy, Rockingham County</u>	<u>Simple-Cycle</u>	<u>42</u>	<u>42</u>
	<u>Simple-Cycle</u>	<u>42</u>	<u>42</u>
	<u>Simple-Cycle</u>	<u>42</u>	<u>42</u>
	<u>Simple-Cycle</u>	<u>41</u>	<u>41</u>
<u>CP&L, Woodleaf, Rowan County</u>	<u>Simple-Cycle</u>	<u>41</u>	<u>41</u>
	<u>Simple-Cycle</u>	<u>27</u>	<u>27</u>
	<u>Simple-Cycle</u>	<u>27</u>	<u>27</u>
	<u>Simple-Cycle</u>	<u>27</u>	<u>27</u>
	<u>Simple-Cycle</u>	<u>27</u>	<u>27</u>
<u>CP&L, Mark's Creek, Richmond County</u>	<u>Simple-Cycle</u>	<u>27</u>	<u>27</u>
	<u>Simple-Cycle</u>	<u>27</u>	<u>27</u>
	<u>Simple-Cycle</u>	<u>27</u>	<u>27</u>
	<u>Simple-Cycle</u>	<u>27</u>	<u>27</u>
	<u>Simple-Cycle</u>	<u>27</u>	<u>27</u>
	<u>Simple-Cycle</u>	<u>27</u>	<u>27</u>
	<u>Simple-Cycle</u>	<u>27</u>	<u>27</u>
<u>CP&L, Asheville, Buncombe County</u>	<u>Simple-Cycle</u>	<u>75</u>	<u>75</u>
	<u>Simple-Cycle</u>	<u>75</u>	<u>75</u>

(B) Sources named in the table in this Subparagraph shall not exceed the nitrogen oxide (NO_x) emission limits in the table beginning May 1 through September 30 (the ozone season), 2004 and each year thereafter until revised according to Rule .1420 of this Section:

<u>FACILITY</u>	<u>SOURCE</u>	<u>ALLOWABLE SEASONAL NO_x EMISSIONS (tons/season) 2004</u>	<u>ALLOWABLE SEASONAL NO_x EMISSIONS (tons/season) 2005</u>	<u>ALLOWABLE SEASONAL NO_x EMISSIONS (tons/season) 2006 and later</u>
<u>Weyerhaeuser Paper Co., Martin Co.</u>	<u>Riley boiler</u>	<u>709</u>	<u>709</u>	<u>379</u>
	<u>Package boiler</u>	<u>25</u>	<u>25</u>	<u>25</u>
<u>Blue Ridge Paper Products, Haywood Co.</u>	<u>Pulverized coal dry bottom boiler</u>	<u>265</u>	<u>265</u>	<u>141</u>
	<u>Pulverized coal dry bottom boiler</u>	<u>234</u>	<u>234</u>	<u>125</u>
	<u>Pulverized coal dry bottom boiler</u>	<u>447</u>	<u>447</u>	<u>239</u>
	<u>Pulverized coal, wet bottom boiler</u>	<u>456</u>	<u>456</u>	<u>244</u>

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<u>FACILITY</u>	<u>SOURCE</u>	<u>ALLOWABLE SEASONAL NO_x EMISSIONS (tons/season) 2004</u>	<u>ALLOWABLE SEASONAL NO_x EMISSIONS (tons/season) 2005</u>	<u>ALLOWABLE SEASONAL NO_x EMISSIONS (tons/season) 2006 and later</u>
	<u>Boiler</u>	<u>169</u>	<u>169</u>	<u>90</u>
<u>International Paper Corp., Halifax Co.</u>	<u>Wood/bark-fired boiler-no. 6 oil-fired boiler-pulverized coal, dry bottom boiler</u>	<u>648</u>	<u>648</u>	<u>346</u>
<u>Weyerhaeuser Co. New Bern Mill, Craven Co.</u>	<u>#1 power boiler</u>	<u>226</u>	<u>226</u>	<u>121</u>
	<u>#2 power boiler</u>	<u>72</u>	<u>72</u>	<u>72</u>
<u>International Paper, Columbus Co.</u>	<u>No. 3 Power Boiler</u>	<u>158</u>	<u>158</u>	<u>84</u>
	<u>No. 4 Power Boiler</u>	<u>418</u>	<u>418</u>	<u>223</u>
<u>Fieldcrest-Cannon, Plant 1, Cabarrus Co.</u>		<u>217</u>	<u>217</u>	<u>116</u>
<u>Transcontinental Gas Pipeline Station, 160, Rockingham Co.</u>	<u>Mainline engine #11</u>	<u>127</u>	<u>25</u>	<u>25</u>
	<u>Mainline engine #12</u>	<u>127</u>	<u>25</u>	<u>25</u>
	<u>Mainline engine #13</u>	<u>152</u>	<u>30</u>	<u>30</u>
	<u>Mainline engine #14</u>	<u>155</u>	<u>31</u>	<u>31</u>
	<u>Mainline engine #15</u>	<u>187</u>	<u>37</u>	<u>37</u>
<u>Transcontinental Gas Pipeline Station, 150, Iredell Co.</u>	<u>Mainline engine #12</u>	<u>66</u>	<u>13</u>	<u>13</u>
	<u>Mainline engine #13</u>	<u>68</u>	<u>13</u>	<u>13</u>
	<u>Mainline engine #14</u>	<u>127</u>	<u>25</u>	<u>25</u>
	<u>Mainline engine #15</u>	<u>127</u>	<u>25</u>	<u>25</u>
<u>Transcontinental Gas Pipeline Station, 155, Davidson Co.</u>	<u>Mainline engine #2</u>	<u>127</u>	<u>25</u>	<u>25</u>
	<u>Mainline engine #3</u>	<u>109</u>	<u>22</u>	<u>22</u>
	<u>Mainline engine #4</u>	<u>187</u>	<u>37</u>	<u>37</u>
	<u>Mainline engine #5</u>	<u>108</u>	<u>21</u>	<u>21</u>
	<u>Mainline engine #6</u>	<u>108</u>	<u>21</u>	<u>21</u>

(2) After the EPA promulgates revisions to 40 CFR Part 51, Subpart G, revising the nitrogen oxide budget for North Carolina, the following limits apply:

(A) Sources named in the table in this Subparagraph shall not exceed the nitrogen oxide (NO_x) emission limits in the table beginning May 1 through September 30 (the ozone season), 2004 and each year thereafter until revised according to Rule .1420 of this Section:

<u>FACILITY</u>	<u>SOURCE</u>	<u>ALLOWABLE SEASONAL NO_x EMISSIONS (tons/season) 2004</u>	<u>ALLOWABLE SEASONAL NO_x EMISSIONS (tons/season) 2005 and later</u>
<u>Butler Warner Generating, Cumberland Co.</u>		<u>33</u>	<u>49</u>

TEMPORARY RULES

<u>FACILITY</u>	<u>SOURCE</u>	<u>ALLOWABLE SEASONAL NO_x EMISSIONS (tons/season) 2004</u>	<u>ALLOWABLE SEASONAL NO_x EMISSIONS (tons/season) 2005 and later</u>
		<u>33</u>	<u>49</u>
		<u>33</u>	<u>49</u>
		<u>33</u>	<u>52</u>
		<u>33</u>	<u>49</u>
		<u>33</u>	<u>49</u>
		<u>86</u>	<u>126</u>
<u>Cogentrix-Rocky Mount, Edgecombe Co.</u>	<u>Boiler</u>	<u>398</u>	<u>351</u>
<u>Cogentrix-Elizabethtown, Bladen Co.</u>	<u>Coal boiler</u>	<u>143</u>	<u>126</u>
<u>Cogentrix-Kenansville, Duplin Co.</u>	<u>Stoker boiler</u>	<u>128</u>	<u>113</u>
<u>Cogentrix-Lumberton, Robeson Co.</u>	<u>Coal boiler</u>	<u>142</u>	<u>125</u>
<u>Cogentrix-Roxboro, Person Co.</u>		<u>218</u>	<u>192</u>
<u>Cogentrix-Southport, Brunswick Co.</u>		<u>443</u>	<u>391</u>
<u>Ed Generators</u>		<u>0.15</u>	<u>0.15</u>
		<u>0.15</u>	<u>0.15</u>
<u>Fayetteville, Cumberland Co.</u>		<u>565</u>	<u>565</u>
<u>Kitty Hawk, Dare Co.</u>		<u>0.5</u>	<u>0.5</u>
		<u>0.4</u>	<u>0.4</u>
<u>Duke Power, Lincoln</u>	<u>Simple-cycle</u>	<u>19</u>	<u>20</u>
	<u>Simple-cycle</u>	<u>19</u>	<u>20</u>
	<u>Simple-cycle</u>	<u>19</u>	<u>20</u>
	<u>Simple-cycle</u>	<u>19</u>	<u>19</u>
	<u>Simple-cycle</u>	<u>19</u>	<u>19</u>
	<u>Simple-cycle</u>	<u>19</u>	<u>19</u>
	<u>Simple-cycle</u>	<u>19</u>	<u>19</u>
	<u>Simple-cycle</u>	<u>19</u>	<u>19</u>
	<u>Simple-cycle</u>	<u>19</u>	<u>19</u>
	<u>Simple-cycle</u>	<u>19</u>	<u>19</u>
	<u>Simple-cycle</u>	<u>19</u>	<u>19</u>
	<u>Simple-cycle</u>	<u>19</u>	<u>19</u>
	<u>Simple-cycle</u>	<u>19</u>	<u>19</u>
	<u>Simple-cycle</u>	<u>19</u>	<u>19</u>
	<u>Simple-cycle</u>	<u>19</u>	<u>19</u>
	<u>Simple-cycle</u>	<u>19</u>	<u>19</u>
	<u>Simple-cycle</u>	<u>19</u>	<u>19</u>
<u>Panda-Rosemary, Halifax Co.</u>		<u>43</u>	<u>32</u>
		<u>31</u>	<u>23</u>
<u>Roanoke Valley, Halifax Co.</u>		<u>557</u>	<u>492</u>
		<u>178</u>	<u>167</u>
<u>Tobbaccoville</u>	<u>Boiler 1</u>	<u>243</u>	<u>64</u>
	<u>Boiler 2</u>	<u>273</u>	<u>64</u>
	<u>Boiler 3</u>	<u>223</u>	<u>64</u>
	<u>Boiler 4</u>	<u>238</u>	<u>64</u>
<u>UNC-CH, Orange Co.</u>	<u>boiler no. 5, 6, and 7</u>	<u>145</u>	<u>128</u>
	<u>Boiler no. 8</u>	<u>150</u>	<u>113</u>
<u>Wiccacon</u>		<u>1</u>	<u>1</u>
<u>CP&L, Lee Plant, Wayne County</u>	<u>Simple-Cycle</u>	<u>31</u>	<u>31</u>

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<u>FACILITY</u>	<u>SOURCE</u>	<u>ALLOWABLE SEASONAL NO_x EMISSIONS (tons/season) 2004</u>	<u>ALLOWABLE SEASONAL NO_x EMISSIONS (tons/season) 2005 and later</u>
	<u>Simple-Cycle</u>	<u>31</u>	<u>31</u>
	<u>Simple-Cycle</u>	<u>115</u>	<u>115</u>
	<u>Simple-Cycle</u>	<u>115</u>	<u>115</u>
<u>Dynegy, Rockingham County</u>	<u>Simple-Cycle</u>	<u>42</u>	<u>42</u>
	<u>Simple-Cycle</u>	<u>42</u>	<u>42</u>
	<u>Simple-Cycle</u>	<u>42</u>	<u>42</u>
	<u>Simple-Cycle</u>	<u>41</u>	<u>41</u>
	<u>Simple-Cycle</u>	<u>41</u>	<u>41</u>
<u>CP&L, Woodleaf, Rowan County</u>	<u>Simple-Cycle</u>	<u>27</u>	<u>27</u>
	<u>Simple-Cycle</u>	<u>27</u>	<u>27</u>
	<u>Simple-Cycle</u>	<u>27</u>	<u>27</u>
	<u>Simple-Cycle</u>	<u>27</u>	<u>27</u>
<u>CP&L, Mark's Creek, Richmond County</u>	<u>Simple-Cycle</u>	<u>27</u>	<u>27</u>
	<u>Simple-Cycle</u>	<u>27</u>	<u>27</u>
	<u>Simple-Cycle</u>	<u>27</u>	<u>27</u>
	<u>Simple-Cycle</u>	<u>27</u>	<u>27</u>
	<u>Simple-Cycle</u>	<u>27</u>	<u>27</u>
	<u>Simple-Cycle</u>	<u>27</u>	<u>27</u>
	<u>Simple-Cycle</u>	<u>27</u>	<u>27</u>
<u>CP&L, Asheville, Buncombe County</u>	<u>Simple-Cycle</u>	<u>75</u>	<u>75</u>
	<u>Simple-Cycle</u>	<u>75</u>	<u>75</u>

(B) Sources named in the table in this Subparagraph shall not exceed the nitrogen oxide (NO_x) emission limits in the table beginning May 1 through September 30 (the ozone season), 2004 and each year thereafter until revised according to Rule .1420 of this Section:

<u>FACILITY</u>	<u>SOURCE</u>	<u>ALLOWABLE SEASONAL NO_x EMISSIONS (tons/season) 2004</u>	<u>ALLOWABLE SEASONAL NO_x EMISSIONS (tons/season) 2005 and later</u>
<u>Weyerhaeuser Paper Co., Martin Co.</u>	<u>Riley boiler</u>	<u>709</u>	<u>379</u>
	<u>Package boiler</u>	<u>25</u>	<u>25</u>
<u>Blue Ridge Paper Products, Haywood Co.</u>	<u>Pulverized coal dry bottom boiler</u>	<u>265</u>	<u>141</u>
	<u>Pulverized coal dry bottom boiler</u>	<u>234</u>	<u>125</u>
	<u>Pulverized coal dry bottom boiler</u>	<u>447</u>	<u>239</u>
	<u>Pulverized coal, wet bottom boiler</u>	<u>456</u>	<u>244</u>
	<u>Boiler</u>	<u>169</u>	<u>90</u>
<u>International Paper Corp., Halifax Co.</u>	<u>Wood/bark-fired boiler-no. 6 oil-fired boiler-pulverized coal, dry bottom boiler</u>	<u>648</u>	<u>346</u>
<u>Weyerhaeuser Co. New Bern Mill, Craven Co.</u>	<u>#1 power boiler</u>	<u>226</u>	<u>121</u>
	<u>#2 power boiler</u>	<u>72</u>	<u>72</u>
<u>International Paper, Columbus Co.</u>	<u>No. 3 Power Boiler</u>	<u>158</u>	<u>84</u>

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<u>FACILITY</u>	<u>SOURCE</u>	<u>ALLOWABLE SEASONAL NO_x EMISSIONS (tons/season) 2004</u>	<u>ALLOWABLE SEASONAL NO_x EMISSIONS (tons/season) 2005 and later</u>
	<u>No. 4 Power Boiler</u>	<u>418</u>	<u>223</u>
<u>Fieldcrest-Cannon, Plant 1, Cabarrus Co.</u>		<u>217</u>	<u>116</u>
<u>Transcontinental. Gas Pipeline Station. 160, Rockingham Co.</u>	<u>Mainline engine #11</u>	<u>127</u>	<u>25</u>
	<u>Mainline engine #12</u>	<u>127</u>	<u>25</u>
	<u>Mainline engine #13</u>	<u>152</u>	<u>30</u>
	<u>Mainline engine #14</u>	<u>155</u>	<u>31</u>
	<u>Mainline engine #15</u>	<u>187</u>	<u>37</u>
<u>Transcontinental. Gas Pipeline Station. 150, Iredell Co.</u>	<u>Mainline engine #12</u>	<u>66</u>	<u>13</u>
	<u>Mainline engine #13</u>	<u>68</u>	<u>13</u>
	<u>Mainline engine #14</u>	<u>127</u>	<u>25</u>
	<u>Mainline engine #15</u>	<u>127</u>	<u>25</u>
<u>Transcontinental. Gas Pipeline Station 155, Davidson Co.</u>	<u>Mainline engine #2</u>	<u>127</u>	<u>25</u>
	<u>Mainline engine #3</u>	<u>109</u>	<u>22</u>
	<u>Mainline engine #4</u>	<u>187</u>	<u>37</u>
	<u>Mainline engine #5</u>	<u>108</u>	<u>21</u>
	<u>Mainline engine #6</u>	<u>108</u>	<u>21</u>

(3) Any source covered under this Rule but not listed in Subparagraph (b)(1) or (2) of this Paragraph shall have an allowable nitrogen oxide seasonal rate of zero tons per season beginning May 1 through September 30 (the ozone season), 2004 and each year thereafter until revised according to Rule .1420 of this Section:

(c) Posting of allowable emissions. The Director shall post the allowable emission rates for sources covered under this Rule on the Division's web page.

(d) Trading. Facilities may comply with the requirements of this Rule using the nitrogen oxide budget trading program set out in Rule .1419 of this Section or otherwise obtaining offsets under Rule .1420(f) or (g) of this Section.

(e) Monitoring. The owner or operator of a facility subject to this Rule shall use continuous emission monitors to show compliance.

(f) Operation of control devices. All emission control devices and techniques installed to comply with this Rule shall be operated beginning May 1 through September 30 in the manner in which they are designed and permitted to be operated.

(g) Violations. If at the end of the ozone season, the owner or operator of a source whose actual emissions of nitrogen oxides exceed the limit in Paragraph (b) of this Rule cannot obtain enough credits under Rule .1419 of this Section to offset these excess emissions, then that source shall be considered in violation for each day that the aggregate emissions of nitrogen oxides exceeded the allowable emissions under Paragraph (b) of

this Rule beginning May 1 through September 30 of that ozone season.

(h) Modification and reconstruction. The modification or reconstruction of a source covered under this Rule shall not make that source a "new" source under this Rule. A source that is modified or reconstructed shall retain its allowable emission rate under Paragraph (b) of this Rule.

(i) Additional controls. The Environmental Management Commission may specify through rulemaking a specific emission limit lower than that established under this Rule for a specific source if compliance with the lower emission limit is required as part of the State Implementation Plan to attain or maintain the ambient air quality standard for ozone.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5), (7), (10); Temporary Adoption Eff. November 1, 2000.

15A NCAC 2D .1418 NEW ELECTRIC GENERATING UNITS, LARGE BOILERS, AND LARGE I/C ENGINES

(a) Electric generating units. Emissions of nitrogen oxides from any fossil fuel-fired stationary boiler, combustion turbine, or combined cycle system permitted after October 31, 2000, serving a generator with a nameplate capacity greater than 25 megawatts electrical and selling any amount of electricity shall not exceed:

(1) 0.15 pounds per million Btu if it is not covered under Rule .0530 (prevention of significant deterioration) or

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.0531 (nonattainment area major new source review) of this Subchapter;

(2) 0.15 pounds per million Btu or best available control technology requirements of Rule .0530 of this Subchapter, whichever requires the greater degree of reduction, if it is covered under Rule .0530 of this Subchapter; or

(3) lowest available emission rate technology requirements of Rule .0531 of this Subchapter if it is covered under Rule .0531 of this Subchapter.

(b) Large boilers. Emissions of nitrogen oxides from any fossil fuel-fired stationary boiler, combustion turbine, or combined cycle system having a maximum design heat input greater than 250 million Btu per hour which is permitted after October 31, 2000, and not covered under Paragraph (a) of this Rule, shall not exceed:

(1) 0.17 pounds per million Btu if it is not covered under Rule .0530 (prevention of significant deterioration) or .0531 (nonattainment area major new source review) of this Subchapter;

(2) 0.17 pounds per million Btu or best available control technology requirements of Rule .0530 of this Subchapter, whichever requires the greater degree of reduction, if it is covered under Rule .0530 of this Subchapter; or

(3) lowest available emission rate technology requirements of Rule .0531 of this Subchapter if it is covered under Rule .0531 of this Subchapter.

(c) Internal combustion engines. The following reciprocating internal combustion engines permitted after October 31, 2000, shall comply with the applicable requirements in 40 CFR Part 98, Subpart A, Emissions of NO_x from Stationary Reciprocating Internal Combustion Engines, if the engine is not covered under Rule .0530 (prevention of significant deterioration) or .0531 (nonattainment area major source review) of this Subchapter:

(1) rich burn stationary internal combustion engines rated at equal or greater than 2,400 brake horsepower,

(2) lean burn stationary internal combustion engines rated at equal or greater than 2,400 brake horsepower,

(3) diesel stationary internal combustion engines rated at equal or greater than 3,000 brake horsepower, or

(4) dual fuel stationary internal combustion engines rated at equal or greater than 2,400 brake horsepower.

If the engine is covered under Rule .0530 of this Subchapter, it shall comply with the requirements of Subparagraphs (c)(1) through (c)(4) of this Paragraph or the best available control technology requirements of Rule .0530 of this Subchapter, whichever requires the greater degree of reduction. If the engine is covered under Rule .0531 of this Subchapter, it shall comply with lowest available emission rate technology requirements of Rule .0531 of this Subchapter.

(d) Monitoring. The owner or operator of a source subject to this rule shall use continuous emission monitors to show compliance.

(e) Offsets. Except for internal combustion engines covered under Paragraph (c) of this Rule, the owner or operator of a source covered under this Rule shall include in the permit application a demonstration of allocations or offsets adequate to meet the allowable emissions for the source. If that allocation is

not granted under Rule .1421 of this Section or is insufficient to offset the emissions of the source, the owner or operator of the source shall acquire reductions in emissions of nitrogen oxides from other sources sufficient to offset its emissions. Sources may comply with the requirements of this Rule using the nitrogen oxide budget trading program set out in Rule .1419 of this Section or obtaining offsets under Rule .1420(f) or (g) of this Section. The owner or operator of internal combustion engines covered under Paragraph (c) of this Rule shall not be required to obtain offsets or emission reductions.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5), (7), (10);

Temporary Adoption Eff. November 1, 2000.

15A NCAC 2D .1419 NITROGEN OXIDE BUDGET TRADING PROGRAM

(a) Definitions. For the purposes of this Rule, the definitions in 40 CFR Part 96.2 shall apply except that:

(1) "Permitting agency" means the North Carolina Division of Air Quality; and

(2) "Fossil Fuel" means fossil fuel as defined under Rule .1401 of this Section.

(b) Existing sources. Facilities and sources covered under Rule .1416 or .1417 of this Section may comply with the requirements of Rule .1416 or .1417 of this Section using the procedures of and complying with the requirements of 40 CFR Part 96, Budget Trading Program for State Implementation Plans, with the following exceptions:

(1) Permit applications shall be submitted following the procedures and schedules in this Section and in Subchapter 2Q of this Title instead of the procedures and schedules in 40 CFR Part 96; and

(2) The dates and schedules for monitoring systems in 40 CFR Part 96 shall not apply; however, a source shall not participate in the nitrogen oxide budget trading program under this Rule until it has installed and is operating a continuous emissions monitoring system that complies with 40 CFR Part 96.

(c) New sources. Facilities and sources covered under Rule .1418 of this Section may comply with the requirements of Rule .1418 of this Section using the procedures of and complying with the requirements of 40 CFR Part 96, Budget Trading Program for State Implementation Plans, with the following exceptions:

(1) Permit applications shall be submitted following the procedures and schedules in this Section and in Subchapter 2Q of this Title instead of the procedures and schedules in 40 CFR Part 96; and

(2) The dates and schedules for monitoring systems in 40 CFR Part 96 shall not apply; however, a source shall not participate in the nitrogen oxide budget trading program under this Rule until it has installed and is operating a continuous emissions monitoring system that complies with 40 CFR Part 96.

(d) Opt-in provisions. Sources not covered under Rule .1416, .1417, or .1418 of this Section may opt-in to the budget trading program of 40 CFR Part 96 by following the procedures and requirements of 40 CFR Part 96, Subpart I.

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(e) Divisional requirements. The Director and the Division of Air Quality shall follow the procedures of 40 CFR Part 96 in reviewing permit applications and issuing permits for NO_x Budget sources, in approving or disapproving monitoring systems for NO_x Budget sources, and in taking enforcement action against NO_x Budget sources. The Director may issue permits after May 1, 2003, for sources covered under this Section that are participating in the nitrogen oxide budget trading program under this Section. The provisions of 40 CFR Part 96 pertaining to early reduction credits shall not apply.

(f) Submitting allowance allocations to the EPA. For facilities participating in the NO_x budget trading program, the Director shall submit to the Administrator of the Environmental Protection Agency NO_x allowance allocations according to 40 CFR Part 96. The Environmental Management Commission and the Director shall follow Rules .1416, .1417, and .1420 for allowance allocations instead of the methodology specified in 40 CFR Part 96. The Environmental Management Commission and the Director shall follow Rule .1421 of this Section for set-asides and new source allocations instead of the provisions of 40 CFR Part 96.

(g) EPA to administer. The United States Environmental Protection Agency (EPA) shall administer the budget trading program of 40 CFR Part 96 on behalf of North Carolina. The Director shall provide the EPA the information necessary under 40 CFR Part 96 for the EPA to administer 40 CFR Part 96 on behalf of North Carolina.

(h) Restrictions on trading. NO_x allowances obtained under this Rule shall not be used to meet the emission limits for a source if compliance with that emission limit is required as part of the State Implementation Plan to attain or maintain the ambient air quality ozone standard. Sources covered under Rule .0531 (nonattainment area major new source review) of this Subchapter shall not use the nitrogen oxide budget trading program to comply with Rule .0531 of this Subchapter.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(5), (7), (10);
Temporary Adoption Eff. November 1, 2000.

15A NCAC 2D .1420 PERIODIC REVIEW AND REALLOCATIONS

(a) Periodic Review. By 2006 and every five years thereafter, the Environmental Management Commission shall review the allowable tons-per-season emission limits of sources covered under Rules .1416, .1417, or .1418 of this Section and decide if any revisions are needed.

(b) Procedures for making revisions. In making these revisions, the Environmental Management Commission shall decide if the revised allowable emission rates shall be based on energy input or energy output. Once this decision is made, the Division shall calculate the revised allowable emission rate of sources covered under this Rule using the following procedure:

- (1) The seasonal energy input (or energy output) for each source covered under this Rule is calculated by averaging the two highest seasonal energy inputs (or energy outputs) for the four most recent years. If the source operated only one of these four years, the seasonal energy input (or energy output) for that year is

used. If the source did not operate in any of these years, its projected seasonal energy input (or energy output) is used. The seasonal energy inputs (or energy outputs) are in terms of million Btu per season. The season is beginning May 1 through September 30;

- (2) Seasonal emission rates in terms of pounds per season are calculated for each source covered under this Rule as follows:

(A) For fossil fuel-fired stationary boilers, combustion turbines, or combined cycle systems serving a generator with a nameplate capacity greater than 25 megawatts electrical and selling any amount of electricity, the seasonal energy input (or energy output) for each source is multiplied by:

- (i) 0.15 pounds per million Btu if it is not covered under Rule .0530 (prevention of significant deterioration) or .0531 (nonattainment area major new source review) of this Subchapter;
- (ii) 0.15 pounds per million Btu or best available control technology requirements of Rule .0530 of this Subchapter, whichever requires the greater degree of reduction, if it is covered under Rule .0530 of this Subchapter; or
- (iii) lowest available emission rate technology requirements of Rule .0531 of this Subchapter if it is covered under Rule .0531 of this Subchapter.

(B) For fossil fuel-fired stationary boilers, combustion turbines, or combined cycle systems having a maximum design heat input greater than 250 million Btu per hour that are not covered under Part (A) of this Subparagraph, the seasonal energy input (or energy output) for each source is multiplied by:

- (i) 0.17 pounds per million Btu if it is not covered under Rule .0530 (prevention of significant deterioration) or .0531 (nonattainment area major new source review) of this Subchapter;
- (ii) 0.17 pounds per million Btu or best available control technology requirements of Rule .0530 of this Subchapter, whichever requires the greater degree of reduction, if it is covered under Rule .0530 of this Subchapter; or
- (iii) lowest available emission rate technology requirements of Rule .0531 of this Subchapter if it is covered under Rule .0531 of this Subchapter.

(C) For rich burn stationary internal combustion engines rated at equal or greater than 2,400 brake horsepower, lean burn stationary internal combustion engines rated at equal or greater than 2,400 brake horsepower, diesel stationary internal combustion engines rated at equal or greater than 3,000 brake horsepower, or dual fuel stationary internal combustion engines rated at equal or

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greater than 2,400 brake horsepower covered under Rule .1417 of this Section, the seasonal energy input (or energy output) for each source is multiplied by 0.91 pounds per million Btu;

(3) The individual seasonal emission rates calculated under Subparagraph (2) of this Paragraph are divided by 2000 pounds per ton;

(4) The individual source tonnage seasonal emission rates calculated under Subparagraph (3) of this Paragraph are summed; and

(5) Each individual source tonnage seasonal emission rate calculated under Subparagraph (3) of this Paragraph is multiplied by:

(A) 40,814 plus 50 percent of any available credits from the inspection/maintenance program if the cumulative tonnage seasonal emission rate calculated in Subparagraph (4) of this Paragraph is greater than 40,814 until the EPA promulgation of revisions to 40 CFR Part 51, Subpart G, revising the nitrogen oxide budget for North Carolina; or

(B) 34,504 plus 50 percent of any available credits from the inspection/maintenance program if the cumulative tonnage seasonal emission rate calculated in Subparagraph (4) of this Paragraph is greater than 34,504 after the EPA promulgation of revisions to 40 CFR Part 51, Subpart G, revising the nitrogen oxide budget for North Carolina.

This product is then divided by the cumulative tonnage seasonal emission rate calculated in Subparagraph (4) of this Paragraph. This calculated rate, rounded to the nearest ton, is the revised allowable emission rate for that source.

(c) Process for adopting revised limits. The Environmental Management Commission may make these revisions without going through rulemaking. The Director shall put the new allowable emission rates in the respective air quality permits after they are approved by the Environmental Management Commission. If the source is participating in the nitrogen oxide budget trading program under Rule .1419 of this Section, the Director shall notify the Environmental Protection Agency of the new allowable emission rate.

(d) Public hearing. Before approving the allowable emissions calculated under Paragraph (b) of this Rule, the Environmental Management Commission shall hold a public hearing on the determination under Paragraph (b) of this Rule. The public hearing shall allow at least 45 days for comments from the time that the notice appears in the North Carolina Register.

(e) Compliance with new limits. The new allowable emission rates shall become effective at the beginning of the third ozone season following the adoption of the new allowable emission rate (tons per season) by the Environmental Management Commission.

(f) Transfer of Allowable Emission Rates. The owner or operator of a source covered under Rule .1416, .1417, or .1418 of this Section may transfer part or all of the allowable emissions of that source to another source covered under Rule .1416, .1417, or .1418 of this Section. Such transfers shall be permanent unless the Director and the involved parties agree to

an alternative proposal. The person requesting the transfer shall submit the following information to the Director:

(1) the name, address, and permit number of the source providing the allowable emissions to be transferred and the new allowable emission rate for this source;

(2) the name, address, and permit number of the source receiving the allowable emissions to be transferred and the new allowable emission rate for this source;

(3) the amount of allowable emissions in tons per season being transferred; and

(4) documentation that the owner or operator of the source providing the allowable emissions and the owner or operator receiving the allowable emissions agree to the transfer.

The Director may approve the transfer if he finds that all the information required by this Paragraph has been submitted and that the amount of allowable emissions being transferred are available to be transferred. If the Director approves the transfer, he shall put the new allowable emission rates in the respective permits and shall notify the Environmental Protection Agency of the new allowable emission rates if one or more of the sources involved in the transfer are participating in the trading program under Rule .1419 of this Section. Any allowable emissions transferred under this Paragraph shall expire when the new allowable emission rates become effective under Paragraph (e) of this Rule.

(g) Offsets from non-covered sources. The owner or operator of a source covered under Rule .1416, .1417, or .1418 of this Section may offset part or all of the allowable emissions of that source by reducing the emissions of another source in North Carolina not covered under Rule .1416, .1417, or .1418 of this Section by an amount equal to or greater than the allowable emissions being offset. Only actual decreased emissions that have not previously been relied on to comply with Subchapter 2D or 2Q of this Title or Title 40 of the Code of Federal Regulations can be used to offset the emissions of another source. The person requesting the offset shall submit the following information to the Director:

(1) the name, address, and permit number of the source providing the offset and what the new allowable emission rate for the source will be;

(2) the name, address, and permit number of the source receiving the offset and what the new allowable emission rate for the source will be;

(3) the amount of allowable emissions in tons per season being offset;

(4) a description of the monitoring (which shall be a continuous emissions monitoring system), recordkeeping, and reporting that shall be used to show compliance;

(5) documentation that the offset is an actual decrease in emissions that has not previously been relied on to comply with Subchapter 2D or 2Q of this Title or Title 40 of the Code of Federal Regulations; and,

(6) documentation that the owner or operator of the source providing the allowable emissions and the owner or operator of the source receiving the allowable emissions agree to the offset.

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The Director may approve the offset if he finds that all the information required by this Paragraph has been submitted and that the offset is an actual decrease in emissions that have not previously been relied on to comply with Subchapter 2D or 2Q of this Title or Title 40 of the Code of Federal Regulations. If the Director approves the offset, he shall put the new allowable emission rates in the respective permits and shall notify the Environmental Protection Agency of the new allowable emission rates if one or more of the sources involved in the transfer are participating in the trading program under Rule .1419 of this Section. Any allowable emissions established under this Paragraph shall expire when the new allowable emission rates become effective under Paragraph (e) of this Rule.

(h) Posting of allowable emissions. The Director shall post the allowable emission rates calculated or transferred under this Rule on the Division's web page.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(5), (7), (10); Temporary Adoption Eff. November 1, 2000.

15A NCAC 2D .1421 ALLOCATIONS FOR NEW GROWTH OF MAJOR POINT SOURCES

(a) Purpose. The purpose of this Rule is to establish an allocation pool from which allowable seasonal emissions of nitrogen oxides may be allocated to sources permitted after October 31, 2000.

(b) Eligibility. This Rule applies only to the following types of sources covered under Rule .1418 of this Section, and permitted after October 31, 2000:

- (1) fossil fuel-fired stationary boilers, combustion turbines, or combined cycle systems serving a generator with a nameplate capacity greater than 25 megawatts electrical and selling any amount of electricity; or
- (2) fossil fuel-fired stationary boilers, combustion turbines, or combined cycle systems having a maximum design heat input greater than 250 million Btu per hour that is not covered under Subparagraph (1) of this Paragraph.

(c) Requesting allocation. To receive an allocation under this Rule, the owner or operator of the facility shall provide the following written documentation to the Director:

- (1) a description of the combustion source or sources including the date on which operation began or is planned to begin;
- (2) evidence that the source complies with the emission limit under Rule .1418 of this Section;
- (3) an estimate of the actual emissions of nitrogen oxides in tons per season;
- (4) the tons per season allocation being requested, not to exceed 500; and
- (5) a description of the monitoring, recordkeeping, and reporting plan that will assure continued compliance.

(d) Approving requests. The Director may approve a request for emissions allocation if he finds that:

- (1) All the information and documentation required under Paragraph (c) of this Rule has been submitted;
- (2) The source is eligible for an allocation under this Rule;
- (3) The source complies with Rule .1418 of this Section;

(4) The requested allocation does not exceed the estimated actual emissions of nitrogen oxides; and

(5) The requested allocation does not exceed 500 tons per season or the amount remaining in the allocation pool under this Rule, whichever is less.

The Director shall only approve emissions allocations under this Rule for years in which operation occurs.

(e) Adjustments by the Director. The Director shall reduce the amount of emissions allocation requested under this Rule if he determines that the emissions allocation requested exceeds the amount in the allocation pool or exceeds the actual emissions of nitrogen oxides. If the emissions allocation requested exceeds the amount in the allocation pool, the Director shall reduce the emission allocation to the amount in the allocation pool. If the emissions allocation requested exceeds the actual emissions of nitrogen oxides, the Director shall reduce the emission allocation to the actual emissions.

(f) Initial allocation pool.

(1) Before the EPA promulgation of revisions to 40 CFR Part 51, Subpart G, revising the nitrogen oxide budget for North Carolina, the allocation pool shall contain the following:

(A) in 2004, 1,197 tons;

(B) in 2005, 1,197 tons;

(C) in 2006, 1,010 tons;

(D) in 2007, 2,116 tons; and

(E) in 2008 and each year after that, any available credits from the inspection/maintenance program.

(2) After the EPA promulgates revisions to 40 CFR Part 51, Subpart G, revising the nitrogen oxide budget for North Carolina, the allocation pool shall contain the following:

(A) in 2004, 1,198 tons;

(B) in 2005, 1,010 tons;

(C) in 2006, 2,233 tons;

(D) in 2007, 3,339 tons; and

(E) in 2008 and each year after that, any available credits from the inspection/maintenance program.

(g) Changes in the allocation pool. The Director shall revise the allocation pool each time he approves a request for an allocation by subtracting the approved amount from the allocation pool. Beginning in 2008, the Director shall add to the allocation pool by May 1 of each year any available credits from the inspection/maintenance program.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(5), (7), (10); Temporary Adoption Eff. November 1, 2000.

TITLE 19A – DEPARTMENT OF TRANSPORTATION

Rule-making Agency: *NC Department of Transportation – Division of Highways*

Rule Citation: *19A NCAC 2D .0642*

Effective Date: *October 19, 2000*

TEMPORARY RULES

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

Authority for the rulemaking: *G.S. 20-118(f); 20-119; 136-18(5)*

Reason for Proposed Action: *G.S. 136-18(5) authorized DOT to promulgate rules governing the safe movement of trucks, tractors, trailers and other heavy or destructive vehicles or machinery on state highways. G.S. 20 sets forth weights and dimensions (height, width, length) at which transporters may lawfully move loads over the highways (G.S. 20-115, et seq.). G.S. 20-119 authorized DOT to exercise its discretion to issue permits for movement of vehicles in excess of lawful dimensions or weight, i.e. oversize/overweight permits. HB 1854, ratified in 2000, provided for changes in the statutory framework for issuing these permits. On August 7, 2000, DOT filed temporary rules to implement changes in a comprehensive fashion to regulate the safe, orderly movement of oversize/overweight vehicle over the highways. The statutory and regulatory changes include increased penalties for non-compliance and increased enforcement criteria. As a result, there has been a marked, unexpected increase in the number of permit applications. The changes were effective October 1, 2000. Since October 1, the Permit Unit has processed applications and issued permits far exceeding those before the statutory changes. Despite the best efforts of staff and because of increased applications, we have a significant backlog of applications. This temporary rule will allow time to address the backlog and issue permits for safe movement of oversize/overweight vehicles*

Comment Procedures: *Any interested person may submit written comments on the proposed rule by mailing the comments to Emily Lee, NCDOT, 1501 Mail Service Center, Raleigh, NC 27699-1501.*

CHAPTER 2 – DIVISION OF HIGHWAYS

SUBCHAPTER 2D – HIGHWAY OPERATIONS

SECTION .0600 – OVERSIZE--OVERWEIGHT PERMITS

19A NCAC 02D .0642 TEMPORARY AUTHORIZATION FOR ISSUANCE OF PERMITS

The State Highway Administrator or his designee may, upon receipt of application to the Central Permit Office, issue a short-term oversize/overweight permit valid for unlimited movement to expire December 31, 2000, for vehicle/vehicle combinations described in the following Items:

- (1) A vehicle combination transporting general commodities which has a minimum extreme wheel base of 51 feet and which does not exceed the following dimensions and weights:
 - (a) width of 12 or 14 feet;
 - (b) height of 13 feet, 6 inches;
 - (c) length of 75 feet;
 - (d) gross weight of 90,000 pounds; and
 - (e) axle weights of 12,000 pounds steer axle; 25, 000 pounds single axle; 50,000 pounds tandem axle;

and 60,000 pounds for a three or more axle grouping.

Permits issued under Item (1) of this Rule shall not be restricted to a specific route of travel except that all posted road and bridge limits must be observed. For vehicle/vehicle combinations not exceeding a width of 12 feet, an escort vehicle shall not be required. Likewise, for vehicle/vehicle combinations with a width in excess of 12 feet but not more than 14 feet, one properly equipped single vehicle escort with a gross vehicle weight rating (GVWR) of no less than 2,000 pounds and no more than 17,000 pounds shall be required. Applications for either a 12 foot or 14 foot wide permit issued under Item (1) of this Rule shall require the payment of an application fee of twenty dollars (\$20.00).

- (2) Four or five axle self-propelled equipment or special mobile equipment capable of traveling at a highway speed of 45 miles per hour which has a minimum wheel base of 30 feet and which does not exceed the following dimensions and weights:

- (a) width of 10 feet;
- (b) gross weight of 90,000 pounds;
- (c) axle weights of 20,000 pounds single axle; 50,000 pounds tandem axle; and 60,000 pounds for a three or more axle grouping;
- (d) height of 13 feet, 6 inches;
- (e) length of 45 feet; and
- (f) front and/or rear overhang not to exceed a total of 10 feet.

Permits issued under Item (2) of this Rule shall not be restricted to a specific route of travel except that all posted road and bridge limits must be observed. Applications for permits issued under Item (2) of this Rule shall require the payment of an application fee of twenty dollars (\$20.00).

- (3) A mobile/modular home unit which does not exceed the following dimensions:

- (a) width of 14 feet with a roof overhang not to exceed a maximum of 12 inches;
- (b) height of 13 feet, six inches; and
- (c) length of 105 feet.

Permits issued under Item (3) of this Rule shall not be restricted to a specific route of travel except that all posted road and bridge limits must be observed. The permit shall require that the move be accompanied at all times by two properly equipped single vehicle escorts with a gross vehicle weight rating (GVWR) of no less than 2,000 pounds and no more than 17,000 pounds. Applications for permits issued under Item (3) of this Rule shall require the payment of an application fee of forty dollars (\$40.00).

History Note: Authority G.S. 20-118(f); 20-119; 136-18(5); Temporary Adoption Eff. October 19, 2000.

RULES REVIEW COMMISSION

This Section contains the agenda for the next meeting of the Rules Review Commission on Thursday, November 16, 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 Monday, November 13, 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, 1st Vice Chairman
Jennie J. Hayman, 2nd Vice Chairman
Walter Futch
Paul Powell
George Robinson

RULES REVIEW COMMISSION MEETING DATES

November 16, 2000	December 16, 2000
January 20, 2001	February 17, 2001
March 16, 2001	April 20, 2001
May 18, 2001	June 15, 2001

LOG OF FILINGS

September 20, 2000 through October 20, 2000

DEPT. OF HEALTH AND HUMAN SERVICES

Services for Non-English Speaking Offenders/Client	10 NCAC 14V .3816	Adopt
Reserve	10 NCAC 50B .0311	Amend

JUSTICE/N C SHERIFFS' EDUCATION AND TRAINING STANDARDS

Medical Examination	12 NCAC 10B .0304	Amend
Administration of Telecommunicator Certification Course	12 NCAC 10B .0708	Adopt
Responsibilities School Directors Telecommunicator Certification Course	12 NCAC 10B .0709	Adopt
Certification: School Directors, Telecommunicator Certification Course	12 NCAC 10B .0710	Adopt
Terms and Conditions of Telecommunicator School Director Certification	12 NCAC 10B .0711	Adopt
Suspension: Revocation: Or Denial: Telecommunicator School Director Cert	12 NCAC 10B .0712	Adopt
Admission of Trainees	12 NCAC 10B .0713	Adopt
Accreditation: Delivery/Telecommunicator Certification Course	12 NCAC 10B .0804	Adopt
Reports/Telecommunicator Cert Course Presentation/Completion	12 NCAC 10B .0805	Adopt
Cert: Instructors for Telecommunicator Certification Course	12 NCAC 10B .0913	Adopt
Telecommunicator Instructor Certification	12 NCAC 10B .0914	Adopt
Terms and Conditions of Telecommunicator Instructor Certification	12 NCAC 10B .0915	Adopt
Professional Lecturer Certification Telecommunicator Certification Course	12 NCAC 10B .0916	Adopt
Terms and Conditions of Professional Lecturer Cert	12 NCAC 10B .0917	Adopt
Use of Guest Participants Telecommunicator Certification Course	12 NCAC 10B .0918	Adopt
Suspension Revocation Denial of Telecommunicator	12 NCAC 10B .0919	Adopt
Period/Suspension Revocation or Denial of Telecomm	12 NCAC 10B .0920	Adopt
Purpose	12 NCAC 10B .1101	Amend
General Provisions	12 NCAC 10B .1102	Amend
Intermediate Service Award	12 NCAC 10B .1103	Amend
Advanced Service Award	12 NCAC 10B .1104	Amend
Telecommunicator Certification Course	12 NCAC 10B .1302	Amend
Trainee Attendance	12 NCAC 10B .1305	Adopt
Completion of Telecommunicator Certification Course	12 NCAC 10B .1306	Adopt
Comprehensive Written Exam Telecommunicator Certification	12 NCAC 10B .1307	Adopt
Satisfaction of Minimum Training Requirements	12 NCAC 10B .1308	Adopt

RULES REVIEW COMMISSION

Basic Reserve Deputy Sheriff Professional Certificate	12 NCAC 10B .1403	Amend
Purpose	12 NCAC 10B .1501	Adopt
General Provisions	12 NCAC 10B .1502	Adopt
Intermediate Reserve Service Award	12 NCAC 10B .1503	Adopt
Advanced Reserve Service Award	12 NCAC 10B .1504	Adopt
How to Apply	12 NCAC 10B .1505	Adopt
Purpose	12 NCAC 10B .1601	Adopt
General Provisions	12 NCAC 10B .1602	Adopt
Basic Telecommunicator Certificate	12 NCAC 10B .1603	Adopt
Intermediate Telecommunicator Certificate	12 NCAC 10B .1604	Adopt
Advanced Telecommunicator Certificate	12 NCAC 10B .1605	Adopt
How to Apply	12 NCAC 10B .1606	Adopt
DEPARTMENT OF LABOR		
Name: Address: Hours	13 NCAC 1A .0101	Repeal
Purpose	13 NCAC 1A .0102	Repeal
Commissioner	13 NCAC 1A .0103	Repeal
Deputy Commissioner	13 NCAC 1A .0104	Repeal
Divisions	13 NCAC 1A .0201	Repeal
Petition for Rulemaking Hearings	13 NCAC 1B .0101	Amend
Contents of Petition	13 NCAC 1B .0102	Amend
Disposition of Petitions	13 NCAC 1B .0103	Amend
Notice Mailing List	13 NCAC 1B .0202	Repeal
Additional Information	13 NCAC 1B .0203	Repeal
Request to Participate	13 NCAC 1B .0301	Repeal
Contents of Request	13 NCAC 1B .0302	Repeal
Receipt of Request	13 NCAC 1B .0303	Repeal
Written Submissions	13 NCAC 1B .0304	Repeal
Presiding Officer	13 NCAC 1B .0305	Repeal
Statement of Reasons for Decision	13 NCAC 1B .0306	Repeal
Record of Proceedings	13 NCAC 1B .0307	Repeal
Subjects of Declaratory Rulings	13 NCAC 1B .0401	Repeal
Submission of Request for Ruling	13 NCAC 1B .0402	Repeal
Disposition of Requests	13 NCAC 1B .0403	Repeal
Record of Decision	13 NCAC 1B .0404	Repeal
Definition	13 NCAC 1B .0405	Repeal
Right to Hearing	13 NCAC 1B .0501	Repeal
Petition for Hearing	13 NCAC 1B .0502	Repeal
Simplification of Issues	13 NCAC 1B .0602	Repeal
Request for Department Records	13 NCAC 1B .0605	Repeal
Assistance of Counsel	13 NCAC 1B .0606	Repeal
Final Decisions in Administrative Hearings	13 NCAC 1B .0607	Repeal
Applicability	13 NCAC 1B .0608	Repeal
General Provisions	13 NCAC 1C .0101	Repeal
Assignment of Responsibility	13 NCAC 1C .0102	Repeal
Job Structuring	13 NCAC 1C .0103	Repeal
Discrimination Complaints	13 NCAC 1C .0106	Repeal
General Provisions	13 NCAC 1C .0201	Repeal
Application Procedure	13 NCAC 1C .0202	Repeal
Job Vacancy Announcements	13 NCAC 1C .0203	Repeal
Interview Procedures	13 NCAC 1C .0204	Repeal
Hiring Procedures	13 NCAC 1C .0205	Repeal
Copies Available	13 NCAC 7A .0302	Amend
Definitions	13 NCAC 17 .0101	Amend
Duration and Renewal of License	13 NCAC 17 .0103	Amend
Job Orders	13 NCAC 17 .0106	Amend
Accepting Fees from Applicant and Employer	13 NCAC 17 .0201	Adopt
Activities of Business Considered to be a Private	13 NCAC 17 .0202	Adopt
Review of Licensee's Records	13 NCAC 17 .0204	Adopt
Disclosure of Financial Relationships	13 NCAC 17 .0205	Adopt

RULES REVIEW COMMISSION

CRIME CONTROL & PUBLIC SAFETY, DEPARTMENT OF

Impartial Use of Services	14A NCAC 9H .0304	Repeal
Rotation Zone Contract and Deviation from System	14A NCAC 9H .0305	Repeal
Wrecker Service Regulations	14A NCAC 9H .0306	Repeal
Removal of Wrecker Service	14A NCAC 9H .0307	Repeal
Definitions	14A NCAC 9H .0308	Adopt
Vehicle Removal Procedures	14A NCAC 9H .0309	Adopt
Securing Vehicles When Operator is Arrested	14A NCAC 9H .0310	Adopt
Vehicles Transported and Stored Over Objection	14A NCAC 9H .0311	Adopt
Parking Vehicles off the Roadway	14A NCAC 9H .0312	Adopt
Transporting and Storing Vehicles	14A NCAC 9H .0313	Adopt
Notification	14A NCAC 9H .0314	Adopt
Release of Vehicles	14A NCAC 9H .0315	Adopt
Vehicle Inventory	14A NCAC 9H .0316	Adopt
Reimbursement of Wrecker Operators	14A NCAC 9H .0317	Adopt
Financial Interest	14A NCAC 9H .0318	Adopt
Impartial Use of Services	14A NCAC 9H .0319	Adopt
Rotation, Zone, Contract and Deviation from System	14A NCAC 9H .0320	Adopt
Rotation Wrecker Service Regulations	14A NCAC 9H .0321	Adopt
Recording Wrecker Requests/Incidents	14A NCAC 9H .0322	Adopt
Sanctions for Violations	14A NCAC 9H .0323	Adopt
Hearing Procedures	14A NCAC 9H .0324	Adopt

DENR/ENVIRONMENTAL MANAGEMENT COMMISSION

Tar-Pamlico River Basin-Nutrient Sensitive Waters	15A NCAC 2B .0255	Adopt
Neuse River Basin	15A NCAC 2B .0315	Amend
Definitions	15A NCAC 2C .0102	Amend
Registration	15A NCAC 2C .0103	Amend
Permits	15A NCAC 2C .0105	Amend
Standards of Construction Water Supply Wells	15A NCAC 2C .0107	Amend
Standards for Construction Wells Other Than Water	15A NCAC 2C .0108	Amend
Well Tests for Yield	15A NCAC 2C .0110	Amend
Disinfection of Water Supply Wells	15A NCAC 2C .0111	Amend
Well Maintenance Repair Groundwater Resources	15A NCAC 2C .0112	Amend
Abandonment of Wells	15A NCAC 2C .0113	Amend
Data and Records	15A NCAC 2C .0114	Amend
Designated Areas Wells Cased to Minimum Depth Variance	15A NCAC 2C .0117	Amend
Compliance with Emission Control Standards	15A NCAC 2D .0501	Amend
Control of Visible Emissions	15A NCAC 2D .0521	Amend
Control and Prohibition of Odorous Emissions	15A NCAC 2D .0522	Repeal
Particulate Emissions from Utility Boilers	15A NCAC 2D .0536	Amend
Odor Control of Feed Ingredient Manufacturing Plan Definition	15A NCAC 2D .0539	Amend
Toxic Air Pollutant Guidelines	15A NCAC 2D .1103	Amend
Applicability	15A NCAC 2D .1104	Amend
Compliance Schedules	15A NCAC 2D .1402	Amend
Recordkeeping Reporting Monitoring	15A NCAC 2D .1403	Amend
Seasonal Fuel Switching	15A NCAC 2D .1404	Amend
Seasonal Emission Rates for Boilers at Utility Com	15A NCAC 2D .1411	Amend
Control and Prohibition of Odorous Emissions	15A NCAC 2D .1416	Adopt
Determination of Maximum Feasible Controls for Odor	15A NCAC 2D .1806	Adopt
Implementation Schedule for Performance Standards	15A NCAC 2D .1807	Adopt
Compliance Schedule for Previously Exempted Activities	15A NCAC 2N .0304	Adopt
Permit and Application Fees	15A NCAC 2Q .0109	Amend
Administrative Permit Amendments	15A NCAC 2Q .0203	Amend
Avoidance Conditions	15A NCAC 2Q .0316	Adopt
Purpose and Applicability	15A NCAC 2Q .0317	Adopt
Permit Content	15A NCAC 2Q .0401	Amend
Definitions	15A NCAC 2Q .0508	Amend
	15A NCAC 2Q .0703	Amend

RULES REVIEW COMMISSION

Emission Rates Requiring a Permit	15A NCAC 2Q .0711	Amend
Coatings, Solvent Cleaning, Graphics Arts Operation	15A NCAC 2Q .0803	Amend
Grain Elevators	15A NCAC 2Q .0805	Amend
Cotton Gins	15A NCAC 2Q .0806	Amend
Emergency Generators	15A NCAC 2Q .0807	Amend
Peak Shaving Generators	15A NCAC 2Q .0808	Amend
DENR/MARINE FISHERIES COMMISSION		
Definitions	15A NCAC 3I .0101	Amend
Pound Net Sets	15A NCAC 3J .0107	Amend
Fyke or Hoop Nets	15A NCAC 3J .0111	Adopt
Fishing Gear Restrictions	15A NCAC 3J .0402	Amend
American Lobster (Northern Lobster)	15A NCAC 3L .0301	Amend
Red Drum	15A NCAC 3M .0501	Amend
American Eel	15A NCAC 3M .0510	Amend
Permit Conditions Specific	15A NCAC 3O .0503	Amend
DENR/COASTAL RESOURCES COMMISSION		
Coastal Shorelines	15A NCAC 7H .0209	Amend
EDUCATION, STATE BOARD OF		
Vacation Leave	16 NCAC 6C .0401	Amend
Sick Leave	16 NCAC 6C .0402	Amend
Leave With Pay	16 NCAC 6C .0404	Amend
General Provisions	16 NCAC 6C .0501	Amend
State Graduation Requirements	16 NCAC 6D .0503	Amend
Annual Performance Standards, Grades K-12	16 NCAC 6G .0305	Amend
Annual Performance Standards, Grades 9-12	16 NCAC 6G .0310	Repeal
TRANSPORTATION, DEPARTMENT OF/DIVISION OF MOTOR VEHICLES		
Physical Requirements	19A NCAC 3G .0214	Adopt
Performance Requirements	19A NCAC 3G .0215	Adopt
Performance Evaluation	19A NCAC 3G .0216	Adopt
Evaluation Administration	19A NCAC 3G .0217	Adopt
Buses Used for Driver Testing	19A NCAC 3G .0218	Adopt
School Bus Size Test Requirements	19A NCAC 3G .0219	Adopt
Enter and Exit Bus Test	19A NCAC 3G .0220	Adopt
Throttle and Brake Test	19A NCAC 3G .0221	Adopt
Door Test	19A NCAC 3G .0222	Adopt
Rear Emergency Door Test	19A NCAC 3G .0223	Adopt
Hand Controls Test	19A NCAC 3G .0224	Adopt
Pass and Fail Records	19A NCAC 3G .0225	Adopt
N C LICENSING BOARD FOR GENERAL CONTRACTORS		
Classification	21 NCAC 12 .0202	Amend
Eligibility	21 NCAC 12 .0204	Amend
Filing Deadline	21 NCAC 12 .0306	Repeal
Definitions	21 NCAC 12 .0901	Amend
COSMETIC ART EXAMINERS, STATE BOARD OF		
Space Requirements	21 NCAC 14G .0103	Amend
Approved Field Trips	21 NCAC 14J .0107	Amend
Course of Study	21 NCAC 14K .0102	Amend
Equipment and Instruments	21 NCAC 14K .0103	Amend
Live Model Performances	21 NCAC 14K .0107	Amend
Licensing of Cosmetic Art Shops	21 NCAC 14P .0104	Amend
DENTAL EXAMINERS, BOARD OF		
Credentials and Permit	21 NCAC 16Q .0201	Amend
Sedation Credentials and Permit	21 NCAC 16Q .0301	Amend
Training for Public Health Hygienists Performing Management Arrangements	21 NCAC 16W .0103	Adopt
	21 NCAC 16X .0101	Adopt
EXAMINERS OF ELECTRICAL CONTRACTORS, BOARD OF		
Fees	21 NCAC 18B .0209	Amend
Annual License Fees	21 NCAC 18B .0404	Amend
N C MEDICAL BOARD		

RULES REVIEW COMMISSION

Clinical Pharmacist Practitioner	21 NCAC 32T .0101	Adopt
N C BOARD OF PHARMACY		
When New Permit Required	21 NCAC 46 .1603	Amend
When New Permit Not Required	21 NCAC 46 .1604	Amend
Informal Procedures	21 NCAC 46 .2008	Amend
Responsibilities of Pharmacist-Manager	21 NCAC 46 .2502	Amend
Clinical Pharmacist Practitioner	21 NCAC 46 .3101	Adopt
Definitions	21 NCAC 46 .3201	Adopt
Peer Review Agreements	21 NCAC 46 .3202	Adopt
Due Process	21 NCAC 46 .3203	Adopt
Receipt and Use of Information of Suspected	21 NCAC 46 .3204	Adopt
Intervention ad Referral	21 NCAC 46 .3205	Adopt
Monitoring Treatment	21 NCAC 46 .3206	Adopt
Monitoring Rehabilitation and Performance	21 NCAC 46 .3207	Adopt
Monitoring Post-Treatment Support	21 NCAC 46 .3208	Adopt
Reports of Individual Cases to the Board	21 NCAC 46 .3209	Adopt
Periodic Reporting of Statistical Information	21 NCAC 46 .3210	Adopt
Confidentiality	21 NCAC 46 .3211	Adopt
EXAMINERS OF PLUMBING, HEATING, AND FIRE SPRINKLER CONTRACTORS, BOARD OF		
Continuing Education Requirements	21 NCAC 50 .1401	Adopt
Exemptions and Credits	21 NCAC 50 .1402	Adopt
Computation of Continuing Education	21 NCAC 50 .1403	Adopt
Course Requirements and Limitations	21 NCAC 50 .1404	Adopt
Approval of Courses	21 NCAC 50 .1405	Adopt
Approval of Course Instructors	21 NCAC 50 .1406	Adopt
Certification of Course Completion	21 NCAC 50 .1407	Adopt
Advertisements by Course Sponsors	21 NCAC 50 .1408	Adopt
Termination of Course or Sponsor Approval	21 NCAC 50 .1409	Adopt
Petitions for Reinstatement of License	21 NCAC 50 .1410	Adopt
N C PSYCHOLOGY BOARD		
Types	21 NCAC 54 .1901	Amend
Retaking	21 NCAC 54 .1903	Amend
Failure to Appear	21 NCAC 54 .1904	Amend

RULES REVIEW COMMISSION

**October 19, 2000
MINUTES**

The Rules Review Commission convened at 10:00 a.m. on Thursday morning, October 19, 2000, in the Assembly Room of the Methodist Building, 1307 Glenwood Avenue, Raleigh, North Carolina. There were eight Commissioners present: Chairman Paul Powell, Laura Devan, Jennie Hayman, Palmer Sugg, George Robinson, John Arrowood, Robert Saunders and Walter Futch.

Staff members present were: Joseph J. DeLuca, Staff Director; Bobby Bryan, Rules Review Specialist; Celia Cox and Lisa Johnson.

The following people attended:

Daniel Garner	Banking Commission
Ann Wall	Department of Labor
Joel Arrington	Press
Jimmy Johnson	Marine Fisheries Commission
Juanita Gaskill	Marine Fisheries
George Hurst	Department of Justice
Nancy Fish	Marine Fisheries
Janice Fain	Division Child Development
Bryan Gillilan	Marine Fisheries Commission
Barry Smith	Freedom

RULES REVIEW COMMISSION

Bob Hamilton	NCALB
Thomas Allen	DENR/DAQ
Brad Nelson	DENR/DAQ
Doug Rader	Environmental Defense
Jackie Sheppard	DHHS/DFS
Charlotte Hall	DHHS/DFS
Cindy Kornegay	DHHS/DFS
Dedra Alston	DENR
Scott Perry	Department of Justice
Don Kihler	Winston-Salem Journal
Jeff Manning	DENR/DWQ
Denise Stanford	Dental Board
Tom Harris	Department of Labor
James Blackerby	Coastal Conservation Association
Marie Doklovie	DENR/DWQ
Kim H. Colsom	DEM/DWQ
Elizabeth Maddox	Department of Labor
Jeff Gray	Auctioneers Commission
Pete Moffitt	
Valerie Chafin	
Jim Taylor	Department of Labor
Tom Earnhardt	

APPROVAL OF MINUTES

The meeting was called to order at 10:08 a.m. with Chairman Powell presiding. The Chairman reminded Commissioners about avoiding conflicts of interest. John Arrowood responded by stating he would not vote on the Banking issues. Chairman Powell also asked for any discussion, comments, or corrections concerning the minutes of the September 29, 2000 meeting. The minutes were approved as written.

FOLLOW-UP MATTERS

15A NCAC 2B .0257 and .0258: DENR/Environmental Management Commission - Rewritten rule .0258 submitted by the agency was approved by the Commission. The Commission objected to rewritten .0257(f)(2)(B) because it is unclear what the standards for designating the technical specialist are. It objected to (e)(1) and (2) because it is unclear how or when a person is to sign up for training after the time periods set out in the rule. It approved the other rewritten portions of the rule.

15A NCAC 3M .0513: Marine Fisheries Commission – The period of review was extended on a motion by George Robinson and seconded by Jennie Hayman to determine if the procedure set out in correspondence from the Seafood and Aquaculture Commission was followed.

The meeting was adjourned for a short break at 12:20 p.m. and reconvened at 12:34 p.m.

15A NCAC 3I .0101: Marine Fisheries Commission – The Commission objected to this rule based on ambiguity. It is unclear what constitutes “economically important seafood species” in (b)(20). Commissioner Arrowood voted not to object.

The Commission voted to give Rules Review Commission staff the authority to withhold from filing with OAH any Marine Fisheries Commission rules with a latitude and longitude or metes and bounds description to determine if the descriptions were accurate and unambiguous.

15A NCAC 3J .0103: Marine Fisheries Commission – The period of review was extended on a motion by Walter Futch and seconded by John Arrowood concerning metes and bounds.

21 NCAC 4B .0202: NC Auctioneer Commission – The Commission objected to this rule due to lack of statutory authority. There is no authority cited for the fees charged in (b)(11) and (12). While there is authority to perform the criminal history checks, there is no authority cited to charge the specific fee.

21 NCAC 4B .0302: NC Auctioneer Commission – The Commission objected to this rule due to lack of statutory authority. Because there is no authority cited to charge a fee for a finger print and criminal history check, there is no authority to refuse to refund any fee

RULES REVIEW COMMISSION

submitted. Because there is no rule establishing the amount of any contribution to the Auctioneer Recovery Fund, there was no authority to charge for it. This objection applied to exiting language in the rule.

21 NCAC 4B .0404: NC Auctioneer Commission – The Commission objected to this rule due to lack of statutory authority and ambiguity. In (a)(14), there is no authority to require compliance with orders that have not been adopted as rules. It is not clear what would and would not constitute a violation of (a)(15). This objection applies to exiting language in the rule.

21 NCAC 4B .0801: NC Auctioneer Commission – The Commission objected to this rule due to lack of statutory authority. There is no authority cited for the provision in (c) requiring Board approval of instructors. The Board has authority to approve courses, not instructors. There is not authority cited for the provision in (d) allowing the Board to set the number of hours required outside rulemaking. There is no authority cited for the provision in (h) allowing the Board to mandate topics outside rulemaking.

21 NCAC 4B .0802: NC Auctioneer Commission – The Commission objected to this rule due to lack of statutory authority and ambiguity. There is no authority cited to charge the fee set in (a) and referenced in (b)(1). There is no authority cited for requiring approval of instructors in (b)(2). In addition, there is no cited authority to set staff qualifications for continuing education coordinators.

21 NCAC 4B .0804: NC Auctioneer Commission – The Commission objected to this rule due to lack of statutory authority. There is no authority cited for the Board to approve continuing education instructors. In addition, in (c), it is not clear how an instructor can show that he is truthful, honest and of high integrity. In (d)(3), it is not clear why a real estate broker loses the right to teach when he gets an auctioneers license.

21 NCAC 4B .0805: NC Auctioneer Commission – The Commission objected to this rule due to lack of statutory authority. Because there is no authority cited to charge course sponsors fees, there is no authority for the provision in (e)(3) that coordinators submit fees.

21 NCAC 4B .0809: NC Auctioneer Commission – The Commission objected to this rule due to lack of statutory authority. There is no authority cited to charge continuing education course sponsors a renewal fee.

21 NCAC 4B .0810: NC Auctioneer Commission – The Commission objected to this rule due to lack of statutory authority and ambiguity. Because there is no authority cited to charge fees to course sponsors, there is no authority to take action against them when they stop payment on the unlawfully charged fee as this rule does in (a)(4). In (d), it is not clear what is meant by “improper conduct.”

21 NCAC 4B .0815: NC Auctioneer Commission – The Commission objected to this rule due to ambiguity. The repeated use of appropriate makes this rule unclear. In (a), it is not clear what student materials would be considered appropriate. In (b)(1), it is not clear what is an appropriate rate of speed or appropriate voice inflection, grammar and vocabulary. In (b)(c), it is not clear what type appearance and physical mannerisms are appropriate. In (b)(3), it is not clear when it is appropriate to use illustrative examples or what response to questions is appropriate. In (b)(6), it is not clear what makes a learning environment appropriate.

21 NCAC 4B .0817: NC Auctioneer Commission – The Commission objected to this rule due to ambiguity. In (a)(1), it is not clear what is meant by “active attention.”

21 NCAC 4B .0819: NC Auctioneer Commission – The Commission objected to this rule due to ambiguity. In (a), it is not clear what would constitute “good cause shown.” In (d)(2), it is not clear what is meant by “certification.” In (d)(3), it is not clear what is meant by a “recognized” professional journal. In (e), it is not clear what standards the Board will use in awarding credit hours.

The remaining rules from the NC Auctioneer Commission were approved.

21 NCAC 16I .0102: State Board of Dental Examiners - The rewritten rule submitted by the agency was approved by the Commission.

LOG OF FILINGS

Chairman Powell presided over the review of the log and all rules were approved with the following exceptions:

10 NCAC 3R .0213: DHHS/Division of Facility Services – The Commission objected to this rule due to lack of statutory authority. There is no authority cited for the agency to require, as set out in (d), that an applicant for an exemption to the CON requirement, meet the qualifications in (d)(1) and (2). These appear to be the same qualifications that an HMO applicant for a CON, not the exemption to a CON, must meet as set out in 131E-180(e) and 131E-183(a)(10).

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- 10 NCAC 3R .0305: DHHS/Division of Facility Services – The Commission objected to this rule due to lack of statutory authority. Paragraph (f) appears to be in direct violation of 131E-182(c).
- 10 NCAC 3R .2715: DHHS/Division of Facility Services – The Commission objected to this rule due to ambiguity. In paragraph (a)(2) seems to include all the scanners also mention in (3) and (4). “Each scanner...to be operated” (2) would seem to include “existing scanners” (3) and “approved scanners” (4). It is difficult to see the distinctions among (2), (3), and (4). The same problem would apply in (a)(5) and (6) except that “approved” in (6) seems to mean “proposed mobile scanners if approved.”
- 10 NCAC 3R .6254: DHHS/Division of Facility Services – The Commission objected to this rule due to ambiguity. In (a)(1) it is unclear if “common ownership” applies to a “group of hospitals located in the same city” or just located in the same county. It is hard to understand how a single hospital’s service system (a) could be just “a single hospital” itself as apparently stated in (a)(2).
- 10 NCAC 3R .6255: DHHS/Division of Facility Services – The Commission objected to this rule due to ambiguity. In (b) it is unclear who makes the “inventory update” and need determination “revisions,” although the standards for making those are set out.
- 10 NCAC 3R .6278: DHHS/Division of Facility Services – The Commission objected to this rule due to ambiguity. In (a) it is unclear who is to make the “projection” of a deficit in hospice beds.
- 10 NCAC 3U .1601: DHHS/Child Care Commission – The Commission objected to this rule due to ambiguity. This rule has been approved by the RRC in the past with the same language. The reasons the offending words were probably overlooked are the same reasons they probably should be removed: they are essentially innocuous, general sounding terms that do not add anything to the rule. Those terms are: “responsible” and “on going” (line 9) and “sound” (line 10).
- 10 NCAC 14V .3804: DHHS/Commission for MH/DD/SAS – The Commission objected to this rule due to lack of statutory authority. There is no authority for an agency to incorporate by reference its own manual, as is done in (d)(4). In this case the division acts as staff for the agency.
- 10 NCAC 46C .0107: Social Services Commission – The Commission objected to this rule due to ambiguity. In (e), it is not clear what standards the Division will use in approving lower payment rates.
- 10 NCAC 46D .0106: DHHS – The Commission objected to this rule due to lack of statutory authority. This rule appears to say that funds will be allocated in accordance with procedures not adopted as rules. There is no authority for such a provision. This objection applies to exiting language in the rule.
- 10 NCAC 46D .0107: DHHS – The Commission objected to this rule due to lack of statutory authority. This rule attempts to incorporate the Department’s own Child Care Subsidy Services Manual into the rules by reference. There is no authority cited to do so. This objection applies to exiting language in the rule.
- 10 NCAC 46D .0202: DHHS – The Commission objected to this rule due to lack of statutory authority and ambiguity. In (a), it is not clear what format has been designated by the Division. It is also not clear what review and evaluation criteria have been established by the Division. There is no authority to set them outside rulemaking. In (b), it is not clear what is meant by “standard accounting procedures.” These objections apply to exiting language in the rule.
- 10 NCAC 46E .0111: DHHS – The Commission objected to this rule due to ambiguity. In (c), it is not clear what standards the Division will use in setting time limits for compliance. This objection applies to existing language in the rule.
- 10 NCAC 46F .0110: DHHS – The Commission objected to this rule due to ambiguity. In (b), it is not clear what standards the Division will use in setting time limits for compliance. This objection applies to exiting language in the rule.
- 10 NCAC 46G .0112: Social Services Commission – The Commission objected to this rule due to lack of authority and ambiguity. In (b), it is not clear what would constitute “extenuating circumstances.” This would not amount to the specific guidelines for a modification provision required by G.S. 150B-19(6). This objection applies to existing language in the rule.
- 10 NCAC 46H .0106: Social Services Commission – The Commission objected to this rule due to lack of statutory authority. In (b), there is no authority to incorporate eligibility requirements by reference from a manual that has not been adopted as a rule.
- 10 NCAC 46H .0203: Social Services Commission – The Commission objected to this rule due to lack of statutory authority and ambiguity. There is no authority to reference a manual that has not been adopted as a rule as this rule does in (e). It therefore is not clear what income is to be considered in computing gross income. This objection applies to exiting language in the rule.

RULES REVIEW COMMISSION

10 NCAC 46H .0208: Social Services Commission– The Commission objected to this rule due to lack of statutory authority. There is no authority to set requirements for income eligibility determination in a manual and not a rule.

10 NCAC 46H .0209: Social Services Commission– The Commission objected to this rule due to lack of statutory authority. There is no authority to establish application and eligibility requirements in a manual and not by rule.

10 NCAC 46H .0304: Social Services Commission – The Commission objected to this rule due to ambiguity. In (a), it appears that you probably mean the amount of expenses that exceed ten percent of the family's gross income shall be deducted rather than the amount of expenses that exceed the gross income. If so, the rule is not clear. This objection applies to existing language in the rule.

15A NCAC 2D .0535: Environmental Management Commission– The Commission objected to this rule due to ambiguity. In (e), it is not clear what standards the Director will use to prescribe a time for submission of amendments to the plan. This objection applies to existing language in the rule.

19A NCAC 3D .0519: Division of Motor Vehicles – The Commission objected to this rule due to lack of statutory authority and ambiguity. There is no authority cited for the requirement that a fee be paid to a contractor in (e). Even though the fee is paid to a contractor, not DMV, the Division has no authority to require it be paid absent a specific grant of authority. Here the contractor is acting for DMV pursuant to a contract, so there is practically no difference than in paying it to DMV. If there is authority some place, then it is still not clear what the amount of the fee is.

21 NCAC 16I .0104: NC State Board of Dental Examiners– The Commission objected to this rule due to ambiguity. In (c), it is not clear how the Board will determine how many hours of credit to give for the listed actions. This objection applies to existing language in the rule.

21 NCAC 16R .0104: NC State Board of Dental Examiners– The Commission objected to this rule due to lack of statutory authority and ambiguity. In (a), it is not clear what is meant by "extenuating circumstance." This does not appear to be the specific guidelines required by G.S. 150B-19(6) for an agency to waive its rules. In (c), it is not clear how the Board will determine how many hours of credit to give for the listed actions. This objection applies to exiting language in the rule.

COMMISSION PROCEDURES AND OTHER BUSINESS

Mr. DeLuca reported that no word had been received on the Pharmacy Board lawsuit and that the Labor lawsuit was scheduled for hearing on motions to dismiss on November 13, 2000.

The next meeting will be on Thursday, November 16, 2000.

The meeting adjourned at 2:53 p.m.

Respectfully submitted,
Lisa Johnson

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>
ALCOHOL BEVERAGE CONTROL COMMISSION				
NC ABC Commission v Food Lion, Inc. T/A Food Lion Store 540	99 ABC 0366	Mann	05/30/00	
NC ABC Commission v.DCL., Inc. T/A Cheap Shot O'Malleys	99 ABC 1341	Morrison	06/15/00	15:03 NCR 340
Daniel W. Shelton T/A Shelton Broers v.NC ABC Commission	99 ABC 1641	Conner	08/31/00	15:08 NCR 879
NC ABC Commission v. Harris Teeter, Inc. T/A Harris Teeter 142	99 ABC 1746	Lassiter	05/01/00	
NC ABC Commission v. Headlights, Inc. T/A Headlights	00 ABC 0302	Gray	08/21/00	
Steven Wilson McCrae v. NC ABC Commission	00 ABC 0598	Wade	08/23/00	
Xavier DeShawn Bradley v. NC ABC Commission	00 ABC 0619	Mann	08/08/00	
CRIME CONTROL AND PUBLIC SAFETY				
Mamie Lee French v. N.C. Crime Victims Compensation Commission	99 CPS 1646	Conner	04/27/00	15:01 NCR 38
HEALTH AND HUMAN SERVICES				
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 ¹	Wade	06/30/00	
Charles Cecil Douglas v. Department of Health & Human Services	00 CRA 0648	Wade	08/23/00	
<i>Child Support Enforcement Section</i>				
Steven M. Helms v. Department of Health & Human Services	98 CSE 1634	Gray	07/13/00	
Michael A. Cameron v. Department of Health & Human Services	99 CSE 0424	Mann	09/25/00	
Marcus James Ward v. Department of Health & Human Services	99 CSE 0784	Wade	09/29/00	
Richard C. Mack v. Department of Health & Human Services	99 CSE 1244	Mann	08/16/00	
John Ray McCarroll v. Department of Health & Human Services	99 CSE 1272	Lassiter	08/16/00	
Loany Centeno v. Department of Health & Human Services	99 CSE 1325	Chess	06/29/00	
Craig D. McLeod v. Department of Health & Human Services	99 CSE 1369	Lassiter	08/29/00	
Joseph E. Toothman v. Department of Health & Human Services	99 CSE 1428	Gray	09/27/00	
Darryl Glenn Cannady v. Department of Health & Human Services	99 CSE 1457	Gray	07/27/00	
Michael A. Whitlow v. Department of Health & Human Services	99 CSE 1482	Gray	07/11/00	
Susan Marie Grier v. Department of Health & Human Services	99 CSE 1484	Mann	06/02/00	
David R. McDonald v. Department of Health & Human Services	99 CSE 1486	Lassiter	10/02/00	
Larry N. McLain v. Department of Health & Human Services	99 CSE 1488	Lassiter	08/16/00	
Randy Gillespie v. Department of Health & Human Services	99 CSE 1491	Gray	08/22/00	
Samuel E. Massenberg, Jr. v. Department of Health & Human Services	99 CSE 1513	Morrison	09/27/00	
Nina Maier v. Department of Health & Human Services	99 CSE 1541	Gray	07/28/00	
Ronald E. Davis, Jr. v. Department of Health & Human Services	99 CSE 1554	Gray	07/28/00	
Kenneth Jones v. Department of Health & Human Services	99 CSE 1590	Gray	08/22/00	
Anthony C. Lambert v. Department of Health & Human Services	99 CSE 1699	Gray	06/05/00	
Wendy Gosnell v. Department of Health & Human Services	00 CSE 0073	Mann	06/14/00	
Dwight Dion Hallman v. Department of Health & Human Services	00 CSE 0098	Mann	06/14/00	
Davis, Donald George v. Department of Health & Human Services	00 CSE 0107	Wade	06/08/00	
Davis, Donald George v. Department of Health & Human Services	00 CSE 0108	Wade	06/08/00	

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Thomas Jackson v. Department of Health & Human Services	00 CSE 0165	Chess	07/27/00
Albertus Shaw III v. Department of Health & Human Services	00 CSE 0176	Gray	06/05/00
Linwood Morris v. Department of Health & Human Services	00 CSE 0178	Mann	06/14/00
John H. Jones v. Department of Health & Human Services	00 CSE 0181	Morrison	08/25/00
Eddie J. Sykes v. Department of Health & Human Services	00 CSE 0192	Lassiter	06/13/00
Andrew S. McKenzie v. Department of Health & Human Services	00 CSE 0193	Wade	06/08/00
Darryal K. Anderson v. Department of Health & Human Services	00 CSE 0200	Gray	06/09/00
John V. Wiberg, Jr. v. Department of Health & Human Services	00 CSE 0211	Mann	06/23/00
William Jerry Gibbs v. Department of Health & Human Services	00 CSE 0213	Gray	06/22/00
Izell Anthony Twigg v. Department of Health & Human Services	00 CSE 0226	Gray	06/07/00
Don Fitzgerald Harris v. Department of Health & Human Services	00 CSE 0230	Mann	08/01/00
Benjamin E. Walker v. Department of Health & Human Services	00 CSE 0232	Morrison	07/31/00
Randy Keith Beddard v. Department of Health & Human Services	00 CSE 0236	Lassiter	06/20/00
Delinda Guthrie Montague v. Department of Health & Human Services	00 CSE 0237	Mann	08/01/00
Lavarr Sharpe v. Department of Health & Human Services	00 CSE 0240	Mann	06/26/00
Timothy Holtzclaw v. Department of Health & Human Services	00 CSE 0245	Gray	09/14/00
Melton Tillery v. Department of Health & Human Services	00 CSE 0246	Lassiter	06/20/00
Darla Judkin v. Department of Health & Human Services	00 CSE 0254	Chess	08/23/00
Ronald L. Long, Jr. v. Department of Health & Human Services	00 CSE 0265	Mann	08/31/00
David Lee Jones v. Department of Health & Human Services	00 CSE 0269	Conner	09/27/00
Walter Witherspoon v. Department of Health & Human Services	00 CSE 0268	Chess	06/19/00
Frederica LaShon Smith v. Department of Health & Human Services	00 CSE 0279	Wade	06/08/00
John Wayne Chambers v. Department of Health & Human Services	00 CSE 0280	Mann	06/30/00
George Fuller v. Department of Health & Human Services	00 CSE 0283	Morrison	06/28/00
Robert G. Wilson v. Department of Health & Human Services	00 CSE 0285	Lassiter	05/25/00
Gary Frank Ramsey v. Department of Health & Human Services	00 CSE 0292	Mann	06/29/00
Pierce Foster Williams, Jr., v. Department of Health & Human Services	00 CSE 0297	Conner	09/26/00
Shylatron Copeland v. Department of Health & Human Services	00 CSE 0316	Mann	06/26/00
Isaac L. McCoy v. Department of Health & Human Services	00 CSE 0324	Lassiter	06/29/00
Robert Boening v. Department of Health & Human Services	00 CSE 0341	Mann	06/26/00
Joseph Patrick Santana v. Department of Health & Human Services	00 CSE 0344	Morrison	06/07/00
Hilton R. Shaw v. Department of Health & Human Services	00 CSE 0346	Lassiter	07/07/00
Anthony B. Bryant v. Department of Health & Human Services	00 CSE 0351	Wade	07/19/00
Michael Shelton DeBerry v. Department of Health & Human Services	00 CSE 0353	Gray	06/22/00
Leroy L. Alford v. Department of Health & Human Services	00 CSE 0354	Mann	06/26/00
Michael A. Tarach v. Department of Health & Human Services	00 CSE 0357	Morrison	07/26/00
Jeffrey T. Daye v. Department of Health & Human Services	00 CSE 0369	Lassiter	07/07/00
Michael Powell v. Department of Health & Human Services	00 CSE 0389	Conner	07/27/00
Jerry M. Thurmond v. Department of Health & Human Services	00 CSE 0390	Wade	06/30/00
Donald E. Church v. Department of Health & Human Services	00 CSE 0394	Gray	07/11/00
Ricky Barrett v. Department of Health & Human Services	00 CSE 0415	Mann	07/17/00
Kenneth Ray Smith v. Department of Health & Human Services	00 CSE 0416	Morrison	05/31/00
Juan M. Acosta v. Department of Health & Human Services	00 CSE 0417	Lassiter	06/24/00
Stanley Ray Allison v. Department of Health & Human Services	00 CSE 0425	Gray	07/11/00
James T. Graham v. Department of Health & Human Services	00 CSE 0426	Wade	06/08/00
Rufus Mitchell Simmons, Jr. v. Department of Health & Human Services	00 CSE 0431	Gray	06/27/00
James Howard Alexander v. Department of Health & Human Services	00 CSE 0433	Mann	06/26/00
Steve A. Hayward v. Department of Health & Human Services	00 CSE 0435	Morrison	07/14/00
Leonard Gabriel v. Department of Health & Human Services	00 CSE 0450	Mann	06/29/00
Patrick L. Moore v. Department of Health & Human Services	00 CSE 0463	Wade	06/19/00
Gregory Lee Bell v. Department of Health & Human Services	00 CSE 0464	Conner	06/29/00
Tamika B. Jenkins v. Department of Health & Human Services	00 CSE 0466	Chess	06/19/00
William R. Parker v. Department of Health & Human Services	00 CSE 0467	Gray	06/26/00
Vernon Ledbetter v. Department of Health & Human Services	00 CSE 0468	Mann	06/14/00
Garry L. Studer v. Department of Health & Human Services	00 CSE 0471	Lassiter	07/31/00
Johnnie Green v. Department of Health & Human Services	00 CSE 0472	Wade	08/09/00
Roger Shular v. Department of Health & Human Services	00 CSE 0478	Mann	07/26/00
William A. Toney v. Department of Health & Human Services	00 CSE 0480	Wade	06/19/00
Larry O. Anthony v. Department of Health & Human Services	00 CSE 0484	Conner	06/26/00
Johnny Daye v. Department of Health & Human Services	00 CSE 0485	Gray	06/22/00
Jose A. Seijo v. Department of Health & Human Services	00 CSE 0491	Morrison	06/26/00
Randy Hammonds v. Department of Health & Human Services	00 CSE 0495	Lassiter	06/20/00
Shawn F. Moser Sr. v. Department of Health & Human Services	00 CSE 0511	Conner	08/14/00
Timothy Franklin Clowney v. Department of Health & Human Services	00 CSE 0512	Wade	08/09/00
Clarence Evans v. Department of Health & Human Services	00 CSE 0513 ²	Conner	07/28/00
Clarence Evans v. Department of Health & Human Services	00 CSE 0545 ²	Conner	07/28/00
Rickey L. Gullede v. Department of Health & Human Services	00 CSE 0558	Mann	06/26/00
Damon Barnes Jr. v. Department of Health & Human Services	00 CSE 0567	Lassiter	08/16/00
William A. Bell v. Department of Health & Human Services	00 CSE 0589	Gray	08/21/00
Robert Lee Thompson v. Department of Health & Human Services	00 CSE 0592	Wade	08/10/00
William T. Hutto v. Department of Health & Human Services	00 CSE 0594	Conner	09/07/00
Julian Orlando Fernandez v. Department of Health & Human Services	00 CSE 0599	Gray	08/21/00
Bryan Keith Wilkerson v. Department of Health & Human Services	00 CSE 0607	Morrison	08/01/00
Rodney A. Hopper v. Department of Health & Human Services	00 CSE 0613	Wade	08/23/00
Tabitha Angley v. Department of Health & Human Services	00 CSE 0614	Conner	07/27/00
Douglas M. Coker v. Department of Health & Human Services	00 CSE 0622	Chess	07/11/00
Mark Christopher Smith v. Department of Health & Human Services	00 CSE 0627	Gray	08/21/00
Terrence L. Holder v. Department of Health & Human Services	00 CSE 0640	Morrison	08/18/00
Mikal M. Mua'zzin v. Department of Health & Human Services	00 CSE 0651	Conner	08/28/00

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Jose' D. Rivas v. Department of Health & Human Services	00 CSE 0658	Chess	08/07/00
Valerie A. Simpson v. Department of Health & Human Services	00 CSE 0673	Morrison	07/07/00
James H. Hopper, Jr. v. Department of Health & Human Services	00 CSE 0677	Lassiter	08/29/00
Joseph I. Woodcock v. Department of Health & Human Services	00 CSE 0684	Lassiter	07/07/00
Kenneth R. Harker v. Department of Health & Human Services	00 CSE 0686	Wade	09/11/00
Justine Roberts v. Department of Health & Human Services	00 CSE 0694	Conner	08/28/00
Dana E. Grice v. Department of Health & Human Services	00 CSE 0709	Morrison	09/08/00
Alfred R. Swain v. Department of Health & Human Services	00 CSE 0718	Mann	06/28/00
James C. Martin, Jr. v. Department of Health & Human Services	00 CSE 0751	Conner	08/30/00
Wade A. Burgess v. Department of Health & Human Services	00 CSE 0757	Gray	08/22/00
Donald Daniel Harmon v. Department of Health & Human Services	00 CSE 0758	Mann	10/24/00
Parnell Dougloss Sparks v. Department of Health & Human Services	00 CSE 0761	Morrison	06/06/00
Kevin S. Tate v. Department of Health & Human Services	00 CSE 0764	Lassiter	09/11/00
Jeffrey Ottis Hairr v. Department of Health & Human Services	00 CSE 0766	Mann	07/17/00
Ricky A. Phillips v. Department of Health & Human Services	00 CSE 0777	Morrison	08/01/00
Catherine A. Odom v. Department of Health & Human Services	00 CSE 0792	Mann	08/31/00
George Franklin Anderson v. Department of Health & Human Services	00 CSE 0793	Morrison	08/09/00
Raymond Thomas Carpenter, Jr. v. Department of Health & Human Svcs	00 CSE 0810	Mann	09/25/00
Darrell Johnson v. Department of Health & Human Services	00 CSE 0811	Wade	09/29/00
Ronald Owen Goodwin v. Department of Health & Human Services	00 CSE 0831	Chess	09/07/00
Jean M. Brown v. Department of Health & Human Services	00 CSE 0848	Wade	08/10/00
Richard B. Malloy v. Department of Health & Human Services	00 CSE 0849	Wade	10/02/00
Ronald R. Lemmons v. Department of Health & Human Services	00 CSE 0865	Gray	08/21/00
St. Clair Staley v. Department of Health & Human Services	00 CSE 0890 ³	Conner	10/06/00
Kenneth Duncan v. Department of Health & Human Services	00 CSE 0896	Gray	09/27/00
Kelvin Hardesty v. Department of Health & Human Services	00 CSE 0901	Lassiter	10/02/00
Michael Anthony Wright v. Department of Health & Human Services	00 CSE 0922	Lassiter	10/17/00
Cyrus V. Perry v. Department of Health & Human Services	00 CSE 0924	Gray	09/29/00
Jamey Johnson v. Department of Health & Human Services	00 CSE 0925	Wade	10/10/00
Marvin A. Smith v. Department of Health & Human Services	00 CSE 0932	Conner	09/21/00
Chris Michael Moore v. Department of Health & Human Services	00 CSE 0945	Gray	10/17/00
Matthew Russell Schmidt v. Department of Health & Human Services	00 CSE 0963	Morrison	10/04/00
Keith D. Meredith v. Department of Health & Human Services	00 CSE 1011	Morrison	09/19/00
Billy Joe Davis v. Department of Health & Human Services	00 CSE 1012	Lassiter	09/08/00
Mary A. Hines v. Department of Health & Human Services	00 CSE 1047	Gray	10/20/00
St. Clair Staley v. Department of Health & Human Services	00 CSE 1069 ³	Conner	10/06/00
Victor Ferguson v. Department of Health & Human Services	00 CSE 1396	Mann	06/26/00

Division of Social Services

Emma Burkes (Edwards v. Department of Health & Human Services	00 DCS 1221	Morrison	08/17/00
Frederica LaShon Smith v. Department of Health & Human Services	00 DCS 0277 ¹	Wade	06/30/00
Michael Clay Mitchell v. Department of Health & Human Services	00 DCS 0300	Wade	06/30/00
Sherry Moorefield v. Department of Health & Human Services	00 DCS 0350	Gray	08/25/00
Pamela Browning Frazier v. Department of Health & Human Services	00 DCS 0479	Lassiter	06/12/00
Lisa Lawler v. Department of Health & Human Services	00 DCS 0529	Morrison	08/29/00
May M. Timmons v. Department of Health & Human Services	00 DCS 0546	Gray	06/22/00
Starice Jennifer Anderson v. Department of Health & Human Services	00 DCS 0556	Gray	08/10/00
Beverly Hawking v. Department of Health & Human Services	00 DCS 0600	Mann	06/30/00
Lisa Hardy v. Department of Health & Human Services	00 DCS 0678	Mann	07/17/00
Chasity Pipkin v. Department of Health & Human Services	00 DCS 0838	Gray	09/11/00
Joyce Staley v. Department of Health & Human Services	00 DCS 0842	Conner	09/12/00
Bessie B. Hampton v. Department of Health & Human Services	00 DCS 0845	Morrison	08/29/00
Beverly Singleton v. Department of Health & Human Services	00 DCS 0846	Lassiter	08/18/00
Kerry Lynn Morgan v. Department of Health & Human Services	00 DCS 0850	Conner	09/12/00
Bonnie D. Drew v. Department of Health & Human Services	00 DCS 0906	Morrison	08/28/00
Amy W. Hill v. Department of Health & Human Services	00 DCS 0974	Lassiter	09/08/00
Amelia B. Bradshaw v. Department of Health & Human Services	00 DCS 0996	Mann	09/13/00
Deborah Gray v. Department of Health & Human Services	00 DCS 1068	Morrison	09/19/00
Jennifer C. Dillard v. Department of Health & Human Services	00 DCS 1119	Wade	09/29/00
Johnny K. Moore v. Department of Health & Human Services	00 DCS 1179	Morrison	10/04/00
Jannai Neal v. Department of Health & Human Services	00 DCS 1227	Conner	10/24/00

Estelle Roberta Allison Teague and Marlene Allison Creary v. Department of Health & Human Services	99 DHR 0120	Reilly	05/15/00
Philistine Thompson v. Department of Health & Human Services	99 DHR 0741	Gray	08/22/00
Ruth I. Johnson v. Department of Health & Human Services	99 DHR 0952	Chess	05/27/00
Lakecher McFadden v. Department of Health & Human Services	99 DHR 1631	Conner	09/18/00
Mary Johnson McClure v. Department of Health & Human Services	00 DHR 0368	Lassiter	06/19/00
Vonda Scales Shore v. Department of Health & Human Services	00 DHR 0500	Lassiter	10/06/00
Ann Marie & Daniel Short v. Department of Health & Human Services	00 DHR 0574	Reilly	05/22/00
Lynell Holley Walton v. DHHS, (Health Care Personnel Registry & Investigations)	00 DHR 0605	Chess	08/15/00
Deborah A. Shands v. Butner Adolescent Treatment Center	00 DHR 0695	Mann	07/27/00
Larry E. Cummins MD, PI Case #1999-1752 v. Div. of Medical Assistance, Kim Meymandi, Chief Hearing Officer	00 DHR 0797	Lassiter	08/01/00
Larry E. Cummins MD, PI Case #1999-1117 v. Div. of Medical Assistance, Kim Meymandi, Chief Hearing Officer	00 DHR 0798	Lassiter	08/01/00
Robert and Shirley Harmon on behalf of Gary Harmon v. Crossroads Behavioral Healthcare Center and the NC Div of Mental Health, Dev.	00 DHR 0955	Chess	09/07/00

CONTESTED CASE DECISIONS

<i>Disabilities and Substance Abuse Services</i>					
Walter W. Griswold for Kimberly Griswold v. Crossroads Behavioral Healthcare Center and the NC Div of Mental Health, Dev.	00 DHR 1025	Chess	09/07/00		
<i>Disabilities and Substance Abuse Services</i>					
Carolyn W. Cooper and Happy Days Child Care v. DHHS, Div of Child Development	00 DHR 1031	Gray	08/31/00		
Larnetra D. Noel v. NC Department of Human Services	00 DHR 1327	Chess	10/06/00		
<i>Division of Facility Services</i>					
Angela Denise Headen v. DHHS, Division of Facility Services	99 DHR 0107	Wade	04/11/00	15:01 NCR	41
Ruth Mae Wiley v. NC DHHS, Division of Facility Services	99 DHR 0331	Chess	05/27/00		
Elyse Glover v. DHHS, Div of Facility Svcs., Personnel Registry Case	99 DHR 1036	Lassiter	06/29/00		
Crystal Shermain Byers v. DHHS, Division of Facility Services	00 DHR 0217	Mann	06/07/00		
Camille Faustin v. DHHS, Division of Facility Services	00 DHR 0298	Smith	06/28/00		
David Jordan v. DHHS, Division of Facility Services	00 DHR 0311	Lassiter	06/19/00		
Lester Lee Huskins v. DHHS, Division of Facility Services	00 DHR 0391	Lassiter	08/29/00		
Celestine L. Bristel v. DHHS, Division of Facility Services	00 DHR 0636	Lassiter	08/15/00		
MariaGoretti Adaugo Obialor v. DHHS, Div. of Facility Services	00 DHR 0743	Morrison	08/31/00		
Huelva Dale Corbett v. DHHS, Div. of Facility Services	00 DHS 0780	Gray	09/27/00		
Phoebe Visconti Sanders v. DHHS, Div. of Facility Services	00 DHR 0802	Lassiter	09/27/00		
Iola Cook Jefferson v. DHHS, Division of Facility Services	00 DHR 0835	Lassiter	07/24/00		
Michelle E. Lee v. DHHS, Division of Facility Services	00 DHR 0869	Conner	10/10/00	15:10 NCR	1045
Betty Jean Ellis v. DHHS, Division of Facility Services	00 DHR 0880	Lassiter	09/08/00		
Hartis Stallings v. DHHS, Division of Facility Services	00 DHR 1037	Lassiter	08/29/00		
Desiree P. Garay v. DHHS, Division of Facility Services	00 DHR 1038	Conner	09/20/00		
Lauren Hoodenpyle v. DHHS Division of Facility Services	00 DHR 1045	Chess	09/12/00		
Jacqueline Alexander v. DHHS, Division of Facility Services	00 DHR 1126	Lassiter	09/07/00		
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3. Petitioner received nurse aide training at Springfield Manor Nursing Home in Springfield, Ill., in 1983. Petitioner had also taken nurse aide training courses at Haywood County Technical College and at Southwestern Community College in Sylva, N.C. Petitioner's training covered patient care, including personal hygiene, and resident rights. Petitioner received additional instruction on resident rights through her employment at Silver Bluff Village and had read the North Carolina Nursing Home Resident Bill of Rights. Petitioner knew that residents of nursing facilities have a right to request assistance when assistance is needed. Petitioner also knew that residents have a right to be free from abuse, including verbal abuse. Petitioner knew that the term "verbal abuse" includes the use of disparaging and derogatory language towards residents. In an attempt to prevent abuse, Silver Bluff had warned staff that they might occasionally get angry with the residents. The staff was informed that, if they ever were to get angry with a resident, they should never take out their anger on the resident but they should leave the resident's room and report to their supervisor. (T pp 28-30, 91-94, 116-17; Resp Exh's 1A and 5)

4. On November 18, 1999, Petitioner arrived at work at approximately 5:30 a.m. Petitioner and other staff began getting some of the residents up and dressed for breakfast. Other staff, including Monica Deaver, Ralph Woody and Janita Coleman, arrived at approximately 7:00 a.m. When Ms. Coleman arrived, she noticed that Petitioner was in an angry mood. (T pp 17-19, 55)

5. Between 7:00 a.m. and 7:30 a.m., Petitioner was walking down the hall. She saw a call light on outside one of the resident's rooms. Petitioner went into the resident's room. Monica Deaver was working with the resident, L.A., behind a curtain. Petitioner walked around the curtain and saw L.A. sitting up in bed. L.A. had taken off her pajamas because they were wet with urine and thrown them on the floor. Petitioner picked them up and placed them at the foot of the bed. L.A. told the aides that she needed to go to the toilet. Petitioner told Ms. Deaver that the night-shift staff had said that L.A. had been ill as a hornet and a terror all night. (T pp 17-20; 80, 98)

6. L.A. was approximately 81 years old. She is a retired nurse and was admitted to the facility after suffering a stroke. L.A. has heart problems and residual one-sided weakness as a result of her stroke. She had been admitted because she was not able to care for herself at home. (T pp 17-20; 80, 98)

7. L.A. told Petitioner and Ms. Deaver several times that she needed to go to the bathroom. Petitioner told L.A. that she had been using her call light all morning and that she needed to find something to plug her mouth and the hole where she urinates from. Petitioner also told Ms. Deaver to just dress L.A. and put her in her wheelchair. Ms. Deaver pointed out that L.A. had said that she needed to go to the bathroom. Petitioner told Ms. Deaver, "I don't care. Just put her in her chair." Petitioner and Ms. Deaver had words and Petitioner, "ranting and raving," left the room. As Petitioner walked out, she kicked a box of wipes across the hall. (T pp 56, 58-60; Resp Exh's 4 and 6, p 3)

8. Petitioner had injured her back. She was on light duty, having been instructed not to lift over 15 pounds. She was in pain that morning and went to the doctor after leaving her shift early. (T pp 15, 18, 35).

9. Janita Coleman was standing approximately six to eight feet away just outside the door to L.A.'s room. She heard what had been said. Ms. Deaver asked Ms. Coleman to come in to help her take L.A. to the toilet. It generally takes two people to assist L.A. to the toilet because L.A. has a balance problem. Ms. Coleman went into the resident's room to help Ms. Deaver assist L.A. to the bathroom. (T pp 56, 63-64, 109; Resp Exh 4)

10. L.A. was clearly upset and angry. L.A. told Ms. Deaver and Ms. Coleman that she was going to report Petitioner. (T pp 58; Resp Exh 6)

11. Petitioner walked down the hall to the nurses station and saw Sheila Franklin, L.P.N. Ms. Franklin told Petitioner that the schedule had been changed and that Petitioner had been assigned to work on another hall. Petitioner stated that, if she was going to have to change halls, she would just go to the "god damn house." Petitioner appeared angry. Ms. Franklin told Petitioner that she needed to talk with the nurse in charge about the assignment. (T pp 69-71; Resp Exh 3 and 6 p 2)

12. A little later, one of the nurse aides told Ms. Franklin that L.A. had words with someone. Ms. Franklin went to talk with L.A. about the incident. L.A. told Ms. Franklin about the incident. She said that, earlier, she had needed to go to the bathroom very badly. When she told the aides, they refused to take her and told her to stick something "in it" and that maybe she would not have to go so often. Ms. Franklin asked L.A. who had said that to her. L.A. said, "I'm not telling you because she will get me and she will get you, too." (T pp 70-71; Resp Exh's 3 and 6 p 2)

13. Ms. Franklin reported the incident to Nancy Shelton, R.N., the nurse in charge. Ms. Franklin talked with L.A. about what had happened. When Ms. Shelton asked L.A. to tell her what happened, L.A. stated, "Please don't make me do that." Ms. Shelton told L.A. that she needed to know what had happened and L.A. responded, "If I tell you anything, she will get me and you

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both.” L.A. was visibly upset but told Ms. Shelton that when she had said that she needed to go to the bathroom, Petitioner had told her to “shut up” and to stick a plug in her mouth and where she urinates from. (T pp 75-76; Resp Exh 11)

14. In accordance with Silver Bluff policy and procedures, Larry Reaves, the director of social services at the facility, conducted the facility’s investigation concerning the reported abuse. Mr. Reaves interviewed Monica Deaver, Janita Coleman, Sheila Franklin and L.A. Mr. Reaves found the statements of all these witnesses to be consistent. Mr. Reaves then contacted Petitioner by telephone and asked her to come in to talk about what had happened. (T pp 82-84; Resp Exh 6)

15. L.A. told Mr. Reaves that she was on medication which caused her to have to urinate frequently. L.A. had been incontinent several times during the night and had called for assistance. At approximately 7:00 a.m., L.A. requested assistance, again. Monica Deaver and Petitioner came to her room. L.A. told the aides that she was wet and had soaked her clothes thoroughly. She asked for assistance in getting dry clothes and in going to the bathroom. L.A. said that Monica Deaver turned off the call light and began to try to move L.A. from the bed to the toilet. Petitioner stated that she was on light duty and that she could not help transfer L.A. L.A. said that she insisted on being helped. Petitioner commented that L.A. was just having one of her fits. After L.A. requested assistance again, Petitioner told Ms. Deaver to just put L.A.’s clothes on her where she was sitting. L.A. said that she did not want to be dressed in bed because her bed was wet. Petitioner then told L.A. to just put a sock or cob in the hole where she urinates from and in her mouth. L.A. was very upset and Petitioner left the room, kicking a container across the hall and saying, “God damn this place. My back hurts.” (T pp 85-87)

16. Mr. Reaves testified that L.A. was very emotionally upset and anxious as a result of the incident. He also testified that L.A. was fearful about reporting the incident because she was afraid that the person who did this would “get her” if she told who it was. (T p 87)

17. Lisa Leatherwood, the Director of Nursing, also interviewed L.A. about the incident because the staff had told her that L.A. was so upset. At first, L.A. did not want to talk about what had happened. She was afraid that the aide would retaliate against her if she found out that the resident had reported the incident. (T p 102)

18. Mr. Reaves collected the information that he had obtained from his interviews and made a report to a panel of three facility employees. The committee members asked a lot of questions. The committee then concluded that Petitioner had verbally abused L.A. and had neglected L.A. as well because Petitioner had refused to assist L.A. to the bathroom as L.A. had requested. The committee recommended that Petitioner be terminated due to the severity of the verbal abuse. A report of the conclusion of the facility’s investigation was made to the Division of Facility Services, the Haywood County Department of Social Services and the Ombudsman for long-term care in western North Carolina. (T pp 88-89; Resp Exh 6)

19. By the time of the hearing, L.A. had declined significantly. She was still alert and oriented in that she knew who she was, where she was, and the approximate time of year. However, she had trouble with long-term memory and no longer left the facility. (T p 99)

20. Barbara Powell, R.N., an investigator for the Health Care Personnel Registry, was assigned to investigate the allegation of abuse. Ms. Powell visited the facility to review the resident’s medical record and Petitioner’s personnel file. She also interviewed Janita Coleman, Sheila Franklin, L.P.N., Nancy Shelton, R.N., and Petitioner. During her interview, Petitioner asked Ms. Powell to contact certain other individuals who worked at the facility. Ms. Powell did so. When she talked with Ralph Woody, he said that he did not hear the remarks that Petitioner made to the resident. However, he did say that when he came into the room he saw Petitioner intentionally kick the box of wipes across the floor. He also heard Petitioner say “damn this place, I’m leaving” or something to that effect. Ms. Powell also interviewed L.A. who became visibly upset when talking about the incident. (T p 120-23; Resp Exh’s 2, 3, 4, and 7)

21. Ms. Powell concluded, as a result of the investigation, that Petitioner abused L.A. by telling her to put a plug in her mouth and where she urinates from. Ms. Powell found that the witness statements were consistent in the description of what had been seen and heard. Ms. Powell also placed much weight on the fact that, five months after the incident, the resident was able to provide details about what had happened and was still visibly upset when talking about the incident. (T pp 123-45, Resp Exh 8)

22. Petitioner was notified by letter, dated May 23, 2000, that Respondent had substantiated the allegation of abuse and that Respondent intended to list a finding of abuse on the Nurse Aide Registry and Health Care Personnel Registry. (Resp Exh 10)

Based upon the foregoing Findings of Fact, the undersigned Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

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1. The Office of Administrative Hearings has jurisdiction over the parties and the subject matter pursuant to Chapters 131E and 150B of the North Carolina General Statutes.

2. All parties have been correctly designated and there is no question as to misjoinder or nonjoinder.

3. As a nurse aide working in a nursing facility, Petitioner is subject to the provisions of N.C. Gen. Stat. § 131E-255 and § 131E-256.

4. “Abuse” is defined by 42 CFR Part 488.301 to mean: “the willful infliction of injury, unreasonable confinement, intimidation or punishment which results in physical harm, pain, or mental anguish.” This definition is incorporated by reference in the definition of abuse found at 10 NCAC 3B.1001(1).

5. The definition is in two parts, the second dependent upon the first. The first part requires that there be willful infliction of one of four things: injury, unreasonable confinement, intimidation, or punishment. There is no showing that Petitioner inflicted injury upon L.A. There is no allegation that she subjected L.A. to unreasonable confinement.

6. North Carolina appellate courts have not yet interpreted this definition. The terms “intimidation” and “punishment” are not defined in the regulation.

7. Though Petitioner did not tell L.A. that Petitioner’s actions were to punish her, the acts of attempting to have L.A. dressed in her urine soaked bed and of attempting to prevent L.A. from going to the bathroom despite her professed need to do so might well be interpreted as acts of punishment of L.A. for her frequent use of the night buzzer and for being “ill as a hornet.”

8. Petitioner’s acts may also have constituted “intimidation”. The Court of Appeals has adopted the following definition of “intimidate” in an analogous context: “to make timid or fearful: inspire or affect with fear: frighten.” *State v. Hines*, 122 N.C. App. 545, 552, 471 S.E.2d 109, 114 (1996), quoting Webster’s Third New International Dictionary (1968). In *Hines*, the Court affirmed a conviction of intimidating an election officer based upon the Defendant, a female election official, having yelled at, threatened, and physically crowded the complainant, a male election official. The definition adopted by the Court requires only the instillation of fear; it does not require an overt threat. However, the facts of the *Hines* case do reflect a threat of assault. In the instant case, Petitioner did not threaten the patient with assault, but did leave her in an agitated state. The patient was reported to have been fearful when later interviewed. Petitioner did threaten the patient with considerable physical discomfort. That discomfort did not come to pass, because other staff members took care of the patient’s needs and refused to comply with Petitioner’s orders; however, it appears that Petitioner, at least in the heat of the moment, intended for the discomfort to occur.

9. The second part of the definition, which comes into play only when the first part is satisfied, requires that physical harm, pain, or mental anguish result from the acts of the Petitioner. There is no allegation that either physical harm or pain resulted from Petitioner’s acts. That leaves the question whether “mental anguish” resulted from the words of Petitioner. This term is also not defined in the regulation. Our Supreme Court, in an exhaustive review of the law relating to recovery of damages for emotional distress or mental anguish, has provided guidance on what constitutes mental anguish in *Johnson v. Ruark Obstetrics and Gynecology Assoc.*, 327 N.C. 283, 395 S.E.2d 85 (1990). The Court first stated that “severe emotional distress” is equivalent in meaning to “mental anguish”. *Id.* at 304, 395 S.E.2d at 97. The Court stated what the terms do not mean: “mere temporary fright, disappointment or regret will not suffice.” *Id.* The Court then defined the terms:

‘severe emotional distress’ means any emotional or mental disorder, such as, for example, neurosis, psychosis, chronic depression, phobia, or any other type of **severe and disabling emotional or mental condition** which may be generally recognized and diagnosed by professionals trained to do so.

Id. (emphasis added).

10. No evidence was presented in this contested case that L.A. suffered from any “severe and disabling emotional or mental condition” as a result of the acts of Petitioner. Accordingly, this Office is unable to find that any such condition resulted.

11. Though the acts of Petitioner might be found, though not clearly so, to be within the definitions of “punishment” or “intimidation”, the regulation additionally requires that the patient suffer physical harm, pain, or mental anguish as a result of the punishment or intimidation. No evidence establishing the latter having been presented, this Office must find that Respondent erred in finding that “abuse” occurred on November 19, 1999.¹

¹ Respondent urges this Office to find that abuse occurred in this case based upon an urged assumption that verbal abuse must be included in the regulatory definition. Neither this Office or the Agency, however, is allowed to substitute what we take to be a

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12. It must be remembered that the purpose of this contested case is not to determine whether the rude and nasty things said by Petitioner to this disabled octogenarian were proper, justified, in line with procedures, nice, or deserving of punishment. Petitioner has already received the swift and sure punishment of an immediate firing from her livelihood. Her firing was undoubtedly justified. One hopes that Petitioner has learned from that experience and from the opprobation she has received from her peers. But the purpose of this contested case is first to determine whether Petitioner did what she was accused of, and this Office has found that she did; and, second, to determine whether what she did constitutes “abuse” as defined in 42 CFR §488.301, and this Office cannot find that Petitioner’s angry words meet that statutory definition. That definition is properly drawn to include only very serious occurrences, since the result of falling under the definition is a no-second-chances, permanent black listing from the accused’s chosen profession.²

13. Respondent erred in substantiating the allegation of abuse against Petitioner.

Based upon the foregoing Findings of Fact and Conclusions of Law, the undersigned makes the following:

RECOMMENDED DECISION

That the Respondent’s decision to place a finding of abuse at Petitioner’s name in the Nurse Aide Registry and the Health Care Personnel Registry be reversed.

NOTICE

Agency that will make the final decision in this contested case is the North Carolina Department of Health and Human Resources, Division of Facility Services.

The agency 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. § 150-36(a). The agency 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' attorney of record and to the Office of Administrative Hearings.

This the 10th day of October, 2000.

James L. Conner, II
Administrative Law Judge

“sensible” definition of “abuse” for the one actually provided in the regulation. The single published decision cited by Respondent interprets a different definition of abuse—one that *does* explicitly include verbal abuse and is much broader than the one at issue here. *Hearns v. District of Columbia Dept. of Consumer & Regulatory Affairs*, 704 A.2d 1181 (1997). The regulatory definition interpreted by the D.C. court, and the one urged upon this Office, is one that sets forth the rights of nursing home residents and states what should not happen to them. 42 CFR §483-13(c)(1). It is not the much narrower standard for what constitutes a career-ending, no-second-chances, permanent black-listing offense for a nursing assistant.

² 42 CFR §483.156(c)(1)(iv)(D) requires that the listing be permanent.