



**Volume 15, Issue 13
Pages 1175 - 1238**

January 2, 2001

This issue contains documents officially filed through December 7, 2000.

Office of Administrative Hearings
Rules Division
424 North Blount Street (27601)
6714 Mail Service Center
Raleigh, NC 27699-6714
(919) 733-2678
FAX (919) 733-3462

Julian Mann III, Director
Camille Winston, Deputy Director
Molly Masich, Director of APA Services
Ruby Creech, Publications Coordinator
Linda Dupree, Editorial Assistant
Dana Sholes, Editorial Assistant
Rhonda Wright, Editorial Assistant

- I. EXECUTIVE ORDERS**
Executive Orders 174 – 175 1175
- II. IN ADDITION**
ENR - Intent to Redevelop a Brownfields
Property - Chair Specialties, Inc. 1176
ENR - Intent to Redevelop a Brownfields
Property - Hillsborough Ventures,L.L.C.. . . . 1177
Labor - Permanent Variance – Dupont
Fluoroproducts. 1178
Labor - Verbatim Adoption of Federal Sandards. . 1179
- III. RULE-MAKING PROCEEDINGS**
Agriculture
Food and Drug Protection Division. 1180
Environment and Natural Resources
Marine Fisheries.. . . . 1180 - 1181
Labor
Wage and Hour... 1180
Transportation
Highways, Division of... 1181
- IV. PROPOSED RULES**
Environment and Natural Resources
Environmental Health Services 1211 - 1222
Insurance
Code Officials Qualification Board 1182 - 1199
Financial Evaluation Division 1210
Home Inspector Licensure Board 1199 - 1209
Life and Health Division 1210 - 1211
Property and Casualty Division.... 1209
- V. TEMPORARY RULES**
Environment and Natural Resources
Marine Fisheries Commission... 1224 - 1225
Health and Human Services
Social Services Commission.. . . . 1223 - 1224
- VI. CONTESTED CASE DECISIONS**
Index to ALJ Decisions 1226 - 1232
Text of Selected Decisions
98 EDC 0368 1233 - 1238
- VII. CUMULATIVE INDEX..... 1 - 87**

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
14A	Crime Control & Public Safety	Electrolysis	19
15A	Environment and Natural Resources	Foresters	20
16	Public Education	Geologists	21
17	Revenue	Hearing Aid Dealers and Fitters	22
18	Secretary of State	Landscape Architects	26
19A	Transportation	Landscape Contractors	28
20	Treasurer	Massage & Bodywork Therapy	30
*21	Occupational Licensing Boards	Marital and Family Therapy	31
22	Administrative Procedures (Repealed)	Medical Examiners	32
23	Community Colleges	Midwifery Joint Committee	33
24	Independent Agencies	Mortuary Science	34
25	State Personnel	Nursing	36
26	Administrative Hearings	Nursing Home Administrators	37
27	NC State Bar	Occupational Therapists	38
28	Juvenile Justice and Delinquency	Opticians	40
	Prevention	Optometry	42
		Osteopathic Examination & Reg. (Repealed)	44
		Pastoral Counselors, Fee-Based Practicing	45
		Pharmacy	46
		Physical Therapy Examiners	48
		Plumbing, Heating & Fire Sprinkler Contractors	50
		Podiatry Examiners	52
		Professional Counselors	53
		Psychology Board	54
		Professional Engineers & Land Surveyors	56
		Real Estate Appraisal Board	57
		Real Estate Commission	58
		Refrigeration Examiners	60
		Sanitarian Examiners	62
		Social Work Certification	63
		Soil Scientists	69
		Speech & Language Pathologists & Audiologists	64
		Substance Abuse Professionals	68
		Therapeutic Recreation Certification	65

Note: Title 21 contains the chapters of the various occupational licensing boards.

NORTH CAROLINA REGISTER
 Publication Schedule for July 2000 – June 2001

Filing Deadlines			Notice of Rule-Making Proceedings	Notice of Text							Temporary Rule
volume & issue number	issue date	last day for filing	earliest register issue for publication of text	earliest date for public hearing	non-substantial economic impact			substantial economic impact			270 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	
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	05/00/02	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	05/00/02	07/13/01
15:09	11/01/00	10/11/00	01/02/01	11/16/00	12/01/00	12/20/00	05/00/02	01/02/01	01/22/01	05/00/02	07/29/01
15:10	11/15/00	10/24/00	01/16/01	11/30/00	12/15/00	12/20/00	05/00/02	01/16/01	01/22/01	05/00/02	08/12/01
15:11	12/01/00	11/07/00	02/01/01	12/18/00	01/02/01	01/22/01	05/00/02	01/30/01	02/20/01	05/00/02	08/28/01
15:12	12/15/00	11/22/00	02/15/01	01/02/01	01/16/01	01/22/01	05/00/02	02/13/01	02/20/01	05/00/02	09/11/01
15:13	01/02/01	12/07/00	03/15/01	01/17/01	02/01/01	02/20/01	05/00/02	03/05/01	03/20/01	05/00/02	09/29/01
15:14	01/16/01	12/20/00	04/02/01	01/31/01	02/15/01	02/20/01	05/00/02	03/19/01	03/20/01	05/00/02	10/13/01
15:15	02/01/01	01/10/01	04/02/01	02/16/01	03/05/01	03/20/01	05/00/02	04/02/01	04/20/01	05/00/02	10/29/01
15:16	02/15/01	01/25/01	05/01/01	03/02/01	03/19/01	03/20/01	05/00/02	04/16/01	04/20/01	05/00/02	11/12/01
15:17	03/01/01	02/08/01	05/01/01	03/16/01	04/02/01	04/20/01	05/00/02	04/30/01	05/21/01	05/00/02	11/26/01
15:18	03/15/01	02/22/01	06/01/01	03/30/01	04/16/01	04/20/01	05/00/02	05/14/01	05/21/01	05/00/02	12/10/01
15:19	04/02/01	03/12/01	06/01/01	04/17/01	05/02/01	05/21/01	05/00/02	06/01/01	06/20/01	05/00/02	12/28/01
15:20	04/16/01	03/26/01	06/15/01	05/01/01	05/16/01	05/21/01	05/00/02	06/15/01	06/20/01	05/00/02	01/11/02
15:21	05/01/01	04/10/01	07/02/01	05/16/01	05/31/01	06/20/01	05/00/02	07/02/01	07/20/01	05/00/02	01/26/02
15:22	05/15/01	04/24/01	07/16/01	05/30/01	06/14/01	06/20/01	05/00/02	07/16/01	07/20/01	05/00/02	02/09/02
15:23	06/01/01	05/11/01	08/01/01	06/18/01	07/02/01	07/20/01	05/00/02	07/31/01	08/20/01	05/00/02	02/26/02
15:24	06/15/01	05/25/01	08/15/01	07/02/01	07/16/01	07/20/01	05/00/02	08/14/01	08/20/01	05/00/02	03/12/02

EXPLANATION OF THE PUBLICATION SCHEDULE

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

GENERAL

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

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

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

FILING DEADLINES

ISSUE DATE: The Register is published on the first and fifteenth 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.

**EXECUTIVE ORDER NO. 174
EXTENDING EXECUTIVE ORDER NO. 48**

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

Executive Order No. 48, Concerning the State Commission on National and Community Service (now known as the "North Carolina Commission on Volunteerism and Community Service"), as previously extended and as previously amended by Executive Order No. 154, is hereby extended until December 31, 2001.

This order is effective immediately.

Done in Raleigh, North Carolina, this the 8th day of November, 2000.

James B. Hunt, Jr.
Governor

ATTEST:

Elaine F. Marshall
Secretary of State

**EXECUTIVE ORDER NO. 175
EXTENDING EXECUTIVE ORDER NO. 157**

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

Executive Order No. 157, Mentoring Council, is hereby extended until December 31, 2001.

This order is effective immediately.

Done in Raleigh, North Carolina, this the 8th day of November, 2000.

James B. Hunt, Jr.
Governor

ATTEST:

Elaine F. Marshall
Secretary of State

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.

**SUMMARY OF NOTICE OF
INTENT TO REDEVELOP A BROWNFIELDS PROPERTY**

CHAIR SPECIALTIES, INC.

Pursuant to G.S. 130A-310.34, Chair Specialties, Inc. has filed with the North Carolina Department of Environment and Natural Resources ("DENR") a Notice of Intent to Redevelop a Brownfields Property ("Property") in Hamlet, Richmond County, North Carolina. The Property consists of approximately 10 acres and is located at the northwest corner of the intersection of North Carolina State Road 2032 and North Carolina Highway 177 South in Hamlet, Richmond County, North Carolina. Environmental contamination exists on the Property in soil. Chair Specialties, Inc. has committed itself to expanding its furniture manufacturing capabilities on the Property. The Notice of Intent to Redevelop a Brownfields Property includes: (1) a proposed Brownfields Agreement between DENR and Chair Specialties, Inc., which in turn includes (a) a legal description of the Property, (b) a map showing the location of the Property, (c) a description of the contaminants involved and their concentrations in the media of the Property, (d) and the above-stated description of the intended future use of the Property; and (2) a proposed Notice of Brownfields Property prepared in accordance with G.S. 130A-310.35. The full Notice of Intent to Redevelop a Brownfields Property may be reviewed at the Hamlet Public Library located at 302 Main Street, Hamlet, North Carolina 28345 by contacting the librarian at (910) 582-3477, or at 401 Oberlin Rd., Raleigh, North Carolina 27605 by contacting Scott Ross at that address, at scott.ross@ncmail.net, or at (919) 733-2801, ext. 328. Written public comments may be submitted to DENR within 60 days of this Notice. Written requests for a public meeting may be submitted to DENR within 30 days of the date of this Notice. All such comments and requests, and/or requests to view the full Notice of Intent, should be addressed as follows:

Mr. Bruce Nicholson
Head, Special Remediation Branch
Superfund Section
Division of Waste Management
NC Department of Environment and Natural Resources
401 Oberlin Road, Suite 150
Raleigh, North Carolina 27605

**SUMMARY OF NOTICE OF
INTENT TO REDEVELOP A BROWNFIELDS PROPERTY**

Hillsborough Ventures, L.L.C.

Pursuant to G.S. 130A-310.34, Hillsborough Ventures, L.L.C. has filed with the North Carolina Department of Environment and Natural Resources ("DENR") a Notice of Intent to Redevelop a Brownfields Property ("Property") in Raleigh, Wake County, North Carolina. The Property consists of 2.017 acres and is located at 3011, 3013, 3015, 3017, 3019, 3021, 3023, 3025 and 3027 Hillsborough Street, 6, 8 and 9 McKnight Street, and 110 Friendly Drive. Environmental contamination exists on the Property in soil and groundwater. Hillsborough Ventures, L.L.C. has committed itself to the purchase of the Property and redevelopment of a mixed retail and residential complex on the Property. In light of previous investigation activities conducted on the Property by Hillsborough Ventures, L.L.C. and others, land use restrictions, inspections during redevelopment, and soil excavation and/or land surface capping requirements included in the proposed Notice of Brownfields Property referenced below are sufficient to protect public health and the environment. The Notice of Intent to Redevelop a Brownfields Property includes: (1) a proposed Brownfields Agreement between DENR and Hillsborough Ventures, L.L.C., which in turn includes (a) a legal description of the Property, (b) a map showing the location of the Property, (c) a description of the contaminants involved and their concentrations in the media of the Property, (d) the above-stated description of the intended future use of the Property, and (e) proposed investigation and remediation; and (2) a proposed Notice of Brownfields Property prepared in accordance with G.S. 130A-310.35. The full Notice of Intent to Redevelop a Brownfields Property may be reviewed at 401 Oberlin Rd., Raleigh, NC 27605 by contacting Scott Ross at that address, at scott.ross@ncmail.net; or at (919) 733-2801, ext. 328. Written public comments may be submitted to DENR within 60 days of the date of this Notice. Written requests for a public meeting may be submitted to DENR within 30 days of the date of this Notice. All such comments and requests, and/or requests to view the full Notice of Intent, should be addressed as follows:

Mr. Bruce Nicholson
Head, Special Remediation Branch
Superfund Section
Division of Waste Management
NC Department of Environment and Natural Resources
401 Oberlin Road, Suite 150
Raleigh, North Carolina 27605

IN ADDITION

North Carolina Department of Labor
Division of Occupational Safety and Health
Raleigh, NC

Order 2000-V-02
Dupont Fluoroproducts
Permanent Variance

Order:

In accordance with G.S. 95-132 and 13 NCAC 07A .0700, Dupont Fluoroproducts is granted permission to use the *Hansen* 4000 series brass coupling in their 3M supplied-air respirator assembly as requested in Dupont's Application for Permanent Variance dated May 30, 2000. This permission applies to Dupont's Fayetteville Works site located at 22828 NC Hwy 87 West in Fayetteville, NC.

Discussion:

The Dupont Fayetteville Works facility manufactures various products, including one that uses Fluorine Compounds that generate Hydrogen Fluoride as a by-product. Hydrogen Fluoride presents a serious inhalation and skin hazard. Due to the potential hazards, Dupont requires its employees to wear full body level B protection as well as a supplied-air respirator during certain production activities.

Dupont was initially using an approved 3M W-8000 series helmet with a brass *Hansen* coupling that worked well in the plant environment but, due to its design, was pinching and tearing the employees' butyl gloves during disconnect. Dupont felt that this posed an unacceptable risk of skin. Dupont switched to and is currently using an approved 3M W-8000 series helmet with a *Schrader* airline coupling. The coupling is made from cadmium-plated steel with brass internal parts. The steel portion of this coupling corrodes in the plant environment and becomes nonfunctional in short periods of time. In some cases, the employees have had to cut off the hose above the coupling in order to disconnect from the air supply. This, too, poses an unacceptable inhalation risk

Dupont contacted 3M to discuss the use of an unapproved *Hansen* 4000 series brass coupling that they were familiar with from prior use. This coupling will withstand the environmental conditions and is designed so that it will not pinch the butyl gloves. 3M purchased and tested the coupling for Dupont. The *Hansen* 4000 series is an expensive coupling that is used in other industries for fluid movement but for respirator use could be cost prohibitive. The *Hansen* 4000 series has a larger inner bore that provides greater airflow than the coupling currently used at Dupont, so 3M tested the coupling and provided Dupont with a table showing the operating pressure necessary to achieve the required airflow.

Action:

This order grants Dupont's request for a permanent variance. This permanent variance will remain in effect until modified or revoked pursuant to G.S. 95-132(b)(3) and 13 NCAC 07A .0709.

11/30/00
Effective Date

Signed on Original
Robert K. Andrews, Jr.
Director

IN ADDITION

North Carolina Department of Labor
Division of Occupational Safety and Health
4 West Edenton Street
Raleigh, NC 27601

(919) 662-4597

NOTICE OF VERBATIM ADOPTION OF FEDERAL STANDARDS

In consideration of G.S. 150-B-21.5(c) the Occupational Safety and Health Division of the Department of Labor hereby gives notice that:

- rule changes have been submitted to update the *North Carolina Administrative Code* at 13 NCAC 07F .0502 to incorporate by reference the occupational safety and health related provisions of Title 29 of the *Code of Federal Regulations* Part 1917 promulgated as of June 30, 2000, except as specifically described, and
- the *North Carolina Administrative Code* at 13 NCAC 07A .0301 automatically includes amendments to certain parts of the *Code of Federal Regulations*, including Title 29, Part 1904—Recording and Reporting Occupational Injuries and Illnesses.

This update encompasses recent verbatim adoptions concerning:

- Marine Terminals

The *Federal Register* (FR), as cited above, contains both technical and economic discussions that explain the basis for each change.

For additional information, please contact:

Bureau of Education, Training and Technical Assistance
Occupational Safety and Health Division
North Carolina Department of Labor
4 West Edenton Street
Raleigh, North Carolina 27601

For additional information regarding North Carolina's process of adopting federal OSHA Standards verbatim, please contact:

Thomas A. Harris, Acting General Counsel
North Carolina Department of Labor
Legal Affairs Division
4 West Edenton Street
Raleigh, NC 27601

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

TITLE 02 – DEPARTMENT OF AGRICULTURE

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

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

Citation to Existing Rule Affected by this Rule-making: 02 NCAC 09L .1005. Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 143-458

Statement of the Subject Matter: 02 NCAC 09L .1005(e) prohibits the aerial application of pesticides within 100 feet of any residence, even with the consent of the occupants. A petition for rule-making would provide for an exemption from the prohibition under certain conditions.

Reason for Proposed Action: The Pesticide Board is initiating rule-making proceedings as a result of a petition for rule-making from Mr. Elbie Powers, a farmer and aerial applicator from Sampson County. His stated purpose is to allow the aerial application of pesticides within 100 feet of a residence to treat fruit and nut trees and for mosquito control.

Comment Procedures: Written comments may be submitted to James W. Burnette, Jr., Secretary, North Carolina Pesticide Board, c/o Food and Drug Protection Division, Pesticide Section, North Carolina Department of Agriculture and Consumer Services, P.O. Box 27647, Raleigh, NC 27611.

TITLE 13 – DEPARTMENT OF LABOR

CHAPTER 12 – WAGE AND HOUR

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

Citation to Existing Rule Affected by this Rule-making: 13 NCAC 12 .0400, .0600, .0700, .0800. Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 95-25.3; 95-25.5; 95-25.15; 95-25.19

Statement of the Subject Matter: Rules regarding the enforcement of the Wage and Hour Act provisions relating to youth employment, including detrimental occupations for youth under age eighteen.

Reason for Proposed Action: To amend and propose Wage and Hour rules to embody enforcement positions of the Department of Labor regarding youth employment and to clarify and add detrimental occupations for youth in order to provide for their health and well-being and to help youth, parents and employers more fully understand their responsibilities.

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

CHAPTER 03 – MARINE FISHERIES

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

Citation to Existing Rule Affected by this Rule-making: 15A NCAC 03J .0301; 03O .0101; 03R .0107. Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 113-182; 113-182.1; 143B-289.51

Statement of the Subject Matter: The Marine Fisheries Commission is considering amending rules identifying long haul seine areas and rules related to the use of pots, including modifying the designated areas and time. Consider amending procedures for issuance/renewal of licenses.

Reason for Proposed Action: The Marine Fisheries Commission is considering the rules which require pots be in designated areas and which areas are so designated. The

Marine Fisheries Commission is considering amending the rules on license issuance and renewals.

Comment Procedures: *Written comments may be submitted to the Marine Fisheries Commission, c/o Juanita Gaskill, PO Box 769, Morehead City, NC 28557*

Comment Procedures: *Interested and potentially affected persons or parties are encouraged to make known their views with regard to this proposed rulemaking. Comments, data or information should be submitted by 5:00 p.m. on March 2, 2001 to Ann B. Wall, Legal Specialist, Department of Labor, Legal Affairs Division, 4 West Edenton St., Raleigh, NC 27601-1092.*

Authority for the Rule-making: *G.S. 143B-350*

TITLE 19A - DEPARTMENT OF TRANSPORTATION

CHAPTER 02 – DIVISION OF HIGHWAYS

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

Citation to Existing Rule Affected by this Rule-making: *19A NCAC 02D .1003. Other rules may be proposed in the course of the rule-making process.*

Statement of the Subject Matter: *Rule sets conditions for individuals or groups to participate in Adopt A Highway program.*

Reason for Proposed Action: *Proposed amendments add language to the rule to enhance the safety of DOT employees. Adoption agreements are lengthened from 1 year to 4 years to reduce staff and volunteer paperwork.*

Comment Procedures: *Any interested person may submit written comments on the proposed rule by mailing the comments to Emily Lee, N.C. DOT, 1501 Mail Service Center, Raleigh, NC 27699-1501 by May 1, 2001.*

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

TITLE 11 – DEPARTMENT OF INSURANCE

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Department of Insurance/NC Code Officials Qualification Board intends to adopt the rule cited as 11 NCAC 08 .0711, amend the rules cited as 11 NCAC 08 .0602, .0604, .0704, .0706, .0708-.0709, and repeal the rule cited as 11 NCAC 08 .0802. Notice of Rule-making Proceedings was published in the Register on November 1, 2000.

Proposed Effective Date: July 1, 2002

Public Hearing:

Date: January 23, 2001

Time: 1:00 p.m.

Location: 410 N. Boylan Ave., Raleigh, NC 27603

Reason for Proposed Action: Rules are being updated to comply with present standards.

Comment Procedures: Written comments may be sent to Mike Page, NC Department of Insurance, 410 N. Boylan Ave., Raleigh, NC 27603. Comments will be received through February 2, 2001.

Fiscal Impact

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

CHAPTER 08 – ENGINEERING AND BUILDING CODES

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

**11 NCAC 08 .0602 NATURE OF
PROBATIONARY CERTIFICATE**

(a) A probationary certificate may be issued, without examination, to any newly-employed or newly-promoted code enforcement official who lacks a standard certificate that covers ~~his~~ the new position. A probationary certificate shall be issued for two years only and may not be ~~renewed~~, ~~renewed~~; ~~provided that probationary certificates shall be issued to Fire Prevention Code enforcement officials for two years only, or until June 30, 1994, whichever is later, and may not be renewed.~~ The official shall take whatever measures are necessary during

~~such~~ the two year period to qualify for an appropriate standard certificate. A probationary certificate authorizes the official, during the effective period of the certificate, to hold the position of the type, level, and location specified. The certificate shall be conditioned on the applicant's completion of a high school diploma or a high school equivalency certificate (GED) and meeting one of the following:

- (1) Working under supervision sufficient to protect the public health and safety;
- (2) Possessing a minimum of two years of design, construction, or inspection experience working under a certified inspector or under a licensed professional engineer, registered architect, or licensed contractor;
- (3) Possessing one of the experience qualifications listed in 11 NCAC 8 .0706 in each area of code enforcement for which the probationary certificate is issued; or
- (4) Successfully completing a probationary prequalification exam administered by the Board in each area of code enforcement for which the probationary certificate is issued.

(b) A probationary certificate shall be issued if the Board determines that the applicant may obtain the experience required by Paragraph (a)(3) of this Rule before the expiration of the probationary certificate.

Authority G.S. 143-151.12(2); 143-151.13(d).

**11 NCAC 08 .0604 APPLICATION FORM:
CONTENTS**

The application form requires the applicant to furnish all of the following pertinent information necessary to determine the qualifications of the applicant for a probationary certificate:

- (1) the date;
- (2) name, address and telephone number where applicant can be reached;
- (3) ~~age~~; date of birth;
- (4) education;
- (5) work experience;
- (6) certificates and other professional licenses, if any, held previously or currently;
- (7) title of position to which appointed or promoted;
- (8) date of appointment or promotion to position;
- (9) governmental unit by which employed;

PROPOSED RULES

- | | |
|--|--|
| <p>(10) duties in a new position, in sufficient detail to determine appropriate type and level of certification;</p> <p>(11) name and title, certification, or other qualifications of persons to be responsible for supervision <u>supervision; and</u></p> <p><u>(12) Social Security number.</u></p> | <p>(2) name, address, and telephone number where applicant can be reached;</p> <p>(3) <u>age; date of birth;</u></p> <p>(4) education;</p> <p>(5) work experience;</p> <p>(6) certificates and other professional licenses, if any, held previously or currently;</p> <p>(7) type and level of certificate for which application is made;</p> <p>(8) governmental unit by which currently employed;</p> <p>(9) supporting data needed for verification of applicant's qualifications called for by Rule .0706 and/or Rule .0707 of these Regulations; <u>.0706 or .0707 of this Section; and</u></p> <p><u>(10) Social Security number.</u></p> |
|--|--|

Authority G.S. 143-151.13.

SECTION .0700 - QUALIFICATION BOARD-STANDARD CERTIFICATE

11 NCAC 08 .0704 APPLICATION FORM: CONTENTS

The application form requires the applicant to furnish all of the following pertinent information necessary to determine the qualifications of the applicant for a standard certificate:

- (1) the date;

Authority G.S. 143-151.13.

11 NCAC 08 .0706 REQUIRED QUALIFICATIONS: TYPES AND LEVELS

(a) Qualification Levels

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

~~OCCUPANCY CLASSIFICATION LEVEL I LEVEL II LEVEL III~~
(See Sec. 404-412 of Volume I, North Carolina State Building Code)

ASSEMBLY	1 story 7,500 sf	1 story 20,000 sf	Unlimited
BUSINESS	1 story 20,000 sf	1 story 60,000 sf	Unlimited
EDUCATION	1 story 7,500 sf 20,000 sf per floor	4 stories 20,000 sf per floor 2 stories	Unlimited
HAZARDOUS	1 story 3,000 sf * (See Note)	2 stories 20,000 sf per floor	Unlimited
INDUSTRIAL	1 story 20,000 sf	1 story 60,000 sf per floor 4 stories 20,000 sf per floor	Unlimited
INSTITUTIONAL	1 story 7,500 sf	3 stories 10,000 sf per floor	Unlimited
MERCANTILE	1 story 20,000 sf	1 story 60,000 sf per floor	Unlimited

PROPOSED RULES

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

Occupancy

<u>Classification</u>	<u>Level I</u>	<u>Level II</u>	<u>Level III</u>
<u>Assembly</u>	<u>1 story/7,500 sf</u>	<u>1 story/20,000 sf</u>	<u>Unlimited</u>
<u>Business</u>	<u>1 story/20,000 sf</u>	<u>1 story/60,000 sf</u>	<u>Unlimited</u>
	<u>Multi-story: 4 stories max/20,000 sf per floor</u>		
<u>Education</u>	<u>1 story/7,500 sf</u>	<u>1 story/20,000 sf</u>	<u>Unlimited</u>
	<u>Multi-story: 2 stories max/20,000 sf per floor</u>		
<u>Hazardous</u>	<u>1 story/3,000 sf</u>	<u>1 story/20,000 sf</u>	<u>Unlimited</u>
	<u>(See Note)</u>	<u>Multi-story: 2 stories max/20,000 sf per floor</u>	
<u>Industrial</u>	<u>1 story/20,000 sf</u>	<u>1 story/60,000 sf</u>	<u>Unlimited</u>
	<u>Multi-story: 4 stories max/20,000 sf per floor</u>		
<u>Institutional</u>	<u>1 story/7,500 sf</u>	<u>1 story/10,000 sf</u>	<u>Unlimited</u>
	<u>Multi-story: 3 stories max/10,000 sf per floor</u>		
<u>Mercantile</u>	<u>1 story/20,000 sf</u>	<u>1 story/60,000 sf</u>	<u>Unlimited</u>
	<u>Multi-story: 4 stories max/20,000 sf per floor</u>		
<u>Residential</u>			
<u>Multi-unit</u>	<u>1 story /7,500 sf</u>	<u>3 stories max/no restriction on floor area</u>	<u>Unlimited</u>
<u>1 & 2 family dwellings, townhouses</u>	<u>Unlimited</u>	<u>Unlimited</u>	<u>Unlimited</u>
<u>Storage</u>	<u>1 story/20,000 sf</u>	<u>1 story/60,000 sf per floor</u>	<u>Unlimited</u>
	<u>Multi-story: 4 stories max/20,000 sf per floor</u>		

See Volume I of NC State Building Code for Occupancy classifications.

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

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

CERTIFICATION LEVELS FOR FIRE INSPECTORS

LEVEL I: - OCCUPANCY:

- Business
- Small Assembly
- Mercantile
- Residential
- Storage
- Excluding Highrise *

PROPOSED RULES

- No Plan Review
- LEVEL II: - OCCUPANCY:
 - Everything in Level I
 - Large Assembly
 - Educational
 - Industrial
 - Plan Review of all Occupancies in Level II
 - Excluding Highrise *
- LEVEL III: - OCCUPANCY:
 - Everything in Levels I and II
 - Hazardous
 - Institutional
 - Highrise
 - Plan Review of all Occupancies
 - (Unlimited Occupancies)

* The term "excluding highrise" is listed because some of the acceptable occupancies for the levels could be located in a highrise (defined in Volume I of the State Building Code) building.

(b) Whenever a provision of ~~this Rule~~ these Rules requires a supporting letter (maximum of two per level) ~~from a supervisor~~, the letter(s) shall be notarized, shall state the ~~author's~~ ~~supervisor's~~ qualifications (i.e., what type and level of certificate or license ~~he the supervisor~~ holds), shall state that the applicant has worked under ~~his the supervisor's~~ direct supervision for a specified period of time, and shall recommend certification of the applicant as a specified type and level of inspector upon satisfaction of other required qualifications.

~~The supervisor shall describe the name, floor area, and number of stories of the buildings worked on by the applicant and shall describe the work performed by the applicant.~~

~~References in these Rules to professional engineer or licensed engineer means engineers licensed according to G.S. 89C. References in these Rules to registered architect means architects licensed according to G.S. 83A. References to licensed building, residential, electrical, heating, plumbing, and fire sprinkler contractors means contractors licensed according to G.S. 87. References to licensed "building" contractors do not include licensed "residential" contractors. Specialty licenses issued by these Boards are not acceptable. Applicants with licenses from other states or countries must provide a copy of their license and documentation that the requirements of the other state are at least equivalent to the statewide licensing requirements of North Carolina licensing boards.~~

Whenever a provision of ~~this Rule~~ these Rules requires the possession of a license other than those certificates that are issued by the Board, if the status of the license is inactive, the applicant must provide documentation from the appropriate licensing board.

~~Whenever a provision of these Rules requires inspector experience on a minimum number of buildings or systems, the experience must include all the inspections typically performed by an inspector during construction of the building or system. Inspections do not have to be performed on the same building.~~

Whenever a provision of ~~this Rule~~ these Rules requires a high school education or other education and experience

qualifications, the Board may in its discretion approve equivalent requirements. Whenever a provision of these Rules requires the possession of a diploma or degree from an accredited college, university, or trade school, accredited shall mean accreditation from a regional accrediting association, for example, Southern Association of Colleges and Schools.

~~Every applicant shall; for certification as a code administrator or a building, electrical, mechanical, plumbing, or fire inspector shall, in addition to satisfying the appropriate education and experience qualifications prescribed by this Rule:~~

- (1) provide documentation that the applicant possesses a minimum of a high school education or a high school equivalency certificate (GED); and
- (2) provide notarized certification by a city or county ~~manager or clerk-manager, clerk, or director of inspection department~~ that the applicant is the administrative head of or is performing "code enforcement", as defined in G.S. 143-151.8(a)(3), as an employee of that city or county; or provide certification by the head of the Engineering and Building Codes Division of the North Carolina Department of Insurance that the applicant is performing "code enforcement", as defined in G.S. 143-151.8(a)(3), for a state department or agency; and
- (3) make a passing grade on ~~short~~ courses specified by the Board or equivalent courses approved by the Board; and
- (4) ~~if required,~~ take and make a passing grade on the written examination administered by the ~~Board;~~ Board unless exempt by Rule .0707 of this Section; and
- (5) meet at least one of the education and experience requirements in Paragraph (c) through (q) of this Rule for the area and level of certification sought.

~~(e) Code Administrator. A standard certificate, code administrator, shall be issued to any applicant who:~~

- ~~(1) possesses a standard certificate as a building, electrical, mechanical, plumbing, or fire inspector; and~~
- ~~(2) has had at least one year of experience supervising inspections for the state or a city or county inspection department.~~

~~(4)(c) Building Inspector, Level I. A standard certificate, building inspector, Level I, shall be issued to any applicant who complies with Paragraph (b) of this Rule and who provides documentation that the applicant possesses one of the following education and experience qualifications:~~

- ~~(1) completion of at least one year of technical or trade school training or an apprenticeship program in building construction; or an approved four-year nontechnical degree;~~
- ~~(2) at least six months of work under the direct supervision of a standard certified building inspector I, II, or III, licensed engineer, architect, or general contractor, with a supporting letter from such supervisor;~~
- ~~(3) a limited license as a building contractor;~~
- ~~(4) at least one year of building construction or inspection experience while working under a limited licensed building contractor;~~
- ~~(5) certification by the Board as an electrical inspector I, mechanical inspector I, plumbing inspector I, or fire inspector I; at least one year of experience as such certified inspector; and completion of at least one year of building construction technology courses approved by the Board;~~
- ~~(6) at least two years of experience as an active principal in a home building firm;~~
- ~~(7) at least two years of experience as a subcontractor in the building trades or work in building construction under the supervision of a home builder who at that time had at least three years of experience; or~~
- ~~(8) at least two continuous years of experience inspecting construction of Level I buildings for a city or county inspection department.~~
- ~~(1) a one year diploma in building construction from an accredited college or an equivalent apprenticeship or trade school program in building construction;~~
- ~~(2) a four-year degree from an accredited college or university;~~
- ~~(3) at least six months of building inspection experience with a probationary certificate on a minimum of two Level I buildings while working under the direct supervision of a standard certified building inspector I, II, or III with a supporting letter from the applicant's supervisor which complies with Paragraph (b) of this Rule;~~
- ~~(4) at least one year of building design, construction, or inspection experience on a~~

minimum of two Level I buildings while working under the direct supervision of a licensed engineer, registered architect, or licensed building contractor with a supporting letter from the applicant's supervisor which complies with Paragraph (b) of this Rule;

- (5) a license as a building contractor ;
- (6) at least two years of building construction or inspection experience while working under a licensed building contractor;
- (7) at least two years of experience with a probationary building inspection certificate inspecting building construction on a minimum of two Level I buildings;
- (8) at least two years of experience as an active principal in a home building firm and who has a license as a residential contractor and with construction experience on a minimum of two Level I buildings; or
- (9) at least two years of construction experience as a subcontractor or employee of a residential contractor in the building trades or work in building construction on a minimum of two Level I buildings and under the direct supervision of a licensed residential contractor who at that time had at least three years of experience.

~~(e)(d) Building Inspector, Level II. A standard certificate, building inspector, Level II, shall be issued to any applicant who complies with Paragraph (b) of this Rule and who provides documentation that the applicant possesses one of the following education and experience qualifications:~~

- ~~(1) a license as an engineer or architect with experience outside of civil or architectural design or inspection of buildings;~~
- ~~(2) completion of at least two years of technical or university training in the field of civil or architectural engineering or building construction technology; or an approved four-year nontechnical degree and at least two years of design, construction, or inspection experience on Level II buildings while working under a certified building inspector II or III, licensed engineer, architect, or intermediate or unlimited building contractor;~~
- ~~(3) certification by the Board as an electrical inspector II, mechanical inspector II, plumbing inspector II, or fire inspector II; at least three years of experience as such certified inspector; and completion of at least one year of building construction technology courses approved by the Board;~~
- ~~(4) a limited or intermediate license as a building contractor with experience on Level II buildings;~~

- ~~(5) at least three years of design, construction, or inspection experience on Level II buildings while working under the direct supervision of a certified building inspector II or III, licensed engineer, architect, or intermediate building contractor, with a supporting letter from such supervisor;~~
- ~~(6) certification by the Board as a building inspector I; at least three years of experience approving plans and making inspections as such certified inspector; and completion of at least one year of building construction technology courses approved by the Board; or~~
- ~~(7) at least four continuous years of experience inspecting construction of Level II buildings for a city or county inspection department.~~
- ~~(1) a license as a professional engineer or registered architect;~~
- ~~(2) a four year degree from an accredited college or university in architecture, civil or architectural engineering, or building construction;~~
- ~~(3) a four-year degree from an accredited college or university and at least two years of design, construction, or inspection experience on a minimum of two Level II buildings while working under the direct supervision of a certified building inspector II or III, licensed engineer, registered architect, or intermediate or unlimited licensed building contractor;~~
- ~~(4) a two year degree from an accredited college or university in architecture, civil or architectural engineering, or building construction and at least two years of building design, construction, or inspection experience on a minimum of two Level II buildings while working under the direct supervision of a certified building inspector II or III, licensed engineer, registered architect, or intermediate or unlimited licensed building contractor;~~
- ~~(5) an intermediate or unlimited license as a building contractor with building construction experience on a minimum of two Level II buildings;~~
- ~~(6) at least three years of building inspection experience including one year of inspection experience with a probationary Level II building certificate on a minimum of two Level II buildings while working under the direct supervision of a certified building inspector II or III with a supporting letter from the applicant's supervisor which complies with Paragraph (b) of this Rule;~~
- ~~(7) at least three years of building design, construction, or inspection experience on a minimum of two Level II buildings while working under the direct supervision of a licensed engineer, registered architect, or licensed intermediate or unlimited building contractor with a supporting letter from the applicant's supervisor which complies with Paragraph (b) of this Rule; or~~
- ~~(8) at least two years of experience with a probationary Level II building inspection certificate inspecting construction of a minimum of two Level II buildings.~~
- ~~(e) Building Inspector, Level III. A standard certificate, building inspector, Level III, shall be issued to any applicant who complies with Paragraph (b) of this Rule and who provides documentation that the applicant possesses one of the following education and experience qualifications:~~
- ~~(1) a license as an engineer or architect with preprofessional qualifications, experience, and professional practice in architectural, structural, or fire protection design or inspection of buildings and current specialization in architectural, civil, or fire protection engineering;~~
- ~~(2) completion of at least four years of technical or university training in the field of civil or architectural engineering; and at least one year of building design, construction, or inspection experience while working under a certified building inspector III, licensed engineer, architect, or unlimited building contractor, at least at the level of supervisor or journeyman building trades craftsman and in responsible charge of a wide variety of types of Level III buildings;~~
- ~~(3) completion of at least two years of technical or university training in the field of civil or architectural engineering or building construction technology; and at least three years of building design, construction, or inspection experience while working under a certified building inspector III, licensed engineer, architect, or unlimited building contractor, with at least one year in responsible charge of a wide variety of types of Level III buildings;~~
- ~~(4) certification by the Board as an electrical inspector III, mechanical inspector III, plumbing inspector III, or fire inspector III; at least four years of experience as such certified inspector; and completion of at least one year of building construction technology courses approved by the Board;~~
- ~~(5) an unlimited license as a building contractor with experience on Level III buildings;~~

- ~~(6) at least four years of design, construction, or inspection experience while working under the direct supervision of a certified building inspector III, licensed engineer, architect, or unlimited building contractor, two years of which have been performed in responsible charge of a wide variety of types of Level III buildings, with a supporting letter from such supervisor;~~
- ~~(7) certification by the Board as a building inspector II; at least four years of experience approving plans and making inspections as such certified inspector; and completion of at least one year of building construction technology courses approved by the Board; or~~
- ~~(8) at least five continuous years of experience inspecting the construction of a wide variety of types of Level III buildings for a city or county inspection department.~~
- ~~(1) a license as a professional engineer or registered architect with design, construction, or inspection experience on Level III buildings and specialization in architecture, civil or architectural engineering, or fire protection engineering;~~
- ~~(2) a four-year degree from an accredited college or university in architecture, civil or architectural engineering, or building construction and at least one year of building design, construction, or inspection experience while working under the direct supervision of a certified building inspector III, licensed engineer, registered architect, or licensed unlimited building contractor, at least at the level of supervisor in responsible charge of a minimum of two Level III buildings;~~
- ~~(3) a two-year degree from an accredited college or university in architecture, civil or architectural engineering or building construction and at least three years of building design, construction, or inspection experience while working under the direct supervision of a certified building inspector III, licensed engineer, registered architect, or licensed unlimited building contractor with at least one year at the level of supervisor in responsible charge of a minimum of two Level III buildings;~~
- ~~(4) an unlimited license as a building contractor with experience on a minimum of two Level III buildings;~~
- ~~(5) at least four years of inspection experience including one year of building inspection experience with a probationary Level III building certificate on a minimum of two Level III buildings while working under the~~

direct supervision of a certified building inspector III, with a supporting letter from the applicant's supervisor which complies with Paragraph (b) of this Rule;

- (6) at least four years of building design, construction, or inspection experience while working under the direct supervision of a licensed engineer, registered architect, or licensed unlimited building contractor, two years of which have been performed at the level of supervisor in responsible charge of a minimum of two Level III buildings with a supporting letter from the applicant's supervisor which complies with Paragraph (b) of this Rule; or
- (7) at least one year of experience with a probationary Level III building inspection certificate inspecting the construction of a minimum of two Level III buildings.

~~(g)(f)~~ Electrical Inspector, Level I. A standard certificate, electrical inspector, Level I, shall be issued to any applicant who complies with Paragraph (b) of this Rule and who provides documentation that the applicant possesses one of the following education and experience qualifications:

- ~~(1) completion of at least one year of technical or trade school training or an apprenticeship program in electrical construction; or an approved four-year nontechnical degree;~~
- ~~(2) at least six months of work under the direct supervision of a standard certified electrical inspector I, II, or III, licensed engineer, or electrical contractor, with a supporting letter from such supervisor;~~
- ~~(3) a limited restricted (one family dwelling) or limited license as an electrical contractor;~~
- ~~(4) at least one year of electrical installation or inspection experience while working under a limited licensed electrical contractor;~~
- ~~(5) certification by the Board as a building inspector I, mechanical inspector I, plumbing inspector I, or fire inspector I; at least one year of experience as such certified inspector; and completion of at least one year of electrical construction technology courses approved by the Board;~~
- ~~(6) at least two years of experience in electrical installation;~~
- ~~(7) a current license (3q) as a county electrical inspector issued by the Commissioner of Insurance pursuant to G.S. 153A-351; or~~
- ~~(8) at least two continuous years of experience inspecting electrical installations in Level I buildings for a city or county inspection department.~~
- (1) a one-year diploma in electrical construction from an accredited college or an equivalent apprenticeship or trade school program in electrical construction;

- (2) a four-year degree from an accredited college or university;
- (3) at least six months of electrical inspection experience with a probationary certificate on a minimum of two Level I buildings while working under the direct supervision of a standard certified electrical inspector I, II, or III with a supporting letter from the applicant's supervisor which complies with Paragraph (b) of this Rule;
- (4) at least one year of electrical design, construction, or inspection experience on a minimum of two Level I buildings while working under the direct supervision of a licensed engineer or licensed electrical contractor with a supporting letter from the applicant's supervisor which complies with Paragraph (b) of this Rule;
- (5) a restricted (one family dwelling) license or license as an electrical contractor;
- (6) at least two years of electrical installation or inspection experience while working under a licensed electrical contractor; or
- (7) at least two years of experience with a probationary electrical inspection certificate inspecting electrical installations on a minimum of two Level I buildings.

(h)(g) Electrical Inspector, Level II. A standard certificate, electrical inspector, Level II, shall be issued to any applicant who complies with Paragraph (b) of this Rule and who provides documentation that the applicant possesses one of the following education and experience qualifications:

- ~~(1) a license as an engineer with experience outside of electrical design or inspection of buildings;~~
- ~~(2) completion of at least two years of technical or university training in the field of electrical engineering or electrical construction technology; or an approved four-year nontechnical degree and at least two years of design, installation, or inspection experience on Level II buildings while working under a certified electrical inspector II or III, licensed engineer, or intermediate or unlimited electrical contractor;~~
- ~~(3) certification by the Board as a building inspector II, mechanical inspector II, plumbing inspector II, or fire inspector II; at least three years of experience as such certified inspector; and completion of at least one year of electrical construction technology courses approved by the Board;~~
- (4) a limited or intermediate license as an electrical contractor with experience on Level II buildings;
- (5) at least three years of design, installation, or inspection experience on Level II buildings

- ~~while working under the direct supervision of a certified electrical inspector II or III, licensed engineer, or intermediate electrical contractor, with a supporting letter from such supervisor;~~
- ~~(6) certification by the Board as an electrical inspector I; at least three years of experience approving plans and making inspections as such certified inspector; and completion of at least one year of electrical construction technology courses approved by the Board;~~
- ~~(7) a current license (2q) as a county electrical inspector issued by the Commissioner of Insurance pursuant to G.S. 153A-351; or~~
- ~~(8) at least four continuous years of experience inspecting electrical installations in Level II buildings for a city or county inspection department.~~
- (1) a license as a professional engineer;
- (2) a four-year degree from an accredited college or university in electrical engineering or electrical construction;
- (3) a four-year degree from an accredited college or university and at least two years of electrical design, construction, or inspection experience on a minimum of two Level II buildings while working under the direct supervision of a certified electrical inspector II or III, licensed engineer, or intermediate or unlimited licensed electrical contractor;
- (4) a two-year degree from an accredited college or university in electrical engineering or electrical construction and at least two years of electrical design, construction, or inspection experience on a minimum of two Level II buildings while working under the direct supervision of a certified electrical inspector II or III, licensed engineer, or intermediate or unlimited licensed electrical contractor;
- (5) an intermediate or unlimited license as an electrical contractor with experience on a minimum of two Level II buildings;
- (6) at least three years of electrical inspection experience including one year of inspection experience with a probationary Level II electrical inspection certificate on a minimum of two Level II buildings while working under the direct supervision of a certified electrical inspector II or III with a supporting letter from the applicant's supervisor which complies with Paragraph (b) of this Rule;
- (7) at least three years of electrical design, construction, or inspection experience on a minimum of two Level II buildings while working under the direct supervision of a

licensed engineer or licensed intermediate or unlimited electrical contractor with a supporting letter from the applicant's supervisor which complies with Paragraph (b) of this Rule; or

- (8) at least two years of experience with a probationary Level II electrical inspection certificate inspecting electrical installations on a minimum of two Level II buildings.

(h) Electrical Inspector, Level III. A standard certificate, electrical inspector, Level III, shall be issued to any applicant who complies with Paragraph (b) of this Rule and who provides documentation that the applicant possesses one of the following education and experience qualifications:

- (1) a license as an engineer with preprofessional qualifications, experience, and professional practice in electrical design or inspection of buildings and current specialization in electrical engineering;
- (2) completion of at least four years of technical or university training in the field of electrical engineering; and at least one year of electrical design, installation, or inspection experience while working under a certified electrical inspector III, licensed engineer, or unlimited electrical contractor, at least at the level of supervisor or journeyman building trades craftsman and in responsible charge of a wide variety of types of Level III buildings;
- (3) completion of at least two years of technical or university training in the field of electrical engineering or electrical construction technology; and at least three years of electrical design, installation, or inspection experience while working under a certified electrical inspector III, licensed engineer, or unlimited electrical contractor, with at least one year in responsible charge of a wide variety of types of Level III buildings;
- (4) certification by the Board as a building inspector III, mechanical inspector III, plumbing inspector III, or fire inspector III; at least four years of experience as such certified inspector; and completion of at least one year of electrical construction technology courses approved by the Board;
- (5) an unlimited license as an electrical contractor with experience on Level III buildings;
- (6) at least four years of design, installation, or inspection experience while working under the direct supervision of a certified electrical inspector III, licensed engineer, or unlimited electrical contractor, two years of which have been performed in responsible charge of a wide variety of types of Level III

buildings, with a supporting letter from such supervisor;

- (7) certification by the Board as an electrical inspector II; at least four years of experience approving plans and making inspections as such certified inspector; and completion of at least one year of electrical construction technology courses approved by the Board;
- (8) a current license (1q) as a county electrical inspector issued by the Commissioner of Insurance pursuant to G.S. 153A-351; or
- (9) at least five continuous years of experience inspecting the electrical installations in a wide variety of types of Level III buildings for a city or county inspection department.
- (1) a license as a professional engineer with, design, construction, or inspection experience on Level III buildings and specialization in electrical engineering;
- (2) a four year degree from an accredited university in electrical engineering or electrical construction and at least one year of electrical design, installation, or inspection experience while working under the direct supervision of a certified electrical inspector III, licensed engineer, or licensed unlimited electrical contractor at least at the level of supervisor in responsible charge of a minimum of two Level III buildings;
- (3) a two-year degree from an accredited college or university in electrical engineering or electrical construction and at least three years of electrical design, installation, or inspection experience while working under the direct supervision of a certified electrical inspector III, licensed engineer, or licensed unlimited electrical contractor with at least one year at the level of supervisor in responsible charge of a minimum of two Level III buildings;
- (4) an unlimited license as an electrical contractor with experience on a minimum of two Level III buildings;
- (5) at least four years of electrical inspection experience including one year of inspection experience with a probationary Level III electrical certificate on a minimum of two Level III buildings while working under the direct supervision of a certified electrical inspector III with a supporting letter from the applicant's supervisor which complies with Paragraph (b) of this Rule;
- (6) at least four years of electrical design, construction, or inspection experience while working under the direct supervision of a licensed engineer or licensed unlimited electrical contractor, two years of which have been performed at the level of

~~supervisor in responsible charge of a minimum of two Level III buildings with a supporting letter from the applicant's supervisor which complies with Paragraph (b) of this Rule; or~~

~~(7) at least one year of experience with a probationary Level III electrical inspection certificate inspecting the electrical installations of a minimum of two Level III buildings.~~

~~(j)(i) Mechanical Inspector, Level I. A standard certificate, mechanical inspector, Level I, shall be issued to any applicant who complies with Paragraph (b) of this Rule and who provides documentation that the applicant possesses one of the following education and experience qualifications:~~

~~(1) completion of at least one year of technical or trade school training or an apprenticeship program in mechanical construction; or an approved four-year nontechnical degree;~~

~~(2) at least six months of work under the direct supervision of a standard certified mechanical inspector I, II, or III, licensed engineer, or mechanical contractor, with a supporting letter from such supervisor;~~

~~(3) an H-2 or H-3 license as a mechanical contractor;~~

~~(4) at least one year of mechanical installation or inspection experience while working under an H-2 or H-3 licensed mechanical contractor;~~

~~(5) certification by the Board as a building-inspector I, electrical inspector I, plumbing inspector I, or fire inspector I; at least one year of experience as such certified inspector; and completion of at least one year of mechanical construction technology courses approved by the Board;~~

~~(6) at least two years of experience in mechanical installation; or~~

~~(7) at least two continuous years of experience inspecting mechanical installations in Level I buildings for a city or county inspection department.~~

~~(1) a one-year diploma in mechanical construction from an accredited college or an equivalent apprenticeship or trade school program in mechanical construction;~~

~~(2) a four-year degree from an accredited college or university;~~

~~(3) at least six months of mechanical inspection experience with a probationary certificate on a minimum of two Level I buildings while working under the direct supervision of a standard certified mechanical inspector I, II, or III with a supporting letter from the applicant's supervisor which complies with Paragraph (b) of this Rule;~~

~~(4) at least one year of mechanical design, construction, or inspection experience on a minimum of two Level I buildings while working under the direct supervision of a licensed engineer or licensed Class I mechanical contractor with a supporting letter from the applicant's supervisor which complies with Paragraph (b) of this Rule;~~

~~(5) an H-1, H-2, or H-3 Class I license as a mechanical contractor ;~~

~~(6) at least two years of mechanical installation or inspection experience while working under a Class I H-1, H-2, or H-3 licensed mechanical contractor; or~~

~~(7) at least two years of experience with a probationary mechanical inspection certificate inspecting mechanical installations a minimum of two Level I buildings.~~

~~(k)(j) Mechanical Inspector, Level II. A standard certificate, mechanical inspector, Level II, shall be issued to any applicant who complies with Paragraph (b) of this Rule and who provides documentation that the applicant possesses one of the following education and experience qualifications:~~

~~(1) a license as an engineer with experience outside of mechanical design or inspection of buildings;~~

~~(2) completion of at least two years of technical or university training in the field of mechanical engineering or mechanical construction technology; or an approved four-year nontechnical degree and at least two years of design, installation, or inspection experience on Level II buildings while working under a certified mechanical inspector II or III, licensed engineer, or H-2 or H-3 mechanical contractor;~~

~~(3) certification by the Board as a building-inspector II, electrical inspector II, plumbing inspector II, or fire inspector II; at least three years of experience as such certified inspector; and completion of at least one year of mechanical construction technology courses approved by the Board;~~

~~(4) an H-2 or H-3 license as a mechanical contractor with experience on Level II buildings;~~

~~(5) at least three years of design, installation, or inspection experience on Level II buildings while working under the direct supervision of a certified mechanical inspector II or III, licensed engineer, or H-2 or H-3 mechanical contractor, with a supporting letter from such supervisor;~~

~~(6) certification by the Board as a mechanical inspector I; at least three years of experience approving plans and making inspections as~~

PROPOSED RULES

~~such certified inspector; and completion of at least one year of mechanical construction technology courses approved by the Board; or~~

- ~~(7) at least four continuous years of experience inspecting mechanical installations in Level II buildings for a city or county inspection department.~~
- ~~(1) a license as a professional engineer;~~
- ~~(2) a four-year degree from an accredited college or university in mechanical engineering or mechanical construction;~~
- ~~(3) a four-year degree from an accredited college or university and at least two years of mechanical design, construction, or inspection experience on a minimum of two Level II buildings while working under the direct supervision of a certified mechanical inspector II or III, licensed engineer, or licensed Class I mechanical contractor;~~
- ~~(4) a two-year degree from an accredited college or university in mechanical engineering or mechanical construction and at least two years of mechanical design, construction, or inspection experience on a minimum of two Level II buildings while working under the direct supervision of a certified mechanical inspector II or III, licensed engineer, or licensed Class I mechanical contractor;~~
- ~~(5) an H-1, H-2, or H-3 Class I license as a mechanical contractor with experience on a minimum of two Level II buildings;~~
- ~~(6) at least three years of mechanical inspection experience including one year of inspection experience with a probationary Level II mechanical inspection certificate on a minimum of two Level II buildings while working under the direct supervision of a certified mechanical inspector II or III with a supporting letter from the applicant's supervisor which complies with Paragraph (b) of this Rule;~~
- ~~(7) at least three years of mechanical design, construction, or inspection experience on a minimum of two Level II buildings while working under the direct supervision of a licensed engineer or licensed Class I H-1, H-2, or H-3 mechanical contractor with a supporting letter from the applicant's supervisor which complies with Paragraph (b) of this Rule; or~~
- ~~(8) at least two years of experience with a probationary Level II mechanical inspection certificate inspecting mechanical installations on a minimum of two Level II buildings.~~

who complies with Paragraph (b) of this Rule and who provides documentation that the applicant possesses one of the following education and experience qualifications:

- ~~(1) a license as an engineer with preprofessional qualifications, experience, and professional practice in mechanical design or inspection of buildings and current specialization in mechanical engineering;~~
 - ~~(2) completion of at least four years of technical or university training in the field of mechanical engineering; and at least one year of mechanical design, installation, or inspection experience while working under a certified mechanical inspector III, licensed engineer, or H-1, H-2, and H-3 mechanical contractor, at least at the level of supervisor or journeyman building trades craftsman and in responsible charge of a wide variety of types of Level III buildings;~~
 - ~~(3) completion of at least two years of technical or university training in the field of mechanical engineering or mechanical construction technology; and at least three years of mechanical design, installation, or inspection experience while working under a certified mechanical inspector III, licensed engineer, or H-1, H-2, and H-3 mechanical contractor, with at least one year in responsible charge of a wide variety of types of Level III buildings;~~
 - ~~(4) certification by the Board as a building inspector III, electrical inspector III, plumbing inspector III, or fire inspector III; at least four years of experience as such certified inspector; and completion of at least one year of mechanical construction technology courses approved by the Board;~~
 - ~~(5) H-1, H-2, and H-3 licenses as a mechanical contractor with experience on Level III buildings;~~
 - ~~(6) at least four years of design, installation, or inspection experience while working under the direct supervision of a certified mechanical inspector III, licensed engineer, or H-1, H-2, and H-3 mechanical contractor, two years of which have been performed in responsible charge of a wide variety of types of Level III buildings, with a supporting letter from such supervisor;~~
 - ~~(7) certification by the Board as a mechanical inspector II; at least four years of experience approving plans and making inspections as such certified inspector; and completion of at least one year of mechanical construction technology courses approved by the Board;~~
- ~~or~~

~~(4)(k)~~ Mechanical Inspector, Level III. A standard certificate, mechanical inspector, Level III shall be issued to any applicant

- ~~(8) at least five continuous years of experience inspecting the mechanical installations in a wide variety of types of Level III buildings for a city or county inspection department.~~
- ~~(1) a license as a professional engineer with design, construction, or inspection experience on Level III buildings and specialization in mechanical engineering;~~
- ~~(2) a four-year degree from an accredited university in mechanical engineering or mechanical construction and at least one year of mechanical design, installation, or inspection experience while working under the direct supervision of a certified mechanical inspector III, licensed engineer, or licensed Class I H-1, H-2, and H-3 mechanical contractor at least at the level of supervisor in responsible charge of a minimum of two Level III buildings;~~
- ~~(3) a two-year degree from an accredited college or university in mechanical engineering or mechanical construction and at least three years of mechanical design, installation, or inspection experience while working under the direct supervision of a certified mechanical inspector III, licensed engineer, or licensed Class I H-1, H-2, and H-3 mechanical contractor with at least one year at the level of supervisor in responsible charge of a wide variety of types of minimum of two Level III buildings;~~
- ~~(4) H-1, H2, and H3 Class I licenses as a mechanical contractor with experience on a minimum of two Level III buildings;~~
- ~~(5) at least four years of mechanical inspection experience including one year of inspection experience with a probationary Level III mechanical certificate on a minimum of two Level III buildings while working under the direct supervision of a certified mechanical inspector III with a supporting letter from the applicant's supervisor which complies with Paragraph (b) of this Rule;~~
- ~~(6) at least four years of mechanical design, construction, or inspection experience while working under the direct supervision of a licensed engineer or licensed Class I H-1, H-2, and H3 mechanical contractor, two years of which have been performed at the level of supervisor in responsible charge of a minimum of two Level III buildings with a supporting letter from the applicant's supervisor which complies with Paragraph (b) of this Rule; or~~
- ~~(7) at least on year of experience with a probationary Level III mechanical inspection certificate inspecting the mechanical~~

installations of a minimum of two Level III buildings.

~~(m)(l)~~ Plumbing Inspector, Level I. A standard certificate, plumbing inspector, Level I, shall be issued to any applicant who complies with Paragraph (b) of this Rule and who provides documentation that the applicant possesses one of the following education and experience qualifications:

- ~~(1) completion of at least one year of technical or trade school training or an apprenticeship program in plumbing construction; or an approved four-year nontechnical degree;~~
- ~~(2) at least six months of work under the direct supervision of a standard certified plumbing inspector I, II, or III, licensed engineer, or plumbing contractor, with a supporting letter from such supervisor;~~
- ~~(3) a license as a plumbing contractor;~~
- ~~(4) at least one year of plumbing installation or inspection experience while working under a licensed plumbing contractor;~~
- ~~(5) certification by the Board as a building inspector I, electrical inspector I, mechanical inspector I, or fire inspector I; at least one year of experience as such certified inspector; and completion of at least one year of plumbing construction technology courses approved by the Board;~~
- ~~(6) at least two years of experience in plumbing installation; or~~
- ~~(7) at least two continuous years of experience inspecting plumbing installations in Level I buildings for a city or county inspection department.~~
- ~~(1) a one-year diploma in plumbing construction from an accredited college or an equivalent apprenticeship or trade school program in plumbing construction;~~
- ~~(2) a four-year degree from an accredited college or university;~~
- ~~(3) at least six months of plumbing inspection experience with a probationary certificate on a minimum of two Level I buildings while working under the direct supervision of a standard certified plumbing inspector I, II, or III with a supporting letter from the applicant's supervisor which complies with Paragraph (b) of this Rule;~~
- ~~(4) at least one year of plumbing design, construction, or inspection experience on a minimum of two Level I buildings while working under the direct supervision of a licensed engineer or licensed Class I plumbing contractor with a supporting letter from the applicant's supervisor which complies with Paragraph (b) of this Rule;~~
- ~~(5) a Class I license as a plumbing contractor;~~

- ~~(6) at least two years of plumbing installation or inspection experience while working under a licensed Class I plumbing contractor; or~~
- ~~(7) at least two years of experience with a probationary plumbing inspection certificate inspecting plumbing installations a minimum of two Level I buildings.~~

~~(m)~~ Plumbing Inspector, Level II. A standard certificate, plumbing inspector, Level II, shall be issued to any applicant who complies with Paragraph (b) of this Rule and who provides documentation that the applicant possesses one of the following education and experience qualifications:

- ~~(1) a license as an engineer with experience outside of plumbing design or inspection of buildings;~~
- ~~(2) completion of at least two years of technical or university training in the field of mechanical engineering or plumbing construction technology; or an approved four year nontechnical degree and at least two years of design, installation, or inspection experience on Level II buildings while working under a certified plumbing inspector II or III, licensed engineer, or plumbing contractor;~~
- ~~(3) certification by the Board as a building inspector II, electrical inspector II, mechanical inspector II, or fire inspector II; at least three years of experience as such certified inspector; and completion of at least one year of plumbing construction technology courses approved by the Board;~~
- ~~(4) a license as a plumbing contractor with experience on Level II buildings;~~
- ~~(5) at least three years of design, installation, or inspection experience on Level II buildings while working under the direct supervision of a certified plumbing inspector II or III, licensed engineer, or plumbing contractor, with a supporting letter from such supervisor;~~
- ~~(6) certification by the Board as a plumbing inspector I; at least three years of experience approving plans and making inspections as such certified inspector; and completion of at least one year of plumbing construction technology courses approved by the Board; or~~
- ~~(7) at least four continuous years of experience inspecting plumbing installations in Level II buildings for a city or county inspection department.~~
- ~~(1) a license as a professional engineer;~~
- ~~(2) a four-year degree from an accredited college or university in mechanical engineering or mechanical or plumbing construction;~~

- ~~(3) a four-year degree from an accredited college or university and at least two years of plumbing design, construction, or inspection experience on a minimum of two Level II buildings while working under the direct supervision of a certified plumbing inspector II or III, licensed engineer, or licensed Class I plumbing contractor;~~
- ~~(4) a two year degree from an accredited college or university in mechanical engineering or mechanical or plumbing construction and at least two years of plumbing design, construction, or inspection experience on a minimum of two Level II buildings while working under the direct supervision of a certified plumbing inspector II or III, licensed engineer, or licensed Class I plumbing contractor;~~
- ~~(5) a Class I license as a plumbing contractor with experience on a minimum of two Level II buildings;~~
- ~~(6) at least three years of plumbing inspection experience including one year of inspection experience with a probationary Level II plumbing inspection certificate on a minimum of two Level II buildings while working under the direct supervision of a certified plumbing inspector II or III with a supporting letter from the applicant's supervisor which complies with Paragraph (b) of this Rule;~~
- ~~(7) at least three years of plumbing design, construction, or inspection experience on a minimum of two Level II buildings while working under the direct supervision of a licensed engineer or licensed Class I plumbing contractor with a supporting letter from the applicant's supervisor which complies with Paragraph (b) of this Rule; or~~
- ~~(8) at least two years of experience with a probationary Level II plumbing inspection certificate inspecting plumbing installations on a minimum of two Level II buildings.~~

~~(n)~~ Plumbing Inspector, Level III. A standard certificate, plumbing inspector, Level III shall be issued to any applicant who complies with Paragraph (b) of this Rule and who provides documentation that the applicant possesses one of the following education and experience qualifications:

- ~~(1) a license as an engineer with preprofessional qualifications, experience, and professional practice in plumbing design or inspection of buildings and current specialization in mechanical engineering;~~
- ~~(2) completion of at least four years of technical or university training in the field of mechanical engineering; and at least one year of plumbing design, installation, or~~

- inspection experience while working under a certified plumbing inspector III, licensed engineer, or plumbing contractor, at least at the level of supervisor or journeyman building trades craftsman and in responsible charge of a wide variety of types of Level III buildings;
- ~~(3) completion of at least two years of technical or university training in the field of mechanical engineering or plumbing construction technology; and at least three years of plumbing design, installation, or inspection experience while working under a certified plumbing inspector III, licensed engineer, or plumbing contractor, with at least one year in responsible charge of a wide variety of types of Level III buildings;~~
- ~~(4) certification by the Board as a building inspector III, electrical inspector III, mechanical inspector III, or fire inspector III; at least four years of experience as such certified inspector; and completion of at least one year of plumbing construction technology courses approved by the Board;~~
- ~~(5) a license as a plumbing contractor with experience on Level III buildings;~~
- ~~(6) at least four years of design, installation, or inspection experience while working under the direct supervision of a certified plumbing inspector III, licensed engineer, or plumbing contractor, two years of which have been performed in responsible charge of a wide variety of types of Level III buildings, with a supporting letter from such supervisor;~~
- ~~(7) certification by the Board as a plumbing inspector II; at least four years of experience approving plans and making inspections as such certified inspector; and completion of at least one year of plumbing construction technology courses approved by the Board;~~ or
- ~~(8) at least five continuous years of experience inspecting the plumbing installations in a wide variety of types of Level III buildings for a city or county inspection department.~~
- ~~(1) a license as a professional engineer with design, construction, or inspection experience on Level III buildings and specialization in mechanical engineering;~~
- ~~(2) a four-year degree from an accredited university in mechanical engineering or mechanical or plumbing construction and at least one year of plumbing design, installation, or inspection experience while working under the direct supervision of a certified plumbing inspector III, licensed engineer, or licensed Class I plumbing contractor at least at the level of supervisor in responsible charge of a minimum of two Level III buildings;~~
- ~~(3) a two-year degree from an accredited college or university in mechanical engineering or plumbing construction and at least three years of plumbing design, installation, or inspection experience while working under the direct supervision of a certified plumbing inspector III, licensed engineer, or licensed Class I plumbing contractor with at least one year at the level of supervisor in responsible charge of a wide variety of types of minimum of two Level III buildings;~~
- ~~(4) a Class I license as a plumbing contractor with experience on a minimum of two Level III buildings;~~
- ~~(5) at least four years of plumbing inspection experience including one year of inspection experience with a probationary Level III plumbing certificate on a minimum of two Level III buildings while working under the direct supervision of a certified plumbing inspector III with a supporting letter from the applicant's supervisor which complies with Paragraph (b) of this Rule;~~
- ~~(6) at least four years of plumbing design, construction, or inspection experience while working under the direct supervision of a licensed engineer or licensed Class I plumbing contractor, two years of which have been performed at the level of supervisor in responsible charge of a minimum of two Level III buildings with a supporting letter from the applicant's supervisor which complies with Paragraph (b) of this Rule; or~~
- ~~(7) at least one year of experience with a probationary Level III plumbing inspection certificate inspecting the plumbing installations of a minimum of two Level III buildings.~~
- ~~(p)(o) Fire Inspector, Level I. A standard certificate, fire inspector, Level I, shall be issued to any applicant who complies with Paragraph (b) of this Rule and who provides documentation that the applicant possesses one of the following education and experience qualifications:~~
- ~~(1) completion of at least one year of technical or trade school training or an apprenticeship program in fire science; or an approved four-year nontechnical degree;~~
- ~~(2) at least six months of work under the direct supervision of a standard certified fire inspector I, II, or III, licensed engineer, or architect, with a supporting letter from such supervisor;~~

- ~~(3) at least three years of construction, maintenance, or inspection experience in fire protection systems while working under a limited licensed contractor;~~
- ~~(4) certification by the Board as a building inspector I, electrical inspector I, mechanical inspector I, or plumbing inspector I; at least one year of experience as such certified inspector; and completion of at least one year of fire protection technology courses approved by the Board;~~
- ~~(5) at least two continuous years of experience conducting fire inspections in Level I Occupancy buildings for a city, county, or other governmental fire inspection department;~~
- ~~(6) at least four continuous years of experience in fire suppression activities for a city, county, volunteer, or other governmental fire department; or~~
- ~~(7) Firefighter Level III certification under the North Carolina State Fire and Rescue Commission with at least one year of fire inspection experience in Level I Occupancy buildings.~~
- ~~(1) a one year diploma in fire science from an accredited college or an equivalent apprenticeship or trade school program in fire science;~~
- ~~(2) a four-year degree from an accredited college or university;~~
- ~~(3) at least six months of fire inspection experience with a probationary certificate on a minimum of two Level I buildings while working under the direct supervision of a standard certified fire inspector I, II, or III with a supporting letter from the applicant's supervisor which complies with Paragraph (b) of this Rule;~~
- ~~(4) at least one year of fire protection design, construction, or inspection experience on a minimum of two Level I buildings while working under the direct supervision of a licensed engineer, registered architect, or licensed building, electrical, or fire sprinkler contractor with a supporting letter from the applicant's supervisor which complies with Paragraph (b) of this Rule;~~
- ~~(5) a license as a fire sprinkler contractor;~~
- ~~(6) at least two years of construction or inspection experience in fire protection systems while working under a licensed building, electrical, or fire sprinkler contractor;~~
- ~~(7) at least two years of experience with a probationary fire inspection certificate conducting fire inspections in a minimum of two Level I buildings;~~

~~(8) at least four years of experience in fire suppression activities for a city, county, volunteer, or other governmental fire department; or~~

~~(9) Firefighter Level II certification under the North Carolina State Fire and Rescue Commission with at least one year of fire inspection experience in Level I buildings.~~

~~(q)(p) Fire Inspector, Level II. A standard certificate, fire inspector, Level II, shall be issued to any applicant who complies with Paragraph (b) of this Rule and who provides documentation that the applicant possesses one of the following education and experience qualifications:~~

- ~~(1) a license as an engineer or architect with experience outside of design or inspection of fire protection systems;~~
- ~~(2) completion of at least two years of technical or university training in the field of civil or architectural engineering, building construction technology, or fire science; or an approved four-year nontechnical degree and at least two years of design, installation, or inspection experience in fire protection systems on Level II Occupancy buildings while working under a certified fire inspector II or III, licensed engineer, or architect;~~
- ~~(3) certification by the Board as a building inspector II, electrical inspector II, mechanical inspector II, or plumbing inspector II; at least three years of experience as such certified inspector; and completion of at least one year of fire protection technology courses approved by the Board;~~
- ~~(4) at least three years of design, installation, or inspection experience in fire protection systems on Level II Occupancy buildings while working under the direct supervision of a certified fire inspector II or III, licensed engineer, or architect, with a supporting letter from such supervisor;~~
- ~~(5) certification by the Board as a fire inspector I; at least three years of experience approving plans and making inspections as such certified inspector; and completion of at least one year of fire protection technology courses approved by the Board;~~
- ~~(6) at least four continuous years of experience conducting fire inspections in Level II Occupancy buildings for a city, county, or other governmental fire inspection department; or~~
- ~~(7) completion of the basic, intermediate, and advanced classes of the North Carolina Fire Prevention School, with at least three years of fire inspection experience in Level II Occupancy buildings.~~

- ~~(1) a license as a professional engineer or registered architect;~~
- ~~(2) a four year degree from an accredited college or university in architecture, civil or architectural engineering, building construction, or fire science;~~
- ~~(3) a four-year degree from an accredited college or university and at least two years of fire protection design, construction, or inspection experience on a minimum of two Level II buildings while working under the direct supervision of a certified building inspector II or III, licensed engineer, registered architect, intermediate or unlimited licensed building contractor, or licensed fire sprinkler contractor;~~
- ~~(4) a two-year degree from an accredited college or university in architecture, civil or architectural engineering, building construction, or fire science and at least two years of fire protection design, construction, or inspection experience on a minimum of two Level II building fire protection systems while working under the direct supervision of a certified fire inspector II or III, licensed engineer, registered architect, intermediate or unlimited licensed building contractor, or licensed fire sprinkler contractor;~~
- ~~(5) a license as a fire sprinkler contractor with experience on a minimum of two Level II buildings;~~
- ~~(6) at least three years of fire inspection experience including one year of inspection experience with a probationary Level II fire certificate on a minimum of two Level II buildings while working under the direct supervision of a certified fire inspector II or III with a supporting letter from the applicant's supervisor which complies with Paragraph (b) of this Rule;~~
- ~~(7) at least three years of fire protection system design, construction, or inspection experience on a minimum of two Level II buildings while working under the direct supervision of a licensed engineer, registered architect, licensed intermediate or unlimited building contractor, or licensed fire sprinkler contractor with a supporting letter from the applicant's supervisor which complies with Paragraph (b) of this Rule;~~
- ~~(8) at least two years of experience with a probationary Level II fire inspection certificate conducting fire inspections in a minimum of two Level II buildings; or~~
- ~~(9) completion of the basic, intermediate, and advanced classes of the North Carolina Fire Prevention School with at least three years~~

~~of fire inspection experience in Level II buildings.~~

~~(q) Fire Inspector, Level III. A standard certificate, fire inspector, Level III, shall be issued to any applicant who complies with Paragraph (b) of this Rule and who provides documentation that the applicant possesses one of the following education and experience qualifications:~~

- ~~(1) a license as an engineer or architect with preprofessional qualifications, experience, and professional practice in architectural, structural, or fire protection design or inspection of buildings and current specialization in architectural, civil, or fire protection engineering;~~
 - ~~(2) completion of at least four years of technical or university training in the field of civil, architectural, or fire protection engineering; and at least one year of fire inspection experience while working under a certified fire inspector III, licensed engineer, or architect and in responsible charge of a wide variety of types of Level III Occupancy buildings;~~
 - ~~(3) completion of at least two years of technical or university training in the field of civil, architectural, or fire protection engineering; and at least three years of fire protection design, installation, or inspection experience while working under a certified fire inspector III, licensed engineer, architect, or unlimited contractor, with at least one year in responsible charge of a wide variety of types of Level III Occupancy buildings;~~
 - ~~(4) certification by the Board as a building inspector III, electrical inspector III, mechanical inspector III, or plumbing inspector III; at least four years of experience as such certified inspector; and completion of at least one year of fire protection technology courses approved by the Board;~~
 - ~~(5) at least four years of design, installation, or inspection experience in fire protection systems while working under the direct supervision of a certified fire inspector III, licensed engineer, or architect, two years of which have been performed in responsible charge of a wide variety of types of Level III Occupancy buildings, with a supporting letter from such supervisor;~~
 - ~~(6) certification by the Board as a fire inspector II; at least four years of experience approving plans and making inspections as such certified inspector; and completion of at least one year of fire protection technology courses approved by the Board;~~
- ~~or~~

- ~~(7) at least five continuous years of experience conducting fire inspections in a wide variety of types of Level III Occupancy buildings for a city, county, or other governmental fire inspection department.~~
- ~~(1) a license as a professional engineer or registered architect with design, construction, or inspection experience on Level III buildings and specialization in architecture, civil or architectural engineering, or fire protection engineering;~~
- ~~(2) a four-year degree from an accredited college or university in civil, architectural, or fire protection engineering and at least one year of fire inspection experience while working under a certified fire inspector III, licensed engineer, registered architect, or licensed fire sprinkler contractor on a minimum of two Level III buildings;~~
- ~~(3) a two-year degree from an accredited college or university in civil, architectural, or fire protection engineering and at least three years of fire protection design, installation, or inspection experience while working under the direct supervision of a certified fire inspector III, licensed engineer, registered architect, licensed unlimited building contractor, or licensed fire sprinkler contractor with at least one year in responsible charge of a minimum of two Level III buildings;~~
- ~~(4) a license as a fire sprinkler contractor with experience on a minimum of two Level III buildings;~~
- ~~(5) at least four years of fire inspection experience in fire protection systems including one year of inspection experience with a probationary Level III fire inspection certificate on a minimum of two Level III buildings while working under the direct supervision of a certified fire inspector III with a supporting letter from the applicant's supervisor which complies with Paragraph (b) of this Rule;~~
- ~~(6) at least four years of fire protection system design, construction, or inspection experience while working under the direct supervision of a licensed engineer, registered architect, licensed intermediate or unlimited building contractor, or licensed fire sprinkler contractor, two years of which have been performed at the level of supervisor in responsible charge of a minimum of two Level III buildings with a supporting letter from the applicant's supervisor which complies with Paragraph (b) of this Rule; or~~

- (7) at least one year of experience with a probationary Level III fire inspection certificate conducting fire inspections in a minimum of two Level III buildings.

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

11 NCAC 08 .0708 CERTIFICATE

(a) If an application is found to be in order and the applicant qualified for a particular type and level of certificate, upon approval of the Board the Board's staff shall mail a standard certificate of that type and level to the applicant at the address specified on the application. The certificate shall be effective ~~for one year, as specified on its face until the renewal date specified in G.S. 143-151.6(b).~~

(b) If the applicant ~~appears does not to~~ meet the criteria for the certificate for which ~~for which he has~~ applied, ~~he the applicant~~ shall be given written notice of the criterion ~~which he that the applicant~~ apparently fails to meet and offered a choice of:

- (1) accepting a certificate for a lower level for which ~~he the applicant~~ is qualified;
- (2) submitting additional evidence in support of ~~his the~~ application;
- (3) withdrawing ~~his the~~ application; or
- (4) appealing the decision to the Board.

If an appeal is filed, the Board shall conduct a hearing and render a decision in accordance with G.S. 150B.

Authority G.S. 143-151.12; 143-151.13; 143-151.14; 143-151.19.

11 NCAC 08 .0709 RENEWAL

To remain effective, a standard certificate must be renewed in accordance with G.S. 143-151.16(b) annually on or before the first day of July. Applications for renewal shall be made ~~in the same manner as the original application for the certificate,~~ on forms furnished by the Division of Engineering and Building Codes of the Department of Insurance. A ten dollar (\$10.00) renewal fee shall accompany each such application. In the event that an application for renewal is not received by July 1, an additional late-renewal fee of two dollars (\$2.00) shall be charged. Any person who fails to renew ~~his a~~ certificate for a period of two consecutive years shall ~~be required by the Board to~~ take and pass the same examination as unlicensed applicants for that type and level of certificate before allowing ~~such that~~ person to renew ~~his the~~ certificate.

Authority G.S. 143-151.16.

11 NCAC 08.0711 PRE-QUALIFICATION PROGRAM

An applicant who is not an employee of a city, county, or state inspection department may become pre-qualified as an inspector. Applicants who meet the same education, experience, and other requirements listed in Rules .0702 through .0707 of this Section will be accepted into the pre-qualification program. When the applicant completes these requirements, the applicant will be pre-qualified at the area and

level of certification for which applied. When the applicant is employed as a code enforcement official by a city, county, or state inspection department, a standard inspection certificate in the area and level will be issued.

Authority G.S. 143-151.12.

SECTION .0800 - DISCIPLINARY ACTIONS: OTHER CONTESTED MATTERS

11 NCAC 08 .0802 PRELIMINARY INVESTIGATION

On receipt of a complaint conforming to 11 NCAC 8 .0801, the Board's staff shall make an investigation of the charges. If the staff determines that the charges appear to have no basis in fact, the staff shall, in writing:

- (1) Advise the complainant in writing that the charges appear to have no basis in fact;
(2) State the reasons for its determination;
(3) Advise the complainant that the complaint will be reviewed by a committee of Board members, to be appointed by the Chairman of the Board, to determine whether the finding of the staff is correct; and
(4) Advise the complainant that the complainant must make a written request for the review and must state in the request the reasons why the complainant is of the opinion the staff's determination is incorrect.

If the complainant makes a written request for a review in accordance with this Rule, the Committee shall review the staff report and the complainant's documentation. If the staff reports or the Committee finds that the charges have some basis in fact, the Board shall fix a time and place for a hearing and give notice to the complainant and to the official.

Authority G.S. 143-151.12(1); 143-151.17(b); 150B-38(h).

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Department of Insurance/NC Home Inspector Licensure Board intends to adopt the rules cited as 11 NCAC 08 .1309-.1351, amend the rules cited as 11 NCAC 08 .1301-.1302, .1304-.1307, and repeal the rule cited as 11 NCAC 08 .1308. Notice of Rule-making Proceedings was published in the Register on October 15, 1999 and November 1, 2000.

Proposed Effective Date: July 1, 2002

Public Hearing:

Date: January 19, 2001

Time: 1:00 p.m.

Location: 410 N. Boylan Avenue, Raleigh, NC 27603

Reason for Proposed Action: Rules are being updated to comply with present standards.

Comment Procedures: Written comments may be sent to Jennifer Hollyfield. NC Department of Insurance, 410 N. Boylan Avenue, Raleigh, NC 27611. Comments will be received through February 2, 2001.

Fiscal Impact

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

CHAPTER 08 - ENGINEERING AND BUILDING CODES DIVISION

SECTION .1300 - HOME INSPECTOR CONTINUING EDUCATION

11 NCAC 08 .1301 DEFINITIONS

(a) As used in this Section:

- (1) "Credit hour" means one continuing education course hour, comprising at least 50 minutes of instruction.
(2) "License period" means October 1 through the following September 30.
(3) "Licensee" means a home inspector or associate home inspector licensed by the Board under G.S. 143, Article 9F and Section .1000 of this Chapter.

(4) "Person" means an individual, partnership, firm, association, corporation, joint-stock company, trust, any similar entity, or any combination of the foregoing acting in concert.

(b) The definitions contained in G.S. 143-151.45 apply to this Section.

Authority G.S. 143-151.49; 143-151.55.

11 NCAC 08 .1302 RENEWAL OF ACTIVE LICENSE

(a) In order to renew an active home inspector or associate home inspector license for license periods beginning on or after October 1, 1999, the licensee shall have completed, during the previous license period, the following number of credit hours: 12 credit hours.

- (1) From October 1, 1998 through September 15, 1999: eight credit hours.
(2) From October 1, 1999 through September 15, 2000: 12 credit hours.
(3) Each subsequent license period: 12 credit hours.

(b) A licensee who is initially licensed on or after June 1 is exempt from this Section for the following license period.

Authority G.S. 143-151.49; 143-151.55.

11 NCAC 08 .1304 COURSE REQUIREMENTS

(a) The same elective continuing education course may be taken only once for continuing education credit during any three year period.

~~(b) For each license period the Board shall specify mandatory subject matter for one course, such course to be not less than two nor more than four credit hours. The remaining courses shall be elective courses covering subject matter to be chosen by the licensee and meeting all other criteria specified in this Section.~~

~~(c) Each course shall comprise at least one credit hour.~~

(b) A licensee may carry over up to eight elective credit hours per year until the next year.

Authority G.S. 143-151.49; 143-151.55.

11 NCAC 08 .1305 ATTENDANCE REQUIREMENTS

In order to receive any credit for completing a continuing education course, a licensee must attend at least ~~ninety percent (90%)~~ 90 percent of the scheduled classroom hours for the course, regardless of the length of the ~~course.~~ course, and must comply with student participation standards described in Rule .1347 of this Section. No credit shall be awarded for attending less than 90 percent of the scheduled classroom hours.

Authority G.S. 143-151.49; 143-151.55.

11 NCAC 08 .1306 EXTENSIONS OF TIME

A licensee may request and be granted an extension of time to satisfy the continuing education requirement for a particular license period if the licensee provides evidence to the Board that the licensee was unable to obtain the necessary education because of an incapacitating illness or other circumstance that:

- (1) Existed for a substantial portion of the license period; and
- (2) Constituted a severe and verifiable ~~hardship; and~~ hardship.
- ~~(3) Made it impossible or unreasonably burdensome to comply with the continuing education requirement.~~

Authority G.S. 143-151.49; 143-151.55.

11 NCAC 08 .1307 DENIAL OR WITHDRAWAL OF CREDIT

(a) The Board shall deny continuing education credit claimed by a licensee, and shall withdraw continuing education credit previously awarded by the Board to a licensee if:

- (1) The licensee unintentionally provided incorrect or incomplete information to the Board concerning continuing education or compliance with this Section; or

- (2) The licensee was mistakenly awarded continuing education credit because of an administrative error; or
- (3) The licensee failed to comply with the attendance requirement established by Rule .1305 of this Section.

(b) When continuing education credit is denied or withdrawn by the Board under Subparagraph (a)(1) or (a)(2) of this Rule, the Board shall, upon written request of the licensee, grant the licensee an extension of time to satisfy the continuing education requirement. When continuing education credit is denied or withdrawn by the Board under Subparagraph (a)(3) of this Rule, the licensee remains responsible for satisfying the continuing education requirement.

Authority G.S. 143-151.49; 143-151.55.

11 NCAC 08 .1308 DUTIES OF LICENSEES TO SHOW PROOF OF COMPLIANCE

~~(a) In order to receive credit from the Board for completion of continuing education courses under this Section, a licensee must provide documentation to the Board on a form prescribed by the Board, no later than September 15 of each year, that:~~

- ~~(1) Each continuing education course or courses taken and completed by the licensee:

 - ~~(A) Comprised at least one credit hour; and~~
 - ~~(B) Contained subject matter that was directly related to the practice of home inspection. Examples of course subject matter that are acceptable to the Board for credit include: Topics directly related to systems and components listed in the Standards of Practice and Code of Ethics in Section .1100 of this Chapter, report writing, and inspection procedures and practices. Examples of subject matter that are not acceptable include: Sales and marketing topics, general business management, office procedures, success training, personal development, radon testing, and time management.~~~~

- ~~(2) The licensee:

 - ~~(A) Had an opportunity to interact directly either in person or by interactive television with the instructor at all times during the course; or~~
 - ~~(B) Took a written examination after course completion if the course comprised correspondence instruction or media-based instruction, such as videotape,~~~~

~~audio tape, remote non-interactive television, or computer programs; or~~

~~(C) Verified completion of the course if the course was based on alternate educational practices, such as computer-assisted instruction or videotape instruction; and~~

~~(D) Complied with Rule .1304 of this Section.~~

~~(b) The documentation filed by the licensee with the Board shall include:~~

~~(1) A course outline provided by the course sponsor showing details of the course content; and~~

~~(2) In the case of traditional classroom courses, a course completion certificate provided by the course sponsor indicating the licensee's completion of the course (or attendance for at least 90% of the allotted time); or~~

~~(3) In the case of alternate education courses (such as videotape, computer-assisted, audio tape, or correspondence courses) a course completion certificate provided by the course sponsor certifying that the sponsor has verified that the licensee has passed a written examination based on the course subject matter, or submitted equivalent proof of completion to the sponsor.~~

Authority G.S. 143-151.49; 143-151.55.

11 NCAC 08 .1309 UPDATE COURSE COMPONENT

(a) To keep a license on active status, a licensee shall complete a Board-developed update course within one year preceding license expiration. This course is in addition to the continuing education elective requirement described in Rule .1318 of this Section, and shall consist of four classroom hours of instruction.

(b) The Board shall develop annually an update course which shall be conducted by sponsors approved by the Board under this Section. The subject matter of this course shall be determined by the Board, which shall prepare a completely new course for each one-year period beginning October 1 and ending September 30. Sponsors shall acquire the Board-developed course materials and utilize such materials to conduct the update course. The course shall be conducted exactly as prescribed by the rules in this Section and the course materials developed by the Board. All course materials that are developed by the Board for use in an update course and that are subject to the protection of federal copyright laws are the property of the Board. Violation of the Board's copyright with regard to these materials shall be grounds for disciplinary action. Sponsors shall provide licensees

participating in their classes a copy of the student materials developed by the Board.

(c) Approval of a sponsor to conduct an update course authorizes the sponsor to conduct the update course using an instructor who has been approved by the Board as an update course instructor under Rules .1313 through .1317 of this Section. The sponsor may conduct the update course at any location as frequently as is desired during the approval period, provided that no courses may be conducted between September 10 and September 30 of any approval period.

Authority G.S. 143-151.49(13); 143-151.64.

11 NCAC 08 .1310 APPLICATION FOR ORIGINAL APPROVAL

An entity seeking original approval to sponsor a Board-developed update course shall make application on a form prescribed by the Board. The applicant shall submit a nonrefundable fee of one hundred fifty dollars (\$150.00) which may be in the form of a check or money order payable to the North Carolina Home Inspector Licensure Board. An applying entity that is not a resident of North Carolina shall also file with the application a consent to service of process and pleadings.

Authority G.S. 143-151.49(13); 143-151.64.

11 NCAC 08 .1311 CRITERIA FOR APPROVAL OF UPDATE COURSE SPONSOR

Approval to sponsor a Board-developed update course shall be granted to an applicant upon showing to the satisfaction of the Board that:

- (1) The applicant has submitted all information required by the Board and paid the application fee;
- (2) The applicant has at least one proposed instructor who has been approved by the Board as an update course instructor under Rules .1313 through .1317 of this Section;
- (3) The applicant satisfies the requirements of Rules .1327 through .1337 of this Section relating to qualifications or eligibility of course sponsors; and
- (4) The applicant and the continuing education coordinator required by Rule .1330 of this Section are truthful, honest, and of high integrity. In this regard, the Board may consider the reputation and character of any owner, officer, or director of any corporation, association, or organization applying for sponsor approval.

Authority G.S. 143-151.49(13); 143-151.64.

11 NCAC 08 .1312 STUDENT FEE FOR UPDATE COURSES

A sponsor of an update course may establish the amount of the fee to be charged to students taking the course. The established fee shall be an all-inclusive fee, and no separate or additional fee may be charged to students for providing course materials required by the Board, providing course completion certificates, reporting course completion to the Board, or for recouping similar routine administrative expenses. The total amount of any fees to be charged shall be included in any advertising or promotional materials for the course.

Authority G.S. 143-151.49(13); 143-151.64.

11 NCAC 08 .1313 NATURE AND SCOPE OF APPROVAL

Approval of update course instructors shall be accomplished on a calendar year basis separate from the approval of update course sponsors. Approval of an update course instructor authorizes the instructor to teach the update course for any approved update course sponsor; however, an approved update course instructor may not independently conduct an update course unless the instructor has also obtained approval as an update course sponsor. An instructor shall obtain written approval from the Board before teaching an update course and before representing to any sponsor or other party that he or she is approved or may be approved as an update course instructor.

Authority G.S. 143-151.49(13); 143-151.64.

11 NCAC 08 .1314 APPLICATION AND CRITERIA FOR ORIGINAL APPROVAL

(a) A person seeking original approval as an update course instructor shall make application on a form prescribed by the Board. An applicant who is not a resident of North Carolina shall also file with the application a consent to service of process and pleadings. No application fee is required. All required information regarding the applicant's qualifications shall be submitted.

(b) The applicant shall be truthful, honest, and of high integrity.

(c) The applicant shall be qualified under one of the following standards:

- (1) Possession of a baccalaureate or higher degree with a major in the field of engineering, construction, or architecture; or
- (2) Possession of a current North Carolina home inspector license, three years active full-time experience in performing home inspections for compensation within the previous ten years, and 30 classroom hours of home inspection education, excluding prelicensing education, within the past three years, such education covering topics that are acceptable under Board rules for continuing education credit; or
- (3) Possession of a current North Carolina home inspector license and experience

teaching at least ten home inspector prelicensing courses within the previous five years; or

- (4) Possession of qualifications found by the Board to be equivalent to one or more of the above standards, provided that the requirement for a current North Carolina home inspector license shall be waived only for applicants who qualify under Subparagraph (c)(1) of this Rule.

(d) The applicant shall possess good teaching skills as demonstrated on a video portraying the instructor teaching a live audience. The applicant shall submit the video to the Board for review. The video shall be 45-60 minutes in length and shall depict a continuous block of instruction on home inspections or a directly related topic. The video shall be unedited, shall show at least a portion of the audience, and shall have visual and sound quality sufficient to enable reviewers to clearly see and hear the instructor. The video shall have been made within the previous three years. The video shall demonstrate that the instructor possesses the teaching skills described in Rule .1345 of this Section.

Authority G.S. 143-151.49(13); 143-151.64.

11 NCAC 08 .1315 RENEWAL OF APPROVAL

Board approval of update course instructors expires on December 31 following issuance of approval. In order to assure continuous approval, approved instructors shall file applications for renewal of approval on a form prescribed by the Board on or before December 1 immediately preceding expiration of their approval. In order to renew approval, applicants shall satisfy the criteria for original approval, with the exception of the requirement stated in Rule .1314(d) of this Section, unless requested by the Board under Rule .1317 of this Section.

Authority G.S. 143-151.49(13); 143-151.64.

11 NCAC 08 .1316 DENIAL OR WITHDRAWAL OF APPROVAL

(a) The Board may deny or withdraw approval of any update course instructor upon finding that:

- (1) The instructor has made any false statements or presented any false information in connection with an application for approval or renewal of approval;
- (2) The instructor has failed to meet the criteria for approval described in Rule .1314 of this Section or has refused or failed to comply with any other provisions of this Section;
- (3) The instructor has failed to demonstrate, during the teaching of update courses, those effective teaching skills described in Rule .1345 of this Section;
- (4) The instructor has provided false or incorrect information in connection with any

reports a course sponsor is required to submit to the Board; or

- (5) The instructor has been disciplined by the Board or any other occupational licensing agency in North Carolina or another jurisdiction.

(b) If a licensee who is an approved update course instructor engages in any dishonest, fraudulent, or improper conduct in connection with the licensee's activities as an instructor, the licensee shall be subject to disciplinary action pursuant to G.S. 143-151.56.

Authority G.S. 143-151.49(13); 143-151.64.

11 NCAC 08 .1317 REQUEST FOR VIDEO

Upon the written request of the Board, an approved update course instructor shall submit to the Board a video depicting the instructor teaching the update course. The video shall have been made within 12 months before the date of submittal, shall include a label that clearly identifies the instructor and the date of the video presentation, and shall conform to technical specifications set forth in Rule .1314(d) of this Section.

Authority G.S. 143-151.49(13); 143-151.64.

11 NCAC 08 .1318 ELECTIVE COURSE COMPONENT

(a) To renew a license on active status, a licensee shall complete eight classroom hours of instruction in two or more Board-approved elective courses within one year preceding license expiration and in addition to satisfying the continuing education mandatory update course requirement described in Rule .1309 of this Section.

(b) Approval of an elective course requires approval of the sponsor and instructor(s) as well as the course itself. Such approval authorizes the sponsor to conduct the approved course using the instructor(s) who have been found by the Board to satisfy the instructor requirements set forth in Rule .1322 of this Section. The sponsor may conduct the course at any location as frequently as is desired during the approval period. However, the sponsor may not conduct any session of an approved course for home inspector continuing education purposes between September 10 and September 30, inclusive, of any approval period.

Authority G.S. 143-151.49(13); 143-151.64.

11 NCAC 08 .1319 APPLICATION FOR ORIGINAL APPROVAL

A person seeking original approval of a proposed elective course shall make application on a form prescribed by the Board. The Board shall not accept an application for original approval between July 1 and September 30. This restriction shall not apply when an applicant is seeking approval to conduct a course for which another sponsor has obtained approval. The applicant shall submit a nonrefundable fee of one hundred fifty dollars (\$150.00) per course which may be in

the form of a check or money order payable to the Home Inspector Licensure Board. The application shall be accompanied by a copy of the course plan or instructor's guide for the course and a copy of materials that will be provided to students. An applicant that is not a resident of North Carolina shall also file with the application a consent to service of process and pleadings.

Authority G.S. 143-151.49(13); 143-151.64.

11 NCAC 08 .1320 CRITERIA FOR ELECTIVE COURSE APPROVAL

The following requirements shall be satisfied in order to obtain approval of a proposed elective course:

- (1) The applicant shall submit all information required by the Board and pay the application fee.
- (2) The applicant shall satisfy the requirements of Rules .1327 through .1337 of this Section relating to the qualifications or eligibility of course sponsors.
- (3) The subject matter of the course shall satisfy the elective course subject matter requirements set forth in Rule .1321 of this Section and all information to be presented in the course shall be current and accurate.
- (4) The course shall involve a minimum of two classroom hours of instruction on acceptable subject matter. A classroom hour consists of 50 minutes of instruction and 10 minutes of break time.
- (5) The applicant and the continuing education coordinator required by Rule .1330 of this Section shall be truthful, honest, and of high integrity. In this regard, the Board may consider the reputation and character of any owner, member, officer, and director of any corporation, association, or organization applying for sponsor approval.
- (6) The proposed instructor(s) for the course shall possess the qualifications described in Rule .1322 of this Section.
- (7) The instructional delivery methods to be used in the course shall comply with the requirements described in 11 NCAC 08 .1326 of this Section.
- (8) The applicant shall submit an instructor guide that includes:
 - (a) a detailed course outline;
 - (b) the amount of time to be devoted to each major topic and to breaks;
 - (c) the learning objective(s) for each major topic; and
 - (d) the instructional methods and instructional aids that will be used in the course. The proposed time allotments shall be appropriate for

the proposed subject matter to be taught. Unless the applicant can demonstrate that straight lecture is the most effective instructional method for the course, the instructor guide shall provide for the use of an appropriate variety of instructional methods and instructional aids intended to enhance student attentiveness and learning. Examples of instructional methods and instructional aids that may be appropriate include class discussion, role-playing, in-class work assignments, overhead transparencies, and videos.

- (9) The course shall include handout materials for students unless the applicant can demonstrate that such materials are either inappropriate or unnecessary for the course. Such materials shall be current, accurate, grammatically correct, logically organized, and produced in a manner that reflects reasonable quality.
- (10) Either the instructor guide or the student materials shall describe, in narrative form, the details of the substantive information to be presented in the course. The substantive information to be presented must be provided in sufficient detail to demonstrate that the information is current, accurate, complete, and otherwise appropriate.
- (11) If an applicant proposes to use copyrighted materials in the course, such materials must be used in a form approved by the copyright holder. If any copyrighted material is to be duplicated by the applicant for use in the course, the sponsor shall have the specific permission of the copyright holder.
- (12) Applicants requesting approval of a computer-based instructional program need not comply with the requirements in Subparagraphs (8), (9), and (10) of this Rule; however, such applicants shall submit a written course plan that includes a detailed course outline, the minimum amount of time required for a typical licensee to complete each lesson, and the entire course and the learning objectives for each major topic. Such applicants shall also submit a complete copy of the instructional program on the medium that is to be utilized and shall make available, at a date and time satisfactory to the Board and at the sponsor's expense, all hardware and software necessary for review by the Board. The information in the instructional program shall comply with the

requirements of 11 NCAC 08 .1326 of this Section.

Authority G.S. 143-151.49(13); 143-151.64.

11 NCAC 08 .1321 ELECTIVE COURSE SUBJECT MATTER

- (a) Elective courses shall cover a home inspector topic and shall directly contribute to accomplishment of the primary purpose of mandatory continuing education, which is to help assure that licensees possess the knowledge, skills, and competence necessary to function in the home inspection profession in a manner that protects and serves the public interest. The knowledge or skills taught in an elective course shall enable licensees to better serve their clients and the subject matter shall be directly related to the home inspection profession. Examples of acceptable subject matter include rules adopted by the Board, including the Standards of Practice and Code of Ethics for home inspectors, which are found in 11 NCAC 08.1100; G.S. 143, Article 9F; construction techniques; construction materials; residential environmental issues; residential mechanical systems and components; residential structural systems and components; and business administration or management.
- (b) If there are unique North Carolina laws, rules, or customary practices that are relevant to a topic being addressed in an elective course, and if the course is to be conducted in North Carolina or primarily for the benefit of North Carolina licensees, then the course shall accurately and completely address such North Carolina laws, rules, or practices.

Authority G.S. 143-151.49(13); 143-151.64.

11 NCAC 08 .1322 ELECTIVE COURSE INSTRUCTORS

- (a) The instructor of an elective course shall be truthful, honest, and of high integrity and shall be qualified under one of the following standards:
 - (1) Possession of a baccalaureate or higher degree in a field directly related to the subject matter of the course;
 - (2) Three years' full-time experience within the previous ten years that is directly related to the subject matter of the course;
 - (3) Three years' full-time experience within the previous ten years teaching the subject matter of the course; or
 - (4) Education or experience or both found by the Board to be equivalent to one or more of the above standards.
- (b) If the subject matter of the course deals directly with conducting a home inspection according to the Standards of Practice and Code of Ethics in 11 NCAC 8.1100, then the instructor shall also possess a current home inspector license issued by the Board.

Authority G.S. 143-151.49(13); 143-151.64.

11 NCAC 08 .1323 ELECTIVE COURSE

CREDIT HOURS

The elective course approval issued to a course sponsor shall include the number of credit hours of continuing education credit that may be awarded for the course. The maximum number of credit hours that may be awarded for an elective course is four credit hours.

Authority G.S. 143-151.49(13); 143-151.64.

11 NCAC 08 .1324 REQUEST FOR VIDEO

Upon the written request of the Board, the sponsor of an approved elective course shall submit to the Board a video depicting the course being taught by a particular instructor designated by the Board. The video shall have been made within 12 months before the date of submittal, shall include a label that clearly identifies the instructor and the date of the video presentation, and shall conform to technical specifications set forth in Rule .1314(d) of this Section.

Authority G.S. 143-151.49(13); 143-151.64.

11 NCAC 08 .1325 STUDENT FEES FOR ELECTIVE COURSES

A sponsor of an elective course may establish the amount of the fee to be charged to students taking the course. The established fee shall be an all-inclusive fee, and no separate or additional fee may be charged to students for providing course materials required by the Board, providing course completion certificates, reporting course completion to the Board, or for recouping similar routine administrative expenses. The total amount of any fees to be charged shall be included in any advertising or promotional materials for the course.

Authority G.S. 143-151.49(13); 143-151.64.

11 NCAC 08 .1326 INSTRUCTIONAL DELIVERY METHODS

(a) The principal instructional delivery method use in elective courses shall be one or more of the following:

- (1) Personal teaching by an instructor in a traditional classroom setting; or
- (2) Instruction through an interactive television system or other audio and video system that permits continuous audio and visual communication between the instructor and all students and that provides for monitoring and technical support at each site where the instructor or students are located; or
- (3) Instruction through an interactive computer-based instructional program, which program provides for control of student progress through the educational materials by testing to assure student mastery of the subject matter at the end of each lesson, monitoring of time devoted to each lesson by the

computer with automatic program shutdown after an appropriate period of non-activity by the student, and a monitoring system that assures that the student receiving continuing education credit for completing the program actually performed all the work required to complete the program; or

(4) Personal teaching by an instructor in a field setting, such as a house or other structure, a new home construction site, a home renovation site, or other locations outside of a classroom that are appropriate for the subject matter of the course.

(b) The use of passive or non-interactive instructional delivery systems such as video, remote non-interactive television, or similar systems may be employed only in a limited manner to enhance or supplement one of the acceptable instructional delivery methods previously described in this Rule. No portion of a course may consist of correspondence instruction.

(c) A field setting shall have technical support at each site where the instructor and students are located, have safeguards in place to prevent injury to the students, such as hardhats. A field setting shall not be at the residence of the instructor, course sponsor, or any other person affiliated with the course.

Authority G.S. 143-151.49(13); 143-151.64.

11 NCAC 08 .1327 SPONSOR ELIGIBILITY

Any person is eligible to seek approval as a sponsor of continuing education courses, provided that the person seeking approval of a continuing education elective course is either the owner of the proprietary rights to the course or has lawfully acquired from the course owner the right to seek course approval from the Board and to conduct the course.

Authority G.S. 143-151.49(13); 143-151.64.

11 NCAC 08 .1328 SPONSOR NAME

(a) The official name to be used by any course sponsor in connection with the offering of an approved continuing education course shall clearly distinguish the sponsor from any other previously approved continuing education course sponsor. Unless the sponsor is a licensed private home inspector training school proposing to operate continuing education courses in its own name, the official name also shall clearly distinguish the sponsor from any licensed private home inspector training school. The Board shall not approve a sponsor name that does not comply with this paragraph.

(b) Any advertisement or promotional material used by an approved course sponsor shall include the course sponsor's official name only.

Authority G.S. 143-151.49(13); 143-151.64.

11 NCAC 08 .1329 ADVANCE APPROVAL REQUIRED

A prospective sponsor of an update course or elective course shall obtain written approval from the Board to conduct the course before offering or conducting the course and before advertising or otherwise representing that the course is or may be approved for continuing education credit in North Carolina. No retroactive approval to conduct an update course will be granted for any reason. Retroactive approval of an elective course shall be granted by the Board if the course sponsor can provide evidence to the Board that the course was not offered for purposes of satisfying the home inspector continuing education requirement and that the sponsor could not reasonably have been expected to anticipate that students would want to receive continuing education credit for the course.

Authority G.S. 143-151.49(13); 143-151.64.

11 NCAC 08 .1330 CONTINUING EDUCATION COORDINATOR

A sponsor of an update course or elective course shall designate one person to serve as the continuing education coordinator for all Board-approved continuing education courses offered by the sponsor. The designated coordinator shall serve as the official contact person for the sponsor and shall be responsible for the following:

- (1) supervising the conduct of attendees at the sponsor's Board-approved continuing education courses;
- (2) signing the course completion certificates provided by the sponsor to licensees completing courses; and
- (3) submitting to the Board all required fees, rosters, reports, and other information.

Authority G.S. 143-151.49(13); 143-151.64.

11 NCAC 08 .1331 COURSE COMPLETION REPORTING

(a) Course sponsors shall prepare and submit to the Board reports verifying completion of a continuing education course for each licensee who satisfactorily completes the course according to the criteria in 11 NCAC 08 .1305 of this Section and who desires continuing education credit for the course. The reports shall be completed on forms prescribed by the Board. Sponsors shall submit these reports to the Board in a manner that will assure receipt by the Board within 15 calendar days following the course, but in no case later than June 15 for courses conducted before that date.

(b) At the request of the Board, course sponsors shall provide licensees enrolled in each continuing education course an opportunity to complete an evaluation of each approved continuing education course on a form prescribed by the Board. Sponsors shall submit the completed evaluation forms to the Board along with the reports that verify completion of a continuing education course.

(c) Course sponsors shall provide each licensee who satisfactorily completes an approved continuing education course according to the criteria in 11 NCAC 08 .1305 of this

Section a course completion certificate on a form prescribed by the Board. Sponsors shall provide the certificates to licensees within 15 calendar days following the course, but in no case later than September 10 for any course completed before that date. The certificate may be retained by the licensee as proof of having completed the course.

(d) When a licensee does not comply with the participation standards in 11 NCAC 08 .1347 of this Section, the course sponsor shall advise the Board of this matter in writing at the time the sponsor submits the reports verifying completion of continuing education for the course. The sponsor who determines that a licensee failed to comply with either the Board's attendance or student participation standards in 11 NCAC 08 .1305 and .1347 of this Section shall not provide the licensee with a course completion certificate nor shall the sponsor include the licensee's name on the reports verifying completion of continuing education.

Authority G.S. 143-151.49(13); 143-151.64.

11 NCAC 08 .1332 PER STUDENT FEE

Following completion of any approved continuing education update or elective course, the sponsor shall submit to the Board, along with the roster and the items required to be submitted by 11 NCAC 08 .1331 of this Section, a fee in the amount prescribed by G.S. 143-151.57(a) for each licensee who satisfactorily completes the course according to the criteria in Rule .1305 of this Section. This fee shall be paid by check or money order payable to the Home Inspector Licensure Board. A separate check or money order is required for each separate class session.

Authority G.S. 143-151.49(13); 143-151.64.

11 NCAC 08 .1333 CHANGE IN SPONSOR OWNERSHIP

The approval granted to a course sponsor may be transferred to a new or different person only with the prior approval of the Board. If the ownership of an approved course sponsor is to be sold or otherwise changed, the sponsor shall obtain Board approval of the ownership change. If the change is unacceptable to the Board, the proposed new sponsor shall apply for original approval.

Authority G.S. 143-151.49(13); 143-151.64.

11 NCAC 08 .1334 CHANGES DURING APPROVAL PERIOD

(a) Course sponsors shall give prior written notice to the Board in writing of any change in business name, continuing education coordinator, address, or business telephone number.

(b) Course sponsors shall obtain prior approval from the Board for any proposed changes in the content or number of hours for elective courses. Changes in course content that are solely for the purpose of assuring that information provided in a course is current and accurate do not require approval during the approval period, but shall be reported at the time the

sponsor requests renewal of course approval. Requests for approval of changes shall be in writing.

Authority G.S. 143-151.49(13); 143-151.64.

11 NCAC 08 .1335 COURSE RECORDS

All course sponsors shall retain records of student registration, attendance, and course completion for each session of a continuing education course for two years. All course sponsors shall make these records available to the Board upon request.

Authority G.S. 143-151.49(13); 143-151.64.

11 NCAC 08 .1336 RENEWAL OF COURSE AND SPONSOR APPROVAL

(a) Board approval of all continuing education elective courses and of update course sponsors expires on the next September 30 following the date of issuance. In order to assure continuous approval, renewal applications shall be accompanied by the prescribed renewal fee and filed on a form prescribed by the Board on or before July 31 of each year. Any incomplete renewal application received on or before July 30 that is not completed within 10 days after notice of the deficiency, as well as any renewal application received after July 31, shall not be accepted; and the sponsor shall file an application for original approval on or after October 1 in order to be reapproved. Applicants for renewal of approval shall satisfy the criteria for original approval. When the Board issues original course or sponsor approval with an effective date between July 1 and September 10, the deadline for submittal of renewal applications shall be September 10 of the year in which the original approval is issued.

(b) The fee for renewal of Board approval shall be seventy-five dollars (\$75.00) for each update course sponsor and seventy five dollars (\$75.00) for each elective course. The fee shall be paid by check or money order payable to the Home Inspector Licensure Board and is nonrefundable.

Authority G.S. 143-151.49(13); 143-151.64.

11 NCAC 08 .1337 DENIAL OR WITHDRAWAL OF APPROVAL

(a) The Board shall deny or withdraw approval of any course or course sponsor upon finding that:

- (1) the course sponsor has made any false statements or presented any false information in connection with an application for course or sponsor approval or renewal of the approval;
- (2) the course sponsor or any official or instructor employed by or under contract with the course sponsor has refused or failed to comply with any of the provisions of this Section;
- (3) the course sponsor or any official or instructor employed by or under contract

with the course sponsor has provided false or incorrect information in connection with any reports the course sponsor is required to submit to the Board;

- (4) the course sponsor has engaged in a pattern of consistently canceling scheduled courses;
- (5) the course sponsor has knowingly paid fees to the Board with a check that was dishonored by a bank;
- (6) an instructor employed by or under contract with the course sponsor fails to conduct approved courses in a manner that demonstrates possession of the teaching skills described in 11 NCAC 08 .1345 of this Section;
- (7) any court of competent jurisdiction has found the course sponsor or any official or instructor employed by or under contract with the course sponsor to have violated, in connection with the offering of continuing education courses, any applicable federal or state law or regulation prohibiting discrimination on the basis of disability, requiring places of public accommodation to be in compliance with prescribed accessibility standards, or requiring that courses related to licensing or certification for professional or trade purposes be offered in a place and manner accessible to persons with disabilities.

(b) If a licensee who is an approved course sponsor or an instructor employed by or under contract with an approved course sponsor engages in any dishonest, fraudulent, or improper conduct in connection with the licensee's activities as a course sponsor or instructor, the licensee shall be subject to disciplinary action pursuant to G.S. 143-151.56.

Authority G.S. 143-151.49(13); 143-151.64.

11 NCAC 08 .1338 SCHEDULING

Courses shall be scheduled and conducted in a manner that limits class sessions to a maximum of eight classroom hours in any given day, including breaks for each class session. The maximum permissible class session without a break is 90 minutes. Courses scheduled for more than four hours in any given day shall include a meal break of at least one hour.

Authority G.S. 143-151.49(13); 143-151.64.

11 NCAC 08 .1339 MINIMUM CLASS SIZE

The minimum class size for any session of an approved continuing education course shall be five students, as determined by the sponsor's preregistration records. The minimum class size requirement shall not apply to class sessions when the sponsor notifies the Board in writing of the scheduled class session as provided in Rule .1340 of this

Section and advertises in advance the scheduled class session in the community where the class session is to be held. A sponsor who conducts a class session for fewer than five students shall submit a copy of the advertisement for the class session with the reports verifying completion of the course plus a statement or other documentation indicating the date of the advertisement and the advertising method.

Authority G.S. 143-151.49(13); 143-151.64.

11 NCAC 08 .1340 NOTICE OF SCHEDULED COURSES

(a) A sponsor shall provide the Board with written notice of each scheduled course offering no later than 10 days before a scheduled course date. The notice shall include the name and assigned number for the sponsor, the name and assigned number for the course, the scheduled date and time, specific location, and name of the instructor.

(b) A sponsor shall notify the Board of any schedule changes or course cancellations at least five days before to the original scheduled course date. If a change or cancellation is necessary because of some unforeseen circumstance, the sponsor shall notify the Board as soon as the sponsor effects the change or cancellation.

(c) A sponsor shall notify the Board as soon as it becomes apparent to the sponsor that enrollment in a planned class session will exceed 100 students.

Authority G.S. 143-151.49(13); 143-151.64.

11 NCAC 08 .1341 ADVERTISING; PROVIDING COURSE INFORMATION

(a) Course sponsors shall not use advertising of any type that is false or misleading. If the number of continuing education credit hours awarded by the Board for an approved elective course is fewer than the number of scheduled hours for the course, any course advertisement or promotional materials that indicate the course is approved for home inspection continuing education credit in North Carolina shall specify the number of continuing education credit hours awarded by the Board for the course.

(b) Any flyers, brochures, or similar materials used to promote a continuing education course shall clearly describe the fee to be charged and the sponsor's cancellation and fee refund policies.

(c) A course sponsor of any elective course shall, upon request, provide any prospective student a description of the course content.

Authority G.S. 143-151.49(13); 143-151.64.

11 NCAC 08 .1342 CLASSES OPEN TO ALL LICENSEES

All class sessions of approved continuing education courses shall be open to all licensees on a first-come, first-served basis. The sponsor of a course that has a bona fide education or experience prerequisite, such as an advanced course leading to

a special home inspector designation, may refuse admission to a licensee who does not satisfy the prerequisite. A sponsor may contract with an organization such as a home inspection firm, franchise, or trade organization to conduct approved continuing education courses for licensees affiliated with the firm, franchise, or organization. The sponsor shall allow licensees not affiliated with the firm, franchise, or organization to enroll in any class session on a first-come, first-served basis.

Authority G.S. 143-151.49(13); 143-151.64.

11 NCAC 08 .1343 CLASSROOM FACILITIES

A classroom in which a course is provided shall:

- (1) accommodate all enrolled students;
- (2) be equipped with student desks, worktables with chairs, or other seating having a surface on which students can write;
- (3) have light, heat, cooling, ventilation, and public address equipment; and
- (4) be free of distractions that would disrupt class sessions. Subparagraphs (2) and (3) of this Rule are not required if the course is conducted in a field setting.

Authority G.S. 143-151.49(13); 143-151.64.

11 NCAC 08 .1344 STUDENT CHECK-IN

Upon initially checking in for a class session, sponsors and instructors shall require licensees to provide their license numbers and shall provide each student with a copy of the continuing education student information sheet provided to sponsors by the Board.

Authority G.S. 143-151.49(13); 143-151.64.

11 NCAC 08 .1345 INSTRUCTOR REQUIREMENTS

(a) Instructors shall assure that class sessions are started on time and are conducted for the full amount of time that is scheduled. Instructors shall also assure that each update course is taught according to the instructor guide provided by the Board and that each elective course is taught according to the course plan and instructor guide that was approved by the Board, including the furnishing of appropriate student materials.

(b) Instructors shall possess the ability to:

- (1) Communicate through speech, with the ability to speak clearly, and with voice inflection, using proper grammar, and vocabulary;
- (2) Present instruction in a thorough, accurate, logical, orderly and understandable manner;
- (3) Use varied instructional techniques in addition to straight lecture, such as class discussion, role-playing, or other techniques.
- (4) Use instructional aids, such as the overhead projector, to enhance learning; and

- (5) Interact with adult students in a positive manner that encourages students to learn, that demonstrates an understanding of varied student backgrounds, that avoids offending the sensibilities of students, and that avoids personal criticism of any other person, agency or organization.

Authority G.S. 143-151.49(13); 143-151.64.

11 NCAC 08 .1346 MONITORING ATTENDANCE

(a) Sponsors and instructors shall monitor attendance for the duration of each class session to assure that all students reported as satisfactorily completing a course according to the criteria in 11 NCAC 08 .1305 of this Section have attended at least 90 percent of the scheduled classroom hours. Students shall not be admitted to a class session after 10 percent of the scheduled classroom hours have been conducted. A student shall not be allowed to sign a course attendance roster report, shall not be issued a course completion certificate, and shall not be reported to the Board as having completed a course unless the student fully satisfies the attendance requirement. Sponsors and instructors shall not make any exceptions to the attendance requirement for any reason.

(b) Sponsors shall assure that personnel in addition to the instructor are present during all class sessions to assist the instructor in monitoring attendance and performing the necessary administrative tasks associated with conducting a course. Sponsors shall provide one monitor for every 50 students attending a course.

Authority G.S. 143-151.49(13); 143-151.64.

11 NCAC 08 .1347 STUDENT PARTICIPATION STANDARDS

(a) In addition to requiring student compliance with the attendance requirement, sponsors and instructors shall require that students comply with the following student participation standards:

- (1) A student shall direct his or her active attention to the instruction being provided and refrain from engaging in activities unrelated to the instruction.
- (2) A student shall refrain from engaging in any activities that are distracting to other students or the instructor, or that otherwise disrupt the orderly conduct of a class.
- (3) A student shall comply with all instructions provided by the sponsor or instructor related to providing information needed to properly report completion of a course by the student.

(b) Instructors and sponsors have the authority to dismiss from a class session any student who fails to comply with the student participation standards prescribed in Paragraph (a) of this Rule.

(c) Sponsors shall not issue a course completion certificate to any student who fails to comply with the student participation standards set forth in Paragraph (a) of this Rule, nor shall a sponsor include the name of that student on a report verifying completion of a continuing education course. A sponsor shall submit to the Board with the report for the class session a written statement that includes the name and license number of the student for whom the sponsor does not report course credit, details concerning the student's failure to comply with the student participation standards, and names of other persons in attendance at the class who witnessed the student's conduct.

Authority G.S. 143-151.49(13); 143-151.64.

11 NCAC 08 .1348 SOLICITATION OF STUDENTS

Sponsors and instructors may make available for purchase by students materials that belong to the sponsor, instructor, or some other party; however, class time may not be used to promote or sell any materials or to solicit affiliation or membership in any business or organization.

Authority G.S. 143-151.49(13); 143-151.64.

11 NCAC 08.1349 CANCELLATION AND REFUND POLICIES

Course sponsors shall administer course cancellation and fee refund policies in a non-discriminatory manner. If a scheduled course is canceled, a sponsor shall notify preregistered students of the cancellation. All prepaid fees received from preregistered students shall be refunded within 30 days after date of cancellation or, with the student's permission, applied toward the fees for another course.

Authority G.S. 143-151.49(13); 143-151.64.

11 NCAC 08 .1350 COURSE MONITORS

A course sponsor shall admit an authorized representative of the Board to monitor any continuing education class without prior notice. A Board representative shall not be required to register or pay any fee and shall not be reported as having completed the course.

Authority G.S. 143-151.49(13); 143-151.64.

11 NCAC 08 .1351 ACCOMMODATIONS FOR PERSONS WITH DISABILITIES

Course sponsors may deviate from Board rules concerning the conduct of continuing education courses, such as rules addressing classroom facilities, minimum class size, and instructional methods, as may be necessary in order for the sponsor to comply with the Americans with Disabilities Act or other laws requiring sponsors to accommodate persons with disabilities. A sponsor providing a special accommodation for a licensee with a disability that requires the sponsor to deviate from Board rules shall notify the Board in writing of the

PROPOSED RULES

accommodation at the time reports are submitted for the class session attended by the licensee.

Authority G.S. 143-151.49(13); 143-151.64.

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Department of Insurance intends to adopt the rule cited as 11 NCAC 10 .1112 and amend the rule cited as 11 NCAC 10 .1206. Notice of Rule-making Proceedings was published in the Register on November 1, 2000.

Proposed Effective Date: July 1, 2002

Public Hearing:

Date: January 18, 2001

Time: 10:00 a.m.

Location: Third Floor Hearing Room, Dobbs Building, 430 N. Salisbury St., Raleigh, NC

Reason for Proposed Action: Rules are being updated to comply with present standards.

Comment Procedures: Written comments may be sent to Charles Swindell, NC Department of Insurance, PO Box 26387, Raleigh, NC 27611. Comments will be received through February 2, 2001.

Fiscal Impact

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

CHAPTER 10 – PROPERTY AND CASUALTY DIVISION

SECTION .1100 – RATE FILINGS

11 NCAC 10 .1112 ACTUARIAL CERTIFICATION

Each rate deviation filing made under G.S. 58-36-30 shall be accompanied by an actuarial certification that the deviation is based on sound actuarial principles.

Authority G.S. 58-2-40; 58-36-30.

SECTION .1200 – FORMS FILINGS

11 NCAC 10 .1206 COMMERCIAL LINES

All licensed insurance companies or any other licensed entity filing forms for coverages governed by G.S. 58, Articles 40 and 41 shall:

- (1) use the Letter of Transmittal as prescribed in 11 NCAC 10 .1203;
(2) complete the Questionnaire as prescribed in 11 NCAC 10 .1207;

- (3) if the filer is filing a modification to an existing form, provide a "side-by-side" comparison of the existing and modified forms and explain all broadenings and restrictions of coverage. provide a side-by-side comparison of the existing and modified forms and explain all broadenings and restrictions of coverage if the filing is a modification of an existing form; and
(4) provide an index of forms contained in the filing.

Authority G.S. 58-2-40; 58-3-150; 58-41-50.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Insurance intends to adopt the rules cited as 11 NCAC 11A .0514-.0515. Notice of Rule-making Proceedings was published in the Register on October 2, 2000.

Proposed Effective Date: July 1, 2002

Public Hearing:

Date: January 18, 2001

Time: 10:00 a.m.

Location: Third Floor Hearing Room, Dobbs Building, 430 N. Salisbury St., Raleigh, NC 27611

Reason for Proposed Action: The purpose of these rules is to incorporate provisions from the NAIC Model Regulation into the NC Administrative Code as provided by G.S. 58-2-205.

Comment Procedures: Written comments may be sent to the attention of Raymond Martinez, NC Department of Insurance, PO Box 26387, Raleigh, NC 27611. Comments will be received through February 2, 2001.

Fiscal Impact

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

CHAPTER 11 – FINANCIAL EVALUATION DIVISION

SUBCHAPTER 11A – GENERAL PROVISIONS

SECTION .0500 – CPA AUDITS

11 NCAC 11A .0514 SEASONING REQUIREMENTS

No partner or other person responsible for rendering a report may act in that capacity for more than seven consecutive years. Following that period of service the person shall be disqualified from acting in that or a similar capacity for the

PROPOSED RULES

same company or its insurance subsidiaries or affiliates for a period of two years. An insurer may make application to the Commissioner for relief from the above rotation requirement on the basis of unusual circumstances. The Commissioner shall consider the following factors in determining if the relief should be granted:

- (1) Number of partners, expertise of the partners, or the number of insurance clients in the currently registered firm;
(2) Premium volume of the insurer; or
(3) Number of jurisdictions in which the insurer transacts business.

Authority G.S. 58-2-40; 58-2-205.

11 NCAC 11A .0515 NOTES TO FINANCIAL STATEMENTS

The notes to financial statements required 11 NCAC 11A .0504(b)(6)(A) shall be those required by the appropriate NAIC Annual Statement Instructions and NAIC Accounting Practices and Procedures Manual, including subsequent amendments and editions. These publications are available for inspection in the Financial Evaluation Division of the Department and may be purchased from the National Association of Insurance Commissioners for a cost of two hundred fifteen dollars (\$215.00) and two hundred twenty-five dollars (\$225.00) respectively. The address and telephone number of the NAIC are: NAIC Executive Headquarters, 2301 McGee, Suite 800, Kansas City, MO 64108-2604, (816) 842-3600.

Authority G.S. 58-2-40; 58-2-205.

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Department of Insurance intends to amend the rule cited as 11 NCAC 12 .0423. Notice of Rule-making Proceedings was published in the Register on November 1, 2000.

Proposed Effective Date: July 1, 2002

Public Hearing:

Date: January 18, 2001

Time: 10:00 a.m.

Location: Third Floor Hearing Room, Dobbs Building, 430 N. Salisbury St., Raleigh, NC

Reason for Proposed Action: Rules are being updated to comply with present standards.

Comment Procedures: Written comments may be sent to Walter James, NC Department of Insurance, PO Box 26387, Raleigh, NC 27611. Comments will be received through February 2, 2001.

Fiscal Impact

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

CHAPTER 12 – LIFE AND HEALTH DIVISION

SECTION .0400 – LIFE: GENERAL NATURE

11 NCAC 12 .0423 REQUIRED REPORTS ON VARIABLE ANNUITY BUSINESS

Any company issuing individual variable annuity contracts shall mail to the contract holder at least once in each contract year after the first year at his last address known to the company, a statement or statements reporting the investments held in the separate account, and in the case of contracts under which payments have not yet commenced, a statement reporting as of a date not more than four months previous to the date of mailing:

- (1) the number of accumulation units credited to such contracts and the dollar value of a unit, or
(2) the value of the contract holder's account.

The company shall submit annually to the commissioner a statement of the business of its separate account or accounts in the form designated as 11 NCAC 11A .0418 life and accident and health annual statement blank separate account business.

Authority G.S. 58-2-40; 58-7-95.

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the DENR/Environmental Health Services intends to adopt the rules cited as 15A NCAC 18A .3301-.3335. Notice of Rule-making Proceedings was published in the Register on April 17, 2000.

Proposed Effective Date: August 1, 2002

Public Hearing:

Date: February 1, 2001

Time: 9:00 a.m.

Location: Ground Floor Hearing Room, Archdale Building, 512 N. Salisbury St., Raleigh, NC

Reason for Proposed Action: To provide sanitation standards for Adult Day Service Facilities.

Comment Procedures: Send written comments to Jim Hayes, DENR/Environmental Health Services Section, 1632 Mail Service Center, Raleigh, NC 27699-1632 or email at jim.hayes@ncmail.net. Comments will be accepted through February 2, 2001.

Fiscal Impact

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

CHAPTER 18 – ENVIRONMENTAL HEALTH

SUBCHAPTER 18A – SANITATION

SECTION .3300 – RULES GOVERNING SANITATION OF ADULT DAY SERVICE FACILITIES

15A NCAC 18A .3301 DEFINITIONS

The following definitions shall apply throughout this Section:

- (1) "Adequate" means determined by the Department to be of sufficient size, volume, or technical specifications, to effectively accommodate and support the planned, current, or projected workloads for a specified operational area.
- (2) "Adult Day Service Facility" means an establishment which provides an organized program of services including a meal, for adults during the day in a community group setting and for which a license or certificate for payment is required from the Department of Health and Human Services. It includes adult day care services, adult day health services, psychosocial rehabilitation programs and other day programs which do not provide overnight accommodations.
- (3) "Approved" means procedures and domestic or commercial equipment determined by the Department to be in compliance with this Section. Food service equipment and utensils which meet and are installed in accordance with National Sanitation Foundation (NSF) standards shall be approved.
- (4) "Communicable Condition" means the state of being infected with a communicable agent but without symptoms.
- (5) "Communicable Disease" means any disease that can be transmitted from one person to another directly, by contact with excrement, other body fluids, or discharges from the body; or indirectly, via substances or inanimate objects, such as contaminated food, drinking glasses, toys or water; or via vectors, such as flies, mosquitoes, ticks, or other insects.
- (6) "Department" or "DENR" means the North Carolina Department of Environment and Natural Resources. The term also means the authorized representative of the Department.
- (7) "Eating and Cooking Utensils" means and includes any kitchenware, tableware,

glassware, cutlery, utensils, containers, or other equipment with which food or drink comes in contact during storage, preparation, or serving.

- (8) "Environmental Health Specialist" means a person authorized to represent the Department.
- (9) "Food" means any raw, cooked, or processed edible substance, ice, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption.
- (10) "Frying" means to cook over direct heat in hot oil or fat.
- (11) "Hermetically Sealed" means a container designed and intended to be secure against the entry of microorganisms and to maintain the commercial sterility of its contents after processing.
- (12) "Hygroscopic Food" means food which readily takes up and retains moisture, such as bean sprouts.
- (13) "Impervious" means that which will not allow entrance or passage, such as an airtight plastic container that will not allow the entrance of moisture or vermin.
- (14) "Multi-Service Articles" means tableware, including flatware and holloware which are designed, fabricated, and intended by the manufacturer to be washed, rinsed, sanitized, and re-used.
- (15) "Multi-Use Articles" means bulk food containers and utensils designed, fabricated, and intended by the manufacturer to be washed, rinsed, sanitized, and re-used. The term includes items such as food storage containers, beverage pitchers, serving spoons and bowls, tongs, and spatulas. The term does not include multi-service articles as defined in this Section.
- (16) "Potable Water" means water from an approved source which is suitable for drinking.
- (17) "Potentially Hazardous Food" means any food or ingredient, natural or synthetic, in a form capable of supporting the growth of infectious or toxigenic microorganisms, including Clostridium botulinum. This term includes raw or heat treated food of animal origin, raw seed sprouts, and treated foods of plant origin. The term does not include foods which have a pH level of 4.6 or below or a water activity value of 0.85 or less.
- (18) "Putrescible Materials" means materials likely to rot or putrefy, such as fruit, vegetables, meats, dairy products, or similar items.

- (19) "Sanitary Sewage System" means a complete system of sewage collection, treatment, and disposal and includes septic tank systems, connection to a public or community sewage system, sewage reuse or recycle systems, mechanical or biological treatment systems, or other such systems.
- (20) "Sanitize" means the approved bactericidal treatment by a process which meets the temperature and chemical concentration levels in 15A NCAC 18A .3312.
- (21) "Sewage" means the liquid and solid human body waste and liquid waste generated by water-using fixtures and appliances, including those associated with foodhandling. The term does not include industrial process wastewater or sewage that is combined with industrial process wastewater.
- (22) "Single-Service Articles" means tableware, including flatware and hollowware, carry-out utensils and other items such as bags, containers, stirrers, straws, toothpicks, and wrappers which are designed, fabricated and intended by the manufacturer for one-time use.
- (23) "Single-Use Articles" means bulk food containers and utensils intended by manufacturer to be used once and discarded. The term includes items such as formed buckets, bread wrappers, pickle barrels, and No. 10 cans. The term does not include single-service articles as defined in this Section.

Authority G.S. 130A-285.

15A NCAC 18A .3302 APPROVAL OF CONSTRUCTION AND RENOVATION PLANS

(a) Plans drawn to scale and specifications for new adult day service facilities shall be submitted to the local health department for review and approval prior to initiating construction. Plans drawn to scale and specifications for changes to building dimensions, kitchen specifications, or other modifications to existing adult day service facilities shall also be submitted to the local health department for review and approval prior to construction. The initial inspection for new construction or the first inspection following modifications to existing adult day service facilities shall not be made by the local health department unless these plans have been approved. For new or proposed adult day service facilities, a site visit to evaluate and assist in meeting the requirements of this Section may be requested by the adult day service operator prior to submission of plans and shall be conducted by the local health department within 30 days of the request.

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

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

Authority G.S. 130A-285.

15A NCAC 18A .3303 INSPECTIONS AND REPORTS

(a) Unannounced inspections of adult day service facilities shall be made by an Environmental Health Specialist at least once each year. An original and one copy of the Inspection of Adult Day Service Facility form shall be completed by the Environmental Health Specialist. The adult day service facility operator and the Environmental Health Specialist shall each retain a copy.

(b) If the Environmental Health Specialist determines that conditions found at the adult day service facility at the time of any inspection are dangerous to the health of the participants, the Environmental Health Specialist shall notify the licensing or certifying agency within 24 hours by verbal contact. A copy of the inspection report documenting the dangerous conditions shall be sent to the licensing or certifying agency within two working days following the inspection. Notification of dangerous conditions found at an adult day care or adult day health service facility shall be made to the NC Department of Health and Human Services, Division of Aging. Notifications involving dangerous conditions found at a psychosocial rehabilitation center facility shall be made to the NC Department of Health and Human Services, Division of Facility Services.

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

Authority G.S. 130A-285.

15A NCAC 18A .3304 FOOD SUPPLIES

(a) Food shall be in good condition, free from spoilage, filth, or other contamination and shall be safe for human consumption. Potentially hazardous foods shall only be obtained from sources that are permitted or inspected by a health department or the North Carolina Department of Agriculture. The use of food packaged in hermetically sealed containers that was not prepared in a commercial food processing establishment is prohibited.

(b) Milk products that are used shall be Grade "A" pasteurized fluid milk and fluid milk products or evaporated milk. The term "milk products" means those products as defined in 15A NCAC 18A .1200. Copies of 15A NCAC 18A .1200 may be obtained from the Environmental Health Services Section, Division of Environmental Health, DENR, P.O. Box 29534, Raleigh, North Carolina 27626-0534. Unless prescribed by a physician, dry milk and dry milk products may be used only for

cooking purposes, including cooked pudding desserts and flavored hot beverages.

(c) Fresh and frozen shucked shellfish (oysters, clams, or mussels) shall be packed in nonreturnable packages identified with the name and address of the original shell stock processor, shucker - packer, or repacker, and the interstate certification number issued according to law. Shell stock and shucked shellfish shall be kept in the container in which they were received until they are used. Each container of unshucked shell stock (oysters, clams, or mussels) shall be identified by an attached tag that states the name and address of the original shell stock processor, the kind and quantity of shell stock, and an interstate certification number issued by the State or foreign shellfish control agency. After each container of shellstock has been emptied, the management shall remove the stub of the tag and retain it for a period of at least 90 days.

(d) Raw eggs or products containing raw eggs shall not be consumed, including raw cookie dough, cake batter, brownie mix, milkshakes, ice cream and other food products. A pasteurized egg product may be used as a substitute for raw eggs.

(e) Formula, other bottled beverages and food sent from home shall be fully prepared, dated, and identified for the appropriate participant at the participant's home. All formula and other bottled beverages shall be returned to the participant's home or discarded at the end of each day. Drinking utensils provided by the adult day service facility shall be sanitized in accordance with this Section. Formula and other beverages which require refrigeration, and pureed food after opening shall be refrigerated at 45°F (7°C) or below. Commercially prepared pureed foods shall be served from a single-serving dish rather than the food container. Upon opening, containers of pureed food shall be covered, dated with the date of opening, and refrigerated.

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

(g) All bag lunches containing potentially hazardous foods shall be refrigerated in accordance with this Section.

Authority G.S. 130A-285.

15A NCAC 18A .3305 FOOD PROTECTION

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

(b) In the event of a fire, flood, power outage, or similar event that might result in the contamination of food, or that might prevent potentially hazardous food from being held at required

temperatures, the person in charge shall immediately contact the local health department.

Authority G.S. 130A-285.

15A NCAC 18A .3306 FOOD STORAGE

(a) Opened food products shall be stored in approved, clean, tightly covered, storage containers. Containers shall be impervious and nonabsorbent.

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

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

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

(e) All food shall be stored in a manner to protect it from dust, insects, drip, splash and other contamination.

(f) Packaged food such as milk or other fluid containers may be stored in undrained ice as long as any individual units are not submerged in water. Wrapped sandwiches shall not be stored in direct contact with ice.

(g) Refrigerated storage:

(1) Refrigeration equipment shall be provided in such number and of such capacity to assure the maintenance of potentially hazardous food at required temperatures during storage. Each refrigerator shall be provided with a numerically scaled indicating thermometer, accurate to ±3° F, (± 1.5°C) located to measure the air temperature in the warmest part of the refrigerator and located to be easily readable. Recording thermometers, accurate to ±3° F (± 1.5°C), may be used in lieu of indicating thermometers;

(2) Potentially hazardous food requiring refrigeration after preparation shall be cooled to an internal temperature of 45°F (7°C), or below. Cooling of potentially hazardous foods shall be initiated upon completion of preparation or a period of hot storage. Methods such as shallow pans, agitation, quick chilling or water circulation external to the food containers shall be used to cool large quantities of potentially hazardous food. Potentially hazardous food to be transported cold shall be prechilled and held at a temperature of 45°F (7°C) or below;

(3) Ice used for cooling stored food and food containers shall not be used for human consumption.

(h) Hot storage:

- (1) Hot food storage equipment shall be provided in such number and of such capacity to assure the maintenance of food at the required temperature during storage. Each hot food unit shall be provided with a numerically scaled indicating thermometer, accurate to $\pm 3^{\circ}$ F ($\pm 1.5^{\circ}$ C), located to measure the air temperature in the coolest part of the unit and located to be easily readable. Recording thermometers, accurate to $\pm 3^{\circ}$ F ($\pm 1.5^{\circ}$ C), may be used in lieu of indicating thermometers. Where it is impractical to install thermometers on equipment such as steam tables, steam kettles, heat lamps, cal-rod units, or insulated food transport carriers, a metal stem-type numerically scaled indicating product thermometer shall be available and used to check internal food temperature;
- (2) The internal temperature of potentially hazardous foods requiring hot storage shall be 140°F (60°C) or above except during necessary periods of preparation and service. Potentially hazardous food to be transported hot shall be held at a temperature of 140°F (60°C) or above.

Authority G.S.130A-285.

15A NCAC 18A .3307 FOOD PREPARATION

- (a) Food shall be prepared with the least possible manual contact, with appropriate utensils, and on surfaces that have been cleaned, rinsed, and sanitized prior to use in order to prevent cross-contamination.
- (b) Whenever there is a change in processing from raw to ready-to-eat foods, the new operation shall begin with food-contact surfaces and utensils which are clean and have been sanitized.
- (c) Raw fruits and raw vegetables shall be thoroughly washed with potable water before being cooked or served.
- (d) Potentially hazardous foods requiring cooking shall be cooked to heat all parts of the food to a temperature of at least 140°F (60°C), except that:
 - (1) Poultry, poultry stuffings, stuffed meats and stuffings containing meat shall be cooked to heat all parts of the food to at least 165°F (74°C) with no interruption of the cooking process;
 - (2) Pork and any food containing pork shall be cooked to heat all parts of the food to at least 155°F (68°C) for 15 seconds with no interruption in the cooking process;
 - (3) Ground beef and foods containing ground beef shall be cooked to an internal temperature of at least 155°F (68°C);

- (4) Rare roast beef shall be cooked to an internal temperature of at least 130°F (54°C) with no interruption in the cooking process.

- (e) Raw animal products cooked in a microwave oven shall be rotated during cooking to compensate for uneven heat distribution and shall be heated an additional 25°F (13.9°C) to compensate for shorter cooking times.
- (f) Potentially hazardous foods that have been cooked and then refrigerated, if served above 45°F (7°C), shall be reheated rapidly to an internal temperature of 165°F (74°C) or higher before being served or before being placed in a hot food storage unit except that, food in intact packages from regulated food manufacturing plants may initially be reheated to 140°F (60°C). Steam tables, warmers, and similar hot food holding units are prohibited for the rapid reheating of potentially hazardous foods unless the equipment was specifically designed to rapidly reheat foods to 165°F. Potentially hazardous foods reheated in a microwave oven shall be heated an additional 25°F (13.9°C).
- (g) A food temperature measuring device, accurate to $\pm 2^{\circ}$ F ($\pm 1^{\circ}$ C), shall be provided and used to assure the attainment and maintenance of proper internal cooking, holding, or refrigeration temperatures of all potentially hazardous foods.
- (h) Potentially hazardous foods shall be thawed:

- (1) In refrigerated units at a temperature not to exceed 45°F (7°C);
- (2) Under potable running water of a temperature of 70°F (21°C) or below, with sufficient water velocity to agitate and float off loose food particles into the overflow;
- (3) In a microwave oven only when the food will be immediately transferred to conventional cooking equipment as part of a continuous cooking process or when the entire, uninterrupted cooking process takes place in the microwave oven; or
- (4) As part of the conventional cooking process.

Authority G.S. 130A-285.

15A NCAC 18A .3308 FOOD SERVICE

- (a) Milk and milk products for drinking purposes shall be served from a commercially filled container of not more than one gallon capacity or drawn from a commercially filled container stored in a mechanically refrigerated bulk milk dispenser directly into the drinking utensil.
- (b) Ice shall be made, handled, transported, stored and dispensed in such a manner as to be protected against contamination. Ice shall be dispensed with scoops, tongs, or other ice-dispensing utensils or through automatic ice-dispensing equipment. Ice-dispensing utensils shall be stored on a clean surface or in the ice with the dispensing utensil's handle extended out of the ice. Between uses, ice transfer receptacles shall be stored to protect them from dust, drip, splash and other contamination. Ice storage bins shall be drained through an air gap.

(c) Employees preparing or serving food shall wash their hands in accordance with 15A NCAC 18A .3328 and shall either use antibacterial soap, dips, or hand sanitizers immediately prior to food preparation or service or use clean, disposable gloves during food preparation or service. This requirement is in addition to all handwashing requirements in Rule .3328 of this Section.

(d) Once served, portions of leftover food shall not be served again unless the package is intact and the food is not potentially hazardous.

(e) Between uses during service, dispensing utensils shall be stored in the food with the dispensing utensil handle extended out of the food or stored clean and dry.

(f) Nothing in these Rules shall be construed as prohibiting family style food service at adult day service facilities so long as supervision of the participants is maintained throughout each meal except that family style food service may be prohibited during the outbreak and investigation of communicable diseases.

Authority G.S. 130A-285.

**15A NCAC 18A .3309 FOOD SERVICE
EQUIPMENT AND UTENSILS**

(a) Material and Construction:

- (1) Materials used in the construction of utensils and equipment shall, under normal use conditions, be durable; corrosion-resistant; nonabsorbent; non-toxic; of sufficient weight and thickness to permit cleaning and sanitizing by normal warewashing methods; finished to have a smooth, easily cleanable surface; and resistant to pitting, chipping, cracking, scratching, scoring, distortion, and decomposition;
- (2) Solder shall be comprised of approved, non-toxic; corrosion-resistant materials;
- (3) Wood and wicker shall not be used as food-contact surfaces, except hard maple or an equivalent nonabsorbent wood may be used for cutting boards, cutting blocks or bakers' tables;
- (4) Galvanized metal shall not be used for utensils which have general utility or for utensils or food-contact equipment which contacts beverages or moist or hygroscopic food;
- (5) Linens shall not be used as food-contact surfaces, except that clean linen may be used in contact with bread and rolls;
- (6) Single-use and single-service articles shall be fabricated from approved, clean materials;
- (7) Single-use articles such as formed buckets, bread wrappers, aluminum pie plates and No. 10 cans shall be used only once except that containers made of plastic, glass or

other food grade material having smooth sides and of a construction so as to be easily cleaned may be reused;

- (8) Equipment, utensils, and single-service articles that impart odors, color or taste, or contribute to the contamination of food shall not be used.

(b) Design and Fabrication:

- (1) Equipment and utensils shall be designed and fabricated to be durable and sufficiently strong to resist denting and buckling under normal-use conditions;
- (2) Product thermometers and thermometer probes shall be of metal stem-type construction;
- (3) Multi-use food-contact surfaces shall be smooth; free of breaks, open seams, cracks, chips, pits and similar imperfections; free of sharp internal angles, corners and crevices; finished to have smooth welds and joints; and accessible for cleaning and inspection without being disassembled, by disassembling without the use of tools or by easy disassembling with the use of only simple tools such as mallets, screw drivers or wrenches which are kept near the equipment;
- (4) Water filters or any other water conditioning devices shall be designed to be disassembled to provide for periodic cleaning or replacement of the active element;
- (5) Nonfood-contact surfaces shall be nonabsorbent, cleanable, and free of ledges, projections, and crevices that obstruct cleaning;
- (6) Interior surfaces of nonfood-contact equipment shall be designed and fabricated to allow easy cleaning and to facilitate maintenance operations;
- (7) Filters and other grease extracting equipment shall be readily accessible for filter replacement and cleaning.

Authority G.S. 130A-285.

**15A NCAC 18A .3310 SPECIFICATIONS FOR
KITCHENS**

(a) For adult day service facilities licensed for or serving food to fewer than 30 participants:

- (1) Domestic kitchen equipment may be used. Domestic kitchen equipment shall include at least a two-compartment sink, drainboards or countertop space of adequate size, refrigeration equipment and adequate cooking equipment. Adult day service facilities using multi-service articles shall also provide a dishwasher. In lieu of a

- dishwasher and two-compartment sink, a three-compartment sink with drainboards or counter top space of adequate size on each end may be used;
- (2) When domestic refrigeration equipment is used the following provisions shall apply:
- (A) Potentially hazardous foods shall not be prepared prior to the day that such foods are to be served;
- (B) Potentially hazardous foods that have been heated shall not be reheated or placed in refrigeration to be used in whole or in part on another day; and
- (C) Salads containing potentially hazardous food shall not be prepared on-site.
- (3) A separate lavatory for handwashing is required in food preparation areas. If the dishwashing area is separate from the food preparation area, an additional lavatory shall be required in the dishwashing area. These handwashing lavatories shall be used only by food service personnel; and
- (4) A commercial hood shall be installed when foods are fried on-site. The hood shall be installed in accordance with the North Carolina Building Code and approved by the local building code enforcement agent.
- (b) For adult day service facilities licensed for or serving food to 30 or more participants:
- (1) Approved food service equipment shall be used. When domestic refrigeration equipment is used the following provisions shall apply:
- (A) Potentially hazardous foods shall not be prepared prior to the day that such foods are to be served;
- (B) Potentially hazardous foods that have been heated shall not be reheated or placed in refrigeration to be used in whole or in part on another day;
- (C) Salads containing potentially hazardous food shall not be prepared on-site; and
- (D) All meats, poultry, and fish shall be purchased in pre-portioned, ready-to-cook form.
- (2) Food service equipment shall include:
- (A) Where meals are prepared and multi-service articles are used, at least a three-compartment sink with drainboards or counter top space of adequate size on each end, refrigeration equipment, and cooking equipment;

- (B) Where meals are prepared and only single-service articles are used, at least a two-compartment sink with drainboards or counter top space of adequate size on each end, refrigeration equipment, and cooking equipment; or
- (C) Where no meals are prepared and only single-service articles are used, refrigeration equipment, and at least a domestic two-compartment sink with drainboards or counter top space of adequate size on each end.
- (3) A separate food preparation sink with drainboards shall be provided for the washing and processing of foods except where plan review shows that volume and preparation frequency do not require separate facilities.
- (4) A separate lavatory for handwashing is required in food preparation and food service areas. If the dishwashing area is separate from the food preparation area, an additional lavatory shall be required in the dishwashing area. These handwashing lavatories shall be used only by food service personnel.
- (5) A commercial hood shall be installed when foods are fried on-site. The hood shall be installed in accordance with the North Carolina Building Code and approved by the local building code enforcement agent.

Authority G.S. 130A-285.

15A NCAC 18A .3311 CLEANING AND SANITIZING OF EQUIPMENT AND UTENSILS

- (a) Multi-use tableware shall be washed, rinsed, and sanitized after each use.
- (b) Food-contact surfaces of equipment and utensils shall be washed, rinsed, and sanitized:
- (1) Each time there is a change from raw to ready-to-eat foods;
- (2) Each time there is a change in processing between types of raw animal products such as beef, fish, lamb, pork, and poultry;
- (3) After any substantial interruption of operations in which contamination may have occurred;
- (4) Whenever necessitated by food temperature, room temperature, type of food, and food particle accumulation; and
- (5) After final use each working day.
- (c) Nonfood-contact surfaces of equipment shall be cleaned as often as is necessary to keep the equipment free of accumulation of dust, dirt, food particles, and other debris.

Authority G.S. 130A-285.

15A NCAC 18A .3312 MANUAL CLEANING AND SANITIZING

(a) Adult day service facilities licensed for or serving food to 30 or more participants shall provide and use a three-compartment sink with drainboards or counter top space of adequate size on each end if utensils and equipment are manually cleaned and sanitized.

(b) Adult day service facilities licensed for or serving food to fewer than 30 participants that use a domestic dishwasher and two compartment sink for sanitizing multi-service articles shall sanitize as required in Paragraph (e)(4) of this Rule. Sink compartments shall be large enough to submerge the largest items to be washed and each compartment shall be supplied with hot and cold running water.

(c) If required under Rule .3310 of this Section, drainboards or counter top space of adequate size shall be provided for handling of soiled utensils prior to washing and cleaned utensils following sanitizing. Drainboards or counter top space shall be no less than 24" long. For adult day service facilities licensed for or serving food to fewer than 13 participants and located in a residence, a domestic dishwasher may be used to provide the equivalent of 24 inches of drainboard space, and other designated areas not contiguous with the sink may be used to meet drainboard or counter top space requirements.

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

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

- (1) Sinks shall be cleaned and sanitized prior to use.
- (2) Equipment and utensils shall be thoroughly washed in the first compartment with a hot detergent solution that is changed when visibly soiled.
- (3) Equipment and utensils shall be rinsed free of detergent and abrasives with clean water in the second compartment.
- (4) The food-contact surfaces of equipment and utensils shall be sanitized in the third compartment by:

- (A) Immersion for at least one minute in clean, hot water at a temperature of at least 170°F (77°C);
- (B) Immersion for at least two minutes in a clean solution containing at least 50 parts per million (ppm) of available chlorine at a temperature of at least 75°F (24°C);
- (C) Immersion for at least two minutes in a clean solution containing at least 12.5 ppm of available iodine and having a pH not higher than

5.0 and at a temperature of at least 75°F (24°C); or

(D) Immersion for at least two minutes in a clean solution containing at least 200 ppm of quaternary ammonium products and having a temperature of at least 75°F (24°C), provided that the product is labeled to show that it is effective in water having a hardness value at least equal to that of the water being used.

(f) For utensils and equipment which are either too large or impractical to sanitize in a dishwashing machine or dishwashing sink, a spray-on or wipe-on sanitizer shall be used. When spray-on or wipe-on sanitizers are used, the chemical strengths shall be those required for sanitizing multi-use eating and drinking utensils. Spray-on or wipe-on sanitizers shall be prepared daily and kept on hand for bactericidal treatment.

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

- (1) An integral heating device or fixture installed in, on, or under the sanitizing compartment of the sink capable of maintaining the water at a temperature of at least 170°F (77°C); and
- (2) A numerically scaled indicating thermometer, accurate to ±3° F (± 1.5°C), convenient to the sink for frequent checks of water temperature; and
- (3) Dish baskets of such size and design to permit complete immersion of the tableware, kitchenware, and equipment in the hot water.

(h) An approved testing method or equipment, used in accordance with the product manufacturer's instructions, shall be available, convenient, and regularly used to test chemical sanitizers to insure minimum prescribed strengths.

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

Authority G.S. 130A-285.

15A NCAC 18A .3313 MECHANICAL CLEANING AND SANITIZING

(a) Machine or water line mounted numerically scaled indicating thermometers, accurate to ±3°F (± 1.5°C), shall be provided for commercial dishwashing equipment to indicate the temperature of the water in each tank of the machine and the temperature of the final rinse water as it enters the manifold.

(b) Drainboards or counter top space of adequate size for the proper handling of soiled utensils prior to washing and cleaned utensils following sanitization shall be provided.

(c) Equipment and utensils shall be flushed or scraped and, when necessary, soaked to remove large food particles and soil prior to being washed in a dishwashing machine unless a prewash cycle is a part of the dishwashing machine operation.

Equipment and utensils shall be placed in racks, trays, or baskets, or on conveyors, in a way that food-contact surfaces are exposed to the unobstructed application of detergent wash and clean rinse waters and that permits free draining.

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

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

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

Authority G.S. 130A-285.

15A NCAC 18A .3314 FOOD SERVICE EQUIPMENT AND UTENSIL STORAGE

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

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

(c) Single-service articles shall be purchased only in clean containers, shall be stored in a clean, dry container until used, and shall be handled in accordance with the rules of this Section.

Authority G.S. 130A-285.

15A NCAC 18A .3315 WATER SUPPLY

(a) Running water under pressure shall be provided in sufficient quantities to meet the needs of cooking, cleaning, drinking, toilets, and outside uses without producing water pressure lower than that required by the North Carolina Plumbing Code.

(b) The water supply shall meet the requirements of 15A NCAC 18C or 15A NCAC 18A .1700 Protection of Water Supplies. Samples of water shall be collected by the Environmental Health Specialist and submitted to a state certified laboratory for bacteriological analysis annually. Other tests of water quality, as indicated by possible sources of contamination, may be collected by the Environmental Health Specialist.

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

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

(e) Hot water heating equipment shall provide hot water as follows:

- (1) _____ at a minimum temperature of 140°F at the point of use when hot water is used for sanitizing;
- (2) _____ at a minimum of 130°F at sinks used for cleaning cooking utensils in kitchens which prepare meals; and
- (3) _____ at a temperature of no less than 90°F and no more than 120°F at hand sinks and in other areas accessible to participants, and in kitchens not used to prepare meals.

Authority G.S. 130A-285.

15A NCAC 18A .3316 DRINKING WATER FACILITIES

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

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

(c) All multi-use utensils used for drinking purposes shall be easily cleanable, cleaned and sanitized after each use. Single-service articles used for drinking water shall be stored and handled so as not to become contaminated by insects, splash, dust, and other contamination.

Authority G.S. 130A-285.

15A NCAC 18A .3317 TOILETS

(a) All toilet fixtures and toilet rooms shall be located to comply with the requirements of these Rules. Storage in toilet rooms shall be limited to toileting and clothing changing supplies except that cleaning supplies can be stored in toilet rooms in a locked cabinet. All toilet fixtures shall be easily cleanable, and in good repair.

(b) Toilet fixtures shall be cleaned and sanitized when soiled and at least on a daily basis. A solution of 100 ppm chlorine solution or other equivalent methods approved by the Department shall be used for sanitizing.

(c) If bedside commodes, bedpans or urinals are used, they shall be located in a room equipped with a spray rinse toilet or

utility sink. Bedside commodes, bedpans and urinals shall be emptied and rinsed or discarded when used, and cleaned and sanitized before use by any other participant, with 100 ppm chlorine solution or equivalent method approved by the Department.

Authority G.S. 130A-285.

15A NCAC 18A .3318 LAVATORIES AND BATHING FACILITIES

(a) Lavatories shall be sized and located to comply with the appropriate handwashing requirements of these Rules, easily cleanable, in good repair, and kept free of storage.

(b) All lavatories and bathing facilities shall be equipped with hot and cold running water through mixing faucets except that automatic mixing faucets or pre-mixing devices which provide water at the temperature specified in Rule .3315(e) of this Section may be provided.

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

(d) Soap and disposable towels or heated air hand drying device shall be provided at every handwash lavatory area.

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

(f) If bathing facilities or hydrotherapy equipment are provided, they shall be kept clean. Bathing equipment which has contact with participant's skin shall be cleaned with a detergent and an EPA listed Germicidal disinfectant between participant uses. Manufacturer's instructions shall be followed for cleaning equipment with pumps. A supply of cleaning and disinfectant agents shall be accessible to bathing areas. Chemical test kits shall be used to test the concentration of disinfectants mixed on site.

Authority G.S. 130A-285.

15A NCAC 18A .3319 CLOTHING AND CLOTHING CHANGING

(a) Clothing changes shall be done in restrooms or other areas designated for that purpose.

(b) Clothing Changing surfaces shall be smooth, nonabsorbent, easily cleanable and shall be approved by the Department.

(c) Clothing Changing surfaces shall be kept free of storage and shall be cleaned with a mild solution of water and detergent and sanitized after each changing. A solution of 100 ppm chlorine or equivalent methods approved by the Department shall be used for sanitizing. A suitable testing method or kit shall be available and used daily to insure compliance with the minimum prescribed strength. These solutions shall be used from separate and properly labeled, hand pump spray bottles.

(d) Each clothing changing area shall include a handwash lavatory for caregivers.

(e) The use of disposable gloves by caregivers during the clothing changing process is required if the worker has cuts or

sores on hands or chapped hands. Gloves shall be discarded after use.

(f) Caregivers may dispose of feces in the toilet, and soiled clothing shall be placed in a tightly closed plastic bag or other equivalent container approved by the Department and sent daily to the participant's home or a laundry area to be laundered. Clothing shall not be rinsed except where a utility sink is provided for that purpose.

(g) Only pre-moistened towelettes or paper towels shall be used for cleaning participants during the changing process. Soiled paper or towelettes shall be discarded after use in a covered plastic-lined receptacle.

(h) Soiled disposable diapers shall be placed in a cleanable, plastic-lined, covered container and removed to an exterior garbage area at least daily.

(i) Whether or not disposable gloves are used, caregivers shall wash their hands after each individual clothing change in accordance with Rule .3328 of this Section.

(j) Participant's hands shall be washed in the lavatory after each individual clothing change in accordance with Rule .3328 of this Section.

Authority G.S. 130A-285.

15A NCAC 18A .3320 STORAGE

(a) Rooms or spaces shall be provided for the storage of equipment, furniture, clothes, beds, cots, mats, and supplies and shall be kept clean. Shelving or other storage, constructed in a manner to facilitate cleaning, shall be provided for orderly storage of supplies and equipment.

(b) All corrosive agents, insecticides, rodenticides, herbicides, bleaches, detergents, polishes, items containing petroleum products, any product which is under pressure in an aerosol dispensing can, and any substance which may be hazardous if ingested, inhaled, or handled shall be stored in a locked storage room or cabinet, locked with a combination lock or key. Keys shall be kept out of the reach of participants and shall not be stored in the lock.

(c) A properly mixed sanitizing solution and a mild detergent solution approved by the Department shall not be required to be stored in a locked storage room or locked cabinet. These solutions shall be clearly labeled.

(d) Medications not under the control of a participant shall be stored in a separate locked cabinet or other locked container. Medications which require refrigeration shall be stored in a locked box or locked container in a refrigerator.

(e) Closets, lockers, or coat hooks shall be provided for storage of coats, hats, or similar items. Personal items such as toothbrushes, dentures or combs shall be stored in containers labeled with the participant's name.

Authority G.S. 130A-285.

15A NCAC 18A .3321 BEDS AND LINENS

(a) All beds, chairs, cots, and mats shall be in good repair stored to protect them from splash, drip and other contamination, cleaned regularly and sanitized between users.

(b) Individual beds used for sleeping shall be covered with waterproof, washable material and shall be equipped with individual linen.

(c) All bed linen shall be kept clean and in good repair and shall be changed between participant uses.

(d) Blankets, throws or other covers shall be kept clean.

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

Authority G.S. 130A-285.

15A NCAC 18A .3322 FURNITURE, EQUIPMENT AND ACTIVITY SUPPLIES

Furniture, equipment and activity supplies provided by the adult day service facility shall be of easily cleanable construction, and shall be kept clean and in good repair.

Authority G.S. 130A-285.

15A NCAC 18A .3323 PERSONNEL

(a) Employees shall wear clean outer clothing and shall be clean as to their person and methods of foodhandling and participant care. Employees shall keep their fingernails clean and trimmed.

(b) Hair nets, caps, or similar hair restraints shall be worn by employees engaged in the preparation or service of food. Hair spray, barrettes, or visors are not considered an effective hair restraint.

(c) Tobacco use in any form is prohibited in the food preparation area. Smoking shall be prohibited in building areas occupied by non-smokers.

(d) Persons with a communicable disease or a communicable condition shall be excluded from situations in which transmission can be reasonably expected to occur, in accordance with Communicable Disease Control Measures under 15A NCAC 19A .0200. Any person with boils, sores, burns, infected wounds or other potentially draining lesions on the face, neck, hands, lower arms or other exposed skin shall properly bandage affected area to eliminate exposure to drainage. If exposure to drainage cannot be eliminated or proper handwashing cannot be maintained, then the employee shall be excluded from the adult day service facility while the condition exists.

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

Authority G.S. 130A-285.

15A NCAC 18A .3324 FLOORS

(a) Floors and floor coverings of all food preparation, food storage, utensil-washing areas, toilet rooms, maintenance rooms, utility rooms, and laundry areas shall be constructed of nonabsorbent, easily cleanable, durable material such as sealed concrete, terrazzo, ceramic tile, durable grades of linoleum or plastic, or tight wood impregnated with plastic.

(b) Carpeting used as a floor covering shall be of closely woven construction, properly installed, and easily cleanable. Carpeting is prohibited in food preparation areas, equipment and utensil-washing areas, food storage areas, laundry areas, and toilet rooms.

(c) All floors shall be kept clean and maintained in good repair. Carpeting shall be kept clean and dry.

Authority G.S. 130A-285.

15A NCAC 18A .3325 WALLS AND CEILINGS

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

(b) Ceilings in rooms in which food is stored, handled or prepared, utensil-washing rooms, and toilet rooms shall be non-absorbent and easily cleanable. Acoustic ceiling material may be used where ventilation precludes the possibility of grease and moisture absorption.

Authority G.S. 130A-285.

15A NCAC 18A .3326 LIGHTING AND THERMAL ENVIRONMENT

(a) All rooms and enclosed areas shall be well lighted by natural or artificial means. Lighting shall be capable of illumination to at least 50 foot-candles at food preparation work surfaces. At least 10 foot-candles of light, at 30 inches above the floor, shall be provided in all other areas, including storage rooms. Light fixtures in all areas shall be kept clean and in good repair. Completely shielded bulbs or shatterproof bulbs shall be used in food preparation, storage, and serving areas.

(b) All rooms used by participants shall be heated, cooled, and ventilated to maintain a temperature between 65°F (19°C) and 85°F (30°C). Ventilation may be in the form of operable windows which are screened or by means of mechanical ventilation to the outside. Windows and window treatments shall be kept clean and in good repair. All ventilation equipment, including heating and cooling vents, fans, and all special ventilation equipment which is required for kitchens and toilet rooms, shall be kept clean and in good repair.

Authority G.S. 130A-285.

15A NCAC 18A .3327 COMMUNICABLE DISEASES AND CONDITIONS

(a) Any person who becomes ill at the adult day service facility and is suspected of having a communicable disease or communicable condition shall be separated from the other participants until leaving the facility.

(b) Each adult day service facility shall include a designated area for a person who becomes ill. When in use, such area shall be equipped with a bed, cot or mat and a vomitus receptacle. All materials shall be sanitized after each use. Linens and disposables shall be changed after each use.

(c) If the area is not a separate room, it shall be separated from space used by other participants by a partition, screen or other means approved by the Environmental Health Specialist. This designated area shall be proximate to a toilet and lavatory, and where health and sanitation measures can be carried out without interrupting activities of other participants and staff. Ill people shall not be allowed in areas where food is prepared or handled.

(d) Facilities providing adult day health services shall have a treatment room which is separate from areas used for storage and handling of food. The treatment room shall have a hand sink or have a doorway which connects it to a room containing a sink.

Authority G.S. 130A-285.

15A NCAC 18A .3328 HANDWASHING

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

(b) Participants shall wash hands upon arrival at the facility; after each clothing change or visit to the toilet; before eating meals or snacks; and after handling animals or animal cages.

(c) Proper handwashing procedures shall include:

- (1) Using soap and tempered running water;
- (2) Rubbing hands vigorously with soap and tempered water for 15 seconds;
- (3) Washing all surfaces of the hands, to include the backs of hands, palms, wrists, under fingernails, and between fingers;
- (4) Rinsing well for 10 seconds;
- (5) Drying hands with a paper towel or mechanical dryer; and
- (6) Turning off faucet with paper towel.

Authority G.S. 130A-285.

15A NCAC 18A .3329 WASTEWATER

All wastewater shall be disposed of in a publically-owned wastewater treatment system or by an approved properly operating on-site wastewater system.

Authority G.S. 130A-285.

15A NCAC 18A .3330 SOLID WASTES

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

(b) Facilities shall be provided for the washing and storage of all garbage cans and mops for adult day service facilities, except for facilities certified or licensed for fewer than 13 participants. Cleaning facilities shall include combination faucet, hot and cold running water, threaded nozzle, and curbed impervious pad sloped to drain into an approved sanitary sewage system. Other can cleaning facilities approved prior to July 1, 2001 shall be deemed approved if in good repair and functioning properly. Can cleaning facilities replaced after July 1, 2001 shall meet the requirements of this Section.

(c) Where containerized systems are used for garbage storage, facilities shall be provided for the cleaning of such systems. A contract for off-site cleaning shall constitute compliance with this Section.

(d) Solid wastes shall be disposed of so as to prevent insect breeding and public health nuisances.

Authority G.S. 130A-285.

15A NCAC 18A .3331 ANIMAL AND VERMIN CONTROL: PREMISES

(a) Unrestrained animals, except those used in approved pet therapy programs, shall not be allowed in the adult day service facility, including the outdoor area. Animals shall not be allowed in the food preparation areas. Animal cages, bedding, litter boxes and other pet-related items shall be kept clean.

(b) Effective measures shall be taken to keep insects, rodents, and other vermin out of the facility and to prevent their breeding or presence on the premises.

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

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

Authority G.S. 130A-285.

15A NCAC 18A .3332 OUTDOOR AREAS

(a) The premises, including the outdoor area, shall be kept clean, drained and free of litter and hazardous materials. Grass

and other vegetation shall be maintained in a manner which does not encourage the harborage of vermin.

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

Authority G.S. 130A-285.

15A NCAC 18A .3333 SWIMMING AND WADING POOLS

(a) Swimming pools, wading pools and spas shall be designed, constructed, operated and maintained in accordance with the Rules Governing Swimming Pools, 15A NCAC 18A .2500.

Copies of these Rules may be obtained from DENR, Division of Environmental Health, Environmental Health Services Section, P.O. Box 29534, Raleigh, North Carolina 27626-0534.

(b) Unfiltered and nondisinfected containments of water shall not be utilized for water recreation activities.

Authority G.S. 130A-285.

15A NCAC 18A .3334 COMPLIANCE

(a) The Environmental Health Specialist shall indicate on the Sanitation Inspection of Adult Day Service Facility Form whether the adult day service facility is superior, approved, provisional, or disapproved based on compliance with the rules of this Section. The classification shall be posted in the facility in a conspicuous place designated by the Environmental Health Specialist.

(b) The degree of compliance is indicated by the total demerit-point score which is shown on the Sanitation Inspection of Adult Day Service Facility Form that the Environmental Health Specialist completes.

(1) For the purpose of issuing a license or certificate to a new operator, a Sanitation Inspection of Adult Day Service Facility Form, shall be forwarded to the licensing or certifying agency only when the facility can be granted a superior classification.

(2) An adult day service facility shall be classified as superior if the total demerit score is not more than 15 and no 6-demerit-point item is violated.

(3) An adult day service facility shall be classified as approved if the total demerit score is more than 15 and not more than 30, and no 6-demerit-point item is violated.

(4) An adult day service facility shall be classified as provisional if any 6-demerit-point item is violated, or if the total demerit-point score is more than 30 but not more than 45. This provisional period shall not exceed seven days unless construction or renovation is necessary to correct any violation, in which case the Environmental Health Specialist may allow a longer provisional period.

(5) An adult day service facility shall be classified as disapproved if the demerit score is 46 or more, or if conditions which resulted in a provisional classification have not been corrected in the time period specified by the Environmental Health Specialist.

(6) If the provisional status period exceeds seven days, or the adult day service facility is disapproved, the licensing or certifying agency shall be notified immediately by forwarding a copy of the inspection report to the Licensing or certifying agency. The Environmental Health Specialist shall notify the licensing or certifying agency in accordance with Rule .3303 of this Section.

(7) The classification card shall not be removed except by or upon the instruction of the Environmental Health Specialist.

Authority G.S. 130A-285.

15A NCAC 18A .3335 APPEALS PROCEDURE

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

Authority G.S. 130A-285.

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

TITLE 10 – DEPARTMENT OF HEALTH AND HUMAN SERVICES

Rule-making Agency: *Social Services Commission*

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

Effective Date: *January 1, 2001*

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

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

Reason for Proposed Action: *In the 2000 Legislative Session, the General Assembly established the Special Children Adoption Incentive Fund to provide financial incentives for foster families desiring to adopt special needs children residing in their care. The establishment of this Fund will make it possible for some of the children with special needs to be adopted who would otherwise remain in the foster care system because of the financial loss to foster parents. Counties who participate in the Special Children Adoption Incentive Fund must commit to provide 50% of the cost of this incentive to the foster parent(s) who choose to adopt a special needs child. The fact that a child has special needs should not preclude the child from the benefits of a permanent loving home. The removal of the financial disincentive to foster parent(s) who wish to adopt will remove another barrier for children who need loving, adoptive parent(s).*

Comment Procedures: *If you wish to make comments please contact Ms. Sharnese Ransome, APA Coordinator, Division of Social Services, 2401 Mail Service Center, Raleigh, NC 27699-2401; (919) 733-3055. Verbal comments may be presented at the public hearing. Written comments must be received by Ms. Ransome not later than December 6, 2000 at 9:00am.*

CHAPTER 41 – CHILDREN'S SERVICES

SUBCHAPTER 41H – ADOPTION STANDARDS

SECTION .0400 – ADOPTION ASSISTANCE: GENERAL

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

DATE

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

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

rate established by the General Assembly for the previous six months on a continuous basis to provide the care required for the child's health condition and functional impairment;

- (6) The foster parent(s) are willing to adopt the child only if the monthly cash assistance from any governmental source whether federal, State or local above the state adoption assistance rate received as foster parent(s) is not terminated;
- (7) The foster parent(s) have signed an adoption assistance agreement and a supplemental agreement that includes the additional amount of cash assistance that the foster parent(s) have agreed to accept prior to the finalization of the adoption;
- (8) The Decree of Adoption for the child was issued by the court on or after January 1, 2001; and
- (9) The county department of social services having legal custody of the child voluntarily agrees to participate in the Special Children Adoption Incentive Fund and agrees to assume 50% of the payment above the State adoption assistance rate established by the General Assembly.

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

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

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

- (a) Payments from the Special Children Adoption Incentive Fund will be made by the Division of Social Services to the adoptive parent(s).
- (b) Participating county departments of social services shall submit claims for payments to the Division of Social Services.
- (c) The initial payment claim must include the following items:
 - (1) verification of child's placement authority;
 - (2) verification that the child has lived with the foster family six consecutive months;
 - (3) copy of written statement from a licensed physician regarding the child's health condition;
 - (4) copy of written statement from a licensed health, mental health, or developmental disability professional regarding the status of the child's condition;
 - (5) copy of signed adoption assistance agreement;

- (6) copy of signed supplemental assistance agreement; and
- (7) copy of Decree of Adoption.
- (d) Monthly payment claims shall be submitted on the "Request for Special Children Adoption Incentive Fund Payment" form developed by the Division of Social Services.

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

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Rule-making Agency: *NC Marine Fisheries Commission*

Rule Citation: *15A NCAC 03L .0207*

Effective Date: *December 6, 2000*

Findings Reviewed and Approved by: *Julian Mann*

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

Reason for Proposed Action: *G.S. 143B-289.52(e) authorizes the adoption of temporary rules within six months of adoption or amendment of a fishery management plan or the notification of change in management measures needed to remain in compliance with a fishery management plan. The Marine Fisheries Commission adopted a bycatch limit of 500 horseshoe crabs effective by temporary rule in May, 2000. A typing error was made in filing that temporary rule (and subsequently, in notice of text also) and the limit was set at 50. This limit is too restrictive for North Carolina fishermen who take horseshoe crabs incidental to other fisheries but restrictive enough to prevent out of state boats from intentionally taking horseshoe crabs and traveling to North Carolina ports to offload. Horseshoe crabs are taken in many of the fall fisheries. Adoption of this temporary rule will allow these landings of 500 horseshoe crabs or less to continue while North Carolina will remain in compliance with the fishery management plan.*

Comment Procedures: *Written comments are encouraged and may be submitted to the NC Marine Fisheries Commission, c/o Juanita Gaskill, PO Box 769, Morehead City, NC 28557.*

CHAPTER 03 – MARINE FISHERIES

SUB CHAPTER 03L – SHRIMP, CRABS, AND LOBSTER

SECTION .0200 – CRABS

15A NCAC 03L .0207 HORSESHOE CRABS

TEMPORARY RULES

(a) It is unlawful to possess more than ~~500~~ **50** horseshoe crabs per vessel per trip.

(b) Horseshoe crabs taken for biomedical use under a Horseshoe Crab Biomedical Use Permit are exempt from this Rule.

(c) The annual (January through December) commercial quota for North Carolina for horseshoe crabs shall be established by the Atlantic States Marine Fisheries Commission Horseshoe Crab Management Plan. Once the quota is projected to be

taken, the Fisheries Director shall, by proclamation, close the season for the landing of horseshoe crabs.

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

Temporary Adoption Eff. August 1, 2000;

Codifier determined that findings did not meet criteria for temporary rule on October 31, 2000;

Temporary Adoption Eff. December 6, 2000.

CONTESTED CASE DECISIONS

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

OFFICE OF ADMINISTRATIVE HEARINGS

Chief Administrative Law Judge

JULIAN MANN, III

Senior Administrative Law Judge

FRED G. MORRISON JR.

ADMINISTRATIVE LAW JUDGES

Sammie Chess Jr.

Beecher R. Gray

Melissa Owens Lassiter

James L. Conner, II

Beryl E. Wade

<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	
Timothy Lee Hopper v. NC ABC Commission		00 ABC 0326	Lassiter	10/20/00
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	
BOARD OF MORTUARY SCIENCE				
NC Board of Mortuary Science v. John Charles McNeill, McNeill Funerals, Inc.	00 BMS 0564	Wade	10/13/00	
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
Pearl J. Conner v. Victim & Justice Services, Dept of Crime Control & Public Safety	00 CPS 0903	Lassiter	11/09/00	
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	
Child Support Enforcement Section				
Steven M. Helms v. Department of Health & Human Services	98 CSE 1634	Gray	07/13/00	
David R. North v. Department of Health & Human Services	99 CSE 0408	Chess	10/25/00	
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	
Omer D. & Marinda A. Potter v. Department of Health & Human Services	99 CSE 0798	Chess	10/25/00	
Richard Cook v. Department of Health & Human Services	99 CSE 0873 ⁴	Chess	10/27/00	
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	
Jermaine L. Covington v. Department of Health & Human Services	99 CSE 1408	Lassiter	11/01/00	
Joseph E. Toothman v. Department of Health & Human Services	99 CSE 1428	Gray	09/27/00	
Kenneth W. Freeman, Jr. v. Department of Health & Human Services	99 CSE 1455	Wade	10/31/00	
Darryl Glenn Cannady v. Department of Health & Human Services	99 CSE 1457	Gray	07/27/00	

CONTESTED CASE DECISIONS

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. Massenber, 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
Edward J. Lucero v. Department of Health & Human Services	99 CSE 1542	Mann	10/31/00
Ronald E. Davis, Jr. v. Department of Health & Human Services	99 CSE 1554	Gray	07/28/00
Almiron J. Deis v. Department of Health & Human Services	99 CSE 1589	Mann	10/31/00
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
Richard Cook v. Department of Health & Human Services	00 CSE 0053 ⁴	Chess	10/27/00
Wendy Gosnell v. Department of Health & Human Services	00 CSE 0073	Mann	06/14/00
Matthew Gibson v. Department of Health & Human Services	00 CSE 0076	Mann	10/31/00
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
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
Gregory L. Pinkett v. Department of Health & Human Services	00 CSE 0214	Wade	10/31/00
Joseph D. Turnage v. Department of Health & Human Services	00 CSE 0220	Morrison	11/16/00
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 Beppard 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
Christopher Mark Boyette v. Department of Health & Human Services	00 CSE 0262	Lassiter	11/01/00
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
Glennie Mae Jones v. Department of Health & Human Services	00 CSE 0349	Mann	10/30/00
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
Ronald T. Palmer v. Department of Health & Human Services	00 CSE 0422	Mann	10/31/00
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	Connor	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

CONTESTED CASE DECISIONS

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	Connor	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
Rhonda Styers v. Department of Health & Human Services	00 CSE 0639	Mann	10/30/00
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
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
Tyrone K. Anthony v. Department of Health & Human Services	00 CSE 0741	Wade	10/31/00
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 Hair 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
James C. Boyce v. Department of Health & Human Services	00 CSE 0946	Wade	12/01/00
Matthew Russell Schmidt v. Department of Health & Human Services	00 CSE 0963	Morrison	10/04/00
Keith Stephenson v. Department of Health & Human Services	00 CSE 0979	Chess	10/25/00
Walter R. Spencer, Jr. v. Department of Health & Human Services	00 CSE 1010	Morrison	10/27/00
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
Darwin Dean Graves v. Department of Health & Human Services	00 CSE 1014	Conner	11/28/00
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
Nancy Moore v. Department of Health & Human Services	00 CSE 1081	Lassiter	11/16/00
Carl V. Greggs, Sr. v. Department of Health & Human Services	00 CSE 1082	Wade	11/16/00
Tacha Hyatt-Crowder v. Department of Health & Human Services	00 CSE 1098	Gray	11/07/00
Stan Valentine v. Department of Health & Human Services	00 CSE 1100	Morrison	11/16/00
Carlos Eugene Jacobs v. Department of Health & Human Services	00 CSE 1259	Mann	11/30/00
Norman Bell v. Department of Health & Human Services	00 CSE 1268	Morrison	11/28/00
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
--	-------------	----------	----------

CONTESTED CASE DECISIONS

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	
Kimberly D. Mays v. Department of Health & Human Services	00 DCS 1099	Gray	10/27/00	
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	
Latisha Eason Parker v. Department of Health & Human Services	00 DCS 1195	Wade	10/31/00	
Jannai Neal v. Department of Health & Human Services	00 DCS 1227	Conner	10/24/00	
Sheila Foy v. Department of Health & Human Services	00 DCS 1238	Gray	10/27/00	
Reta M. Dixon v. Department of Health & Human Services	00 DCS 1381	Conner	12/04/00	
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	
Barry Arthur Kelly, Linda Snipes Kelley v. Department of Health and Human Services	00 DHR 0038	Gray	09/15/00	
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. Disabilities and Substance Abuse Services	00 DHR 0955	Chess	09/07/00	
Walter W. Griswold for Kimberly Griswold v. Crossroads Behavioral Healthcare Center and the NC Div of Mental Health, Dev. Disabilities and Substance Abuse Services	00 DHR 1025	Chess	09/07/00	
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	
Tracy McLeod v. First Health Richmond Cty Home Health, DHR-DOFS	00 DHR 1382	Gray	11/21/00	
Division of Facility Services				
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	
Rhonda Gail Andrew v. DHHS, Division of Facility Services	00 DHR 0282	Chess	09/21/00	
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	
Charlene Jenkins v. DHHS, Div. of Facility Svcs., Health Care Personnel, Registry Section	00 DHR 0531	Wade	11/27/00	
Cynthia Renee Cajuste v. DHHS, Division of Facility Services	00 DHR 0606	Morrison	11/08/00	
Celestine L. Bristel v. DHHS, Division of Facility Services	00 DHR 0636	Lassiter	08/15/00	
MariaGoretti Aduago 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	

CONTESTED CASE DECISIONS

Debra Brown v. DHHS, Division of Facility Services	00 DHR 1136	Lassiter	09/07/00		
Tracy Smith v. DHHS, Division of Facility Services	00 DHR 1236	Lassiter	10/16/00		
Michele Carver v. DHHS, Div. of Facility Services, Health Care Personnel Registry	00 DHR 1289	Lassiter	10/05/00		
ENVIRONMENT AND NATURAL RESOURCES					
Ronnie L. Sturdivant v. Dept. of Environment & Natural Resources	98 EHR 1222	Lassiter	05/11/00	15:04 NCR	501
Dixie Lumber Company of Cherryville, Inc. v. Department of Environment & Natural Resources	99 EHR 0395	Wade	05/04/00		
Shuttle Cleaning Service, Inc., Phillip Allen (Owner) v. Dept. of Environment & Natural Resources	99 EHR 1167	Reilly	05/19/00	15:06 NCR	696
Murphy Family Farms v. Department of Environment & Natural Resources	99 EHR 1181	Gray	08/14/00		
William A. Weston, Jr. v. Dept. of Environment & Natural Resources	99 EHR 1538	Conner	05/24/00	15:03 NCR	343
William F. McBrayer, Jr. v. Dept. of Environment & Natural Resources	99 EHR 1566	Wade	08/21/00		
Howard L. Hardy, Kenneth & Vester Freeman v. Department of Environment & Natural Resources	99 EHR 1600	Gray	08/31/00		
Gregory Marc Edwards v. Department of Environment & Natural Resources	99 EHR 1635	Wade	09/29/00		
David Sinclair v. Dept. of Environment & Natural Resources	00 EHR 0126	Conner	08/15/00	15:06 NCR	693
Jerry D. Phillips v. Department of Environment & Natural Resources	00 EHR 0151	Chess	09/28/00		
Amos Walter Jackson v. Dept. of Environment & Natural Resources	00 EHR 0568	Gray	09/22/00		
Archie D. Fellenzer, Jr. v. CAMA	00 EHR 0836	Morrison	11/03/00		
Carolina Mountain Construction, Inc. v. Dept. of Env. & Natural Resources	00 EHR 0902	Chess	09/07/00		
Peter Pallas v. New Hanover County Board of Health	00 EHR 1149	Chess	10/19/00		
Jerry J. Fowler v. Department of Environment & Natural Resources	00 EHR 1154	Chess	10/27/00		
<i>Coastal Resources Commission</i>					
Gregory A. Bohmert v. Coastal Resources Commission	99 EHR 1438	Reilly	05/24/00	15:03 NCR	342
<i>Division of Air Quality</i>					
Bullock Properties/Ralph M. Bullock v. DENR, Div. of Air Quality	99 EHR 1088	Morrison	04/12/00		
VXIII Airborne Corps & Fort Bragg, Dept. of the Army, USA v. State of North Carolina, Dept. of Environment and Natural Resources, Division of Air Quality	00 EHR 0227	Conner	08/31/00		
<i>Division of Land Resources</i>					
James Carlis Reavis and Melinda D. Reavis v. NC DENR, Division of Land Resources	98 EHR 1292	Gray	10/16/00		
<i>Division of Water Quality</i>					
Fred J. McPherson v. DENR, Division of Water Quality	00 EHR 0160	Morrison	09/01/00		
Town of Wallace v. NCDENR, Division of Water Quality	00 EHR 0247	Lassiter	10/05/00		
Frederick Holland, Hervie S. Honeycut, and Mary Jane P. Osborne v. NCDENR, Division of Water Quality	00 EHR 0332	Conner	09/18/00		
<i>Division of Waste Management</i>					
A. J. Lancaster, Jr. v. NC DENR, Div. of Waste Management	99 EHR 0994	Mann	07/27/00	15:05 NCR	636
JUSTICE					
Pierre Deberry Debnam v. NC Criminal Justice Education and Training Standards Commission	00 DOJ 0719	Morrison	08/15/00		
<i>Alarm Systems Licensing Board</i>					
John Martin Canter v Alarm Systems Licensing Board	00 DOJ 0573	Gray	06/02/00		
Kenneth Waits Putnam v. Alarm Systems Licensing Board	00 DOJ 0574	Gray	06/07/00		
James Thomas Wagg v. Alarm Systems Licensing Board	00 DOJ 1124	Lassiter	11/02/00		
Edwin Moore Stevens v. Alarm Systems Licensing Board	00 DOJ 1413	Lassiter	11/02/00		
<i>Education and Training Standards Division</i>					
Peter A. Davis v. Sheriffs' Education & Training Standards Comm.	99 DOJ 0531	Reilly	09/14/00		
James Everett Hill v. Sheriffs' Education & Training Standards Comm.	99 DOJ 1479	Reilly	04/10/00		
Juan Montez Jones v. N.C. Criminal Justice Education & Training Standards Commission	99 DOJ 1716	Conner	07/05/00		
Larry G. McClain v. Sherriffs' Education & Training Standards Comm.	99 DOJ 1721	Morrison	06/28/00		
Ersal Overton, III v. Sherriffs' Education & Training Standards Comm.	99 DOJ 0791	Mann	08/23/00	15:08 NCR	883
Margaret A. Singleton v. Sheriffs' Education & Training Stds. Comm.	00 DOJ 0056	Gray	03/01/00		
William H. Norton, III v. NC Sheriffs' Educ. & Training Stds. Comm.	00 DOJ 0563	Gray	09/19/00		
Herbert Wilson Stubbs v. NC Criminal Justice Ed. & Training Stds. Comm.	00 DOJ 0907	Lassiter	11/02/00		
James Edward Ellerbe v. Sheriffs' Education & Training Stds. Comm.	00 DOJ 0948	Lassiter	07/31/00		
Dexter Dwayne Boyd v. Criminal Justice Education & Training Standards Commission	00 DOJ 1366	Lassiter	05/26/00		
<i>Private Protective Services Board</i>					
Charles A. Joyce and Carolina Security Patrol, Inc. v. Private Protective Services Board	00 DOJ 0004	Conner	08/14/00		
George Thomas Bond v. Private Protective Services	00 DOJ 0014	Conner	05/11/00		
Robert V. Croom and Robert V. Wooster v. Private Protective Services	00 DOJ 0058	Morrison	05/16/00		

CONTESTED CASE DECISIONS

Board				
Sharon Blackstock v. Private Protective Services Board	00 DOJ 0059	Morrison	05/16/00	
Samuel G. Slater v. Private Protective Services Board	00 DOJ 0090	Morrison	05/12/00	
Keith Lewis v. Private Protective Services Board	00 DOJ 0113	Connor	06/07/00	
John W. Fromm v. Private Protective Services Board	00 DOJ 0570	Conner	06/07/00	
Jason Stewart Duckett v. Private Protective Services Board	00 DOJ 0572	Gray	06/07/00	
Shannon Ray Nance v. Private Protective Services Board	00 DOJ 0609	Gray	06/07/00	
Franklin Delano Gann, Jr. v. Private Protective Services Board	00 DOJ 0670	Morrison	06/15/00	
William Junior Holmes v. Private Protective Services Board	00 DOJ 0671	Morrison	06/15/00	
Michael Burt v. Private Protective Services Board	00 DOJ 0672	Morrison	06/15/00	
Jason William Kane v. Private Protective Services Board	00 DOJ 0952	Wade	09/08/00	
Anthony Queen Williams v. Private Protective Services Board	00 DOJ 1005	Morrison	09/01/00	
Calvin Earl McRae v. Private Protective Services Board	00 DOJ 0736	Morrison	08/02/00	
PUBLIC INSTRUCTION				
Doris G. Branch v. NC Department of Public Instructions	98 EDC 0368	Gray	10/08/00	15:13 NCR 1233
Stacia R. Parker v. Charlotte-Mecklenburg Board of Education	99 EDC 0389	Gray	08/23/00	
Charlie Lee Richardson v. Department of Public Instruction	99 EDC 0788	Reilly	04/11/00	15:01 NCR 45
Dale Y. Farmer v. Department of Public Instruction	00 EDC 0373	Gray	05/26/00	
Cumberland County Board of Education v. Mr. and Mrs. Wesley Waters for Weston Harold Waters	00 EDC 0465	Wade	08/11/00	
Kings Mountain Board of Education, Larry Allen, Melony Bolin, Ronald Hawkins, Shearra Miller, Stella Putnam, Joanne Cole, Otis Cole, Charlie Smith, Frank Smith, and Angela Smith v. NC State Board of Education and Cleveland County Board of Commissioners	00 EDC 0800	Morrison	06/26/00	15:04 NCR 492
James William Stockstill v. Orange County Board of Education, Orange County Schools and Randy Bridges	00 EDC 1261	Conner	09/28/00	
DEPARTMENT OF INSURANCE				
Jacquelyn Hastings v. NC Teachers & State Employees' Comprehensive Major Medical Plan	98 INS 1662	Gray	05/25/00	
MISCELLANEOUS				
Nancy York Vorys v. Raleigh Police Department	00 MIS 1436	Gray	10/27/00	
STATE PERSONNEL				
Denise M. Ashe v. Northampton County Board of Commissioners, Northampton County Board of Social Services, Northampton County Department of Social Services	95 OSP 1011	Gray	08/29/00	
Michele Smith v. Cumberland Co. Dept. of Social Services	97 OSP 1344	Morgan	07/11/00	
Marshe Morgan v. Black Mount Center, NC DHHS	98 OSP 1302	Gray	07/11/00	15:05 NCR 624
Pat Hovis v. Lincoln County Department of Social Services	98 OSP 1348	Conner	11/15/00	
Larry Wellman v. Department of Health & Human Services	99 OSP 0484	Reilly	05/11/00	15:01 NCR 47
Betty R. Holman v. Broughton Hospital	99 OSP 0580	Hunter	05/08/00	
Doris A. Archibald v. Dare County Health Department	99 OSP 0622	Gray	08/10/00	
Mack Reid Merrill v. NC Department of Correction	99 OSP 0627	Wade	08/23/00	15:07 NCR 772
Russell J. Suga v. Employment Security Commission of NC	99 OSP 0768	Gray	06/23/00	
Glenn Roger Forrest v. NC Department of Transportation	99 OSP 0853	Lassiter	08/24/00	15:07 NCR 781
Sarah C. Hauser v. Forsyth Co., Department of Public Health	99 OSP 0923	Lassiter	04/20/00	15:01 NCR 5
Larry Mayo v. Employment Security Commission of NC	99 OSP 1023	Wade	06/30/00	
Michael Duane Maxwell v. Dept. of Health & Human Services	99 OSP 1068	Reilly	08/03/00	15:09 NCR 924
Joel T. Lewis v. Department of Correction	99 OSP 1116	Reilly	05/31/00	
Christopher D. Lunsford v. NC Dept. of Administration, Motor Fleet	99 OSP 1142	Morrison	08/11/00	
Van Sutton v. Office of Juvenile Justice/Dobbs School	99 OSP 1204	Gray	07/13/00	
Benny Callihan v. Department of Correction	99 OSP 1381	Wade	09/06/00	
Russell J. Suga v. Employment Security Commission of NC	99 OSP 1649	Gray	06/09/00	15:04 NCR 508
Preston D. Stiles v. NC Dept of Health & Human Svcs., Caswell Center	99 OSP 1757	Anderson	08/28/00	
Lawrence E. Cooke v. Craven Correctional Facility, NC Dept of Correction	00 OSP 0013	Conner	07/05/00	
Fred J. Hargro, Jr. v. NC Dept of Crime Control & Public Safety, NC State Highway Patrol	00 OSP 0029	Morrison	08/08/00	
Robert Boyd Choat v. Department of Correction		00 OSP 0102	Reilly	07/24/00
Larry Campbell v. Wildlife Resources Commission	00 OSP 0117 ⁵	Reilly	09/28/00	
Larry Campbell v. Wildlife Resources Commission	00 OSP 0118 ⁵	Reilly	09/28/00	
Vicky Ruffin-Jenkins v. Sparc Academy	00 OSP 0207	Connor	06/26/00	
Jesse C. Whitaker v. Facilities Operations (NCSU)	00 OSP 0342	Chess	07/11/00	
Gladys M. Sanders v. NC Department of Correction	00 OSP 0362	Gray	09/27/00	
Lillie B. Whitaker v. Center Point Human Resources, Ronald Morton	00 OSP 0443	Lassiter	07/24/00	
Starr M. Strickland v. Correction Enterprises, NC Dept. of Correction	00 OSP 0460	Chess	10/24/00	
Addie M. Williams v. Pender Correctional Inst., Dept. of Correction	00 OSP 0562	Conner	09/12/00	
Shelby Gorham-Teel v. NC Dept of Corrections, Div. of Prisons	00 OSP 0586	Chess	07/10/00	
Michael Jackson v. University Graphics, NC State University	00 OSP 0621	Lassiter	08/16/00	
Marvin Clark v. NC Department of Correction	00 OSP 0623	Gray	08/03/00	
James F. Pridgen, Jr. v. A&T State University, Millicent Hopkins	00 OSP 0652	Mann	07/27/00	
Mark Esposito v. NCDOT/Aviation, Bill Williams, Director	00 OSP 0791	Lassiter	07/24/00	
Marilyn R. Horton v. Gaston-Lincoln Mental Health	00 OSP 0912	Morrison	10/19/00	
Jeffrey L. Teague v. NC Department of Correction	00 OSP 0978	Chess	10/27/00	
Bernadine Johnson v. Department of Correction		00 OSP 1118	Morrison	11/20/00

CONTESTED CASE DECISIONS

Robert C. Adams v. NC Department of Labor	00 OSP 1185	Conner	11/28/00	
Pamela R. Smith v. NC Department of Public Instruction	00 OSP 1229	Conner	11/09/00	
Dora P. Pettiford v. NC Department of Health & Human Services	00 OSP 1279	Lassiter	09/25/00	
David A. Greets v. NC Department of Correction	00 OSP 1282	Conner	11/09/00	

STATE TREASURER

Jean C. Burkhart v. NC Dept. of State Treasurer, Retirement Systems Division	99 DST 1475	Mann	05/30/00	15:05 NCR 633
--	-------------	------	----------	---------------

DEPARTMENT OF REVENUE

Eddie B. Thomas v. NC Department of Revenue	00 REV 0530	Gray	08/24/00	
---	-------------	------	----------	--

UNIVERSITY OF NORTH CAROLINA

Theresa T. Godfrey v. UNC Hosp. at Chapel Hill, Dept of Pharm. Billing	00 UNC 0763	Lassiter	09/08/00	
Betty S. Matheson v. UNC Hospitals, Patient Accounting Department, OR Services	00 UNC 1020	Gray	10/09/00	

NC BOARD OF ETHICS

H. Michael Poole, Ph.D v. Perry Newsome, Exec. Dir. NC Board of Ethics	00 EBD 0696	Lassiter	08/25/00	
--	-------------	----------	----------	--

STATE OF NORTH CAROLINA

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS

COUNTY OF BURKE

98 EDC 0368

<p>DORIS G. BRANCH, Petitioner,</p> <p>v.</p> <p>NORTH CAROLINA DEPARTMENT OF PUBLIC INSTRUCTION, Respondent.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>RECOMMENDED DECISION</p>
---	--	------------------------------------

This contested case was commenced by the filing of a petition on March 25, 1998. The history of this case shows that it has been scheduled and noticed for a hearing on the merits at least twice with one of the parties requesting a continuance each time. Two or more telephone conferences have been conducted with counsel for the parties in an effort to resolve motions, schedule hearings, and to have the case submitted for decision on stipulated facts. Respondent, by and through counsel, Laura E. Crumpler, Assistant Attorney General, filed a Motion for Summary Judgment, without affidavits, on July 20, 1998. Petitioner, by and through counsel, Phyllis A. Palmeiri, Esq., filed a response on August 28, 1998. On January 29, 1999, Petitioner, following discovery between the parties, filed a cross Motion for Summary Judgment. Accompanying Petitioner’s Motion for Summary Judgment was an affidavit from Petitioner and, among other documents, a request to deem admitted certain requests for admissions under G.S. 1A-1, Rule 36 which Petitioner served on Respondent but never received a response. Respondent filed an affidavit from Harry Wilson, staff attorney for the State Board of Education, on December 13, 1999 in support of Respondent’s summary judgment motion.

ADMISSIONS

Petitioner propounded the following ten (10) requests for admissions which are hereby deemed admitted under G.S. 1A-1, Rule 36:

1. On or about October 27, 1997, Alan Stephens, principal at George Hildebrand Elementary School provided the Petitioner with a reference letter, citing her above standard evaluations, tenured status, excellent personality, and her ability to work well with children.
2. The Respondent can not demonstrate any specific factual instances where the Petitioner was unable to perform her duties in a professional manner prior to her dismissal.
3. The Respondent has no documentation that the Petitioner was unable to perform any of her professional duties prior to her dismissal.
4. There have been other personnel employed by Burke County Schools that have tested positive for drugs or alcohol and were not discharged as a result.
5. The Petitioner was not prosecuted for any of the alleged incidents that arose from this occurrence.
6. The Respondent had knowledge of the domestic situation between the Petitioner and Michael Pruitt.
7. The Respondent has no factual basis to allege that the Petitioner was a habitual user of any illegal drug at any time.
8. The Petitioner’s principal or supervisor had not reported any problems or strange behavior or suspected drug abuse prior to receiving information from Steve Demiter or David Burleson.
9. The information received shortly after the school year began, by Steve Demiter and David Burleson,

regarding the alleged drug use of the Petitioner was provided by Michael Pruitt.

10. The Petitioner had performed her job duties to the satisfaction of the Respondent in every position at which she worked for the Respondent.

UNDISPUTED FACTS

11. Both parties, in the respective motions and responses, agree that the undisputed facts of this case are those found by the case manager on November 24, 1997 after conducting a hearing on the charges and allegations against Petitioner brought by the Burke County Superintendent in his recommendation to dismiss her. Those undisputed facts are the underlying basis for determining the cross motions for summary judgment under G.S. 1A-1, Rule 56. For the sake of clarity and ease of understanding, those undisputed facts are as follows:

Report Of Case Manager

1. Petitioner was employed by the Burke County Schools for Five and a half years. Ms. Branch attained tenure and career status as a teacher on May 27, 1996. As of September 1997, she held the position of first grade teacher at George Hildebrand Elementary School.
2. Petitioner was a good teacher. Her performance evaluations were standard or above standard. Her principal at George Hildebrand, Alan Stephens, thought well of her.
3. Petitioner had no prior disciplinary actions on her record prior to the recommendation of dismissal which was the subject of this hearing.
4. On September 18, 1997, officers from the Narcotics Division of the Burke County Sheriff's Department went to Petitioner's home. Petitioner was not home, but Dale Nichols, who also resided at the home, gave written consent for the officers to search the home.
5. According to her testimony, if Petitioner had been home, she herself would have consented to the search.
6. Because the search of Petitioner's home was conducted with Dale Nichols' consent, the identity of the person or persons who made the report which caused the officers to request consent to search is not material to this proceeding.
7. According to the credible testimony of Butch Jenkins, who has worked for the Burke County Sheriff's Office for fifteen years, including two years with the Narcotics Division, and who was one of the officers who searched Petitioner's home, the search revealed a small amount of marijuana residue in a canister in the bedroom shared by Petitioner and Mr. Nichols, and five marijuana cigarette butts ("roaches") in a locked two-drawer file cabinet in the same room. The file cabinet contained check books and other banking records which bore Petitioner's name.
8. Petitioner consented to a search of her person, vehicle and the home to which she was moving. No marijuana was found as a result of these searches.
9. On September 18, 1997, Officer Jenkins informed Assistant Superintendent David Burleson of the marijuana residue and "roaches" found during the search of Petitioner's home.
10. The Burke County Schools have a drug testing policy, promulgated under N.C.G.S. 115C, which provides for drug testing of an employee for reasonable suspicion that the employee has consumed a substance as defined in the policy. The policy (Superintendent's Exhibit #1) defines "reasonable suspicion" to mean "a belief based on specific objective facts and rational inferences drawn from those facts that an employee has consumed a substance" The policy enumerates four examples of circumstances which constitute a basis for determining reasonable suspicion, but does not limit reasonable suspicion to those enumerated circumstances.
11. The September 18, 1997 telephone report of Officer Jenkins to Assistant Superintendent David Burleson that a law enforcement search of Ms. Burch's home had revealed marijuana residue and "roaches" in her home was

sufficient to provide the Superintendent with the reasonable, individualized suspicion required to request that Petitioner submit to a drug test.

12. As a result of the report of Officer Jenkins, On September 19, 1997, representatives of the Superintendent asked Ms. Branch to submit to a drug test.¹
13. Petitioner consented to the drug test. According to her testimony, prior to the Superintendent's request that she submit to a drug test, she had already decided to volunteer to take a drug test on September 19, 1997.
14. Petitioner submitted to a drug test at Burke Occupational, Inc. The test was supervised. The specimen was forwarded to Smithkline Beecham laboratory in Atlanta for testing. When an initial amino acid screening test of her specimen indicated the presence of marijuana metabolites in a concentration greater than the screening cut-off to 50 ng/ml, Smithkline Beecham performed a GC/MS confirmation test on Petitioner's specimen. The cut-off for a "positive" result under this test was 15 ng/ml. Petitioner's specimen revealed levels of marijuana metabolites at 70 ng/ml.
15. At the hearing in this matter, Petitioner did not challenge the accuracy of the drug test performed by Smithkline Beecham, the procedures pursuant to which her specimen was collected or tested, or the chain of custody for the specimen.
16. The Documentation Package of Smithkline Beecham (Superintendent's Exhibit 4) established that the performance of the screening and confirmation tests, retention of Ms. Branch's specimen and chain of custody comported with the procedural safeguards set forth in the N.C. Controlled Substances Act, N.C.G.S. 95-232.
17. As her sole explanation for the positive drug test, Petitioner testified that one week to one and a half weeks before September 19, 1997, she had eaten spinach bread given to her by the sister of a former boyfriend. Petitioner testified that when she learned that the initial amino acid screening test of her specimen was inconclusive, she thought back and surmised that the spinach bread had contained marijuana. She did not testify to having experienced any physical effects of marijuana ingestion prior to learning the results of her drug screen.
18. The testimony of Dr. Michael Feldman, a forensic toxicologist with Smithkline Beecham Clinical Laboratories in Atlanta, established that ingestion of marijuana in bread in the manner and at the time Petitioner had described would not likely result in the concentration of marijuana metabolites in her system at 70 ng/ml as revealed on her drug test.
19. New testimony which Petitioner gave after Dr. Feldman testified, about when she had ingested the bread, was inconsistent with her earlier testimony on this point and was not credible.
20. As described in N.C.G.S. 115C-325(e)(1)(f), Petitioner engaged in the non-medical use of a controlled substance (marijuana) as defined in Article 5 of Chapter 90 of the General Statutes.
21. On October 17, 1997, approximately one month after her initial drug test, Petitioner voluntarily submitted to a second drug screen at Keystone Laboratories, Inc. this second drug screen was negative.
22. At the hearing in this matter, Petitioner suggested that a former boyfriend, Michael Pruitt, angry at her for breaking up with him and for repossessing on September 1, 1997 a car he had been driving a) broke into her house three times prior to September 18, 1997 and planted marijuana in the canister and file cabinet in the bedroom, and b) enlisted his sister to feed Ms. Branch bread containing marijuana one week to one and a half weeks prior to September 18, 1997 so that she would subsequently test positive for marijuana. A preponderance of the competent, non-hearsay evidence offered at the hearing did not support these contentions.
23. Upon receiving the confirmation drug test from Smithkline Beecham, representatives of the Superintendent met to discuss what action to take concerning Ms. Branch. They considered her work history, job assignment as a

¹ Hereafter, "Superintendent" is used to refer to Superintendent Tony M. Stewart and to Assistant Superintendent David Burleson and Personnel Director Steve Demiter acting for the Superintendent.

teacher of young children, length of employment, job performance, and the absence of past disciplinary actions in her record.

24. The Burke County Schools policy on drug testing authorized the Superintendent to impose disciplinary action on Petitioner “up to and including dismissal.”
25. Representatives of the Superintendent met with Petitioner and informed her that the Superintendent would recommend her dismissal based on the positive drug test. The Superintendent did not at that meeting provide Petitioner with a written notice of the charges against her as required by N.C.G.S. 115C-325(h)(2).
26. On or about September 29, 1997, the Superintendent did send to Petitioner by certified mail a written notice of the charges against her and a copy of N.C.G.S. 115C-325. Petitioner timely requested and was granted a review by a case manager.
27. Petitioner was not prejudiced by the Superintendent’s failure to give her written notice of the charges against her at the time he met with her to inform her he would recommend dismissal.
28. The written notice which the Superintendent sent to her by certified mail on September 29, 1997, was adequate to apprise Petitioner of the charge against her.
29. Information imparted to Petitioner by representatives of the Superintendent between September 19, 1997 and the date she received the Superintendent’s written notice by certified mail constituted an adequate explanation of the basis for the charge that she had non-medically used a controlled substance as defined in Article 5 of Chapter 90 of the General Statutes.
30. Petitioner was not prejudiced by any inadequacy in the Superintendent’s explanation of the charge against her.
31. The parties consented to the date for the hearing, had adequate time to prepare for the hearing, timely exchanged documents and witness lists, and were both ably represented by their respective attorneys at the hearing.
32. The Superintendent did not violate the Burke County drug testing policy when he recommended Petitioner’s dismissal rather than choosing the option of a lesser punishment or referral to an Employee Assistance Program.
33. At the hearing in this matter, Petitioner asserted sex discrimination as an affirmative defense to her dismissal, contending that the Superintendent had penalized her for a situation of domestic violence involving revenge by her former boyfriend. Assuming without deciding that Petitioner could make out a prima facie case of sex discrimination, the positive drug test, admitted into evidence at the hearing with no objection by Petitioner, established that the Superintendent had a legitimate, non-discriminatory reason for recommending her dismissal. Petitioner did not offer any evidence that the positive drug test was used as a pretext to mask sex discrimination. She did not offer any evidence that the Superintendent had treated her differently from similarly situated male employees or that the Superintendent’s recommendation of dismissal was motivated by her gender.
34. At the hearing, Petitioner asserted as an affirmative defense a violation of the North Carolina Controlled Substances Act, N.C.G.S. 95-230 through 235, in that the Superintendent did not offer Petitioner a second drug test. The pertinent provision of the Controlled substances act, N.C.G.S. 95-232, provides:
 - (f) Retesting of positive samples: the examinee shall have the right to retest a confirmed positive sample at the same or another approved laboratory. The examiner, through the approved laboratory, shall make confirmed positive samples available to the affected examinee, or a designated agent, during the time which the sample is required to be retained. The examinee must request release of the sample in writing specifying to which approved laboratory the sample is to be sent. The examinee incurs all reasonable expenses for chain of custody procedures, shipping, and retesting of positive samples related to this request.
35. Petitioner did not request release of her specimen in order to perform a second test on it.
36. On October 27, 1997, Alan Stephens, Principal of George Hildebrand Elementary School, provided Petitioner with

a reference letter, citing her consistent above standard evaluations on the Burke County Teacher Performance Appraisal Instrument, her tenured status, her excellent personality and her ability to work well with children.

12. On December 11, 1997, State Superintendent of Public Instruction, Dr. Michael Ward, issued a Notice and Finding of Reasonable Cause and Statement of Charges against Petitioner indicating the intent of the State Board of Education to revoke Petitioner's teaching certificate under the Board's rules for conduct of certified teachers. Specifically, the Notice cited the Board's rule which provides:

(a) The State Board of Education may deny an application for certification or may suspend or revoke a certificate issued by the department only for the following reasons:

...

(8) any other illegal, unethical, or lascivious conduct by a person, if there is a reasonable and adverse relationship between the underlying conduct and the continuing ability of the person to perform any of his/her professional functions in an effective manner.

N.C. Admin. Code tit. 16, r. 6C.0312(a)(8) (June 2000).

13. The December 11, 1997 Finding of Reasonable Cause and Statement of Charges contained the following charge as grounds for revocation of Petitioner's teaching certificate:

[f]ollowing a lawful consensual search of the premises occupied by Ms. Branch that produced marijuana residue and marijuana cigarette butts, the Burke County Schools asked Ms. Branch to submit to a drug test. Ms. Branch had already volunteered to take a drug test, which was conducted on September 19, 1997. The test revealed the presence of marijuana metabolites at 70 ng/ml, which is in excess of the screening cut-off of 50 ng/ml.

THE CROSS-MOTIONS FOR SUMMARY JUDGMENT

For purposes of the cross-motions for summary judgment, the above stated undisputed facts and admissions have been construed in the light most favorable to the nonmovant. Having considered the motions, responses, supporting affidavits, and admissions, I find that Petitioner has, as a matter of law, engaged in illegal conduct in violation of the Controlled Substances Act by the nonmedical use of marijuana, a controlled substance under Article 5, Chapter 90 of the General Statutes of North Carolina, and in consequent violation of the Board's rule .0312(a)(8) against other illegal conduct. Further, as a matter of law, Petitioner's nonmedical use of marijuana has a reasonable and adverse relationship between that conduct and her continuing ability to perform some of her professional functions in an effective manner. Specifically, the relationship of trust between Petitioner and parents of students and the relationship of trust between Petitioner and supervisory school system personnel is damaged by this conduct. Petitioner's status as a role model is eroded by this conduct. Our Supreme Court has stated that it is reasonable to hold teachers to a higher standard of personal conduct, given the youthful ideals they are supposed to foster and promote. *Faulkner v. New Bern-Craven Board of Education*, 311 N.C. 42, 316 S.E.2d 281 (1984).

RECOMMENDED DECISION

Based upon the foregoing, it hereby is recommended that the State Board of Education revoke Petitioner's teaching certificate for illegal conduct but that the revocation be suspended for a period of two years on the conditions that:

1. Petitioner attend and successfully complete a drug assessment and education program as prescribed by the Board;
2. Petitioner submit to periodic, random drug testing as prescribed by the Board; and
3. Petitioner incur no additional violations of the Board's rules during the two year suspension.

It further is recommended that the Board dismiss the charges against Petitioner should she successfully complete the two year suspended revocation and that the Board issue an Order invoking the revocation should Petitioner fail to satisfy the conditions imposed by the Board under the suspended revocation.

ORDER

CONTESTED CASE DECISIONS

It hereby is ordered that the agency serve a copy of the final decision on the Office of Administrative Hearings, Post Office Drawer 27447, Raleigh, North Carolina, 27611-7447, in accordance with North Carolina General Statute § 150B-36(b).

NOTICE

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to this recommended decision and to present written arguments to those in the agency who will make the final decision. North Carolina General Statute 150B-36(a). The agency is required by North Carolina General Statute 150B-36 to serve a copy of the final decision on all parties and to furnish a copy to the party's attorney of record and to the Office of Administrative Hearings.

The agency that will make the final decision in this contested case is the North Carolina State Board of Education .

This the 9th day of October, 2000.

Beecher R. Gray
Administrative Law Judge