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This issue contains documents officially filed through April 24, 2001.
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**

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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.

**FILING DEADLINES**

**ISSUE DATE:** The Register is published on the first and fifteen of each month if the first or fifteenth of the month is not a Saturday, Sunday, or State holiday for employees mandated by the State Personnel Commission. If the first or fifteenth of any month is a Saturday, Sunday, or a holiday for State employees, the North Carolina Register issue for that day will be published on the day of that month after the first or fifteenth 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 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 proposed rule, whichever is longer.

2. **RULE WITH SUBSTANTIAL ECONOMIC IMPACT:** An agency shall accept comments on the text of a proposed rule with non-substantial economic impact requiring a fiscal note under G.S. 150B-21.4(b1) for at least 30 days after the text is published or until the date of any public hearing held on the proposed 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.
February 28, 2001

Mr. Ferrell Blount
Southern Republican Leadership Conference 2002
PO Box 12949
Raleigh, NC 27605

Re: Southern Republican Leadership Conference 2002

Dear Mr. Blount,

Your letter dated February 22, 2001 details the plans for the Southern Republican Leadership Conference 2002 (SRLC) and requests a ruling pursuant to G. S. 163-278.23.

Contingent upon all the assurances and performances set out in your letter, SRLC will not be required to file a report disclosing the finances of the conference. The more important assurances given are as follow:

- The SRLC will be an independent business entity with separate accounts from the North Carolina Republican Party.
- All funds raised from corporations will be solicited by SRLC and spent on the actual conference.
- The North Carolina Republican Party will collect registration fees and will not solicit or accept any registration fees from any business entity.
- Any potential revenue derived by the North Carolina Republican Party will come totally from individual participants.

The November 1, 1989 letter of this office from Executive Secretary-Director Alex K. Brock to Mr. R. Jack Hawke and the October 31, 1989 letter of Mr. Hawke to this office, are attached and are incorporated into this opinion by reference.

If any of the circumstances of the 2002 SRLC conference set out in your recent letter change, please contact this office.

Sincerely,

Gary O. Bartlett
Executive Secretary-Director

Letter of Mr. Jack Hawke of October 31, 1989
This office's letter of November 1, 1989

cc: North Carolina Republican Party
April 18, 2001

Mr. Duane Royal  
Treasurer Sampson County Republican Party  
PO Box 1325  
Clinton, NC 28328

RE: Donation Use as to Party Headquarters

Dear Mr. Royal,

Your letter of March 29, 2001 requests guidance for political party building fund donation use and a ruling pursuant to GS 163-278.23. We welcome your request in order to have the opportunity to provide more detail to all parties as to this issue.

GS 163-278.19B controls the issue of donations to political party headquarters building funds. Please note (4) of that statute that specifically prohibits the use of building funds to pay utilities or to purchase equipment other than fixtures. Only expenditures authorized by GS 63-278.19B(4) may be made from the building fund.

As such, the building fund cannot be used to:

1. Pay utilities
2. Purchase furniture unless it becomes a fixture
3. Purchase computers or related information technology items unless they become fixtures

A display case affixed to the building would be a fixture, which could be paid for out of the building fund. A fixture is an item attached to realty to which an expectation attaches that it will stay on or in the real estate. This would include light fixtures, sinks, bathtubs, commodes, heating and air conditioning systems, built-in kitchen appliances, wallpaper or paint, installed carpet or flooring, window dressings, and other similar type items.

Since furniture and computers are not fixtures, they are not allowed to be paid under the provisions of GS 63-278.19B. Thus the prohibition against contributions from corporations and business entities would come into play to make in-kind donations, of these types and from the list above, from businesses unlawful. In-kind donations by businesses of items and services allowed to be paid from a political party building fund would be lawful.

This office would interpret the “renovation” language found in the statute to allow repairs and maintenance to the building and fixtures (both as to the cost of materials and labor) to be paid for out of a political party building fund. Maintenance would also include pest control, lawn-care, and landscaping for the headquarters. Business entities would be able to provide funds or in-kind donations for these maintenance and repair needs as per the provisions of GS 163-278.19A.

This office would interpret that maintenance of the building would also include the costs of maintaining property insurance upon it and fixtures, but would exclude liability coverage and personal property coverage on non-fixture contents. Thus it may be necessary that the insurance premium on the party headquarters be unbundled so as to determine the actual cost of property coverage to the building and fixtures.

The payment of property tax upon the building and its fixtures from the building fund will be allowed by this office, based upon the fact that the payment of such taxes are necessary to maintain the building ownership in the political party, and that tax payments are often covered in escrow accounts paid into jointly with the allowable mortgage payment. Since items of personal property cannot be bought with building fund monies, the tax on personal property cannot be paid from the building fund.

Based upon a review of building fund reports filed with this office, it appears that disbursements from building funds for personal property have been made. Notice is hereby given that this office will not review building fund reports for enforcement purposes for a period until July 1, 2001 to allow political party organizations to amend their building fund reports to reflect corrected disbursements. The parties are allowed, as well, to amend their reports to reflect additional retroactive disbursements from building funds based upon any allowance of the same contained in this opinion. I would also ask the state parties headquarters staff to share this information with counties that have or plan to have county headquarters.

Sincerely,

Gary O. Bartlett  
Executive Secretary-Director

Cc: North Carolina Democratic Party  
Cc: North Carolina Republican Party  
Cc: North Carolina Libertarian Party
Mr. George E. Wilson, Treasurer  
Sampson County Republican Party  
PO Box 1325  
Clinton, NC 28328  

Re: Advisory Ruling issued under G.S. 163-278.23

Dear Mr. Wilson:

In your letter dated September 29, 1998, you state that the Sampson County Republican Party is in the process of totally renovating the headquarters it owns. New bathrooms, kitchen area, heat & air conditioning, new lighting, store front, ceiling, carpet, walls, and other items have been built and paid for from the Building Fund. The request for a ruling is to determine whether or not building fund money can be used to purchase appliances, desks, chairs, telephone system, and etc.

An October 7, 1994 opinion on "Political Party Building Funds" permitted State political parties to accept contributions from business entities, including corporations into a separate segregated building fund. Provided district and county executive committees strictly adhere to the provisions, district and county executive committee building funds may accept business contributions. The provisions are as follows:

1. Business contributions solicited and accepted are designated for the building fund.
2. Potential business contributors are advised that all business contributions will be exclusively for the building fund.
3. A separate segregated bank account in which only business contributions designated for the building fund will be deposited is established.
4. The funds deposited in that separate account will be expended only to purchase or construct, or in payment of the mortgage, for a headquarters, or to refund contributions if a facility is not acquired.
5. No business funds received will be used for the purpose of influencing Federal, State, or local elections.
6. No limit, other than on a voluntary basis, is placed on the amount of the business contributions, individual or collectively, to the building fund.
7. The building fund contributions and expenditures shall be disclosed to the public in an annual report filed at the Campaign Reporting Office, no later than the last Friday in January of the following year.

The opinion gave particular attention to the fact that the building fund ruling does not allow either monetary or in-kind contributions from any business entity for headquarters rent and utilities, either as a part of a building fund or into any political party fund or bank account.

After careful review, and considering that the opinion provides for a building fund to receive business contributions only to purchase or construct or in payment of the mortgage for a headquarters, or to refund contributions if a facility is not acquired, the response must be no. The Building Fund cannot be used to purchase equipment and furnishings for headquarters and should refund any business contributions that remain after reconstruction is complete and any mortgage is paid.

I am sorry this ruling is unfavorable. However, the Sampson County Republican Party may certainly pay for equipment and furnishings from its treasury account holding funds contributed by individuals from their personal funds.

Very truly yours,

Gary O. Bartlett  
Executive Secretary-Director
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 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES**

**CHAPTER 02 – ENVIRONMENTAL MANAGEMENT**

Notice of Rule-making Proceedings is hereby given by the Environmental Management 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 02B .0304 - Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 143-214.1; 143-215.1; 143-215.3(a)(1)

Statement of the Subject Matter: The Environmental Management Commission (EMC) is proposing to reclassify a portion of the North Toe River in Avery and Mitchell Counties (French Broad River Basin) from Class C Tr (Trout) to Water Supply-V Tr.

Reason for Proposed Action: The Town of Spruce Pine has requested that the headwaters above their WS-IV North Toe River Water Supply Watershed and associated tributaries in Avery County (French Broad River Basin) be reclassified from Class C Tr to WS-V Tr. The segment of the river which is requested for reclassification extends from a point located approximately 4.5 miles due north of the Avery County/Mitchell County line to the headwaters (source); this point is also the upper boundary of a WS-IV water supply watershed (which extends downstream to the Spruce Pine water supply intake). Thus, in this case, no intake or critical area for an intake is located nor is proposed to be located in the waters to be reclassified. The Town’s current water supply intake, critical area, and protected area will not be altered, but all waters above and draining to the water supply watershed will be reclassified; this proposed area comprises the northernmost portion of the North Toe River. The tributaries flowing into the part of the North Toe River to be reclassified are currently Class C Tr or Class C, and these tributaries are proposed to be reclassified to WS-V Tr and WS-V, respectively. The Public Water Supply (PWS) Section of the NC Division of Environmental Health (DEH) has given the Town of Spruce Pine permission to pursue expansion of their water treatment plant, and as part of this process, the town was required by the NC DEH PWS Section to request this reclassification. Avery County, the Town of Newland, and Mitchell County are the three local governments to be affected. No confirmation that the water is suitable for treatment for potable use was required from the PWS Section, and DWQ did not collect water samples from the waters to be reclassified in order to determine if these waters meet the water quality standards required by a WS-V classification; this confirmation and sampling were not required because the waters proposed to be reclassified are located above a current water supply (WS-IV) intake, and therefore met water quality standards for a water supply classification. In addition, all the waters proposed to be reclassified had a water supply classification in 1994; due to a following court decision and an EMC rule reinterpretation, the water supply classifications of some of these waters were removed. Furthermore, staff with the PWS Section is not aware of any new discharges or pollution sources in the waters proposed for reclassification since an earlier sanitary survey of those waters was done in 1990. If reclassified, more stringent water quality standards will apply to the waters to be reclassified. However, due to the past classification history of these waters, the NPDES discharges into these waters currently meet these more stringent water quality standards. Nevertheless, any new NPDES discharges will need to comply with these more stringent standards. In addition, DOT Best Management Practices (BMPs) will need to be applied as practical for WS-V waters (whereas no DOT BMPs are required for Class C waters).

Comment Procedures: The purpose of this announcement is to encourage those interested in this proposal to provide written comments. Written comments, data, or other information relevant to this proposal can be submitted. It is very important that all interested and potentially affected persons or parties make their views known to the Environmental Management Commission whether in favor or opposed to and all provisions of the proposal being noticed. Written comments may be submitted to Elizabeth Kountis, DENR/Division of Water Quality, Planning Branch, 1617 Mail Service Center, Raleigh, NC 27699-1617, or by calling Elizabeth Kountis at (919) 733-5083, ext. 369.

**CHAPTER 02 – ENVIRONMENTAL MANAGEMENT**

Notice of Rule-making Proceedings is hereby given by the Environmental Management 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.
chlorination but wish to do so, a chlorine limit and period. For dischargers to TR waters that do not disinfect by ml in more than 20% of the samples examined during such a 200/100 ml based on at least five consecutive samples Class B waters is that it not exceed a geometric mean of The water quality standard to be met for fecal coliform for fecal limit will be required to have a fecal limit and disinfect. failure. In addition, dischargers who do not currently have a continued treatment of wastewater during instances of power violations to these waters will need to comply with reliability existing discharges, and existing discharges with fecal affects. However, new wastewater discharges, expansions of water quality standard, and discharges in the immediate vicinity of bathing areas may not be allowed if the Director determines that the waste can not be reliably treated to ensure the protection of primary recreation.

Reason for Proposed Action: Asheville Regional Office DWQ staff requested reclassification of the French Broad River (Transylvania, Henderson, Buncombe, and Madison Counties; French Broad River Basin) and Nolichucky River (Mitchell and Yancey Counties; French Broad River Basin) to Class B. More specifically, the French Broad River is to be reclassified from Class C/C Tr/Water Supply-IV/Water Supply-IV CA (Critical Area) to Class B (Primary Recreation)/B Tr/Water Supply-IV & B/Water Supply-IV CA & B. The EMC is also proposing to reclassify the Nolichucky River (Mitchell and Yancey Counties) in the French Broad River Basin from Class C to Class B.

Chapter 02 – Environmental Management

Notice of Rule-making Proceedings is hereby given by the Environmental Management 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.

Reason for Proposed Action: The Wooten Company has requested on behalf of Lenoir County that a Neuse River segment in Lenoir County (Neuse River Basin) from Class C NSW (Nutrient Sensitive Waters) to Water Supply-IV CA (Critical Area) NSW. The segment in Lenoir County (Neuse River Basin) from Class C NSW (Nutrient Sensitive Waters) to Water Supply-IV CA (Critical Area) NSW.
Notice of Rule-making Proceedings is hereby given by the 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 03I, 03J, 03M, 03N, 03O - Other rules may be proposed in the course of the rule-making process.

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

Statement of the Subject Matter: Procedures for consideration of applications to the Standard Commercial Fishing Licenses Eligibility Pool; beach seines; fyke nets, hickory shad; black sea bass; nursery areas; southern flounder fishery management plan; dolphin/wahoo restrictions.

Reason for Proposed Action: The Marine Fisheries Commission is reviewing and considering updating the rules governing the Standard Commercial Fishing License Eligibility Board; allowing a limited number of hickory shad to be used for bait; examining the need to define and restrict beach seines and fyke nets; considering management restrictions for black sea bass; reviewing nursery areas; management actions necessary to implement the southern flounder fishery management plan; and considering management restrictions to comply with the dolphin/wahoo fishery management plan.

Comment Procedures: Written comments are encouraged and may be submitted to MFC, Juanita Gaskill, PO Box 769, Morehead City, NC 28557.

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CHAPTER 07 – COASTAL MANAGEMENT

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

Citation to Existing Rule Affected by this Rule-making:
15A NCAC 07B - Other rules may be proposed in the course of the rule-making process.

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

Statement of the Subject Matter: Land use plan guidelines

Reason for Proposed Action: In November, 1998, the Coastal Resources Commission (CRC) authorized the appointment of the Land Use Plan Review Team to evaluate the CAMA land use planning program and make recommendations for improvement. Based on the recommendations submitted in September, 2000, the CRC is...
revising its land use planning guidelines (Subchapter 7B). The revised guidelines aim to improve the quality of local plans by better supporting the purposes and goals of CAMA. The rules include simple, clear requirements for land use plans, improved land suitability analysis and management objectives to tie land use plans to CAMA goals.

Comment Procedures: Written comments may be submitted to Kathy Vinson, 151-B, Hwy 24, Hestron Plaza II, Morehead City, NC 28557, phone 252-808-2808.

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CHAPTER 07 – COASTAL MANAGEMENT
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Notice of Rule-making Proceedings is hereby given by the Coastal Resources Commission in accordance with G.S. 150B-21.2. The agency shall subsequently publish in the Register the text of the rule(s) it proposes to adopt as a result of this notice of rule-making proceedings and any comments received on this notice.

Citation to Existing Rule Affected by this Rule-making: 15A NCAC 07K .0213 - Other rules may be proposed in the course of the rule-making process.

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

Statement of the Subject Matter: High Hazard Flood AEC Exceptions

Reason for Proposed Action: The proposed amendment will reduce the permitting burden for certain types of development located in the high hazard flood AEC.

Comment Procedures: Written comments may be submitted to Charles S. Jones, 151-B, Hwy 24, Hestron Plaza II, Morehead City, NC 28557, phone 252-808-2808.

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TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES
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CHAPTER 07 – COASTAL MANAGEMENT

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

Citation to Existing Rule Affected by this Rule-making: 15A NCAC 07L - Other rules may be proposed in the course of the rule-making process.

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

Statement of the Subject Matter: Local Planning and Management Grants

Reason for Proposed Action: The Department of Environment and Natural Resources is revising the funding rules for Local Planning and Management Grants to local governments. These grants provide funding assistance for CAMA land use plans and coastal planning and management projects within North Carolina's coastal area. These changes are based on the recommendations of the Land Use Plan Review Team, which was appointed by the Coastal Resources Commission to evaluate the current program and make recommendations for improvement. The revisions include a more cost effective framework for funding land use plans and incentives to improve the level of implementation.

Comment Procedures: Comments may be submitted to Kathy Vinson, 151-B Hwy 24, Hestron Plaza II, Morehead City, NC 28557, phone 252-808-2808.

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TITLE 21 – OCCUPATIONAL LICENSING BOARDS
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CHAPTER 12 – LICENSING BOARD FOR GENERAL CONTRACTORS

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

Citation to Existing Rule Affected by this Rule-making: 21 NCAC 12 .0103; .0202; .0204; .0503; .0818. Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 87-1; 87-2; 87-3; 87-4; 87-5; 87-6; 87-7; 87-8; 87-10; 87-11; 150B-38

Statement of the Subject Matter: Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Licensing Board for General Contractors (Board) will consider adopting rules, repealing rules, or amending rules addressing the structure of the Board, contractor classifications, licensure eligibility, licensure renewal; requests for hearing; the definition of "undertaking to bid or construct" on a public job; and minimum experience requirements for licensure applicants.

Reason for Proposed Action:
1. To amend power of Secretary-Treasurer to allow for designee to sign checks;
2. To amend licensure classifications to provide that if an applicant passes the building, public utilities, and highway examinations, license granted to the applicant will carry with it a designation of "unclassified";
3. To increase the financial responsibility requirements for working capital for limited, intermediate, and unlimited licenses and to increase the bond amounts required to demonstrate financial responsibility for limited, intermediate, and unlimited licenses;
4. To require a corporate licensee to notify the Board of its dissolution or suspension of its corporate charter within 30
days and to require a foreign corporation to notify the Board of revocation of its certificate of authority;
5. To set a time limit within which an individual must file a request for a hearing;
6. To define "undertakes to bid or construct" under G.S. 87-1 for public jobs; and
7. To establish minimum experience requirements for licensure applicants.

Comment Procedures: Written comments may be submitted on the subject matter of the proposed rulemaking to Mark D. Selph at the Board’s office. The Board’s address is P.O. Box 17187, Raleigh, NC 27619.

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CHAPTER 46 - BOARD OF PHARMACY

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

Citation to Existing Rule Affected by this Rule-making: 21 NCAC 46 .1414; .1601; .1814; .2004; .2502. Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 90-85.6; 90-85.21; 90-85.25; 90-85.32; 90-85.33; 90-640; 150B-38

Statement of the Subject Matter: Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Board of Pharmacy (Board) will consider adopting rules, repealing rules, or amending rules addressing drug distribution and control in a health care facility pharmacy, pharmacy permits, automated dispensing or drug supply devices, requests for hearings, responsibilities of pharmacist-managers, exemptions from wearing identification badges, and identification requirements for persons picking up prescriptions.

Reason for Proposed Action:
1. To set out requirements for supervision of technicians using pyxis machines;
2. To revise number of technicians a pharmacist may supervise;
3. To set out time limit within which an individual may request a formal hearing;
4. To require that documentation of dispensing errors be readily retrievable and available for inspection at permitted location;
5. To set out exemptions from wearing of identification badges requirement; and
6. To require positive identification of persons picking up prescriptions.

Comment Procedures: Written comments may be submitted on the subject matter of the proposed rulemaking to David R. Work, Executive Director, P.O. Box 459, Carrboro, NC 27510-0459.

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CHAPTER 57 – REAL ESTATE APPRAISAL BOARD

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

Citation to Existing Rule Affected by this Rule-making: 21 NCAC 57A .0200; .0300; .0400; 57B .0100; .0200; .0300; .0400; .0500; .0600; 57C .0101-.0104. Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 93E-1-10

Statement of the Subject Matter: Review of current rules indicates a need for technical and clerical changes. Also, the board must come into compliance with changes in continuing education requirements on the federal level for trainees and appraisers.

Reason for Proposed Action: There has been a change in continuing education requirements for appraisers by the appraiser qualifications Board of Appraisal Foundation, in accordance with Title XI of the US Code. In addition, some technical and clerical changes to the rules are necessary. These changes also address requirements for continuing education sponsors.

Comment Procedures: Written comments should be directed to Mel Black, Executive Director, NC Appraisal Board, PO Box 20500, Raleigh, NC 27619-0500.
This Section contains the text of proposed rules. At least 60 days prior to the publication of text, the agency published a Notice of Rule-making Proceedings. The agency must accept comments on the proposed rule for at least 30 days from the publication date, or until the public hearing, or a later date if specified in the notice by the agency. The required comment period is 60 days for a rule that has a substantial economic impact of at least five million dollars ($5,000,000). Statutory reference: G.S. 150B-21.2.

TITLE 10 – DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Commission for Mental Health, Developmental Disabilities and Substance Abuse Services intends to amend the rule cited as 10 NCAC 45H .0205. Notice of Rule-making Proceedings was published in the Register on November 15, 2000.

Proposed Effective Date: August 1, 2002

Instructions on How to Demand a Public Hearing: (must be requested in writing within 15 days of notice): Any person may request a public hearing on the proposed rule by submitting a request in writing within 15 days of this notice. The request should be submitted to John Womble, DMHDDSAS, Regulatory Unit, 3016 Mail Service Center, Raleigh, NC 27699-3016.

Reason for Proposed Action: This action is proposed in order to be consistent with the Drug Enforcement Administration (DEA) by placing "Modafinil" and Zaleplon in Schedule IV of the federal controlled substance act. Modafinil is a central nervous system (CNS) stimulant that produces many of the same pharmacological effects and adverse reactions as classic psychomotor stimulants, but at higher doses. Zaleplon is a central nervous system (CNS) depressant for short-term treatment of insomnia.

Comment Procedures: Written comments should be sent to John Womble, Regulatory Branch, 3016 Mail Service Center, Raleigh, NC 27699-3016.

Fiscal Impact
☐ State
☐ Local
☒ Substantive ($5,000,000)

CHAPTER 45 - COMMISSION FOR MENTAL HEALTH, DEVELOPMENTAL DISABILITIES AND SUBSTANCE ABUSE SERVICES

SUBCHAPTER 45H – DRUG TREATMENT FACILITIES

SECTION .0200 – SCHEDULES OF CONTROLLED SUBSTANCES

10 NCAC 45H .0205 SCHEDULE IV

(a) Schedule IV shall consist of the drugs and other substances by whatever official name, common or usual name, chemical name or brand name designated listed in this Rule. Each drug or substance has been assigned the Drug Enforcement Administration controlled substances code number set forth opposite it.

(b) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances, including its salts, isomers and salts of isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation:

(1) Alprazolam 2882
(2) Barbital 2145
(3) Bromazepam 2748
(4) Camazepam 2749
(5) Chloral betaine 2460
(6) Chloral hydrate 2465
(7) Chlordiazepoxide 2744
(8) Clobazam 2751
(9) Clonazepam 2737
(10) Clorazepate 2768
(11) Clotiazepam 2752
(12) Cloxazolam 2753
(13) Delorazepam 2754
(14) Diazepam 2765
(15) Estazolam 2756
(16) Ethchlorvynol 2540
(17) Ethinamate 2545
(18) Ethyl loflazepate 2758
(19) Fludiazepam 2759
(20) Flunitrazepam 2763
(21) Flurazepam 2767
(22) Halazepam 2762
(23) Haloxazolam 2771
(24) Ketazolam 2772
(25) Loprazolam 2773
(26) Lorazepam 2774
(27) Lormetazepam 2775
(28) Mebutamate 2800
(29) Medazepam 2836
(30) Meprobamate 2820
(31) Methohexital 2264
(32) Methylphenobarbital (mephobarbital) 2250
(33) Midazolam 2884
(34) Nimetazepam 2837
(35) Nitrazepam 2834
(36) Nordiazepam 2838
(37) Oxazepam 2835
(38) Oxazolam 2839
(39) Paraldehyde 2585
(40) Petrichloral 2591
(41) Phenobarbital 2285
(42) Pinazepam 2883
(43) Prazepam 2764
(44) Quazepam 2881
(45) Temazepam 2925
(46) Tetrazepam 2886
(47) Triazolam 2887
(48) Zaleplon
(49) Zolpidem 2783

(c) Fenfluramine. Any material compound, mixture or preparation which contains any of the following substances including its salts, isomers (whether optical, position or geometric) and salts of such isomers whenever the existence of such salts, isomers and salts of isomers is possible:

Fenfluramine 1670

(d) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or other preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including their salts, isomers (whether optical, position, or geometric), and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Cathine [(+)-norpseudoephedrine] 1230
(2) Diethylpropion 1610
(3) Fenproporex 1575
(4) Mazindol 1605
(5) Mefenorex 1580
(7) Modafinil
(7) Phentermine 1640
(9) Pemolin (including organometallic complexes and chelates thereof) 1530
(10) Sibutramine 1675

(e) Other Substances. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substance, including its salts:

(1) Butorphanol (including its optical isomers) 9720
(2) Pentazocine 9709
(3) Pipradrol 1750
(4) SPA [(-)-1-dimethylamino-1,2-diphenylethane] 1635

(f) Narcotic Drugs. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation containing limited quantities of any of the following narcotic drugs, or any salt thereof:

(1) not more than one milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit, 9167
(2) Dextropropoxyphene (alpha-(8f)-4-dimethylamino-1,2-diphenyl-3-
PROPOSED RULES

methyl-2-propionoxybutane),
(3) Buprenorphine

Authority G.S. 90-88; 90-92; 143B-147.

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Marine Fisheries Commission intends to amend the rule cited as 15A NCAC 03O .0101. Notice of Rule-making Proceedings was published in the Register on January 2, 2001.

Proposed Effective Date: August 1, 2002

Public Hearing:
Date: June 6, 2001
Time: 7:00 p.m.
Location: New Bern Riverfront Convention Center, Tryon Room, New Bern, NC

Reason for Proposed Action: The Fisheries Reform Act of 1997 and its amendments (House Bill 1448) created a new license system that became effective July 1, 1999. Included in the Fisheries Reform Act of 1997 was the authority of the Marine Fisheries Commission to adopt rules to implement such a license system. Due to the complexity and comprehensiveness of the Fisheries Reform Act into all areas of fishery management as well as licensing, the Marine Fisheries Commission has phased implementation of various aspects of the Fisheries Reform Act into an area of fishery management and as a result, the Marine Fisheries Commission has implemented the Marine License Act. The renewal process was not addressed in the original licensing rules because the emphasis was on getting this new complex license scheme implemented. In 1999, the General Assembly modified the licensing provisions to allow the advance sale or renewal of licenses prior to the beginning of the fiscal year in Session Laws 1999-209, s. 6, which added Subsection (j) to G.S. 113-168.1. The development of a mail-in renewal system to better implement this advance sale provision and the simplification of the renewal process is still part of the implementation process of the Fisheries Reform Act.

Comment Procedures: Written comments are encouraged and may be submitted to the MFC, Juanita Gaskill, PO Box 769, Morehead City, NC 28557. Oral comments may be presented at the public hearing scheduled for June 6, 2001 at New Bern Riverfront Convention Center, Tryon Room, New Bern, NC beginning at 7:00 p.m. Oral presentation length may be limited, depending on the number of people that wish to speak at the public hearing. The public comments period will end on June 14, 2001. The Marine Fisheries Commission will consider this Rule and the public comments at a business session scheduled for June 7-8 at the New Bern Riverfront Convention Center, Tryon Room, New Bern, NC.

Fiscal Impact
☐ State
☐ Local
☐ Substantive (>$5,000,000)
☒ None

CHAPTER 03 – MARINE FISHERIES

SUBCHAPTER 03O – LICENSES, LEASES AND FRANCHISES

SECTION .0100 – LICENSES

15A NCAC 03O .0101 PROCEDURE AND REQUIREMENTS TO OBTAIN LICENSES, ENDORSEMENTS AND COMMERCIAL FISHING VESSEL REGISTRATIONS

(a) To obtain any Marine Fisheries licenses, endorsements, commercial fishing vessel registrations except Recreational Fishing Tournament Licenses to Sell Fish and Land or Sell Licenses, the following information is required for a proper application by the licensee, a responsible party or person holding a power of attorney:

(1) Full name, physical address, mailing address, date of birth, and signature of the licensee on the application. If the licensee is not appearing before a license agent or a representative of the Division, the licensee's signature on the application must be notarized;

(2) Current picture identification of licensee or responsible party; acceptable forms of picture identification are driver's license, state identification card, military identification card, resident alien card (green card) or passport or if purchased by mail, a copy thereof;

(3) Certification that the applicant does not have four or more marine or estuarine resource violations during the previous three years;

(4) Valid documentation papers or current motor boat registration or copy thereof when purchasing a commercial fishing vessel registration. If an application for transfer of documentation is pending, a copy of the pending application and a notarized bill of sale may be submitted;

(5) Current articles of incorporation and a current list of corporate officers when purchasing a license or commercial fishing vessel registration in a corporate name. In the case of incorporation of an individual fishing vessel, the name of the master of that vessel shall also be specified. It is unlawful to fail to notify the Morehead City Office of the Division of Marine Fisheries within five days of change of the master specified for that vessel;
(6) If a partnership is established by a written partnership agreement, a current copy of such agreement shall be provided when purchasing a license, endorsement or commercial fishing vessel registration in a partnership name;

(7) For nonresidents, certification of the state of residency;

(8) In addition to the information required in G.S. 113-169.4, linear length of pier when purchasing an Ocean Fishing Pier License;

(9) In addition to the information required in G.S. 113-171.1, current aircraft registration and list of operator(s) when purchasing a Spotter Plane License;

(10) In addition, for fish dealers licenses, the physical address of the established location where business is conducted and, if different, the address where records are kept.

(b) To obtain a License to Land Flounder from the Atlantic Ocean:

(1) To qualify for a License to Land Flounder from the Atlantic Ocean, the applicant shall:
   (A) have landed in North Carolina at least 1,000 pounds of flounder from a single vessel each year from the Atlantic Ocean during any two of the 1992-93, 1993-94, 1994-95 license years for which the person had a vessel that was licensed to land in North Carolina; and
   (B) have been licensed under G.S. 113-152 or 113-153 during any two of the 1992-93, 1993-94, or 1994-95 license years; and
   (C) hold a valid Standard or Retired Standard Commercial Fishing License or valid Land or Sell License.

(2) It is unlawful for the holder of the License to Land Flounder from the Atlantic Ocean to fail to notify the Morehead Office of the Division of Marine Fisheries within five days of change as to the master identified on the license.

(3) Licenses to Land Flounder from the Atlantic Ocean are issued for the current license year and expire on June 30.

(c) To obtain a Recreational Fishing Tournament License to Sell Fish, the following information is required for a proper application:

(1) Full name, physical address, mailing address, date of birth, signature of the tournament organizer, name of tournament, and dates of tournament on the license application. If the licensee is not appearing before a representative of the Division, the licensee's signature must be notarized on the application.

(2) Current picture identification of tournament organizer; acceptable forms of picture identification are driver's license, state identification card, military identification card, or passport, or if purchased by mail, a copy thereof.

(3) The tournament organizer must apply with the Division of Marine Fisheries at least 30 days prior to the starting date of the tournament.

(d) To obtain a Land or Sell License, the following information is required for a proper application:

(1) Full name, physical address, mailing address, date of birth, and signature of the responsible party or master for the vessel on the license application. If the licensee is not appearing before a representative of the Division, the licensee's signature on the application must be notarized on the application;

(2) Current picture identification of responsible party or master; acceptable forms of picture identification are driver's license, state identification card, military identification card, or passport or if applying by mail, a copy thereof.

(3) Valid documentation papers or current motor boat registration or copy thereof when purchasing a commercial fishing vessel registration. If an application for transfer of documentation is pending, a copy of the pending application and a notarized bill of sale may be submitted.

Fees will be based on the vessel's homeport as it appears on the U.S. Coast Guard documentation papers or the State in which the vessel is registered.

(e) Proof of residency in North Carolina for:

(1) Standard Commercial Fishing License or Retired Standard Commercial Fishing License shall be:
(A) a notarized certification from the applicant that the applicant is a resident of the State of North Carolina as defined by G.S. 113-130(4); and

(B) a notarized certification from the applicant that a North Carolina State Income Tax Return was filed for the previous calendar or tax year as a North Carolina resident; or

(C) a notarized certification that the applicant was not required to file a North Carolina State Income Tax Return for the previous calendar or tax year; or

(D) military identification, military dependent identification and permanent change of station orders or assignment orders substantiating individual’s active duty assignment at a military facility in North Carolina.

(2) All other types of licenses:

(A) North Carolina voter registration card; or

(B) Current North Carolina Driver’s License; or

(C) Current North Carolina Certificate of Domicile; or

(D) Current North Carolina Identification Card issued by the North Carolina Division of Motor Vehicles; or

(E) Military identification, military dependent identification and permanent change of station orders or assignment orders substantiating individual’s active duty assignment at a military facility in North Carolina.

(f) Applications submitted without complete and required information will be deemed incomplete and will not be considered further until resubmitted with all required information.

(g) It is unlawful for a license or registration holder to fail to notify the Division of Marine Fisheries within 30 days of a change of address.

(h) Licenses are available at Offices of the Division or by mail from the Morehead City Office, unless otherwise specified. In addition, Recreational Commercial Gear Licenses are available at Wildlife Service Agents who have been designated as agents of the Department.

(i) To renew any Marine Fisheries licenses, endorsements, and commercial fishing vessel registration, except Recreational Commercial Gear Licenses, the following is required for a proper renewal application by the licensee, a responsible party or person holding a power of attorney:

1. The information required in Subparagraphs (a)(4), (a)(5), and (a)(6) of this Rule are only required if a change has occurred since the last issuance of license, endorsement or commercial fishing vessel registration.

2. Certification that articles of incorporation and list of corporate officers, if incorporated, written partnership agreement, if written partnership, or documentation papers or motor boat registration previously provided for initial license purchase is still valid and current for renewal.

3. Current and valid state driver's license or state identification picture identification numbers and expiration dates must be verified on mail license renewal applications or any other electronic license renewal process, otherwise the licensee must provide a photocopy for renewal by mail or visit a Division License Office and present a current and valid picture identification pursuant to Subparagraph (a)(2) of this Rule.

4. The Division of Marine Fisheries may require current copies of documentation for licenses, endorsements, commercial fishing vessel registration on renewal when necessary to verify inconsistent information or the information cannot be verified by independent sources.

5. If the linear length of the pier has not changed for the Ocean Fishing Pier License renewal, the responsible party will certify that the length is accurate; otherwise, a Marine Patrol Officer's signature is required to certify the linear length before the license can be renewed.

Authority G.S. 113-134; 113-168; 113-168.1; 113-168.2; 113-168.3; 113-168.4; 113-168.5; 113-168.6; 113-169; 113-169.2; 113-169.3; 113-169.4; 113-169.5; 113-171.1; 143B-289.52.

TITLE 25 – OFFICE OF STATE PERSONNEL

Notice is hereby given in accordance with G.S. 150B-21.2 that the State Personnel Commission intends to amend the rules cited as 25 NCAC 01B .0437; 01C .0214 and 01J .0603. Notice of Rule-making Proceedings for 25 NCAC 01B .0437 was published in the Register on October 2, 2000 and for 25 NCAC 01C .0214 and 01J .0603 was published October 16, 2000.

Proposed Effective Date: July 1, 2002

Public Hearing:
Date: June 6, 2001
Time: 10:00
Location: 116 West Jones Street, Administration Building, 5th Floor Conference Room, Raleigh, NC

Reason for Proposed Action:
25 NCAC 01B .0437 - H.B. 968 reduced the Commission’s time in which it may exercise jurisdiction over Recommended
Decisions rendered by the Administrative Law Judges from 90 to 60 days. This compressed time period will require the commission to hear every case in which the Office of Administrative Hearings delivers a record to the Office of State Personnel at any time prior to a commission meeting. In order for the commissioners to have adequate time to review the parties written arguments in each case, it will be important for the Parties to submit those as soon as possible after the Recommended Decision in a matter is issued.

25 NCAC 01C .0214 and 01J .0603 - The proposed amendment to these rules would allow the agency/university the option to issue a final response before the 60 calendar expiration period. Should an agency/university exercise this option it waives its right to make another or different determination. A written final agency decision waiver should be issued to the grievant and the grievant should acknowledge waiver and return such written acknowledgement to the agency/university.

Comment Procedures: 25 NCAC 01B .0437 - Written comments may be submitted to Delores A. Joyner, Office of State Personnel, 1331 Mail Service Center, Raleigh, NC 27699-1331. Oral comments will be received at the public hearing. Written comments must be received no later than June 14, 2001.

25 NCAC 01C .0214 and 01J .0603 – Written comments may be submitted to Ms. Nellie Riley, Hearing Officer, Office of State Personnel, 1331 Mail Service Center, Raleigh, NC 27699-1331. Oral comments will be received at the public hearing. Written comments must be received no later than June 14, 2001.

Fiscal Impact
☐ State
☐ Local
☒ Substantive (>$5,000,000)
☐ None

CHAPTER 01 – OFFICE OF STATE PERSONNEL

SUBCHAPTER 01B – STATE PERSONNEL COMMISSION

SECTION .0400 – APPEAL TO COMMISSION

25 NCAC 01B .0437  STATE PERSONNEL COMMISSION: PROCEDURES

(a) The State Personnel Commission Administrator, on behalf of the State Personnel Commission, shall receive the record in the contested cases forwarded by the Office of Administrative Hearings and the State Personnel Commission shall make a final administrative decision in the case. Any record received by the Administrator on the day of a Commission meeting shall be deemed to have been received after the Commission meeting and the time in which the Commission has to review and decide the case shall run from the Commission meeting. The Office of State Personnel shall be responsible for the administrative management of contested cases coming before the Commission for its review and decision.

(b) Oral Argument. Either party to a contested case may request the opportunity to appear before the State Personnel Commission and make oral argument in all cases except those arising under G.S. 126-14.4. Such arguments shall be based solely on the information contained in the record submitted by the OAH. Oral arguments shall be requested or waived in writing no more than 10 calendar days after the filing date of the recommended decision of the Administrative Law Judge and the parties shall attach a copy of the Administrative Law Judge's recommended decision to the request or waiver notice by the Commission has been sent to the parties. The Commission has received the official record from the OAH in the contested case. After 30 calendar days have passed since the notice to the parties that the official record has been received by the Commission, the Commission shall send a notice of review which shall contain the date, time and place of the Commission meeting at which the case shall may be reviewed. If a party fails to request or waive oral argument in a timely fashion, that party may not be allowed to present oral argument or file legal briefs or memoranda to the Commission. Each party requesting oral argument shall be allotted a maximum of 10 minutes for the presentation, unless the time period is extended by a vote of the Commission. Time may be extended by the Commission for good cause shown as defined in 25 NCAC 01B .0439. All requests to speak for more than 10 minutes shall be made in writing in the same document which requests the opportunity to make oral argument. The party which did not prevail before the Administrative Law Judge is entitled to make the first oral argument and to present a rebuttal. If both parties are seeking changes in the Administrative Law Judge's recommended decision, both parties may present a rebuttal and the party with the burden of proof in the contested case is entitled to the last rebuttal.

(c) Briefs, Legal Memoranda, Attorney's Fees Requests. All briefs and legal memoranda in cases other than those arising under G.S. 14.4 shall be received by the Office of State Personnel no later than 30 calendar days after the date of the notice sent by the Commission notifying the parties of the Commission's receipt of the official record from the OAH the filing date of the recommended decision of the Administrative Law Judge. Such document shall also be served upon the opposing party and a copy of the recommended decision of the Administrative Law Judge shall be attached to the document. Such a document received after the deadline shall be presented to the Commission only after the party has shown that the opposing party was served with the document no later than 30 calendar days after the date of the notice sent by the Commission notifying the parties of the Commission's receipt of the official record from the OAH the filing date of the recommended decision of the Administrative Law Judge. Such document shall also be served upon the opposing party. The Commission shall notify the parties upon receipt of a request for attorneys fees and provide an
opportunity for the opposing party to file objections to the fees requested. If the parties wish to make oral argument on an attorney's fees request, a request for oral argument must be received by the Office of State Personnel within two weeks after the filing of the attorney's fees request and at least one month prior to the meeting at which such oral argument is requested. Parties shall submit 25 copies of each pleading (with three holes in the left margin) filed with the Commission. An extension of time to file documents with the Commission may be granted by the Administrator for good cause shown as defined in 25 NCAC 01B.0439.

(d) Written Exceptions. Proposed Alternative Findings, Conclusions and Recommendations. Each party shall submit written exceptions to the recommended decision of the Administrative Law Judge, unless the party accepts the recommended decision in its entirety. Any party may choose to submit proposed alternative findings of fact and conclusion of law. Exceptions and alternative findings of fact and conclusions shall be received by the Office of State Personnel no later than 30 calendar days after the date of the notice sent by the Commission notifying the parties of the Commission's receipt of the official record from the OAH, filing date of the recommended decision of the Administrative Law Judge. Written exceptions shall be specifically drawn. Each exception and proposed alternative finding or conclusion shall specifically, separately, and in detail, set forth how the finding or conclusion is clearly contrary to the preponderance of the admissible evidence, the specific reason(s) the Commission should not adopt the Administrative Law Judge's recommended finding of fact or conclusion of law and the specific evidence in the record which supports the rejection of the Administrative Law Judge's recommended finding of fact or conclusion of law, including but not limited to references to the testimony of witnesses, any evidentiary exhibits, and any exercise of discretion by the agency to which deference should be accorded. Any new findings of fact proposed to the Commission must be supported by a preponderance of the evidence which shall be set forth in support of the new finding of fact. Any new decision proposed to the Commission must be supported by a preponderance of the admissible evidence in the record and the reason that the Administrative Law Judge's decision is clearly contrary to the preponderance of the admissible evidence in the record must be set forth in detail. If the Administrative Law Judge has recommended granting summary judgment or judgment on the pleadings and a party proposes that the Commission reject the Administrative Law Judge's decision, the party shall set forth the basis for rejecting the Administrative Law Judge's decision in detail. Reference must be made to the transcript (and volumes, where applicable), if the transcript of the hearing was made and is available. Where a party excepts to a finding, conclusion, or recommendation and requests its deletion or amendment, an alternative finding, conclusion, or recommendation shall be made. Such a document received after the deadline shall be presented to the Commission only after the party has shown that the opposing party was served with the document no later than 30 calendar days after the date of the notice sent by the Commission notifying the parties of the Commission's receipt of the official record from the OAH, the filing date of the Administrative Law Judge's recommended decision. The Commission may adopt the findings of fact and conclusions of law of the Administrative Law Judge, or amend the same, or adopt alternative findings of fact and conclusion of law, either from those submitted by the parties or drawn from its own review of the whole record. Parties shall submit 20 copies of each pleading (with three holes in the left margin) filed with the Commission. An extension of time to file documents with the Commission may be granted by the Administrator for good cause shown as defined in 25 NCAC 01B.0439.

(e) Proposed Decision and Order. Each party to a contested case shall submit a proposed Decision and Order for consideration by the Commission in that case. The proposed Decision and Order shall be received by the Office of State Personnel no later than 30 calendar days after the date of the notice sent by the Commission notifying the parties of the Commission's receipt of the official record from OAH, filing date of the recommended decision of the Administrative Law Judge. The Commission may delay decision in a case until all parties have submitted a proposed Decision and Order. The Proposed Decision and Order shall indicate which findings, conclusions, and recommendations of the Administrative Law Judge are being deleted or amended and why, and what new findings, and conclusions are being adopted and specifically, separately, and in detail, set forth how the finding or conclusion is clearly contrary to the preponderance of the admissible evidence. The Proposed Decision and Order must include the specific reason(s) the Commission should not adopt the Administrative Law Judge's recommended finding of fact or conclusion of law and the specific evidence in the record which supports the rejection of the Administrative Law Judge's recommended finding of fact or conclusion of law, including but not limited to references to the testimony of witnesses, any evidentiary exhibits, and any exercise of discretion by the agency to which deference should be accorded. Any new findings of fact proposed to the Commission must be supported by a preponderance of the evidence which shall be set forth in support of the new finding of fact in the Proposed Decision and Order. Any new conclusions of law or decision proposed to the Commission must be supported by a preponderance of the admissible evidence in the record and the reason that the Administrative Law Judge's decision is clearly contrary to the preponderance of the admissible evidence in the record must be set forth in detail in the Proposed Decision and Order. If the Administrative Law Judge has recommended granting summary judgment or judgment on the pleadings and a party proposes that the Commission reject the Administrative Law Judge's decision, the party shall set forth the basis for rejecting the Administrative Law Judge's decision in detail. Reference must be made to the transcript (and volumes, where applicable), if the transcript of the hearing was made and is available. Where a party excepts to a finding, conclusion, or recommendation and requests its deletion or amendment, an alternative finding, conclusion, or recommendation shall be made. Such a document received after the deadline shall be presented to the Commission only after the party has shown that the opposing party was served with the document no later than 30 calendar days after the date of the notice sent by the Commission notifying the parties of the Commission's receipt of the official record from the OAH, the filing date of the Administrative Law Judge's recommended decision. The Commission may adopt the findings of fact and conclusions of law of the Administrative Law Judge, or amend the same, or adopt alternative findings of fact and conclusion of law, either from those submitted by the parties or drawn from its own review of the whole record. Parties shall submit 20 copies of each pleading (with three holes in the left margin) filed with the Commission. An extension of time to file documents with the Commission may be granted by the Administrator for good cause shown as defined in 25 NCAC 01B.0439.

(f) Service on Opposing Parties. Copies of all documents permitted or required by this Rule shall be served on the opposing party, but no later than 30 calendar days after the
date of the notice sent by the Commission notifying the parties of the Commission's receipt of the official record from the OAH the filing date of the recommended decision of the Administrative Law Judge. If a document is filed electronically with the Commission as permitted in 25 NCAC 01B .0437(i), the document must also be served electronically on the opposing party if the opposing party has an electronic address. Electronic service must be followed by service of printed copies of any document filed electronically within 24 hours of electronic filing. (g) Notification. The parties or when applicable, the legal representative of record for a party, shall be notified by certified mail, return receipt requested, of the Commission's decision. The Commission's decision shall be prepared and sent out by the Office of State Personnel. Copies or the content of a specific decision and order shall not be released to non-parties until the Office of State Personnel has knowledge that all parties have received a copy of the Decision and Order.

(h) Cases arising under G.S. 126-14.4. In contested cases arising under G.S. 126-14.4, where the Commission is required to make a decision within 60 days of receipt of the official record, the parties shall not be entitled to appear in person before the Commission and make oral argument. Instead, either party may request an opportunity to make oral argument to the Commission in a teleconference (or by other video or audio electronic conferencing means) within 10 calendar days of notice by the Commission that it has received the official record from the Office of Administrative Hearings. If a party requests the opportunity to present an oral argument in a teleconference, a teleconference shall be scheduled by the Office of State Personnel and a Notice of Review via Teleconference shall be sent to the parties which shall contain the date and time the teleconference will take place and the telephone numbers at which the parties will be called. No delays in scheduling the teleconference shall be permitted which would prejudice the Commission's ability to render its written decision in compliance with the statutory 60 day deadline. Any briefs or legal memoranda which the parties wish to submit must be received by the Office of State Personnel no later than 14 calendar days after notice that the Commission has received the official record from the Office of Administrative Hearings. An extension of time to file documents with the Commission may be granted by the Administrator for good cause shown as defined in 25 NCAC 01B .0439. Each party requesting oral argument shall be allotted a maximum of 10 minutes for the presentation, unless the time period is extended by a vote of the Commission for good cause shown as defined in 25 NCAC 01B .0439. All requests to speak for more than 10 minutes shall be made in writing in the same document which requests the opportunity to make oral argument. The party which did not prevail before the Administrative Law Judge is entitled to make the first oral argument and to present a rebuttal. If both parties are seeking changes in the Administrative Law Judge's recommended decision, both parties may present a rebuttal and the party with the burden of proof in the contested case is entitled to the last rebuttal. (h) Electronic Filing. Any documents which are required or permitted to be filed under 25 NCAC 01B .0437, may be filed electronically by midnight of the filing date with the State Personnel Commission Administrator in a format readable by the Administrator. Printed copies of any documents filed electronically must also be filed with the Administrator in accordance with 25 NCAC 01B .0437(c), (d) and (e) within 24 hours of the electronic filing. Authority G.S. 126-4.

SUBCHAPTER 01C – PERSONNEL ADMINISTRATION

SECTION .0200 – GENERAL EMPLOYMENT POLICIES

25 NCAC 01C .0214 UNLAWFUL WORKPLACE HARASSMENT

(a) Purpose. The purpose of this policy is to establish that the State of North Carolina prohibits in any form unlawful workplace harassment of state employees or applicants, and to require that every agency subject to the State Personnel Act establishes policies and programs to ensure that work sites are free of unlawful workplace harassment. (b) Unlawful workplace harassment is defined as unsolicited, and unwelcome speech or conduct based upon race, sex, creed, religion, national origin, age, color, or handicapping condition as defined by G.S. 168A-3 that creates a hostile work environment or circumstances involving quid pro quo:

(1) Hostile Work Environment is one that both a reasonable person would find hostile or abusive and one that the particular person who is the object of the harassment perceives to be hostile or abusive. Hostile work environment is determined by looking at all of the circumstances, including the frequency of the allegedly harassing conduct, its severity, whether it is physically threatening or humiliating, and whether it unreasonably interferes with an employee’s work performance.

(2) Quid Pro Quo harassment consists of unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct when:

(A) submission to such conduct is made either explicitly or implicitly as a term or condition of an individual's employment; or

(B) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual.

(3) Retaliation is adverse action taken because of opposition to unlawful workplace harassment.

(c) Policy. The policy of the State of North Carolina is that no state employee may engage in conduct that falls under the definition of unlawful workplace harassment indicated in Paragraph (b) of this Rule. No personnel decisions shall be made on the basis of race, sex, creed, religion, national origin, age, color, or handicapping condition as defined by G.S. 168A-3. All
(d) employees are guaranteed the right to work in an environment free from unlawful workplace harassment and retaliation. Unlawful workplace harassment shall _hereforth henceforth_ be deemed a form of discrimination prohibited by G.S. 126-16 and G.S. 126-36.

(e) Grievances. Any current or former state employee who feels he/she has been the victim of unlawful workplace harassment in violation of this policy and G.S. 126-16 and G.S. 126-36 may file a grievance through the departmental grievance procedure. Filing such a written complaint shall be a prerequisite to any further appeal to the State Personnel Commission regarding unlawful workplace harassment. After the employee’s written complaint is submitted to the department or agency, the department or agency shall have 60 days within which to consider the complaint and take _any_ appropriate remedial action, _if any. unless the department or agency has waived the 60-day period, and the employee has acknowledged such waiver_. The waiver and acknowledgement shall be in writing. Consistent with G.S. 126-34, G.S. 126-34.1, G.S. 126-36 and G.S. 126-36.1, any current or former state employee who feels that he/she has been subjected to unlawful workplace harassment may appeal directly to the State Personnel Commission (such appeal consisting of a contested case hearing under G.S. 150B and a decision by the State Personnel Commission) only after submitting a written complaint and _waiting sixty days from the submission of the complaint_. After receiving notification of remedial action, if any, by the department or agency,

(f) Departmental Plans. Each department head or university chancellor shall include as a supplement to the _Affirmative Action Plan_ a plan setting for the steps to be taken to prevent unlawful workplace harassment. Each department or university shall submit such a plan to the Office of State Personnel for review, technical assistance, and approval by the Director of State Personnel. Each plan on unlawful workplace harassment shall, at the minimum, include:

1. publishing and disseminating a policy statement establishing that unlawful workplace harassment of employees and applicants is prohibited;
2. establishment of internal procedure to handle complaints of unlawful workplace harassment. This procedure shall provide prompt investigation and resolution of complaints within the department or university and shall offer the employee recourse other than through the immediate supervisor;
3. utilization of training and other methods to prevent unlawful workplace harassment;
4. stating that the department will, in allegations of unlawful workplace harassment, review the entire record and the totality of the circumstances, to determine whether the alleged conduct constitutes unlawful workplace harassment;
5. development of appropriate disciplinary actions for conduct determined to constitute unlawful workplace harassment, to be implemented on a case by case basis on the facts of each complaint;
6. _prohibition of internal interference, coercion, restraint or reprisal against any person complaining of alleged unlawful workplace harassment;_
7. _notification to all employees that a complaint or allegation of unlawful workplace harassment must be filed within the department or agency and that the agency or department has 60 days (or less, if waived by agency or department and acknowledged by employee) to take appropriate action, if any, in response to the complaint prior to the filing of a complaint of unlawful workplace harassment with the State Personnel Commission._

Authority G.S. 126-4; 126-16; 126-17; 126-36; 126-36.1.

**SUBCHAPTER 01J – EMPLOYEE RELATIONS**

**SECTION .0600 – DISCIPLINARY ACTION: SUSPENSION AND DISMISSAL**

**25 NCAC 01J .0603 APPEALS**

(a) A career employee who has been demoted, suspended or dismissed shall have 15 calendar days from the date of his receipt of written notice of such action to file an appeal with his department/university grievance procedure. Grievances which do not allege discrimination, a violation of G.S. 126-7.1(a) or (c), a violation of G.S. 126-82, or that do not allege a denial of employment or promotion in violation of G.S. 126-14.2 must follow the department or university grievance procedure. An appeal to the State Personnel Commission of a final departmental or university decision must be filed with the Office of Administrative Hearings in accordance with G.S. 150B-23 within 30 calendar days of receipt of the final agency decision. Grievances which allege unlawful workplace harassment must be submitted in writing to the agency or department, within 30 calendar days of the alleged harassing action, and the agency or department must be given 60 calendar days in which to take appropriate remedial action, if any, unless the department or agency has waived the 60-day period, and the employee has acknowledged such waiver. The acknowledgement and waiver shall be in writing. An appeal to the State Personnel Commission of unlawful workplace harassment must be submitted in writing to the agency or department, within 30 calendar days of notification of the remedial action, if any, _taken by the agency. 60th day of the period given to the agency to consider the unlawful workplace harassment complaint._

(b) Grievances which allege discrimination not including unlawful workplace harassment may, at the election of the employee, proceed through the department or university procedure or proceed directly to the State Personnel Commission (SPC) for a hearing by the Office of Administrative Hearings (OAH) and a decision by the SPC. A direct appeal to the SPC (such appeal involving a contested case hearing by the OAH and a recommended decision by that agency to the SPC) alleging discrimination not including unlawful workplace harassment must be filed in accordance with G.S. 126-4; 126-16; 126-17; 126-36; 126-36.1.
with G.S. 150B-23 and must be filed within 30 calendar days of receipt of notice of the alleged discriminatory act.

(c) Grievances which allege a violation of G.S. 126-14.2 must be filed with the Civil Rights Division of the OAH within 30 calendar days after the employee or applicant receives written notice that the position in question has been filled. The employee or applicant must file a petition for a contested case hearing pursuant to G.S. 126-34.1 and Article 3 of Chapter 150B within 15 days of the initial determination by the OAH Civil Rights Division that there has been a violation of G.S. 126-14.2.

(d) Grievances filed on an untimely basis (see G.S. 126-14.4, 126-35, 126-36 and 126-38) must be dismissed. Allegations of discrimination raised more than 30 calendar days after receipt of notice of the occurrence of the alleged discriminatory act must be dismissed. Grievances alleging unlawful workplace harassment raised more than 30 calendar days after the 60th day of the 60-day time period given to the agency to consider an unlawful workplace harassment complaint must be dismissed. Notification of the remedial action, if any, taken by the agency must be dismissed.

Authority G.S. 126-1A; 126-35; 126-36; 126-38; 150B, Article 3; 150B-23.
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 02C.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:** Division of Facility Services, DHHS

**Rule Citation:** 10 NCAC 03R .6302, .6308

**Effective Date:** May 1, 2001

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

**Authority for the rulemaking:** G.S. 131E-176(25); 131E-177(1); 131E-183(b)

**Reason for Proposed Action:** The amendment/repeal to these Rules are necessary to comply with recent changes in Ambulatory Surgical Service Area 24 that now eliminate the need for one additional ambulatory surgical facility in that area (as identified in the 2001 SMFP and promulgated by the aforementioned temporary rules). Temporary rule-making is necessary because the process does not provide the Department with the time necessary to utilize the permanent rule-making process.

**Comment Procedures:** Questions or comments concerning the rules should be directed to Jackie Sheppard, Assistant Director/Rule-Making Coordinator, Division of Facility Services, 701 Barbour Dr., 2701 Mail Service Center, Raleigh, NC 27699-2701.

**CHAPTER 03 – FACILITY SERVICES**

**SUBCHAPTER 03R – CERTIFICATE OF NEED REGULATIONS**

**SECTION .6300 – PLANNING POLICIES AND NEED DETERMINATION FOR 2001**

10 NCAC 03R .6302 CERTIFICATE OF NEED REVIEW SCHEDULE

The Department of Health and Human Services (DHHS) has established the following review schedules for certificate of need applications:

1. **Ambulatory Surgical Facilities** (in accordance with the need determination in 10 NCAC 03R .6308)

<table>
<thead>
<tr>
<th>Ambulatory Surgery Service Area</th>
<th>CON Beginning</th>
<th>Review Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Area 24 (Greene, Lenoir, Martin and Pitt Counties)</td>
<td>September 1, 2001</td>
<td></td>
</tr>
</tbody>
</table>

2. **Heart-Lung Bypass Machine** (in accordance with the need determination in 10 NCAC 03R .6310)

<table>
<thead>
<tr>
<th>Hospital Service System</th>
<th>CON Beginning</th>
<th>Review Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gaston Memorial</td>
<td>August 1, 2001</td>
<td></td>
</tr>
</tbody>
</table>

3. **Fixed Cardiac Catheterization Equipment** (in accordance with the need determination in 10 NCAC 03R .6311)

<table>
<thead>
<tr>
<th>County</th>
<th>CON Beginning</th>
<th>Review Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pasquotank</td>
<td>March 1, 2001</td>
<td></td>
</tr>
<tr>
<td>Johnston</td>
<td>July 1, 2001</td>
<td></td>
</tr>
</tbody>
</table>

4. **Shared Fixed Cardiac Catheterization Equipment** (in accordance with the need determination in 10 NCAC 03R .6312)

| County | CON Beginning |
|--------|--------------|-------------|
### TEMPORARY RULES

<table>
<thead>
<tr>
<th>Hospital Service System</th>
<th>Review Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lake Norman Regional</td>
<td>April 1, 2001</td>
</tr>
</tbody>
</table>

#### (4) Positron Emission Tomography Scanners (in accordance with the need determination in 10 NCAC 03R .6314)

<table>
<thead>
<tr>
<th>Health Service Area (HSA)</th>
<th>CON Beginning</th>
<th>Review Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>I</td>
<td>October 1, 2001</td>
<td></td>
</tr>
<tr>
<td>II</td>
<td>April 1, 2001</td>
<td></td>
</tr>
<tr>
<td>III</td>
<td>July 1, 2001</td>
<td></td>
</tr>
<tr>
<td>IV</td>
<td>November 1, 2001</td>
<td></td>
</tr>
<tr>
<td>V</td>
<td>March 1, 2001</td>
<td></td>
</tr>
</tbody>
</table>

#### (5) Magnetic Resonance Imaging Scanners (in accordance with the need determinations in 10 NCAC 03R .6320)

<table>
<thead>
<tr>
<th>Service Area</th>
<th>CON Beginning</th>
<th>Review Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>3 (Buncombe, Madison, McDowell, Mitchell, Yancey)</td>
<td>August 1, 2001</td>
<td></td>
</tr>
<tr>
<td>13 (Caswell, Durham, Granville, Person, Vance, Warren)</td>
<td>November 1, 2001</td>
<td></td>
</tr>
<tr>
<td>17 (Anson, Mecklenburg, Union)</td>
<td>October 1, 2001</td>
<td></td>
</tr>
<tr>
<td>19 (Franklin, Harnett, Johnston, Lee, Wake)</td>
<td>March 1, 2001</td>
<td></td>
</tr>
<tr>
<td>21 (Bladen, Brunswick, Columbus, Duplin, New Hanover, Pender)</td>
<td>July 1, 2001</td>
<td></td>
</tr>
</tbody>
</table>

#### (6) Magnetic Resonance Imaging Scanners (in accordance with the need determination in 10 NCAC 03R .6321)

<table>
<thead>
<tr>
<th>Service Area</th>
<th>CON Beginning</th>
<th>Review Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>15 (Davidson, Guilford, Randolph &amp; Rockingham)</td>
<td>August 1, 2001</td>
<td></td>
</tr>
<tr>
<td>17 (Anson, Mecklenburg, Union)</td>
<td>April 1, 2001</td>
<td></td>
</tr>
</tbody>
</table>

#### (7) Nursing Care Beds (in accordance with the need determination in 10 NCAC 03R .6322)

<table>
<thead>
<tr>
<th>County</th>
<th>CON Beginning</th>
<th>Review Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Davie</td>
<td>August 1, 2001</td>
<td></td>
</tr>
<tr>
<td>Wayne</td>
<td>May 1, 2001</td>
<td></td>
</tr>
</tbody>
</table>

#### (8) Medicare-Certified Home Health Agencies or Offices (in accordance with the need determination in 10 NCAC 03R .6323)

<table>
<thead>
<tr>
<th>County</th>
<th>CON Beginning</th>
<th>Review Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pamlico</td>
<td>November 1, 2001</td>
<td></td>
</tr>
</tbody>
</table>

#### (9) Hospice Home Care Program Need Determination (in accordance with the need determination in 10 NCAC 03R .6326)

<table>
<thead>
<tr>
<th>County</th>
<th>CON Beginning</th>
<th>Review Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wake</td>
<td>May 1, 2001</td>
<td></td>
</tr>
</tbody>
</table>

#### (10) Adolescent Residential Chemical Dependency (Substance Abuse) Treatment Beds (in accordance with the need determination in 10 NCAC 03R .6329)
## TEMPORARY RULES

### Chemical Dependency (Substance Abuse) Beds – Adult Detox-Only Beds

Chemical Dependency (Substance Abuse) Beds – Adult Detox-Only Beds (in accordance with the need determination in 10 NCAC 03R .6330)

### Intermediate Care Facilities for the Mentally Retarded

Intermediate Care Facilities for the Mentally Retarded (in accordance with need determination in 10 NCAC 03R .6331)

### THERE ARE 11 CATEGORIES OF PROJECTS FOR CERTIFICATE OF NEED REVIEW

There are 11 categories of projects for certificate of need review. The DHHS shall determine the appropriate review category or categories for all applications submitted pursuant to 10 NCAC 3R .0304. For proposals which include more than one category, the DHHS may require the applicant to submit separate applications. If it is not practical to submit separate applications, the DHHS shall determine in which category the application shall be reviewed. The review of an application for a certificate of need shall commence in the next applicable review schedule after the application has been determined to be complete. The 11 categories are:

(a) Category A. Proposals submitted by acute care hospitals, except those proposals included in Categories B through H and Categories J and K, including but not limited to the following types of projects: renovation, construction, equipment, and acute care services.

(b) Category B. Proposals for nursing care beds; new continuing care retirement communities applying for exemption under 10 NCAC 03R .6337; and relocations of nursing care beds under 10 NCAC 03R .6339 or 10 NCAC 03R .6341.

(c) Category C. Proposals for new psychiatric facilities; psychiatric beds in existing health care facilities; new intermediate care facilities for the mentally retarded (ICF/MR) and ICF/MR beds in existing health care facilities.
facilities; new substance abuse and chemical dependency treatment facilities; substance abuse and chemical
dependency treatment beds in existing health care facilities.

(d) Category D. Proposals for new dialysis stations in response to the "county need" or "facility need"
methodologies; and relocations of existing dialysis stations to another county.

(e) Category E. Proposals for new or expanded inpatient rehabilitation facilities and inpatient rehabilitation
beds in other health care facilities; and new or expanded ambulatory surgical facilities except those
proposals included in Category H.

(f) Category F. Proposals for new Medicare-certified home health agencies or offices, new hospices, new
hospice inpatient facility beds, and new hospice residential care facility beds.

(g) Category G. Proposals for conversion of hospital beds to nursing care under 10 NCAC 03R .6336.

(h) Category H. Proposals for bone marrow transplantation services, bone marrow transplantation services, neonatal
intensive care services, open heart surgery services, solid organ transplantation services, air ambulance
equipment, cardiac angioplasty equipment, cardiac catheterization equipment, heart-lung bypass machines,
gamma knives, lithotriptors, magnetic resonance imaging scanners, positron emission tomography
scanners, major medical equipment as defined in G.S. 131E-176 (14f), diagnostic centers as defined in G.S.
131E-176 (7a), and oncology treatment centers as defined in G.S. 131E-176 (18a).

(i) Category I. Proposals involving cost overruns; expansions of existing continuing care retirement
communities which are licensed by the Department of Insurance at the date the application is filed and are
applying under 10 NCAC 3R .6337 for exemption from need determinations in 10 NCAC 03R .6322;
relocations within the same county of existing health service facilities, beds or dialysis stations which do
not involve an increase in the number of health service facility beds or stations; relocations of nursing care
beds from State Psychiatric Hospitals to local communities pursuant to 10 NCAC 03R .6340; reallocation
of beds or services; Category A proposals submitted by Academic Medical Center Teaching Hospitals
designated prior to January 1, 1990; proposals submitted pursuant to 10 NCAC 03R .6332(c) by Academic
Medical Center Teaching Hospitals designated prior to January 1, 1990; acquisition of replacement
equipment that does not result in an increase in the inventory; and any other proposal not included in
Categories A through H and Categories J and K.

(j) Category J. Proposals for demonstration projects.

(k) Category K. Proposals for conversion of acute care hospitals to long-term acute care hospitals.

(15)(14) A service, facility, or equipment for which a need determination is identified in Items (1) through (13) of this Rule
shall have only one scheduled review date and one corresponding application filing deadline in the calendar year as
specified in these items, even though the following review schedule shows multiple review dates for the broad
category. Applications for certificates of need for new institutional health services not specified in Items (1) through
(13) of this Rule shall be reviewed pursuant to the following review schedule, with the exception that no reviews are
scheduled if the need determination is zero. Need determinations for additional dialysis stations pursuant to the
"county need" or "facility need" methodologies shall be reviewed in accordance with 10 NCAC 03R .6324 or 10
NCAC 03R .6325.

<table>
<thead>
<tr>
<th>CON Beginning Review Date</th>
<th>Review Categories for HSA I, II, III</th>
<th>Review Categories for HSA IV, V, VI</th>
</tr>
</thead>
<tbody>
<tr>
<td>January 1, 2001</td>
<td>D</td>
<td>D</td>
</tr>
<tr>
<td>February 1, 2001</td>
<td>A, E, G, I, J</td>
<td>J</td>
</tr>
<tr>
<td>March 1, 2001</td>
<td>--</td>
<td>A, E, G, H, I</td>
</tr>
<tr>
<td>April 1, 2001</td>
<td>B, F, H, I</td>
<td>--</td>
</tr>
<tr>
<td>May 1, 2001</td>
<td>--</td>
<td>B, F, I</td>
</tr>
<tr>
<td>June 1, 2001</td>
<td>A, C, I, K</td>
<td>K</td>
</tr>
<tr>
<td>July 1, 2001</td>
<td>--</td>
<td>A, C, H, I</td>
</tr>
<tr>
<td>August 1, 2001</td>
<td>B, E, H, I</td>
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</tr>
<tr>
<td>September 1, 2001</td>
<td>D</td>
<td>B, D, E, I</td>
</tr>
<tr>
<td>October 1, 2001</td>
<td>A, F, H, I</td>
<td>--</td>
</tr>
<tr>
<td>November 1, 2001</td>
<td>--</td>
<td>A, F, H, I</td>
</tr>
<tr>
<td>December 1, 2001</td>
<td>C, I</td>
<td>C, I</td>
</tr>
</tbody>
</table>

For purposes of Magnetic Resonance Imaging (MRI) scanners reviews only, Anson County in MRI Area 17 is
considered to be in HSA III and Caswell County in MRI Area 13 is considered to be in HSA IV.

(16)(15) In order to give the DHHS sufficient time to provide public notice of review and public notice of public hearings as
required by G.S. 131E-185, the deadline for filing certificate of need applications is 5:00 p.m. on the 15th day of the
month preceding the "CON Beginning Review Date." In instances when the 15th day of the month falls on a
weekend or holiday, the filing deadline is 5:00 p.m. on the next business day. The filing deadline is absolute and applications received after the deadline shall not be reviewed in that review period.

10 NCAC 03R .6308  AMBULATORY SURGICAL FACILITIES NEED DETERMINATION (REVIEW CATEGORY E)

It is determined that there is a need for one additional ambulatory surgical facility with two operating rooms in Ambulatory Surgery Service Area 24. It is determined that there is no need for additional Ambulatory Surgical Facilities in any other Ambulatory Surgical Facility Planning Area.

10 NCAC 42B .2701  DEFINITIONS

The following definitions shall apply throughout this Section:

1. "Accident" means an unexpected, unnatural or irregular event contributing to a resident's death and includes, but is not limited to, medication errors, falls, fractures, choking, elopement, exposure, poisoning, drowning, burns or thermal injury, electrocution, misuse of equipment, motor vehicle accidents, and natural disasters.

2. "Division" means the Division of Facility Services (DFS).

3. "Immediately" means at once, at or near the present time, without delay.

4. "Violence" means physical force exerted for the purpose of violating, damaging, abusing or injuring.

10 NCAC 42B .2702  SCOPE

For purposes of this Section, facilities licensed in accordance with G.S. 131D-2 shall report resident deaths to the Division of Facility Services.

10 NCAC 42B .2703  REPORTING REQUIREMENTS

(a) Upon learning of the death of a resident a facility shall file a report in accordance with G.S. 131D-34.1 and these Rules. A facility shall be deemed to have learned of a death when any facility staff obtains reliable information that the death occurred.

(b) A written notice containing the information listed under Paragraph (d) of this Rule shall be made immediately for a resident death occurring in an adult care home within seven days of the use of a physical restraint or physical hold on the resident or within 24 hours of the resident's transfer from the adult care home to a hospital, if the death occurred within seven days of physical restraint or physical hold of the resident.

(c) A written notice containing the information under Paragraph (d) of this Rule shall be made within three days of any death resulting from violence, accident, suicide or homicide.

(d) Written notice may be submitted in person or by telefacsimile or electronic mail. If the reporting facility does not have the capacity or capability to submit a written notice immediately, the information contained in the notice can be reported by telephone following the same time requirements under Subparagraphs (b) and (c) of this Rule until such time...
the written notice can be submitted. The notice shall include at least the following information:

1. **Reporting facility:** Name, address, county, license number (if applicable), Medicare/Medicaid provider number (if applicable), facility administrator and telephone number, name and title of person preparing report, first person to learn of death and first staff to receive report of death, and date and time report prepared;

2. **Resident information:** Name, Medicaid number (if applicable), date of birth, age, sex, race, primary admitting diagnoses, and date of most recent admission to an acute care hospital;

3. **Circumstances of death:** place and address where resident died, date and time death was discovered, physical location decedent was found, cause of death (if known), whether or not decedent was restrained at the time of death or within seven days of death and if so, a description of the type of restraint and its usage, and a description of events surrounding the death; and

4. **Other information:** list of other authorities such as law enforcement or the County Department of Social Services that have been notified, have investigated or are in the process of investigating the death or events related to the death.

(e) The facility shall submit a written report, using a form pursuant to G.S. 131D-34.1(e). The facility shall provide, fully and accurately, all information sought on the form. If the facility is unable to obtain any information sought on the form, or if any such information is not yet available, the facility shall so explain on the form.

(f) In addition, the facility shall:

1. Notify the Division of Facility Services immediately whenever it has reason to believe that information provided may be erroneous, misleading, or otherwise unreliable;

2. Submit to the Division of Facility Services immediately after it becomes available, any information required by this Rule that was previously unavailable; and

3. Provide, upon request by the Division of Facility Services, other information the facility obtains regarding the death, including, but not limited to, death certificates, autopsy reports, and reports by other authorities.

(g) With regard to any resident death under circumstances described in G.S. 130A-383, a facility shall notify the appropriate law enforcement authorities so the medical examiner of the county in which the body is found can be notified. Documentation of such notification shall be maintained by the facility and be made available for review by the Division upon request.

(h) In deaths not under the jurisdiction of the medical examiner, the facility shall notify the decedent's next-of-kin, or other individual authorized according to G.S. 130A-398, that an autopsy may be requested as designated in G.S. 130A-389.

**History Note:** Authority G.S. 131D-2; Temporary Adoption Eff. May 1, 2001.

### SUBCHAPTER 42C – LICENSING OF FAMILY CARE HOMES

#### SECTION .4000 – DEATH REPORTING REQUIREMENTS

**10 NCAC 42C .4002** **DEFINITIONS**

The following definitions shall apply throughout this Section:

1. "**Accident**" means an unexpected, unnatural or irregular event contributing to a resident’s death and includes, but is not limited to, medication errors, falls, fractures, choking, elopement, exposure, poisoning, drowning, burns or thermal injury, electrocution, misuse of equipment, motor vehicle accidents, and natural disasters.

2. "**Division**" means the Division of Facility Services (DFS).

3. "**Immediately**" means at once, at or near the present time, without delay.

4. "**Violence**" means physical force exerted for the purpose of violating, damaging, abusing or injuring.

**History Note:** Authority G.S. 131D-2; Temporary Adoption Eff. May 1, 2001.

**10 NCAC 42C .4003** **SCOPE**

For purposes of this Section, facilities licensed in accordance with G.S. 131D-2 shall report resident deaths to the Division of Facility Services.

**History Note:** Authority G.S. 131D-2; Temporary Adoption Eff. May 1, 2001.

**10 NCAC 42C .4004** **REPORTING REQUIREMENTS**

(a) Upon learning of the death of a resident a facility shall file a report in accordance with G.S. 131D-34.1 and these Rules. A facility shall be deemed to have learned of a death when any facility staff obtains reliable information that the death occurred.

(b) A written notice containing the information listed under Paragraph (d) of this Rule shall be made immediately for a resident death occurring in an adult care home within seven days of the use of a physical restraint or physical hold on the resident or within 24 hours of the resident’s transfer from the adult care home to a hospital, if the death occurred within seven days of physical restraint or physical hold of the resident.

(c) A written notice containing the information under Paragraph (d) of this Rule shall be made within three days of any death resulting from violence, accident, suicide or homicide.
TEMPORARY RULES

(d) Written notice may be submitted in person or by telefascimile or electronic mail. If the reporting facility does not have the capacity or capability to submit a written notice immediately, the information contained in the notice can be reported by telephone following the same time requirements under Subparagraphs (b) and (c) of this Rule until such time the written notice can be submitted. The notice shall include at least the following information:

(1) Reporting facility: Name, address, county, license number (if applicable), Medicare/Medicaid provider number (if applicable), facility administrator and telephone number, name and title of person preparing report, first person to learn of death and first staff to receive report of death, and date and time report prepared;

(2) Resident information: Name, Medicaid number (if applicable), date of birth, age, sex, race, primary admitting diagnoses, and date of most recent admission to an acute care hospital;

(3) Circumstances of death: place and address where resident died, date and time death was discovered, physical location decedent was found, cause of death (if known), whether or not decedent was restrained at the time of death or within seven days of death and if so, a description of the type of restraint and its usage, and a description of events surrounding the death; and

(4) Other information: list of other authorities such as law enforcement or the County Department of Social Services that have been notified, have investigated or are in the process of investigating the death or events related to the death.

(e) The facility shall submit a written report, using a form pursuant to G.S. 131D-34.1(e). The facility shall provide, fully and accurately, all information sought on the form. If the facility is unable to obtain any information sought on the form, or if any such information is not yet available, the facility shall so explain on the form.

(f) In addition, the facility shall:

(1) Notify the Division of Facility Services immediately whenever it has reason to believe that information provided may be erroneous, misleading, or otherwise unreliable;

(2) Submit to the Division of Facility Services, immediately after it becomes available, any information required by this Rule that was previously unavailable; and

(3) Provide, upon request by the Division of Facility Services, other information the facility obtains regarding the death, including, but not limited to, death certificates, autopsy reports, and reports by other authorities.

(g) With regard to any resident death under circumstances described in G.S. 130A-383, a facility shall notify the appropriate law enforcement authorities so the medical examiner of the county in which the body is found can be notified. Documentation of such notification shall be maintained by the facility and be made available for review by the Division upon request.

(h) In deaths not under the jurisdiction of the medical examiner, the facility shall notify the decedent's next-of-kin, or other individual authorized according to G.S. 130A-398, that an autopsy may be requested as designated in G.S. 130A-389.

SUBCHAPTER 42D – LICENSING OF HOMES FOR THE AGED AND INFIRM

SECTION .2300 – DEATH REPORTING REQUIREMENTS

10 NCAC 42D .2302 DEFINITIONS

The following definitions shall apply throughout this Section:

(1) "Accident" means an unexpected, unnatural or irregular event contributing to a resident's death and includes, but is not limited to, medication errors, falls, fractures, choking, elopement, exposure, poisoning, drowning, burns or thermal injury, electrocution, misuse of equipment, motor vehicle accidents, and natural disasters.

(2) "Division" means the Division of Facility Services (DFS).

(3) "Immediately" means at once, at or near the present time, without delay.

(4) "Violence" means physical force exerted for the purpose of violating, damaging, abusing or injuring.

SUBCHAPTER 42D – LICENSING OF HOMES FOR THE AGED AND INFIRM

SECTION .2300 – DEATH REPORTING REQUIREMENTS

10 NCAC 42D .2302 DEFINITIONS

The following definitions shall apply throughout this Section:

(1) "Accident" means an unexpected, unnatural or irregular event contributing to a resident's death and includes, but is not limited to, medication errors, falls, fractures, choking, elopement, exposure, poisoning, drowning, burns or thermal injury, electrocution, misuse of equipment, motor vehicle accidents, and natural disasters.

(2) "Division" means the Division of Facility Services (DFS).

(3) "Immediately" means at once, at or near the present time, without delay.

(4) "Violence" means physical force exerted for the purpose of violating, damaging, abusing or injuring.

History Note:  Authority G.S. 131D-2; Temporary Adoption Eff. May 1, 2001.

10 NCAC 42D .2303 SCOPE

For purposes of this Section, facilities licensed in accordance with G.S. 131D-2 shall report resident deaths to the Division of Facility Services.

History Note:  Authority G.S. 131D-2; Temporary Adoption Eff. May 1, 2001.

10 NCAC 42D .2304 REPORTING REQUIREMENTS

(a) Upon learning of the death of a resident a facility shall file a report in accordance with G.S. 131D-34.1 and these Rules. A facility shall be deemed to have learned of a death when any facility staff obtains reliable information that the death occurred.

(b) A written notice containing the information listed under Paragraph (d) of this Rule shall be made immediately for a resident death occurring in an adult care home within seven days of the use of a physical restraint or physical hold on the resident or within 24 hours of the resident's transfer from the adult care home to a hospital, if the death occurred within...
seven days of physical restraint or physical hold of the resident.
(c) A written notice containing the information under Paragraph (d) of this Rule shall be made within three days of any death resulting from violence, accident, suicide or homicide.
(d) Written notice may be submitted in person or by telefascimile or electronic mail. If the reporting facility does not have the capacity or capability to submit a written notice immediately, the information contained in the notice can be reported by telephone following the same time requirements under Subparagraphs (b) and (c) of this Rule until such time the written notice can be submitted. The notice shall include at least the following information:
  (1) Reporting facility: Name, address, county, Medicare/Medicaid provider number (if applicable), facility administrator and telephone number, name and title of person preparing report, first person to learn of death and first staff to receive report of death, and date and time report prepared;
  (2) Resident information: Name, Medicaid number (if applicable), date of birth, age, sex, race, primary admitting diagnoses, and date of most recent admission to an acute care hospital;
  (3) Circumstances of death: place and address where resident died, date and time death was discovered, physical location decedent was found, cause of death (if known), whether or not decedent was restrained at the time of death or within seven days of death and if so, a description of the type of restraint and its usage, and a description of events surrounding the death; and
  (4) Other information: list of other authorities such as law enforcement or the County Department of Social Services that have been notified, have investigated or are in the process of investigating the death or events related to the death.
(e) The facility shall submit a written report, using a form pursuant to G.S. 131D-34.1(e). The facility shall provide, fully and accurately, all information sought on the form. If the facility is unable to obtain any information sought on the form, or if any such information is not yet available, the facility shall so explain on the form.
(f) In addition, the facility shall:
  (1) Notify the Division of Facility Services immediately whenever it has reason to believe that information provided may be erroneous, misleading, or otherwise unreliable;
  (2) Submit to the Division of Facility Services, immediately after it becomes available, any information required by this Rule that was previously unavailable; and
  (3) Provide, upon request by the Division of Facility Services, other information the facility obtains regarding the death.
(g) With regard to any resident death under circumstances described in G.S. 130A-383, a facility shall notify the appropriate law enforcement authorities so the medical examiner of the county in which the body is found can be notified. Documentation of such notification shall be maintained by the facility and be made available for review by the Division upon request.
(h) In deaths not under the jurisdiction of the medical examiner, the facility shall notify the decedent's next-of-kin, or other individual authorized according to G.S. 130A-398, that an autopsy may be requested as designated in G.S. 130A-389.

History Note: Authority G.S. 131D-2; Temporary Adoption Eff. May 1, 2001.

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Rule-making Agency: Environmental Management Commission

Rule Citation: 15A NCAC 02S .0102-.0103; .0202; .0301-.0302; .0401

Effective Date: June 1, 2001

Findings Reviewed and Approved by: Beecher R. Gray

Authority for the rulemaking: G.S. 143-215.104D(b); 150B-21.2

Reason for Proposed Action: These Rules are needed to implement the Dry-Cleaning Solvent Cleanup Act (DSCA) of 1997 as amended by S.L. 2000-19 so that dry-cleaning sites in North Carolina that are contaminated by dry-cleaning solvent can be certified into the DSCA Program. Once certified into the DSCA program, the threats to human health and the environment posed by the environmental contamination will be assessed and corrective actions can be taken at these sites.

Comment Procedures: Please send all comments to Lisa Taber, Division of Waste Management, Superfund Section, 1646 Mail Service Center, Raleigh, NC 27699-1646.
following words and phrases shall have the following meanings:

(1) “Number of full time employees” is equivalent to the total hours worked by all persons employed by a company or corporation in the previous year divided by 40 hours per week.

(2) “Impervious” means a material that is specifically manufactured for the containment of dry-cleaning solvent.

(3) “Act” means the Dry-Cleaning Solvent Cleanup Act of 1997 and any amendments thereto.

(4) “Apparel and household fabrics” means apparel and fabrics that have been purchased at retail or have been purchased at wholesale for rental at retail.

(5) “Business” means a sole proprietorship, a partnership, a limited partnership, a limited liability company, a corporation or any other business entity.

(6) “Discovery Site” means the physical site or area where dry-cleaning solvent contamination has been discovered. A discovery site may or may not be the same property as the facility site.

(7) “Division” means the Division of Waste Management of the Department of Environment and Natural Resources.

(8) “Dry-Cleaning Business” means a business having engaged in dry-cleaning operations or the operation of a wholesale distribution facility at a facility site.

(9) “Environmental media” means soil, sediment, surface water, groundwater or other physical substance.

(10) “Facility site” means the physical location of a dry-cleaning facility, a wholesale distribution facility or an abandoned site.

(11) “Material impervious to dry-cleaning solvent” means a material that has been demonstrated by the manufacturer or a reputable testing organization to maintain its chemical and structural integrity in the presence of the applicable dry-cleaning solvent and prevent the movement of dry-cleaning solvent for a period of at least 72 hours.

(12) “Petitioner” means a potentially responsible party that submits a petition for certification of a facility site.

(13) “Person” means any and all natural persons, firms, partnerships, associations, public or private institutions, municipalities or political subdivisions, governmental agencies, or private or public corporations organized or existing under the laws of this State or any other state or country.

History Note: Authority G.S. 143-215.104D(b); 15B-21.2; Eff. August 1, 2000; Temporary Amendment Eff. June 1, 2001.

15A NCAC 02S.0103 CALCULATION OF FULL TIME EQUIVALENT EMPLOYMENT

(a) This Rule governs the calculation of the number of full-time equivalent employees employed by a person who owns a dry-cleaning facility. For the purposes of this Rule, the person that owns the dry-cleaning facility shall be referred to as the "facility owner." If the dry-cleaning facility is jointly owned by more than one person, the full-time equivalent employment associated with the dry-cleaning facility shall be the number of full-time equivalent employees employed in activities related to dry-cleaning by all persons with an ownership interest in the dry-cleaning facility.

(b) The number of full-time employees employed by a facility owner in activities related to dry-cleaning operations shall be the sum of the following:

(1) the number of salaried employees employed by the facility owner in activities related to dry-cleaning operations;

(2) the total number of hours worked in the previous calendar year by non-salaried employees employed by the facility owner in activities related to dry-cleaning operations divided by 2080; and

(3) the lesser of:

(A) the number of persons who hold ownership interests in the dry-cleaning facility, but are not included in Subparagraphs (1) or (2) of this Paragraph, and who perform activities related to dry-cleaning operations at a dry-cleaning facility in which the persons have ownership interests; or

(B) the total number of hours worked by such persons divided by 2080.

(c) If a facility owner was not engaged in the operation of dry-cleaning facilities during the entire calendar year for which full-time equivalent employment is being calculated, then the number in Subparagraph (b)(2) of this Rule shall be prorated according to the number of weeks, or partial weeks, during the previous calendar year that the facility owner was engaged in the operation of such dry-cleaning facilities.

(d) For the purposes of this Section, an employee shall be considered to be employed in activities related to dry-cleaning
operations if the employee's duties include any of the following activities:

(1) the provision of dry-cleaning or laundry services, including the collection, cleaning, pressing, altering, repair, packaging, handling, or delivery of items of apparel or household fabrics for which dry-cleaning or laundry services are provided;

(2) the supervision of employees involved in the provision of dry-cleaning or laundry services as described in Subparagraph (d)(1) of this Rule;

(3) the maintenance or operation of physical facilities used to provide dry-cleaning or laundry services as described in Subparagraph (d)(1) of this Rule; or

(3)(4) the management, including accounting, financial, human resource, or other support functions, of the business providing dry-cleaning or laundry services as described in Subparagraph (d)(1) of this Rule.

History Note: Authority G.S. 143-215.104D(b);
150B-21.2;

SECTION .0200 – MINIMUM MANAGEMENT PRACTICES

15A NCAC 02S .0202 REQUIRED MINIMUM MANAGEMENT PRACTICES

(a) Any potentially responsible party may petition for certification pursuant to the Dry Cleaning Solvent Cleanup Act of 1997 shall demonstrate at all times after this Rule becomes effective, compliance with Required Minimum Management Practice (b)(5) of this Rule.

(b) All currently operating dry-cleaning, or dry-cleaning facilities and wholesale distribution facilities wishing to petition for certification pursuant to the Dry Cleaning Solvent Cleanup Act of 1997 shall demonstrate, at all times after this Rule becomes effective, compliance with the following minimum management practices:

(1) At no time shall any dry-cleaning solvent, wastes containing dry-cleaning solvent, or water containing dry-cleaning solvent be discharged onto land or into waters of the State, sanitary sewers, storm drains, floor drains, septic systems, boilers, or cooling towers. All invoices generated as a result of disposal of all dry-cleaning solvent waste shall be made available for review by the Department. If a dry-cleaning facility uses devices such as atomizers, evaporators, carbon filters, or other equipment for the treatment of wastewater containing solvent, all records, including but not limited to, invoices for the purchase, maintenance, and service of such devices, shall be made available to the Department. Records shall be kept for a period of three years.

(2) Spill containment shall be constructed in areas installed and maintained under and around dry-cleaning machines, filters, dry-cleaning solvent pumps, stills, vapor adsorbers, solvent storage areas, and waste solvent storage areas by January 1, 2002. The spill containment area and shall be capable of preventing the release of the applicable liquid dry-cleaning solvent beyond the spill containment area for a period of at least 72 hours. All floor drains within or beneath the spill containment area shall be removed or permanently sealed with materials impervious to dry-cleaning solvents. Emergency adsorbent spill clean-up materials shall be on the premises. Facilities must maintain an emergency response plan that is in compliance with federal, state and local requirements.

All perchloroethylene dry-cleaning machines installed at a dry-cleaning facility after the effective date of this Rule shall meet air emissions that equal or exceed the standards that apply to a comparable dry-to-dry perchloroethylene dry-cleaning machine with an integrated refrigerated condenser. All perchloroethylene dry-cleaning facilities must be in compliance with the EPA Perchloroethylene Dry Cleaner NESHAP: 40CFR, Part 63, Subpart M to be eligible for certification.

(4) Facilities that use perchloroethylene shall use a closed container solvent transfer system by January 1, 2002.

(5) Within six months of the effective date of this Rule, no dry-cleaning facility shall use underground storage tanks for solvents or waste.

History Note: Authority G.S. 143-215.104D(b);
150B-21.2;
Eff. August 1, 2000;

SECTION .0300 - PETITIONS FOR CERTIFICATION

15A NCAC 02S .0301 FILING

(a) Any potentially responsible party may petition for certification of a facility site by filing a petition with the Division using forms provided by the Division. Petitions shall be verified by the petitioner, and shall include a laboratory analysis demonstrating the presence of dry-cleaning solvent in environmental media at the discovery site.
(b) Petition forms may be obtained from the Dry-Cleaning Solvent Cleanup Act Program of the Superfund Section of the Division, 401 Oberlin Road, Raleigh, North Carolina 27605.

History Note: Authority G.S. 143-215.104D(b); 150B-21.2; Temporary Adoption Eff. June 1, 2001.

15A NCAC 02S .0302 OTHER POTENTIALLY RESPONSIBLE PARTIES
(a) After receiving a petition, the Division may notify other potentially responsible parties that a petition has been filed.
(b) The Division may request from any potentially responsible party that has not petitioned for certification of the facility site additional information concerning the dry-cleaning business, the discovery site, or the facility site. The Division may refuse to enter into an assessment or remediation agreement with any potentially responsible party that:
1. fails to provide within 60 days any additional information requested by the Division that is in the possession or control of the party; or
2. fails or refuses to cooperate in the assessment or remediation of the facility site or the discovery site.

The time for responding to requests for additional information described in this Rule shall be measured from the date a request for information is received by the potentially responsible party from whom the information is requested.

History Note: Authority G.S. 143-215.104D(b); 150B-21.2; Temporary Adoption Eff. June 1, 2001.

SECTION .0400 – ASSESSMENT AGREEMENTS

15A NCAC 02S .0401 PRIORITIZATION ASSESSMENT
(a) Upon receipt of a petition for certification that meets the requirements of the Act and Section .0300 of this Subchapter, the Division may enter into an agreement with one or more potentially responsible parties that have petitioned for certification requiring such party or parties to provide a prioritization assessment of the dry-cleaning solvent contamination identified in the petition. A prioritization assessment agreement entered into pursuant to this Paragraph shall qualify the petitioners party thereto to the liability protections of the Act.
(b) An agreement made pursuant to Paragraph (a) of this Rule shall provide that costs associated with the prioritization assessment be paid by the petitioner or petitioners who are party to the agreement, provided that costs in excess of the petitioner's deductible and copay obligations under the Act shall be reimbursed from the Fund in accordance with the provisions of the Act.

History Note: Authority G.S. 143-215.104D(b); 150B-21.2; Temporary Adoption Eff. June 1, 2001.
15A NCAC 03J .0103  GILL NETS, SEINES, IDENTIFICATION, RESTRICTIONS

(a) It is unlawful to use a gill net with a mesh length less than 2 1/2 inches.

(b) The Fisheries Director may, by proclamation, limit or prohibit the use of gill nets or seines in coastal waters, or any portion thereof, or impose any or all of the following restrictions on the use of gill nets or seines:

1. Specify area.
2. Specify season.
3. Specify gill net mesh length.
4. Specify means/methods.
5. Specify net number and length.

(c) It is unlawful to use fixed or stationary gill nets in the Atlantic Ocean, drift gill nets in the Atlantic Ocean for recreational purposes, or any gill nets in internal waters unless nets are marked by attaching to them at each end two separate yellow buoys which shall be of solid foam or other solid buoyant material no less than five inches in diameter and no less than five inches in length. Gill nets which are not connected together at the top line shall be considered as individual nets, requiring two buoys at each end of each individual net. Gill nets connected together at the top line shall be considered as a continuous net requiring two buoys at each end of the continuous net. Any other marking buoys on gill nets used for recreational purposes shall be yellow except one additional buoy, any shade of hot pink in color, constructed as specified in Paragraph (c) of this Rule, shall be added at each end of each individual net. Any other marking buoys on gill nets used in commercial fishing operations shall be yellow except that one additional identification buoy of any color or any combination of colors, except any shade of hot pink, may be used at either or both ends. The owner shall always be identified on a buoy on each end either by using engraved buoys or by attaching engraved metal or plastic tags to the buoys. Such identification shall include owner's last name and initials and if a vessel is used, one of the following:

1. Owner's N.C. motor boat registration number, or
2. Owner's U.S. vessel documentation name.

(d) It is unlawful to use gill nets:

1. Within 200 yards of any pound net with lead and pound or heart in use;
2. From March 1 through October 31 in the Intracoastal Waterway within 150 yards of any railroad or highway bridge.

(e) It is unlawful to use gill nets within 100 feet either side of the center line of the Intracoastal Waterway Channel south of Quick Flasher No. 54 in Alligator River at the southern entrance to the Intracoastal Waterway to the South Carolina line, unless such net is used in accordance with the following conditions:

1. No more than two gill nets per boat may be used at any one time;
2. Any net used must be attended by the fisherman from a boat who shall at no time be more than 100 yards from either net; and
3. Any individual setting such nets shall remove them, when necessary, in sufficient time to permit unrestricted boat navigation.

(f) It is unlawful to use drift gill nets in violation of 15A NCAC 03J .0101(2) and Paragraph (e) of this Rule.

(g) It is unlawful to use unattended gill nets with a mesh length less than five inches in a commercial fishing operation in the following areas:

1. Pamlico River, west of a line beginning at a point on Mauls Point at 35° 26' 9.176' N - 76° 55.252' W; to a point on Ragged Point at 35° 27.5768' N - 76° 54.3612' W;
2. Within 200 yards of any shoreline in Pamlico River and its tributaries east of the line from Mauls Point at 35° 26' 9.176' N - 76° 55.252' W; to Ragged Point at 35° 27.5768' N - 76° 54.3612' W and west of a line beginning at a point on Pamlico Point at 35° 18.5906' N - 76° 28.9530' W; through Marker #1 to a point on Roos Point at 35° 22.3622' N - 76° 28.2032' W;
3. Pungo River, east of a line beginning at a point on Durants Point at 35° 30' 53.12' N - 76° 35.1594' W; to the northern side of the breakwater at 35° 31.7198' N - 76° 36.9195' W;
4. Within 200 yards of any shoreline in Pungo River and its tributaries west of the line from Durants Point at 35° 30' 53.12' N - 76° 35.1594' W; to the northern side of the breakwater at 35° 31.7198' N - 76° 35.1594' W, and west of a line beginning at a point on Pamlico Point at 35° 18.5906' N - 76° 28.9530' W; through Marker #1 to a point on Roos Point at 35° 22.3622' N - 76° 28.2032' W;
5. Neuse River and its tributaries northwest of the Highway 17 highrise bridge;
6. Trent River and its tributaries;
7. Within 200 yards of any shoreline in Neuse River and its tributaries east of a line from the Highway 17 highrise bridge and west of a line beginning at a point on Wilkinson Point at 34° 57.9116' N - 76° 48.2240' W; to a point on Cherry Point at 34° 56.3658' N - 76° 48.7110' W.

(h) It is unlawful to use unattended gill nets with a mesh length less than five inches in a commercial fishing operation from May 1 through October 31 in the following internal coastal and joint waters of the state south of a line beginning at a point on Roanoke Marshes Point at 35° 48.3693' N - 75° 43.7232' W; to a point on Eagle Nest Bay at 35° 44.1710' N - 75° 31.0520' W to the South Carolina State Line:

1. All primary nursery areas described in 15A NCAC 03R .0103, all permanent secondary nursery areas described in 15A NCAC 03R .0104, and no trawl areas described in 15A NCAC 03R .0106 (3),(4),(6), and (7);
2. In the area along the Outer Banks, beginning at a point on Core Banks at 34° 58.7853' N - 76° 09.8922' W; to a point on Wainwright Island at 34° 59.4664' N - 76° 12.4859' W; to a point at 35° 00.2666' N - 76° 12.2000' W; to a point near Beacon "HL" at 35°
TEMPORARY RULES

15A NCAC 03M .0010  MUTILATED FINFISH
It is unlawful to possess aboard a vessel or while engaged in fishing from the shore or a pier any species of finfish which is subject to a size or harvest restriction without having head and tail attached. Blueback herring and alewife shall be exempt from this Rule when used for bait provided that not more than two fish per boat or fishing operation may be cut for bait at any one time.

History Note:  Authority G.S. 113-134; 113-185; 113-221; 143B-289.52; 15A NCAC 03M .0101  MUTILATED FINFISH

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

(1) Specify areas.
(2) Specify seasons.
(3) Specify quantity for fish taken by commercial gear.
(4) Specify means/methods.
(5) Specify size for fish taken by commercial gear.

(b) It is unlawful to remove red drum from any type of net with the aid of any boat hook, gaff, spear, gig, or similar device.

(c) It is unlawful to possess red drum less than 18 inches total length or greater than 27 inches total length.

(d) It is unlawful to possess more than one red drum per person per day taken by hook-and-line or for recreational purposes.

(e) It is unlawful to possess more than 100 pounds of red drum per day taken in a commercial fishing operation, regardless of the number of individuals or vessels involved.

(f) The annual commercial harvest limit (September through August 31) for red drum is 250,000 pounds. If the harvest limit is projected to be taken, the Fisheries Director shall, by proclamation, prohibit possession of red drum taken in a commercial fishing operation.

History Note:  Authority G.S. 113-134; 113-182; 113-221; 143B-289.52; Eff. January 1, 1991;
This Section contains the agenda for the next meeting of the Rules Review Commission on Wednesday, May 17, 2001, 10:00 a.m. at 1307 Glenwood Avenue, Assembly Room, Raleigh, NC. Anyone wishing to submit written comment on any rule before the Commission should submit those comments to the RRC staff, the agency, and the individual Commissioners by Tuesday, May 11, 2001 at 5:00 p.m. Specific instructions and addresses may be obtained from the Rules Review Commission at 919-733-2721. Anyone wishing to address the Commission should notify the RRC staff and the agency at least 24 hours prior to the meeting.

RULES REVIEW COMMISSION MEMBERS

Appointed by Senate
Paul Powell - Chairman
Robert Saunders
Laura Devan
Jim Funderburke
David Twiddy

Appointed by House
John Arrowood - 1st Vice Chairman
Jennie J. Hayman 2nd Vice Chairman
Walter Futch
Jeffrey P. Gray
George Robinson

RULES REVIEW COMMISSION MEETING DATES

May 17, 2001       June 14, 2001
July 19, 2001    August 16, 2001

Log of Filings (Log #175)
March 21, 2001 through April 20, 2001

DHHS
Respite Care 10 NCAC 42B .2407 Adopt
Respite Care 10 NCAC 42C .2406 Adopt
Respite Care 10 NCAC 42D .1832 Adopt

DENR/MARINE FISHERIES COMMISSION
Snapper-Grouper 15 NCAC 03M .0506 Amend

DENR/SOIL AND WATER CONSERVATION COMMISSION
Objectives 15 NCAC 06G .0101 Adopt
Eligibility 15 NCAC 06G .0102 Adopt
Conservation Plan 15 NCAC 06G .0103 Adopt
Approving State Agreements 15 NCAC 06G .0104 Adopt
Payment 15 NCAC 06G .0105 Adopt
Dispute Resolution 15 NCAC 06G .0106 Adopt

DENR/WILDLIFE RESOURCES COMMISSION
Deer (White-Tailed) 15 NCAC 10B .0203 Amend
Quail 15 NCAC 10B .0208 Amend
Wild Turkey (Breasted Turkeys Only) 15 NCAC 10B .0209 Amend
Public Mountai Trout Waters 15 NCAC 10C .0205 Amend
Possession of Certain Fishes 15 NCAC 10C .0211 Amend
Open Seasons: Creel and Size Limits 15 NCAC 10C .0305 Amend
Manner of Taking Nongame Fishes: Purchase & Sale 15 NCAC 10C .0401 Amend
Taking Nongame Fishes for Bait 15 NCAC 10C .0402 Amend
Taking Nongame Fishes for Bait 15 NCAC 10C .0404 Amend
Permitted Specials Devices & Open Seasons 15 NCAC 10C .0407 Amend
Hunting on Gamelands 15 NCAC 10D .0103 Amend
Fishing on Gamelands 15 NCAC 10D .0104 Amend
McDowell County 15 NCAC 10F .0339 Amend
General Requirements 15 NCAC 10H .0301 Amend
Game Bird Propagation 15 NCAC 10H .0901 Amend
Special Concern Species Listed 15 NCAC 10L .0105 Amend

TRANSPORTATION, DEPARTMENT OF/DIVISION OF HIGHWAYS
Permits-Issuance and Fees 19 NCAC 02D .0602 Amend

STATE BOARDS/EXAMINERS OF ELECTRICAL CONTRACTORS
Fees 21 NCAC 18B .0209 Amend
AGENDA
RULES REVIEW COMMISSION
May 17, 2001

Call to Order and Opening Remarks

Review of minutes of last meeting

Follow Up Matters

(A) Department of Agriculture Structural Pest Control Committee– 2 NCAC 34 .0502: Objection on 12/21/00 (DeLuca)
(B) DHHS/Division of Medical Assistance - 10 NCAC 26H .0506: Objection on 04/19/01 (DeLuca)
(C) DHHS/Social Services Commission - 10 NCAC 41S All Rules: Objected on 04/19/01 (DeLuca)
(D) DHHS/Social Services Commission – 10 NCAC 41T .0106; .0201: Objected on 04/19/01 (DeLuca)
(E) NC Alarm Systems Licensing Board – 12 NCAC 11 .0502: Objection on 02/28/01 (DeLuca)
(F) DENR/Environmental Management Commission – 15A NCAC 2E .0502: Objection on 02/28/01 (Bryan)
(G) Commission for Health Services – 15A NCAC 18A .3307; .3313; .3319; .3323; .3324; .3327; .3330; .3331; .3334: Objected on 04/19/01 (Bryan)
(H) State Board of Education – 16 NCAC 6E .0301: Objection on 04/19/01 (Bryan)
(I) Department of Transportation – 19A NCAC 2D .0601: Objection on 02/28/01 (Bryan)
(J) State Board of Community Colleges – 23 NCAC 2C .0308: Objection on 04/19/01 (Bryan)
(K) State Board of Community Colleges – 23 NCAC 2D .0202: Objection on 04/19/01 (Bryan)

Review of rules (Log Report #175)

V. Commission Business

VI. Next meeting: Thursday, June 21, 2001
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  
A.B. (Butch) Elkins

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