

NORTH CAROLINA

IN THIS ISSUE



REGISTER

Volume 16, Issue 11
Pages 950 - 1059

December 3, 2001

This issue contains documents officially filed through November 7, 2001.

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

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

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NORTH CAROLINA ADMINISTRATIVE CODE CLASSIFICATION SYSTEM

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

TITLE/MAJOR DIVISIONS OF THE NORTH CAROLINA ADMINISTRATIVE CODE

TITLE	DEPARTMENT	LICENSING BOARDS	CHAPTER
1	Administration	Acupuncture	1
2	Agriculture	Architecture	2
3	Auditor	Athletic Trainer Examiners	3
4	Commerce	Auctioneers	4
5	Correction	Barber Examiners	6
6	Council of State	Certified Public Accountant Examiners	8
7	Cultural Resources	Chiropractic Examiners	10
8	Elections	Employee Assistance Professionals	11
9	Governor	General Contractors	12
10	Health and Human Services	Cosmetic Art Examiners	14
11	Insurance	Dental Examiners	16
12	Justice	Dietetics/Nutrition	17
13	Labor	Electrical Contractors	18
14A	Crime Control & Public Safety	Electrolysis	19
15A	Environment and Natural Resources	Foresters	20
16	Public Education	Geologists	21
17	Revenue	Hearing Aid Dealers and Fitters	22
18	Secretary of State	Landscape Architects	26
19A	Transportation	Landscape Contractors	28
20	Treasurer	Massage & Bodywork Therapy	30
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Note: Title 21 contains the chapters of the various occupational licensing boards.

NORTH CAROLINA REGISTER
 Publication Schedule for July 2000 – June 2001

Filing Deadlines			Notice of Rule-Making Proceedings	Notice of Text							Temporary Rule
volume & issue number	issue date	last day for filing	earliest register issue for publication of text	earliest date for public hearing	non-substantial economic impact			substantial economic impact			270 th day from issue date
					end of required comment period	deadline to submit to RRC for review at next meeting	first legislative day of the next regular session	end of required comment period	deadline to submit to RRC for review at next meeting	first legislative day of the next regular session	
15:13	01/02/01	12/07/00	03/15/01	01/17/01	02/01/01	02/20/01	05/00/02	03/05/01	03/20/01	05/00/02	09/29/01
15:14	01/16/01	12/20/00	04/02/01	01/31/01	02/15/01	02/20/01	05/00/02	03/19/01	03/20/01	05/00/02	10/13/01
15:15	02/01/01	01/10/01	04/02/01	02/16/01	03/05/01	03/20/01	05/00/02	04/02/01	04/20/01	05/00/02	10/29/01
15:16	02/15/01	01/25/01	05/01/01	03/02/01	03/19/01	03/20/01	05/00/02	04/16/01	04/20/01	05/00/02	11/12/01
15:17	03/01/01	02/08/01	05/01/01	03/16/01	04/02/01	04/20/01	05/00/02	04/30/01	05/21/01	05/00/02	11/26/01
15:18	03/15/01	02/22/01	05/15/01	03/30/01	04/16/01	04/20/01	05/00/02	05/14/01	05/21/01	05/00/02	12/10/01
15:19	04/02/01	03/12/01	06/01/01	04/17/01	05/02/01	05/21/01	05/00/02	06/01/01	06/20/01	05/00/02	12/28/01
15:20	04/16/01	03/26/01	06/15/01	05/01/01	05/16/01	05/21/01	05/00/02	06/15/01	06/20/01	05/00/02	01/11/02
15:21	05/01/01	04/10/01	07/02/01	05/16/01	05/31/01	06/20/01	05/00/02	07/02/01	07/20/01	05/00/02	01/26/02
15:22	05/15/01	04/24/01	07/16/01	05/30/01	06/14/01	06/20/01	05/00/02	07/16/01	07/20/01	05/00/02	02/09/02
15:23	06/01/01	05/11/01	08/01/01	06/18/01	07/02/01	07/20/01	05/00/02	07/31/01	08/20/01	05/00/02	02/26/02
15:24	06/15/01	05/25/01	08/15/01	07/02/01	07/16/01	07/20/01	05/00/02	08/14/01	08/20/01	05/00/02	03/12/02
16:01	07/02/01	06/11/01	09/04/01	07/17/01	08/01/01	08/20/01	05/00/02	08/31/01	09/20/01	05/00/02	03/29/02
16:02	07/16/01	06/22/01	09/17/01	07/31/01	08/15/01	08/20/01	05/00/02	09/14/01	09/20/01	05/00/02	04/12/02
16:03	08/01/01	07/11/01	10/01/01	08/16/01	08/31/01	09/20/01	05/00/02	10/01/01	10/22/01	05/00/02	04/28/02
16:04	08/15/01	07/25/01	10/15/01	08/30/01	09/14/01	09/20/01	05/00/02	10/15/01	10/22/01	05/00/02	05/12/02
16:05	09/04/01	08/13/01	11/15/01	09/19/01	10/04/01	10/22/01	05/00/02	11/05/01	11/20/01	05/00/02	06/01/02
16:06	09/17/01	08/24/01	12/03/01	10/02/01	10/17/01	10/22/01	05/00/02	11/16/01	11/20/01	05/00/02	06/14/02
16:07	10/01/01	09/10/01	12/03/01	10/16/01	10/31/01	11/20/01	05/00/02	11/30/01	12/20/01	05/00/02	06/28/02
16:08	10/15/01	09/24/01	12/17/01	10/30/01	11/14/01	11/20/01	05/00/02	12/14/01	12/20/01	05/00/02	07/12/02
16:09	11/01/01	10/11/01	01/02/02	11/16/01	12/03/01	12/20/01	05/00/02	12/31/01	01/21/02	05/00/02	07/29/02
16:10	11/15/01	10/24/01	01/15/02	11/30/01	12/17/01	12/20/01	05/00/02	01/14/02	01/21/02	05/00/02	08/12/02
16:11	12/03/01	11/07/01	02/01/02	12/18/01	01/02/02	01/22/02	05/00/02	02/01/02	02/20/02	05/00/02	08/30/02
16:12	12/17/01	11/26/01	02/15/02	01/02/02	01/16/02	01/22/02	05/00/02	02/15/02	02/20/02	05/00/02	09/13/02

EXPLANATION OF THE PUBLICATION SCHEDULE

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

GENERAL

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

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

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

FILING DEADLINES

ISSUE DATE: The Register is published on the first and 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 for at least 30 days after the text is published or until the date of any public hearings held on the proposed rule, whichever is longer.

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

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

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

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

U.S. Department of Justice

Civil Rights Division

JDR:DHH:NT:nj:jdh
DJ 166-012-3
2001-1872

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

July 17, 2001

Michael Crowell, Esq.
Tharrington Smith
P.O. Box 1151
Raleigh, NC 27602-1151

Dear Mr. Crowell:

This refers to the 2001 redistricting plan for the Town of Ahoskie in Hertford County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submission on July 3, 2001.

The Attorney General does not interpose any objection to the specified change. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the change. In addition, as authorized by Section 5, we reserve the right to reexamine this submission if additional information that would otherwise require an objection comes to our attention during the remainder of the sixty-day review period. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41 and 51.43).

Future submissions under Section 5 for delivery by the United States Postal Service should be addressed as follows: Chief, Voting Section, Civil Rights Division, Department of Justice, P.O. Box 66128, Washington, D.C. 20035-6128. Submissions for delivery by commercial express service companies should be addressed as follows: Chief, Voting Section, Civil Rights Division, Department of Justice, 1800 G Street, N.W., Room 7254, Washington, D.C. 20096. In either case, the envelope and first page should be marked: Submission under Section 5 of the Voting Rights Act.

Sincerely,

Joseph D. Rich
Acting Chief
Voting Section

U.S. Department of Justice

Civil Rights Division

JDR:MSR:TGL:par
DJ 166-012-3
2001-1802
2001-2172

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

August 14, 2001

Michael Crowell, Esq.
Tharrington Smith
P.O. Box 1151
Raleigh, NC 27602-1151

Dear Mr. Crowell:

This refers to the 2001 redistricting plan for the city council, and the delay of the 2001 general election for the city of Laurinburg in Scotland County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42, U.S.C. 1973c. We received your submissions on June 26 and July 27, 2001.

The Attorney General does not interpose any objection to the specified change. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the change. In addition, as authorized by Section 5, we reserve the right to reexamine this submission if additional information that would otherwise require an objection comes to our attention during the remainder of the sixty-day review period. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41 and 51.43).

Sincerely,

Joseph D. Rich
Acting Chief
Voting Section

U.S. Department of Justice

Civil Rights Division

JDR:MSR:SMC:par
DJ 166-012-3
2001-2171

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

August 23, 2001

Michael Crowell, Esq.
Tharrington Smith
P.O. Box 1151
Raleigh, NC 27602-1151

Dear Mr. Crowell:

This refers to the postponement of the November 2001 general election until May 2002 for the City of High Point in Guilford County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submission on July 27, 2001.

The Attorney General does not interpose any objection to the specified change. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the change. In addition, as authorized by Section 5, we reserve the right to reexamine this submission if additional information that would otherwise require an objection comes to our attention during the remainder of the sixty-day review period. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41 and 51.43).

Sincerely,

Joseph D. Rich
Acting Chief
Voting Section

U.S. Department of Justice

Civil Rights Division

JDR:DHH:ALP:nj
DJ 166-012-3
2001-2161

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

September 17, 2001

Michael Crowell, Esq.
Tharrington Smith
P.O. Box 1151
Raleigh, NC 27602-1151

Dear Mr. Crowell:

This refers to the postponement of the November 2001 general election to May 7, 2002 for the City of Jacksonville in Onslow County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submission on July 27, 2001.

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

Sincerely,

Joseph D. Rich
Acting Chief
Voting Section

U.S. Department of Justice

Civil Rights Division

JDR:DHH:TAR:nj
DJ 166-012-3
2001-2170

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

September 18, 2001

Michael Crowell, Esq.
Tharrington Smith
P.O. Box 1151
Raleigh, NC 27602-1151

Dear Mr. Crowell:

This refers to the postponement of the November 2001 general election until May 2002 for the Town of Tarboro in Edgecombe County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submission on July 27, 2001.

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

Sincerely,

Joseph D. Rich
Acting Chief
Voting Section

U.S. Department of Justice

Civil Rights Division

JDR:JBG:SLI:par
DJ 166-012-3
2001-2173

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

September 20, 2001

Michael Crowell, Esq.
Tharrington Smith
P.O. Box 1151
Raleigh, NC 27602-1151

Dear Mr. Crowell:

This refers to the postponement of the November 2001 general election until May 2002 for the Town of Enfield in Halifax County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submission on July 27, 2001.

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

Sincerely,

Joseph D. Rich
Acting Chief
Voting Section

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 11 – DEPARTMENT OF INSURANCE

CHAPTER 10 – PROPERTY AND CASUALTY DIVISION

Notice of Rule-making Proceedings is hereby given by NC Department of Insurance 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: 11 NCAC 10 .1102, .1113-.1114, .1203, .1206, .1209. Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: 58-2-40; 58-3-150; 58-36-15; 58-36-30; 58-36-55; 58-36-65; 58-36-70; 58-36-100; 58-40-30; 58-40-40; 58-41-50; 58-45-35; 58-45-45; 58-46-15

Statement of the Subject Matter: Rate and form fillings

Reason for Proposed Action: Rules need to be amended in order to be NAIC compliant.

Comment Procedures: Written comments may be sent to Charles Swindell, NC Department of Insurance, Property & Casualty, P.O. Box 26387, Raleigh, NC 27611.

Statement of the Subject Matter: Rules for teaching cosmetology in an approved beauty school and imposing civil penalties

Reason for Proposed Action: To update the curriculum for all schools and salons

Comment Procedures: Written comments concerning this rule-making action must be submitted to Dee Williams, Rule-Making Coordinator, NC State Board of Cosmetic Art Examiners, 1201-110 Front St., Raleigh, NC 27609.

CHAPTER 56 – BOARD OF PROFESSIONAL ENGINEERS AND PROFESSIONAL LAND SURVEYORS

Notice of Rule-making Proceedings is hereby given by NC Board of Examiners for Engineers and Surveyors 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: 21 NCAC 56. Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 89C-10(a)

Statement of the Subject Matter: Board rules relating to the licensing and practice of Professional Engineers and Land Surveyors

Reason for Proposed Action: To allow for digital signatures on electronically transmitted documents; to provide for additional statements to be used when issuing documents; to require notification of change in resident professional; to incorporate standards for topographic surveys to accommodate additional technologies; to increase the annual license renewal fee; and to make language changes in 56 .0501(a)(1), .0701(e)(1) & (f)(3), and .1713(d) for clarification.

Comment Procedures: Written comments may be submitted to David S. Tuttle, NC Board of Examiners for Engineers and Surveyors, 310 W. Millbrook Rd., Raleigh, NC 27609.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS

CHAPTER 14 – BOARD OF COSMETIC ART EXAMINERS

Notice of Rule-making Proceedings is hereby given by NC State Board of Cosmetic Art Examiners 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: 21 NCAC 14B .0603; 14G .0103; 14J .0208; 14K .0106; 14N .0103; 14P .0105-.0106, .0108, .0116; 14Q. Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 88B-4

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 02- DEPARTMENT OF AGRICULTURE

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Pesticide Board intends to amend the rules cited as 02 NCAC 09L .1102-.1103, .1108, .1110, and repeal the rules cited as 02 NCAC 09L .1101, .1106, .1109. Notice of Rule-making Proceedings was published in the Register on February 1, 2001.

Proposed Effective Date: October 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 rules by submitting a request in writing no later than December 18, 2001 to James W. Burnette, Jr., Secretary, North Carolina Pesticide Board, c/o Food and Drug Protection Division, Pesticide Section, North Carolina Department of Agriculture and Consumer Services, PO Box 27647, Raleigh, NC 27611.

Reason for Proposed Action: The Pesticide Board initiated rule-making proceedings as a result of recommendations received from its Pesticide Advisory Committee. The proposed changes would require applicants for initial certification as private pesticide applicators to pass an examination and increase the requirements for recertification of private pesticide applicators to include two additional continuing certification credit hours in order to improve knowledge and skills of pesticide applicators.

Comment Procedures: Written comments may be submitted no later than January 2, 2002 to James W. Burnette, Jr., Secretary, North Carolina Pesticide Board, c/o Food and Drug Protection Division, Pesticide Section, North Carolina Department of Agriculture and Consumer Services, PO Box 27647, Raleigh, NC 27611.

Fiscal Impact

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

CHAPTER 09 – FOOD AND DRUG PROTECTION DIVISION

SUBCHAPTER 09L – PESTICIDE SECTION

SECTION .1100 - PRIVATE PESTICIDE APPLICATOR CERTIFICATION

02 NCAC 09L .1101 CERTIFICATION

Any individual as defined under the definition of private pesticide applicator in Rule .1102 of this Section and who is not

a licensed pesticide applicator as defined in G.S. 143-460(29) or a certified applicator as defined in G.S. 106-65.24(4) must be certified through completion of one of the certification options in Rule .1103 of this Section.

Authority G.S. 143-440.

02 NCAC 09L .1102 DEFINITIONS

(a) Certified applicator--any individual who is certified to use or supervise the use of any restricted use pesticide.

(b) Private pesticide applicator--a person who uses or supervises the use of any restricted use pesticide under the following conditions:

- (1) for the purpose of producing any agricultural commodity on property owned or rented by him or his employer, or
(2) if applied without compensation other than the trading of personal services between producers of agricultural commodities on the property of another person.

(c) Private pesticide applicator certification standards review--a comprehensive training session designed to advance a private pesticide applicator's practical knowledge in areas such as the pest problems and pest control practices associated with agricultural operations; proper storage, use, handling, and disposal of pesticides and their containers; labels and labeling information; local environmental situations that must be considered during application to avoid contamination; recognition of poisoning symptoms and procedures to follow in case of a pesticide accident; protective clothing, equipment, and other appropriate worker protection standards; appropriate federal and state pesticide laws and regulations and the applicator's related legal responsibility; current agricultural production-related pesticide technology; sources of advice and guidance necessary for the safe and proper use of each pesticide related to his/her certification; and other areas as deemed appropriate and necessary by the North Carolina Pesticide Board. These training sessions will be taught by extension Cooperative Extension Service pesticide training agents or other individuals approved by the Board.

(d) Continuing certification credit--one hour of continuing certification training. Continuing certification training must be approved by the Board. Such training may be offered during grower meetings, seminars, short courses, or other board-approved Board-approved presentations taught by extension Cooperative Extension Service pesticide training agents, or other privately or publicly sponsored training organizations. Private applicators may also earn continuing certification credits by attending approved training sessions for which credit has been assigned in the following commercial categories:

- (1) aquatic;
(2) agricultural pest - animal;
(3) agricultural pest - plant;

- (4) ornamentals and turf;
- (5) forest; and
- (6) seed treatment,

as defined in 02 NCAC 09L .0505(1)(a) through (1)(h).

Authority G.S. 143-440.

02 NCAC 09L .1103 CERTIFICATION EXAMINATION

~~(a) Classroom training consisting of instruction approved by the Board on material such as contained in the USDA-EPA private applicator manual entitled "Apply Pesticides Correctly" and supplemental slide series with audio support, plus active participation in a question answer session. These training sessions will be taught by extension pesticide training agents or other individuals approved by the Board. Such training will involve three or more hours of classroom training.~~

~~(b) Classroom training for participants with reading difficulties may be available in the form of a specially designed training program approved by the Board incorporating the information offered in (a) of this Rule. Emphasis will be placed on the importance of the participant having someone available who can relay to him all label information. These training sessions will be taught by extension pesticide training agents or other individuals approved by the Board. Such training will involve three or more hours of classroom training.~~

~~(c) Programmed instruction utilizing the EPA or equivalent type of workbook approved by the Board which relates small amounts of information to the participant after which trainee would answer a written question(s). Upon completion of the programmed instruction booklet, the participant must turn in the manual which will be randomly reviewed for completeness.~~

~~(d) Curriculum for high school students may be available in the form of classroom instruction utilizing material developed by a private firm under an EPA grant and approved by the Board. The agricultural education section of the State Department of Public Instruction has worked with firms in developing the material. Curriculums such as this may be taught by the vocational agriculture teachers and other groups approved by the Board. Qualified students passing such courses will be certified.~~

~~(e) A written examination may be taken in lieu of the other options (a) to (d) of this Rule. Questions for the examination will be taken from the training material used under other options. If the participant scores less than 70 on the examination, he must participate in one of the other options.~~

Beginning on October 1, 2002, an applicant for an initial private pesticide applicator's certification must demonstrate by written examination his/her knowledge of pesticides, their usefulness and their hazards; his/her competence to act as a private pesticide applicator; and his/her knowledge of the laws and rules governing the use and application of pesticides by private pesticide applicators. Passing grade shall be 70 percent or more.

Authority G.S. 143-440.

02 NCAC 09L .1106 RECERTIFICATION

~~(a) Private pesticide applicators may be required to be recertified through attendance at training sessions or other options approved by the Pesticide Board and carried out by extension pesticide training agents, vocational agriculture~~

~~pesticide training personnel or other groups approved by the Board when determined necessary in the following instances:~~

- ~~(1) to ensure that certified applicators continue to meet the requirements of changing technology and to ensure a continuing level of competency and ability to use pesticides safely and properly, or~~
- ~~(2) when it is determined through a hearing as provided by the pesticide law that a private pesticide applicator is guilty of violating the pesticide law or regulations of the Board.~~

~~(b) Updating information on pesticide usage will be provided through the extension service, vocational agriculture education personnel, N.C. Department of Agriculture, and other groups using mass media, direct mail, and group meetings to ensure adequate continued competency.~~

Authority G.S. 143-440.

02 NCAC 09L .1108 TERM OF CERTIFICATION; RECERTIFICATION

~~(a) The term of certification shall be for a period of three years, except as stated in Rule .1110(a) of this Section. years.~~

~~(b) In no event will the certification of a private pesticide applicator be continued for more than three years unless the individual has completed Continuing Certification requirements in Rule .1109 of this Section.~~

(b) In order to be recertified as a private pesticide applicator without a written examination, a person must complete two hours of private pesticide applicator certification standards review, plus two continuing certification credit hours, as defined in 02 NCAC 09L .1102(d).

Authority G.S. 143-440.

02 NCAC 09L .1109 CONTINUING CERTIFICATION

~~Certified private pesticide applicators shall be required to complete two continuing certification credit hours of private pesticide applicator certification standards review.~~

Authority G.S. 143-440.

02 NCAC 09L .1110 RECERTIFICATION BY EXAMINATION

~~(a) For certifications issued after June 30, 1987, the certification period shall expire on June 30th of the third year after issuance. For certifications issued prior to June 30, 1987, the department shall establish a system of staggered expiration dates so that approximately one-third of the certifications shall expire on June 30, 1988, one-third on June 30, 1989, and one-third on June 30, 1990.~~

(b)(a) A certified private pesticide applicator who has not completed Continuing Certification the continuing certification requirements in Rule .1109 of this Section prior to 02 NCAC 09L .1108 on or before September 30th 30 of the year of certification expiration shall be required to must pass a comprehensive examination administered by the North Carolina Department of Agriculture personnel, and Consumer Services, in order to renew his/her certification.

(e)(b) No individual will be allowed to carry over any continuing certification credits from one recertification period to another.

Authority G.S. 143-440.

TITLE 10 – DEPARTMENT OF HEALTH AND HUMAN RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Division of Facility Services intends to amend the rules cited as 10 NCAC 03R .2113-.2116, .2118-.2119. Notice of Rule-making Proceedings was published in the Register on August 1, 2001.

Proposed Effective Date: May 1, 2002

Public Hearing:

Date: December 18, 2001

Time: 10:00 a.m.

Location: Room 113, Council Building, NC Division of Facility Services, 701 Barbour Drive, Dorothea Dix Campus, Raleigh, NC

Reason for Proposed Action: S.L. 2001-234 amends the existing Certificate of Need (CON) law by bringing all operating rooms under the CON process. Prior to this legislation, only Ambulatory Surgical Facilities were subject to CON review.

Comment Procedures: Written comments will be accepted through January 2, 2002. These comments should be directed to Mark Benton, Rule-making Coordinator, Division of Facility Services, 2701 Mail Service Center, Raleigh, NC 27699-2701.

Fiscal Impact

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

CHAPTER 03 – FACILITY SERVICES

SUBCHAPTER 03R – CERTIFICATE OF NEED REGULATIONS

SECTION .2100 - CRITERIA AND STANDARDS FOR AMBULATORY SURGICAL SERVICES AND OPERATING ROOMS

10 NCAC 03R .2113 DEFINITIONS

The following definitions shall apply to all rules in this Section:

- (1) "Ambulatory surgical case" means an individual who receives one or more ambulatory surgical procedures in an ambulatory surgical-operating room during a single operative encounter.
- (2) "Ambulatory surgical service area" means a single or multi-county area as used in the development of the ambulatory surgical

- (3) "Ambulatory surgical services" means those surgical services provided to patients as part of an ambulatory surgical program within a licensed ambulatory surgical facility or a general acute care hospital licensed under G.S. 131E, Article 5, Part A.
- (4) "Ambulatory surgical facility" means a facility as defined in G.S. 131E-176(1a).
- (5) "~~Ambulatory surgical operating~~ Operating room" means ~~a dedicated or shared operating room in a licensed ambulatory surgical facility, or a general acute care hospital licensed under G.S. 131E, Article 5, Part A, that is fully equipped to perform surgical procedures and is constructed to meet the specifications and standards, including fire and life safety code requirements, appropriate to the type of facility as utilized by the Construction Section of the Division of Facility Services. Ambulatory surgical operating rooms exclude operating rooms dedicated for the performance of inpatient surgical procedures, cast rooms, procedures rooms that do not meet operating room specifications, suture rooms, YAG laser rooms, and cystoscopy and endoscopy procedure rooms that do not meet the specifications of an operating room. an inpatient operating room, an outpatient or ambulatory surgical operating room, a shared operating room, or an endoscopy procedure room in a licensed health service facility.~~
- (6) "Ambulatory surgical program" means a program as defined in G.S. 131E-176(1b).
- (7) "Ambulatory surgical procedure" means a ~~surgical~~ procedure performed in ~~a surgical~~ an operating room which requires local, regional or general anesthesia and a period of post-operative observation of less than 24 hours. ~~Ambulatory surgical procedures exclude those procedures which are generally performed more than 50 percent of the time in a physician's office.~~
- (8) "Existing ~~ambulatory surgical~~ operating rooms" means those ~~ambulatory surgical~~ operating rooms in ambulatory surgical facilities and hospitals which were reported in the License Application for Ambulatory Surgical Facilities and Programs and in Part III of Hospital Licensure Renewal Application Form submitted to the Licensure Section of the Division of Facility Services and which were licensed and certified prior to the beginning of the review period.
- (9) "Approved ~~ambulatory surgical~~ operating rooms" means those ~~ambulatory surgical~~ operating rooms that were approved for a certificate of need by the Certificate of Need Section prior to the date on which the

- applicant's proposed project was submitted to the Agency but that have not been licensed and certified. ~~The term also means those operating rooms which the Certificate of Need Section determined were not subject to certificate of need review and which were under construction prior to the date the applicant's proposal was submitted to the Agency.~~
- (10) "Dedicated ambulatory surgical operating room" means an ~~ambulatory surgical~~ operating room used solely for the performance of ambulatory surgical procedures.
 - (11) "Multispecialty ambulatory surgical program" means a program as defined in G.S. 131E-176(15a).
 - (12) "Shared ~~surgical~~ operating room" means an ~~ambulatory surgical~~ operating room that is used for the performance of both ambulatory and inpatient surgical procedures.
 - (13) "Specialty area" means an area of medical practice in which there is an approved medical specialty certificate issued by a member board of the American Board of Medical Specialties and includes, but is not limited to the following: gynecology, otolaryngology, plastic surgery, general surgery, ophthalmology, urology, orthopedics, and oral surgery.
 - (14) "Specialty ambulatory surgical program" means a program as defined in G.S. 131E-176(24c).
 - (15) "Practical utilization" is 4.3 surgical cases per day for a dedicated ambulatory surgical operating room and 3.5 surgical cases per day for a shared ~~surgical~~ operating room.

Authority G.S. 131E-177(1); 131E-183.

10 NCAC 03R .2114 INFORMATION REQUIRED OF APPLICANT

(a) An applicant proposing to establish a new ambulatory surgical facility, to increase the number of ~~ambulatory surgical~~ operating rooms in an existing ambulatory surgical facility or hospital, to convert a specialty ambulatory surgical program to a multispecialty ambulatory surgical program or to add a specialty to a specialty ambulatory surgical program shall identify each of the following specialty areas that will be provided in the facility:

- (1) gynecology;
- (2) otolaryngology;
- (3) plastic surgery;
- (4) general surgery;
- (5) ophthalmology;
- (6) orthopedic;
- (7) oral surgery; and
- (8) other specialty area identified by the applicant.

(b) An applicant proposing to establish a new ambulatory surgical facility, to increase the number of ~~ambulatory surgical~~ operating rooms in an existing ambulatory surgical facility or hospital, to convert a specialty ambulatory surgical program to a multispecialty ambulatory surgical program or to add a specialty to a specialty ambulatory surgical program shall provide the

following information regarding the services to be offered in the facility following completion of the project:

- (1) the number and type of existing and proposed dedicated ~~inpatient and~~ ambulatory surgical operating rooms;
- (2) the number and type of existing and proposed shared ~~ambulatory surgical~~ operating rooms;
- (3) the number and type of shared ~~ambulatory surgical~~ operating rooms that are proposed to be converted to dedicated ambulatory surgical operating rooms;
- (4) the current and projected number of surgical procedures, identified by CPT code or ICD-9-CM procedure code, to be performed in the ~~ambulatory surgical~~ operating rooms;
- (5) the fixed and movable equipment to be located in each ~~ambulatory surgical~~ operating room;
- (6) the hours of operation of the ~~ambulatory surgical program; proposed operating rooms;~~
- (7) if the applicant is an existing ambulatory surgical facility, the average charge for the 20 surgical procedures most commonly performed in the facility during the preceding twelve months and a list of all services and items included in each charge;
- (8) the projected average charge for the 20 surgical procedures which the applicant projects will be performed most often in the ~~proposed ambulatory surgical program facility~~ and a list of all services and items in each charge; and
- (9) identification of providers of pre-operative services and procedures which will not be included in the facility's charge.

Authority G.S. 131E-177; 131E-183(b).

10 NCAC 03R .2115 NEED FOR SERVICES

(a) In projecting utilization for existing, approved, proposed and expanded ~~ambulatory~~ surgical programs, a program shall be considered to be open five days per week and 52 weeks a year.

(b) A proposal to establish a new ambulatory surgical facility, to increase the number of ~~ambulatory surgical~~ operating rooms in an existing ambulatory surgical facility or hospital, to convert a specialty ambulatory surgical program to a multispecialty ambulatory surgical program or to add a specialty to a specialty ambulatory surgical program shall not be approved unless the applicant documents that the average number of ~~ambulatory surgical~~ cases per ~~ambulatory surgical~~ operating room ~~to be performed in the applicant's proposed ambulatory surgical program are projected to be operating at facility is projected to be at least 2.7 surgical cases per day for each dedicated inpatient operating room.~~ 4.3 surgical cases per day for each dedicated ambulatory surgical operating room and 3.5 surgical cases per day for each shared ~~surgical operation operating~~ room during the fourth quarter of the third year of operation following completion of the project.

(c) An applicant proposing to convert a specialty ambulatory surgical program to a multispecialty ambulatory surgical program or to add a specialty to a specialty ambulatory surgical program shall provide documentation to show that each existing

ambulatory surgery program in the ambulatory surgical service area that performs ambulatory surgery in the same specialty area as proposed in the application is currently operating at 4.3 surgical cases per day for each dedicated ambulatory surgical operating room and 3.5 surgical cases per day for each shared surgical-operating room .

(d) An applicant proposing to convert a specialty ambulatory surgical program to a multispecialty ambulatory surgical program or to add a specialty to a specialty ambulatory surgical program shall provide documentation to show that each existing and approved ambulatory surgery program in the ambulatory surgical service area that performs ambulatory surgery in the same specialty areas as proposed in the application is projected to be operating at 4.3 surgical cases per day for each dedicated ambulatory surgical operating room and 3.5 surgical cases per day for each shared surgical operating room prior to the completion of the proposed project. The applicant shall document the assumptions and provide data supporting the methodology used for the projections.

Authority G.S. 131E-177; 131E-183(b).

10 NCAC 03R .2116 FACILITY

(a) An applicant proposing to establish a licensed ambulatory surgical facility that will be physically located in a physician's or dentist's office or within a general acute care hospital shall demonstrate that reporting and accounting mechanisms exist and can be used to confirm that the licensed ambulatory surgery facility is a separately identifiable entity physically and administratively, and is financially independent and distinct from other operations of the facility in which it is located.

(b) An applicant proposing a licensed ambulatory surgical facility shall receive accreditation from the Joint Commission for the Accreditation of Healthcare Organizations, the Accreditation Association for Ambulatory Health Care or a comparable accreditation authority within two years of completion of the facility.

(c) An applicant proposing to establish a new ambulatory surgical facility, to increase the number of ambulatory surgical operating rooms in an existing ambulatory surgical facility or hospital, to convert a specialty ambulatory surgical program to a multispecialty ambulatory surgical program or to add a specialty to a specialty ambulatory surgical program shall document that the physical environment of the facility conforms to the requirements of federal, state, and local regulatory bodies.

(d) In competitive reviews, an applicant proposing to perform ambulatory surgical procedures in at least three specialty areas will be considered more favorably than an applicant proposing to perform ambulatory surgical procedures in fewer than three specialty areas.

(e) The applicant shall provide a floor plan of the proposed facility clearly identifying the following areas:

- (1) receiving/registering area;
- (2) waiting area;
- (3) pre-operative area;
- (4) operating room by type;
- (5) recovery area; and
- (6) observation area.

(f) An applicant proposing to expand by converting a specialty ambulatory surgical program to a multispecialty ambulatory surgical program or by adding a specialty to a specialty

ambulatory surgical program that does not propose to add physical space to the existing ambulatory surgical facility shall demonstrate the capability of the existing ambulatory surgical program to provide the following for each additional specialty area:

- (1) physicians;
- (2) ancillary services;
- (3) support services;
- (4) medical equipment;
- (5) surgical equipment;
- (6) receiving/registering area;
- (7) clinical support areas;
- (8) medical records;
- (9) waiting area;
- (10) pre-operative area;
- (11) operating rooms by type;
- (12) recovery area; and
- (13) observation area.

Authority G.S. 131E-177; 131E-183(b).

10 NCAC 03R .2118 STAFFING

(a) An applicant proposing to establish a new ambulatory surgical facility, to increase the number of ambulatory surgical operating rooms in an existing ambulatory surgical facility or hospital, to convert a specialty ambulatory surgical program to a multispecialty ambulatory surgical program or to add a specialty to a specialty ambulatory surgical program shall identify, justify and document the availability of the number of current and proposed staff to be utilized in the following areas:

- (1) administration;
- (2) pre-operative;
- (3) post-operative;
- (4) operating room; and
- (5) other.

(b) The applicant shall identify the number of physicians who currently utilize the facility and estimate the number of physicians expected to utilize the facility and the criteria to be used by the facility in extending surgical and anesthesia privileges to medical personnel.

(c) The applicant shall provide documentation that physicians with privileges to practice in the facility will be active members in good standing at a general acute care hospital within the ambulatory surgical service area in which the facility is, or will be, located or will have written referral procedures with a physician who is an active member in good standing at a general acute care hospital in the ambulatory surgical service area.

Authority G.S. 131E-177; 131E-183(b).

10 NCAC 03R .2119 RELATIONSHIP TO SUPPORT AND ANCILLARY SERVICES

(a) An applicant proposing to establish a new ambulatory surgical facility, increase the number of ambulatory surgical operating rooms in an existing ambulatory surgical facility or hospital, convert a specialty ambulatory surgical program to a multispecialty ambulatory surgical program or add a specialty to a specialty ambulatory surgical program shall provide written policies and procedures demonstrating that the facility will have patient referral, transfer, and followup procedures.

(b) The applicant shall provide documentation showing the proximity of the proposed facility to the following services:

- (1) emergency services;
- (2) support services;
- (3) ancillary services; and
- (4) public transportation.

Authority G.S. 131E-177; 131E-183(b).

TITLE 11 – DEPARTMENT OF INSURANCE

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Department of Insurance intends to amend the rules cited as 11 NCAC 20 .0404-.0405, .0407. Notice of Rule-making Proceedings was published in the Register on October 1, 2001.

Proposed Effective Date: July 1, 2002

Public Hearing:

Date: January 7, 2002

Time: 10:00 a.m.

Location: Dobbs Building, 3^d floor hearing room, 430 N. Salisbury St., Raleigh, NC

Reason for Proposed Action: G.S. 58-3-230(b) (S.L. 2001-172) requires the Commissioner of Insurance to adopt rules for a uniform provider credentialing application form.

Comment Procedures: Written comments may be sent to Nancy O'Dowd, Managed Care Section, NC Department of Insurance, 111 Seaboard Ave., Raleigh, NC 27604. Comments will be received through January 7, 2002.

Fiscal Impact

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

CHAPTER 20 - MANAGED CARE HEALTH BENEFIT PLANS

SECTION .0400 - NETWORK PROVIDER CREDENTIALS

11 NCAC 20 .0404 APPLICATION

For all providers who submit applications to be added to a carrier's network on or after October 1, 2001; the effective date of this Section and for all providers participating in a carrier's network on or after 21 months after the effective date of this Section:

- (1) Each carrier shall obtain and retain on file a complete signed and dated application on the form approved by the Commissioner, entitled "Uniform Application to Participate as a Health Care Practitioner", that details credentials from of each individual provider participating in the plan network. All required information shall be current upon final

approval by the health plan. The application shall include, when applicable:

- (a) ~~Personal-Demographic and personal information (for example, name, address, telephone number).~~
- (b) Practice information, including call coverage.
- (c) ~~Education and training~~ Education, training and work history.
- (d) The current provider license, registration, or certification, and the names of other states where the applicant is or has been licensed, registered, or certified.
- (e) Drug Enforcement Agency (DEA) registration number and prescribing restrictions.
- (f) Specialty board or other certification.
- (g) Professional and hospital affiliation.
- (h) The amount of professional liability coverage and any malpractice history.
- (i) Any disciplinary actions by medical organizations and regulatory agencies.
- (j) Any felony or misdemeanor convictions.
- (k) The type of affiliation requested (for example, primary care, consulting specialists, ambulatory care, etc.).
- (l) A statement of completeness, veracity, and release of information, signed and dated by the applicant.
- (m) Letters of reference or recommendation or letters of oversight from supervisors, or both.

- (2) The carrier shall obtain and retain on file the following information regarding facility provider credentials, when applicable:
 - (a) Joint Commission on Accreditation of Healthcare Organization's certification or certification from other accrediting agencies.
 - (b) State licensure.
 - (c) Medicare and Medicaid certification.
 - (d) Evidence of current malpractice insurance.
- (3) No credential item listed in Paragraph ~~(a) or (b)~~ (1) or (2) of this Rule shall be construed as a substantive threshold or criterion or as a standard for credentials that must be held by any provider in order to be a network provider.
- (4) A carrier shall not require an applicant to submit information not required by the "Uniform Application to Participate as a Health Care Practitioner" form.

Authority G.S. 58-2-40(1); 58-2-131; 58-3-230; 58-50-55(b); 58-65-1; 58-65-25; 58-65-105; 58-65-140; 58-67-5; 58-67-10; 58-67-20; 58-67-35; 58-67-65; 58-67-100; 58-67-140; 58-67-150.

11 NCAC 20 .0405 VERIFICATION OF CREDENTIALS

Upon the receipt of the application containing information about the presence or absence of credentials and all supporting documents, each carrier shall verify all information provided in 11 NCAC 20 .0404.

Each carrier that provides a health benefit plan and credentials providers for its network shall maintain a process to assess and verify the qualifications of a licensed health care practitioner within 60 days of receipt of a completed "Uniform Application to Participate as a Health Care Practitioner" form. Each carrier's process for verifying credentials shall take into account and make allowance for the time required to request and obtain primary source verifications and other information that must be obtained from third parties in order to authenticate the applicant's credentials, and shall make allowance for the scheduling of a final decision by a credentialing committee, if the carrier's credentialing program requires such review.

- (1) Within 60 days after receipt of a completed application and all supporting documents, the carrier shall assess and verify the applicant's qualifications and notify the applicant of its decision. If, by the 60th day after receipt of the application, the carrier has not received all of the information or verifications it requires from third parties, or date-sensitive information has expired, the carrier shall issue a written notification to the applicant either closing the application and detailing the carrier's attempts to obtain the information or verification, or pending the application and detailing the carrier's attempts to obtain the information or verifications. If the application is held, the carrier shall inform the applicant of the length of time the application will be pending. The notification shall include the name, address and phone number of a credentialing staff person who will serve as a contact person for the applicant.

- (2) Within 15 days after receipt of an incomplete application, the carrier shall notify the applicant in writing of all missing or incomplete information or supporting documents.

- (a) The notice to the applicant shall include a complete and detailed description of all of the missing or incomplete information or documents that must be submitted in order for review of the application to continue. The notification shall include the name, address, and telephone number of a credentialing staff person who will serve as a contact person for the applicant.

- (b) Within 60 days after receipt of all of the missing or incomplete information or documents, the carrier shall assess and verify the applicant's qualifications and notify the applicant

of its decision, in accordance with Item (1) of this Rule.

- (c) If the missing information or documents have not been received within 60 days after initial receipt of the application or if date-sensitive information has expired, the carrier shall close the application or delay final review, pending receipt of the necessary information. The carrier shall provide written notification to the applicant of the closed or pending status of the application and where applicable, the length of time the application will be pending. The notification shall include the name, address, and telephone number of a credentialing staff person who will serve as a contact person to the applicant.

- (3) If a carrier elects not to include an applicant in its network, for reasons that do not require review of the application, the carrier shall provide written notice to the applicant of that determination within 30 days after receipt of the application.

- (4) Nothing in this Rule shall require a carrier to include a health care practitioner in its network or prevent a carrier from conducting a complete review and verification of an applicant's credentials, including an assessment of the applicant's office, before agreeing to include the applicant in its network.

Authority G.S. 58-2-40(1); 58-3-230; 58-50-55(b); 58-65-1; 58-65-25; 58-65-105; 58-65-140; 58-67-5; 58-67-10; 58-67-20; 58-67-35; 58-67-65; 58-67-140; 58-67-150.

11 NCAC 20 .0407 REVERIFICATION OF PROVIDER CREDENTIALS

Each carrier shall reverify the credentials of all network providers at least every three years. On or after October 1, 2001, carriers shall utilize the "Uniform Application to Participate as a Health Care Practitioner" form for reverification of provider credentials and shall not require a network provider to submit information not requested by the form. Carriers may require completion of all or only selected sections of the form for reverification of credentials.

Authority G.S. 58-2-40(1); 58-3-230; 58-50-55(b); 58-65-1; 58-65-25; 58-65-105; 58-65-140; 58-67-5; 58-67-10; 58-67-20; 58-67-35; 58-67-65; 58-67-140; 58-67-150.

TITLE 12 – DEPARTMENT OF JUSTICE

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Criminal Justice Education and Training Standards Commission intends to amend the rules cited as 12 NCAC 09D .0101-.0102, 0104-.0106 and repeal the rule cited as 12 NCAC

09D .0103. Notice of Rule-making Proceedings was published in the Register on July 16, 2001.

Proposed Effective Date: August 1, 2002

Public Hearing:

Date: February 15, 2002

Time: 10:00 a.m.

Location: Old Education Bldg, 114 W. Edenton St., Raleigh, NC

Reason for Proposed Action: The North Carolina Criminal Justice Education and Training Standards Commission has authorized rule-making authority to amend its administrative rules which govern the Law Enforcement Officers' Professional Certificate Program in order to clarify and strengthen the standards for obtaining Intermediate and Advanced certification recognition from the Commission.

Comment Procedures: Written comments should be directed to Scott Perry, Criminal Justice Standards Division, Room G-25, Old Education Building, 114 W. Edenton St., PO Drawer 149, Raleigh, NC 27602-0149. Comments will be accepted through February 15, 2002.

Fiscal Impact

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

CHAPTER 09 - CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS

SUBCHAPTER 09D - PROFESSIONAL CERTIFICATE PROGRAMS

SECTION .0100 - LAW ENFORCEMENT OFFICERS' PROFESSIONAL CERTIFICATE PROGRAM

12 NCAC 09D .0101 PURPOSE

In order to recognize the level of competence of law enforcement officers serving the governmental agencies within the state, to foster increased interest in college education and professional law enforcement training programs, and to attract highly qualified individuals into a law enforcement career, the Criminal Justice Education and Training Standards Commission establishes the ~~law enforcement officers professional certificate program.~~ Law Enforcement Officers' Professional Certificate Program. This program is a method by which dedicated officers may receive statewide and nationwide recognition for education, professional training, and on-the-job experience.

Authority G.S. 17C-6.

12 NCAC 09D .0102 GENERAL PROVISIONS

(a) In order to be eligible for one or more of the professional awards, an officer shall first meet the following preliminary qualifications:

- (1) The officer shall presently hold general law enforcement officer certification. A person serving under a probationary certification is not eligible for consideration.
 - (2) The officer shall be familiar with and subscribe to the Law Enforcement Code of Ethics.
 - (3) The officer shall be a full-time, sworn, paid member of a law enforcement agency within the state.
 - ~~(4) All applicants who became full-time, sworn, paid members of a law enforcement agency within the state on or after October 1, 1984, shall be given credit for satisfactory completion of only one commission accredited basic training program for purposes of calculating training points.~~
 - ~~(4) Applicants shall be given credit for the satisfactory completion of all in-service law enforcement training which is not mandated by the Commission pursuant to 12 NCAC 09E .0102.~~
 - ~~(5) Applicants shall not be given credit for the satisfactory completion of Commission-mandated Basic Law Enforcement Training courses.~~
 - ~~(5)(6)~~ Full-time, paid employees of a law enforcement agency within the State who have successfully completed a ~~commission accredited~~ Commission-accredited law enforcement officer basic training program and have previously held general law enforcement officer certification as specified in 12 NCAC 09D .0102(a)(1), but are presently, by virtue of promotion or transfer, serving in non sworn positions not subject to certification are eligible to participate in the professional certificate program. Eligibility for this exception requires continuous employment with the law enforcement agency from the date of promotion or transfer from a sworn, certified position to the date of application for a professional certificate.
- (b) Awards are based upon a formula which combines formal education, law enforcement training, and actual experience as a law enforcement officer. Points are computed in the following manner:
- (1) Each semester hour of college credit shall equal one point and each quarter hour shall equal two-thirds of a point;
 - (2) Twenty classroom hours of ~~commission approved~~ Commission-approved law enforcement training shall equal one point;
 - (3) Only experience as a full-time, sworn, paid member of a law enforcement agency or

equivalent experience shall be acceptable for consideration.

~~(e) Certificates shall be awarded in an officer's area of expertise only. Separate sub-programs shall be administered as follows:~~

- ~~(1) General Law Enforcement Certificate. The General Law Enforcement Certificate is appropriate for full-time, sworn law enforcement officers employed by units of local government with authority to arrest for any violation of the criminal law and to arrest anywhere within the boundaries of the unit, including:

 - ~~(A) municipal and county police officers,~~
 - ~~(B) local ABC board enforcement officers.~~~~
- ~~(2) State Law Enforcement Certificate. The State Law Enforcement Certificate is appropriate for full-time, sworn law enforcement officers employed by an agency of state government, with authority to arrest throughout the state, including:

 - ~~(A) Special agents of the State Bureau of Investigation,~~
 - ~~(B) State Highway Patrol officers,~~
 - ~~(C) State Alcohol Law Enforcement officers,~~
 - ~~(D) Division of Motor Vehicles officers,~~
 - ~~(E) Fisheries enforcement officers,~~
 - ~~(F) Wildlife enforcement officers, and~~
 - ~~(G) State forest rangers.~~~~
- ~~(3) Special Law Enforcement Certificate. The Special Law Enforcement Certificate is appropriate for other full-time, sworn law~~

~~enforcement officers with arrest authority, including:~~

- ~~(A) Security officers for State buildings and agencies,~~
- ~~(B) Airport security officers,~~
- ~~(C) Campus police officers,~~
- ~~(D) Company police officers,~~
- ~~(E) Department of Correction extradition officers, and~~
- ~~(F) Parks and recreation commissions enforcement officers.~~

~~(d) There shall be limited reciprocity between sub-programs. Only training and experience gained in an officer's area of expertise shall be eligible for application to the sub-program.~~

Authority G.S. 17C-6.

12 NCAC 09D .0103 BASIC LAW ENFORCEMENT CERTIFICATE

~~In addition to the qualifications set forth in Rule .0102(a) of this Subchapter, an applicant for the Basic Law Enforcement Certificate shall have completed the probationary period prescribed by the employing agency, but in no case less than one year and shall have completed an accredited law enforcement basic training course or the equivalent as determined by the Commission.~~

Authority G.S. 17C-6.

12 NCAC 09D .0104 INTERMEDIATE LAW ENFORCEMENT CERTIFICATE

(a) In addition to the qualifications set forth in Rule .0102(a) of this Subchapter, an applicant for the Intermediate Law Enforcement Certificate ~~shall possess or be eligible to possess the Basic Law Enforcement Certificate and~~ shall have acquired the following combination of educational points or degrees, law enforcement training points and years of full-time law enforcement experience:

Educational Degrees				AA/AS	AB/BS
Years of Law Enforcement Experience	8	6	4	4	2
Minimum Law Enforcement Training Points	-	-	-	<u>22 16</u>	<u>24 8</u>
Minimum Total Education and Training Points	<u>37 32</u>	<u>67 40</u>	<u>97 48</u>	<u>22 16</u>	<u>24 8</u>

~~(b) Educational points claimed shall have been earned at a technical institute, technical college, community college, junior college, college or university accredited as such by the Department of Education of the state in which the institution is located, the American Council on Education, or the state university of the state in which the institution is located. must be issued by institutions recognized by the United States~~

Department of Education and the Council for Higher Education Accreditation.

Authority G.S. 17C-6.

12 NCAC 09D .0105 ADVANCED LAW ENFORCEMENT CERTIFICATE

PROPOSED RULES

(a) In addition to the qualifications set forth in Rule .0102(a) of this Subchapter, an applicant for the Advanced Law Enforcement Certificate shall possess or be eligible to possess the Intermediate Law Enforcement Certificate and shall have

acquired the following combination of educational points or degrees, law enforcement training points and years of full-time law enforcement experience:

Educational Degrees		AA/AS	AB/BS	GRAD./PRO.	
Years of Law Enforcement Experience	12	9	9	6	4
Minimum Law Enforcement Training Points	-	-	34 <u>36</u>	25 <u>24</u>	24 <u>16</u>
Minimum Total Education and Training Points	67 <u>48</u>	97 <u>60</u>	34 <u>36</u>	25 <u>24</u>	24 <u>16</u>

(b) Educational points claimed ~~shall have been earned at a technical institute, technical college, community college, junior college, college or university accredited as such by the Department of Education of the state in which the institution is located, the American Council on Education, or the state university of the state in which the institution is located. must be issued by institutions recognized by the United States Department of Education and the Council for Higher Education Accreditation.~~

Public Hearing:

Date: December 19, 2001

Time: 1:00-3:00 p.m.

Location: Cooper Building, 6th Floor Board Room, 225 N. McDowell St., Raleigh, NC

Reason for Proposed Action:

15A NCAC 19A .0101 – This Rule change will make chlamydia trachomatis reportable by laboratories. This will allow public health staff to better track the number of diagnosed chlamydia cases and to provide rapid follow-up.

15A NCAC 19A .0102 – A rule change is proposed for 15A NCAC 19A .0101 to make chlamydia trachomatis reportable by laboratories. This Rule change will define the time of reporting and the content of reports for chlamydia trachomatis.

15A NCAC 19A .0201 – Revisions are proposed to ensure compliance with current national standards and to update administrative information.

15A NCAC 19A .0203 – The proposed changes in this Rule will facilitate the detection, treatment and reduction of cases of hepatitis B throughout the state. The additions and changes made in this Rule will clarify the rule and make the rule consistent with the standard of care recommended throughout the United States and consistent with the care already recommended and provided in North Carolina.

15A NCAC 19A .0204 – The revised language will require that all pregnant women be tested for chlamydia at their first prenatal visit and pregnant women less than 25 years of age and women who are at increased risk of exposure to chlamydia, i.e., women who have a new partner or more than one partner or whose partner has other partners, be tested for chlamydia in the third trimester. The rule also specifies that pregnant women will be tested for syphilis at the first prenatal visit and between 28 and 30 weeks of gestation instead of early pregnancy and in the third trimester as stated in the current rule. This Rule mirrors the language from the 2001 CDC STD Treatment Guidelines. Data obtained from chlamydia testing in public health prenatal clinics indicates a positivity rate above 7 percent.

Authority G.S. 17C-6.

12 NCAC 09D .0106 METHOD OF APPLICATION

(a) All applicants for an award of the ~~basic, intermediate or and~~ advanced certificates ~~in each sub-program~~ shall complete an "Application for Award of Law Enforcement Certificate."

(b) Documentation of education and training shall be provided by certified copies of transcripts, diplomas, Report of Training Course Completion, agency training records, or other verifying documents attached to the application.

(c) The applicant shall submit the Application for Award of Law Enforcement Certificate to the department head who shall attach a recommendation and forward the application to the Commission. Certificates will be issued to the department head for award to the applicant.

(d) Certificates and awards remain the property of the Commission and the Commission shall have the power to cancel or recall any certificate or award.

Authority G.S. 17C-6.

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Health and Human Services intends to amend the rules cited as 15A NCAC 19A .0101-.0102, .0201, .0203-.0204. Notice of Rule-making Proceedings was published in the Register on October 1, 2001.

Proposed Effective Date: August 1, 2002

Comment Procedures: Written comments concerning this rule making action may be submitted within 30 days after the date of publication in this issue of the North Carolina Register.

Comments must be submitted to Chris Hoke, Rule-making Coordinator, Division of Public Health, 1915 Mail Service Center, Raleigh, NC 27699-1915.

Fiscal Impact

- State** 15A NCAC 19A .0204
- Local**
- Substantive** (≥\$5,000,000)
- None** 15A NCAC 19A .0101-.0102, .0201, .0203

CHAPTER 19 - HEALTH: EPIDEMIOLOGY

SUBCHAPTER 19A - COMMUNICABLE DISEASE CONTROL

SECTION .0100 - REPORTING OF COMMUNICABLE DISEASES

Text in bold is waiting for approval at the next legislative session.

15A NCAC 19A .0101 REPORTABLE DISEASES AND CONDITIONS

(a) The following named diseases and conditions are declared to be dangerous to the public health and are hereby made reportable within the time period specified after the disease or condition is reasonably suspected to exist:

- (1) acquired immune deficiency syndrome (AIDS) - 7 days;
- (2) anthrax - 24 hours;
- (3) botulism - 24 hours;
- (4) brucellosis - 7 days;
- (5) campylobacter infection - 24 hours;
- (6) chancroid - 24 hours;
- (7) chlamydial infection (laboratory confirmed) - 7 days;
- (8) cholera - 24 hours;
- (9) **Creutzfeldt-Jakob disease – 7 days;**
- ~~(9)~~(10) cryptosporidiosis - 24 hours;
- ~~(10)~~(11) cyclosporiasis - 24 hours;
- ~~(11)~~(12) dengue - 7 days;
- ~~(12)~~(13) diphtheria - 24 hours;
- ~~(13)~~(14) ~~*E. coli* 0157:H7 infection~~ *Escherichia coli, shiga toxin-producing* - 24 hours;
- ~~(14)~~(15) ehrlichiosis - 7 days;
- ~~(15)~~(16) encephalitis, arboviral - 7 days;
- ~~(16)~~(17) enterococci, vancomycin-resistant, from normally sterile site - 7 days;
- ~~(17)~~(18) foodborne disease, including but not limited to *Clostridium perfringens*, staphylococcal, and *Bacillus cereus* - 24 hours;
- ~~(18)~~(19) gonorrhea - 24 hours;
- ~~(19)~~(20) granuloma inguinale - 24 hours;
- ~~(20)~~(21) *Haemophilus influenzae*, invasive disease - 24 hours;
- (22) **Hantavirus infection – 7 days;**
- ~~(21)~~(23) Hemolytic-uremic syndrome/thrombotic thrombocytopenic purpura - 24 hours;
- ~~(22)~~(24) hepatitis A - 24 hours;
- ~~(23)~~(25) hepatitis B - 24 hours;
- ~~(24)~~(26) hepatitis B carriage - 7 days;

- ~~(25)~~(27) hepatitis C, acute - 7 days;
- ~~(26)~~(28) human immunodeficiency virus (HIV) infection confirmed - 7 days;
- ~~(27)~~(29) legionellosis - 7 days;
- ~~(28)~~(30) leptospirosis - 7 days;
- (31) **listeriosis – 24 hours;**
- ~~(29)~~(32) Lyme disease - 7 days;
- ~~(30)~~(33) lymphogranuloma venereum - 7 days;
- ~~(31)~~(34) malaria - 7 days;
- ~~(32)~~(35) measles (rubeola) - 24 hours;
- ~~(33)~~(36) meningitis, pneumococcal - 7 days;
- ~~(34)~~(37) meningococcal disease - 24 hours;
- ~~(35)~~(38) mumps - 7 days;
- ~~(36)~~(39) nongonococcal urethritis - 7 days;
- ~~(37)~~(40) plague - 24 hours;
- ~~(38)~~(41) paralytic poliomyelitis - 24 hours;
- ~~(39)~~(42) psittacosis - 7 days;
- ~~(40)~~(43) Q fever - 7 days;
- ~~(41)~~(44) rabies, human - 24 hours;
- ~~(42)~~(45) Rocky Mountain spotted fever - 7 days;
- ~~(43)~~(46) rubella - 24 hours;
- ~~(44)~~(47) rubella congenital syndrome - 7 days;
- ~~(45)~~(48) salmonellosis - 24 hours;
- ~~(46)~~(49) shigellosis - 24 hours;
- ~~(47)~~(50) **smallpox – 24 hours;**
- ~~(48)~~(51) streptococcal infection, Group A, invasive disease - 7 days;
- ~~(49)~~(52) syphilis - 24 hours;
- ~~(50)~~(53) tetanus - 7 days;
- ~~(51)~~(54) toxic shock syndrome - 7 days;
- ~~(52)~~(55) toxoplasmosis, congenital - 7 days;
- ~~(53)~~(56) trichinosis - 7 days;
- ~~(54)~~(57) tuberculosis - 24 hours;
- ~~(55)~~(58) tularemia - 24 hours;
- ~~(56)~~(59) yphoid - 24 hours;
- ~~(57)~~(60) typhoid carriage (*Salmonella typhi*) - 7 days;
- ~~(58)~~(61) yphus, epidemic (louse-borne) - 7 days;
- ~~(59)~~(62) vibrio infection (other than cholera) - 24 hours;
- ~~(60)~~(63) whooping cough - 24 hours;
- (64) **ellow fever - 7 days.**

(b) For purposes of reporting; confirmed human immunodeficiency virus (HIV) infection is defined as a positive virus culture; repeatedly reactive EIA antibody test confirmed by western blot or indirect immunofluorescent antibody test; positive polymerase chain reaction (PCR) test; or other confirmed testing method approved by the Director of the State Public Health Laboratory conducted on or after February 1, 1990. In selecting additional tests for approval, the Director of the State Public Health Laboratory shall consider whether such tests have been approved by the federal Food and Drug Administration, recommended by the federal Centers for Disease Control and Prevention, and endorsed by the Association of ~~State and Territorial~~ Public Health ~~Laboratory Directors~~ Laboratories.

(c) In addition to the laboratory reports for *Mycobacterium tuberculosis*, *Neisseria gonorrhoeae*, and syphilis specified in G.S. 130A-139, laboratories shall report:

- (1) Isolation or other specific identification of the following organisms or their products from human clinical specimens:

- (A) Any hantavirus.
- (B) **Arthropod-borne virus (any type).**
- ~~(B)~~(C) *Bacillus anthracis*, the cause of anthrax.
- ~~(C)~~(D) *Bordetella pertussis*, the cause of whooping cough (pertussis).
- (E) ***Borrelia burgdorferi*, the cause of Lyme disease (confirmed tests).**
- ~~(D)~~(F) *Brucella spp.*, the causes of brucellosis.
- ~~(E)~~(G) *Campylobacter spp.*, the causes of campylobacteriosis.
- (H) *Chlamydia trachomatis*, the cause of genital chlamydial infection, conjunctivitis (adult and newborn) and pneumonia of newborns.
- ~~(F)~~(I) *Clostridium botulinum*, a cause of botulism.
- ~~(G)~~(J) *Clostridium tetani*, the cause of tetanus.
- ~~(H)~~(K) *Corynebacterium diphtheriae*, the cause of diphtheria.
- ~~(I)~~(L) *Coxiella burnetii*, the cause of Q fever.
- ~~(J)~~(M) *Cryptosporidium parvum*, the cause of human cryptosporidiosis.
- ~~(K)~~(N) *Cyclospora cayetanensis*, the cause of cyclosporiasis.
- ~~(L)~~(O) *Ehrlichia spp.*, the causes of ehrlichiosis.
- ~~(M)~~(P) ~~*Escherichia coli* O157:H7, a Shiga toxin-producing *Escherichia coli*, a cause of hemorrhagic colitis, hemolytic uremic syndrome, and thrombotic thrombocytopenic purpura.~~
- ~~(N)~~(Q) *Francisella tularensis*, the cause of tularemia.
- ~~(O)~~(R) Hepatitis B virus or any component thereof, such as hepatitis B surface antigen.
- ~~(P)~~(S) Human Immunodeficiency Virus, the ~~virus associated with~~ cause of AIDS.
- ~~(Q)~~(T) *Legionella spp.*, the causes of legionellosis.
- ~~(R)~~(U) *Leptospira spp.*, the causes of leptospirosis.
- ~~(U)~~(V) *Listeria monocytogenes*, the cause of listeriosis.
- ~~(V)~~(W) *Plasmodium falciparum*, *P. malariae*, *P. ovale*, and *P. vivax*, the causes of malaria in humans.
- ~~(W)~~(X) Poliovirus (any), the cause of poliomyelitis.
- ~~(X)~~(Y) Rabies virus.
- ~~(Y)~~(Z) *Rickettsia rickettsii*, the cause of Rocky Mountain spotted fever.
- ~~(Z)~~(AA) Rubella virus.
- ~~(AA)~~(BB) *Salmonella spp.*, the causes of salmonellosis.
- ~~(BB)~~(CC) *Shigella spp.*, the causes of shigellosis.
- ~~(CC)~~(DD) **Smallpox virus, the cause of smallpox.**
- ~~(DD)~~(EE) *Trichinella spiralis*, the cause of trichinosis.
- ~~(EE)~~(FF) *Vibrio spp.*, the causes of cholera and other vibrioses.
- ~~(FF)~~(GG) Yellow fever virus.
- ~~(GG)~~(HH) *Yersinia pestis*, the cause of plague.
- (2) Isolation or other specific identification of the following organisms from normally sterile human body sites:
- (A) Group A *Streptococcus pyogenes* (group A streptococci).
- (B) *Haemophilus influenzae*, serotype b.
- (C) *Neisseria meningitidis*, the cause of meningococcal disease.
- (D) Vancomycin-resistant *Enterococcus spp.*
- (3) Positive serologic test results, as specified, for the following infections:
- (A) Fourfold or greater changes or equivalent changes in serum antibody titers to:
- (i) Any arthropod-borne viruses associated with meningitis or encephalitis in a human.
- (ii) Any hantavirus.
- (iii) *Chlamydia psittaci*, the cause of psittacosis.
- (iv) *Coxiella burnetii*, the cause of Q fever.
- (v) Dengue virus.
- (vi) *Ehrlichia spp.*, the causes of ehrlichiosis.
- (vii) Measles (rubeola) virus.
- (viii) Mumps virus.
- (ix) *Rickettsia rickettsii*, the cause of Rocky Mountain spotted fever.
- (x) Rubella virus.
- (xi) Yellow fever virus.
- (B) The presence of IgM serum antibodies to:
- (i) *Chlamydia psittaci*.
- ~~(i)~~(ii) Hepatitis A virus.
- ~~(ii)~~(iii) Hepatitis B virus core antigen.
- ~~(iii)~~(iv) Rubella virus.
- ~~(iv)~~(v) Rubeola (measles) virus.
- ~~(v)~~(vi) Yellow fever virus.

Authority G.S. 130A-134; 130A-135; 130A-139; 130A-141.

15A NCAC 19A .0102 METHOD OF REPORTING

(a) When a report of a disease or condition is required to be made pursuant to G.S. 130A-135 through 139 and 15A NCAC 19A .0101, the report shall be made to the local health director as follows:

- (1) **With the exception of laboratories, which shall proceed as in Subparagraph (d) of this Rule, for ~~For~~ diseases and conditions required to be reported within 24 hours, the initial report shall be made by telephone, and the report required by Subparagraph (2) of this Paragraph shall be made within seven days.**
- (2) In addition to the requirements of Subparagraph (1) of this Paragraph, the report shall be made on the communicable disease report card or in an electronic format provided by the Division of ~~Epidemiology—Public Health~~ and shall include the name and address of the patient, the name and address of any minor's parent or guardian, and all other pertinent epidemiologic information.
- (3) Until September 1, 1994, reports of cases of confirmed HIV infection identified by anonymous tests that are conducted at HIV testing sites designated by the State Health Director pursuant to 15A NCAC 19A .0202(10) shall be made on forms provided by the Department for that purpose. No communicable disease report card shall be required. Effective September 1, 1994, anonymous testing shall be discontinued and all cases of confirmed HIV infection shall be reported in accordance with 15A NCAC 19A .0102(a)(1) and (2).
- (4) In addition to the requirements of Subparagraphs (1) and (2) of this Paragraph, forms or electronic formats provided by the Division of ~~Epidemiology—Public Health~~ for collection of information necessary for disease control and documentation of clinical and epidemiologic information about the cases shall be completed and submitted for the reportable diseases and conditions identified in 15A NCAC 19A .0101(a), namely, ~~(1), (4), (13), (20), (21), (22), (23), (24), (25), (26), (27), (28), (29), (31), (32), (33), (34), (35), (38), (39), (42), (43), (44), (49), (50), (52), (53), (54), (55), (56),~~ **acquired immune deficiency syndrome (AIDS); brucellosis; cholera; cryptosporidiosis; cyclosporiasis; E. coli 0157:H7 infection; ehrlichiosis; Haemophilus influenzae, invasive disease; Hemolytic-uremic syndrome/thrombotic thrombocytopenic purpura; hepatitis A; hepatitis B; hepatitis B carriage; hepatitis C; human immunodeficiency virus (HIV) confirmed; legionellosis; leptospirosis; Lyme disease; malaria; measles (rubeola); meningitis, pneumococcal; meningococcal disease; mumps; paralytic poliomyelitis; psittacosis; Rocky Mountain spotted fever; rubella; rubella congenital syndrome; tetanus; toxic shock syndrome; trichinosis; tuberculosis; tularemia; typhoid; typhoid carriage (Salmonella typhi); vibrio infection (other than cholera); and (59) whooping cough.**
- (5) Communicable disease report cards, surveillance forms, and electronic formats are available from the **General Communicable Disease Control Branch** Surveillance Unit, ~~N.C. Division of Epidemiology, P.O. Box 29601, 1902 Mail Service Center, Raleigh, NC 27626-0601, 27699-1902,~~ (919) 733-3419, and from local health departments.
- (b) Notwithstanding the time frames established in 15A NCAC 19A .0101 a restaurant or other food or drink establishment shall report all outbreaks or suspected outbreaks of foodborne illness in its customers or employees and all suspected cases of foodborne disease or foodborne condition in food-handlers at the establishment by telephone to the local health department within 24 hours in accordance with Subparagraph (a)(1) of this Rule. However, the establishment is not required to submit a report card or surveillance form pursuant to Subparagraphs (a)(2) and (a)(4) of this Rule.
- (c) For the purposes of reporting by restaurants and other food or drink establishments pursuant to G.S.130A-138, the diseases and conditions to be reported shall be those listed in 15A NCAC 19A .0101 ~~(a), (3), (5), (8), (9), (12), (16), (21), (44), (45), (51), (54), (55),~~ **namely, anthrax; botulism; brucellosis; campylobacter infection; cholera; cryptosporidiosis; cyclosporiasis; E. coli 0157:H7 infection; hepatitis A; salmonellosis; shigellosis; streptococcal infection, Group A, invasive disease; trichinosis; tularemia; typhoid; typhoid carriage (Salmonella typhi); and (57) vibrio infection (other than cholera).**
- (d) Laboratories required to report test results pursuant to G.S. 130A-139 and 15A NCAC 19A .0101(c) shall report as follows:
- (1) The results of the specified tests for ~~syphilis~~ **syphilis, chlamydia** and gonorrhea shall be reported to the local health department by the first and fifteenth of each month. Reports of the results of the specified tests for ~~gonorrhea~~ **gonorrhea, chlamydia** and syphilis shall include the specimen collection date, the patient's age, race, and sex, and the submitting physician's name, address, and telephone numbers.
- (2) Positive darkfield examinations for syphilis and STS titers of 1:16 and above shall be reported within 24 hours by telephone to the HIV/STD ~~Control—Prevention and Care~~ **Control—Prevention and Care** Branch at (919) 733-7301, or the HIV/STD ~~Control—Prevention and Care~~ **Control—Prevention and Care** Branch Regional Office where the laboratory is located.
- (3) With the exception of positive laboratory tests for human immunodeficiency virus, positive laboratory tests as defined in G.S. 130A-139(1) and 15A NCAC 19A .0101(c) shall be reported to the General Communicable Disease Control ~~Section—Branch~~ **electronically, by secure telefax or by telephone** within the time periods specified for each reportable disease or condition in 15A NCAC 19A .0101(a). Confirmed positive

laboratory tests for human immunodeficiency virus as defined in 15A NCAC 19A .0101(b) shall be reported to the HIV/STD ~~Control Section~~ **Prevention and Care Branch** within seven days of obtaining reportable test results. Reports shall include as much of the following information as the laboratory possesses: the specific name of the test performed; the source of the specimen; the collection date(s); the patient's name, age, race, ~~and sex~~ **sex, address, and county**; and the submitting physician's name, address, and telephone number.

Authority G.S. 130A-134; 130A-135; 130A-138; 130A-139; 130A-141.

SECTION .0200 - CONTROL MEASURES FOR COMMUNICABLE DISEASES

15A NCAC 19A .0201 CONTROL MEASURES – GENERAL

(a) Except as provided in Rules .0202 - .0209 of this Section, the recommendations and guidelines for testing, diagnosis, treatment, follow-up, and prevention of transmission for each disease and condition specified by the American Public Health Association in its publication, Control of Communicable Diseases Manual shall be the required control measures. Control of Communicable Diseases Manual is hereby incorporated by reference including subsequent amendments and editions. Guidelines and recommended actions published by the Centers for Disease Control and Prevention shall supercede those contained in the Control of Communicable Disease Manual and are likewise incorporated by reference. Copies of this publication may be purchased from the American Public Health Association, Publication Sales Department, Post Office Box 753, Waldora, MD 20604 ~~for a cost of twenty-two dollars (\$22.00) each plus five dollars (\$5.00) shipping and handling.~~ A copy is available for inspection in the General Communicable Disease Control ~~Section~~ **Branch**, Cooper Memorial Health Building, 225 N. McDowell Street, Raleigh, North Carolina 27603-1382.

(b) In interpreting and implementing the specific control measures adopted in Paragraph (a) of this Rule, and in devising control measures for outbreaks designated by the State Health Director and for communicable diseases and conditions for which a specific control measure is not provided by this Rule, the following principles shall be used:

- (1) control measures shall be those which can reasonably be expected to decrease the risk of transmission and which are consistent with recent scientific and public health information;
- (2) for diseases or conditions transmitted by the airborne route, the control measures shall require physical isolation for the duration of infectivity;
- (3) for diseases or conditions transmitted by the fecal-oral route, the control measures shall require exclusions from situations in which transmission can be reasonably expected to occur, such as work as a paid or voluntary food handler or attendance or work in a day care center for the duration of infectivity;

- (4) for diseases or conditions transmitted by sexual or the blood-borne route, control measures shall require prohibition of donation of blood, tissue, organs, or semen, needle-sharing, and sexual contact in a manner likely to result in transmission for the duration of infectivity.

(c) Persons with congenital rubella syndrome, tuberculosis, and carriers of Salmonella typhi and hepatitis B who change residence to a different local health department jurisdiction shall notify the local health director in both jurisdictions.

(d) Isolation and quarantine orders for communicable diseases and communicable conditions for which control measures have been established shall require compliance with applicable control measures and shall state penalties for failure to comply. These isolation and quarantine orders may be no more restrictive than the applicable control measures.

(e) An individual enrolled in an epidemiologic or clinical study shall not be required to meet the provisions of 15A NCAC 19A .0201 - .0209 which conflict with the study protocol if:

- (1) the protocol is approved for this purpose by the State Health Director because of the scientific and public health value of the study, and
- (2) the individual fully participates in and completes the study.

Authority G.S. 130A-135; 130A-144.

15A NCAC 19A .0203 CONTROL MEASURES – HEPATITIS B

(a) The following are the control measures for hepatitis B infection. The infected persons shall:

- (1) refrain from sexual intercourse unless condoms are used except when the partner is known to be infected with or immune to hepatitis B;
- (2) not share needles or syringes;
- (3) not donate or sell blood, plasma, platelets, other blood products, semen, ova, tissues, organs, or breast milk;
- (4) if the time of initial infection is known, identify to the local health director all sexual intercourse and needle partners since the date of infection; and, if the date of initial infection is unknown, identify persons who have been sexual intercourse or needle partners during the previous six months;
- (5) for the duration of the infection, notify future sexual intercourse partners of the infection and refer them to their attending physician or the local health director for control ~~measures~~ measures; and for the duration of the infection, notify the local health director of all new sexual intercourse partners;
- (6) in all cases, identify to the local health director all current household contacts;
- ~~(6)(7)~~ be tested six months after diagnosis to determine if they are chronic carriers, ~~annually for two years thereafter if they remain infected,~~ and when necessary to determine

appropriate control measures for persons exposed pursuant to Paragraph (b) of this Rule.

~~(7)(8)~~ Comply with all control measures for hepatitis B specified in the American Public Health Association publication, Control of Communicable Diseases Manual, in those instances where such control measures are not in conflict with other requirements of this Rule. This adoption by reference applies to all future editions of the Control of Communicable Diseases Manual.

(b) The following are the control measures for persons reasonably suspected of being exposed:

~~(1)~~ when a person has had a sexual intercourse exposure to hepatitis B infection, the person shall be tested;

~~(1)(2)~~ when a person has had sexual intercourse exposure to hepatitis B infection, the person shall be given an appropriate dose of hepatitis B immune globulin ~~or immune globulin, 0.06 ml/kg, IM~~ as soon as possible but no later than two weeks after the last exposure;

~~(2)(3)~~ when a person is a household contact, sexual intercourse or needle sharing contact of a person who has remained infected with hepatitis B for six months or longer, the partner or household contact, if susceptible and at risk of continued exposure, shall be vaccinated against hepatitis B;

~~(3)(4)~~ when a health care worker or other person has a needlestick, non-intact skin, or mucous membrane exposure to blood or body fluids that, if the source were infected with the hepatitis B virus, would pose a significant risk of hepatitis B transmission, the following shall apply:

(A) when the source is known, the source person shall be tested for hepatitis B infection, unless already known to be infected;

(B) when the source is infected with hepatitis B and the exposed person is:

(i) vaccinated, the exposed person shall be tested for anti-HBs and reimmunized if appropriate; If anti-HBs is less than ten SRU by RIA or negative by EIA, the exposed person shall be given hepatitis B immune globulin, 0.06 ml/kg, IM immediately and a single dose of hepatitis B vaccine within seven days;

(ii) not vaccinated, the exposed person shall be given an appropriate dose of hepatitis B immune ~~globulin globulin,~~ 0.06 ml/kg, IM immediately and, ~~if at high risk for future exposure,~~ begin vaccination

with hepatitis B vaccine within seven days;

(C) when the source is unknown and the exposed person is:

(i) vaccinated, no intervention is necessary;

(ii) not vaccinated, begin vaccination with hepatitis B vaccine within seven days ~~if at high risk for future exposure.~~

~~(4)(5)~~ infants born to infected mothers shall be given hepatitis B immune globulin, ~~0.5 ml, IM~~ as soon as maternal infection is known and infant is stabilized; vaccinated against hepatitis B beginning as soon as possible; and tested for HBsAg at ~~12-9-15~~ months of age. Infants whose test results indicate no immunity and no infection after completing three doses of vaccine must receive additional doses of vaccine until either immunity is obtained or a total of three additional doses have been administered.

(c) The attending physician shall advise all patients known to be at high risk, including injection drug users, men who have sex with men, hemodialysis patients, and patients who receive frequent transfusions of blood products, that they should be vaccinated against hepatitis B if susceptible.

(d) The following persons shall be tested for hepatitis B infection:

(1) pregnant women unless known to be infected; and

(2) donors of blood, plasma, platelets, other blood products, semen, ova, tissues, or organs.

(e) The attending physician of a child who is infected with hepatitis B virus and who may pose a significant risk of transmission in the school or day care setting because of open, oozing wounds or because of behavioral abnormalities such as biting shall notify the local health director. The local health director shall consult with the attending physician and investigate the circumstances.

(f) If the child referred to in Paragraph (e) of this Rule is in school or scheduled for admission and the local health director determines that there may be a significant risk of transmission, the local health director shall consult with an interdisciplinary committee, which shall include school personnel, a medical expert, and the child's parent or guardian to assist in the investigation and determination of risk. The local health director shall notify the superintendent or private school director of the need to appoint such an interdisciplinary committee. If the superintendent or private school director establishes such a committee within three days of notification, the local health director shall consult with this committee. If the superintendent or private school director does not establish such a committee within three days of notification, the local health director shall establish such a committee.

(g) If the child referred to in Paragraph (e) of this Rule is in school or scheduled for admission and the local health director determines, after consultation with the committee, that a significant risk of transmission exists, the local health director shall:

- (1) notify the parents;
- (2) notify the committee;
- (3) assist the committee in determining whether an adjustment can be made to the student's school program to eliminate significant risks of transmission;
- (4) determine if an alternative educational setting is necessary to protect the public health;
- (5) instruct the superintendent or private school director concerning appropriate protective measures to be implemented in the alternative educational setting developed by school personnel; and
- (6) consult with the superintendent or private school director to determine which school personnel directly involved with the child need to be notified of the hepatitis B virus infection in order to prevent transmission and ensure that these persons are instructed regarding the necessity for protecting confidentiality.

(h) If the child referred to in Paragraph (e) of this Rule is in day care and the local health director determines that there is a significant risk of transmission, the local health director shall notify the parents that the child must be placed in an alternate child care setting that eliminates the significant risk of transmission.

(i) The physician shall recommend that chronic carriers receive hepatitis A vaccine (if susceptible).

Authority G.S. 130A-135; 130A-144.

15A NCAC 19A .0204 CONTROL MEASURES – SEXUALLY TRANSMITTED DISEASES

(a) Local health departments shall provide diagnosis, testing, treatment, follow-up, and preventive services for syphilis, gonorrhea, chlamydia, nongonococcal urethritis, mucopurulent cervicitis, chancroid, lymphogranuloma venereum, and granuloma inguinale. These services shall be provided upon request and at no charge to the patient.

(b) Persons infected with, exposed to, or reasonably suspected of being infected with gonorrhea, chlamydia, non-gonococcal urethritis, and mucopurulent cervicitis shall:

- (1) Refrain from sexual intercourse until examined and diagnosed and treatment is completed, and all lesions are healed;
- (2) Be tested, treated, and re-evaluated in accordance with the STD Treatment Guidelines published by the U.S. Public Health Service. The recommendations contained in the STD Treatment Guidelines shall be the required control measures for testing, treatment, and follow-up for gonorrhea, chlamydia, nongonococcal urethritis, and mucopurulent cervicitis, and are incorporated by reference including subsequent amendments and editions. A copy of this publication is on file for public viewing with the HIV/STD Control Branch located at 225 N. McDowell Street, Cooper Building, Raleigh, N.C. 27611-7687 or a copy may be obtained free of charge by writing the

HIV/STD Control Branch, P.O. Box 27687, Raleigh, N.C. 27611-7687, and requesting a copy. However, urethral Gram stains may be used for diagnosis of males rather than gonorrhea cultures unless treatment has failed;

- (3) Notify all sexual partners from 30 days before the onset of symptoms to completion of therapy that they must be evaluated by a physician or local health department.

(c) Persons infected with, exposed to, or reasonably suspected of being infected with syphilis, lymphogranuloma venereum, granuloma inguinale, and chancroid shall:

- (1) Refrain from sexual intercourse until examined and diagnosed and treatment is completed, and all lesions are healed;
- (2) Be tested, treated, and re-evaluated in accordance with the STD Treatment Guidelines published by the U.S. Public Health Service. The recommendations contained in the STD Treatment Guidelines shall be the required control measures for testing, treatment, and follow-up for syphilis, lymphogranuloma venereum, granuloma inguinale, and chancroid, except that chancroid cultures shall not be required;
- (3) Give names to a disease intervention specialist employed by the local health department or by the HIV/STD Control Branch for contact tracing of all sexual partners and others as listed in this Rule:
 - (A) for syphilis:
 - (i) congenital - all immediate family members;
 - (ii) primary - all partners from three months before the onset of symptoms to completion of therapy and healing of lesions;
 - (iii) secondary - all partners from six months before the onset of symptoms to completion of therapy and healing of lesions; and
 - (iv) latent - all partners from 12 months before the onset of symptoms to completion of therapy and healing of lesions and, in addition, for women with late latent, spouses and children;
 - (B) for lymphogranuloma venereum:
 - (i) if there is a primary lesion and no buboes, all partners from 30 days before the onset of symptoms to completion of therapy and healing of lesions; and
 - (ii) if there are buboes all partners from six months before the onset of symptoms to completion of

PROPOSED RULES

therapy and healing of lesions;

- (C) for granuloma inguinale - all partners from three months before the onset of symptoms to completion of therapy and healing of lesions; and
(D) for chancroid - all partners from ten days before the onset of symptoms to completion of therapy and healing of lesions.

(d) All persons evaluated or reasonably suspected of being infected with any sexually transmitted disease shall be tested for syphilis, encouraged to be tested confidentially for HIV, and counseled about how to reduce the risk of acquiring sexually transmitted disease, including the use of condoms.

(e) All pregnant women shall be tested for syphilis and gonorrhea early in pregnancy and in the third trimester. Pregnant women at high risk for exposure to syphilis and gonorrhea shall also be tested for syphilis and gonorrhea at the time of delivery.

(e) All pregnant women shall be tested for syphilis, chlamydia and gonorrhea at the first prenatal visit. All pregnant women shall be tested for syphilis between 28 and 30 weeks of gestation. Pregnant women at increased risk for exposure to syphilis shall be tested for syphilis again, at the time of delivery. All pregnant women shall be tested for gonorrhea in the third trimester. Pregnant women at increased risk for exposure to gonorrhea shall be tested for gonorrhea again, at the time of delivery. Pregnant women less than 25 years of age and women who are at increased risk of exposure to chlamydia, i.e., women who have a new partner or more than one partner or whose partner has other partners, shall be tested for chlamydia in the third trimester.

(f) All newborn infants shall be treated prophylactically against gonococcal ophthalmia neonatorum in accordance with the STD Treatment Guidelines published by the U. S. Public Health Service. The recommendations contained in the STD Treatment Guidelines shall be the required prophylactic treatment against gonococcal ophthalmia neonatorum.

Authority G. S. 130A-135; 130A-144.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS

CHAPTER 50 - BOARD OF EXAMINERS OF PLUMBING, HEATING AND FIRE SPRINKLER CONTRACTORS

Notice is hereby given in accordance with G.S. 150B-21.2 that the State Board of Examiners of Plumbing, Heating and Fire Sprinkler Contractors intends to amend the rules cited as 21 NCAC 50 .0104, .0106, .0301, .0306-.0309, .0404, .0409, .0411, .0501, .0505, .0508, .0511, .1101-.1102, .1104 and repeal the rules cited as 21 NCAC 50 .0304, .1103. Notice of Rule-making Proceedings was published in the Register on September 17, 2001.

Proposed Effective Date: June 14, 2002

Public Hearing:

Date: January 15, 2002

Time: 9:00 a.m.

Location: 3801 Wake Forest Rd., Suite 201, Raleigh, NC

Reason for Proposed Action:

21 NCAC 50 .0104, .0106, .0301, .0306, .0308, .0404, .0411, .0505 – Recent legislation has mandated certain changes and has authorized others. In addition, minor changes in text of rules and changes to match current procedures are being contemplated. Also, hearings on adoption, as permanent rules, of rules previously adopted as temporary rules will be carried out at the same hearing. Among the issues are changes in office hours, Board elections, personnel titles, conversion to computer-based examination of applicants, alteration of exam and experience requirements for license applicants, creation of additional education and training requirements for failed examinees, creation of on-line license register, clarification of employment, and supervision requirements and standards.

21 NCAC 50 .0304, .1103 – The General Assembly has eliminated special examinations and different fees for persons from towns less than 10,000 population. Repeal of these Rules in conflict with the statutes is contemplated.

21 NCAC 50 .0307, .0309, .0409, .0501, .0508, .0511, .1101-.1102, .1104 – Each of these Rules are amended in order to match mandates in Chapter 270 of the 2001 Session Law. The text is consistent with temporary rules adopted effective August 31, 2001.

Comment Procedures: Written comments must be received by 9:00 a.m., January 15, 2002. Comments should be mailed to John N. Fountain, Rulemaking Coordinator, 3801 Wake Forest Rd., Suite 201, Raleigh, NC 27609.

Fiscal Impact

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

SECTION .0100 – ORGANIZATION

21 NCAC 50 .0104 EXECUTIVE DIRECTOR: OTHER PERSONNEL

- (a) The Board shall employ a full time executive secretary director, who shall act as an authorized agent of the Board.
(b) The Board is empowered to employ legal, accounting, consulting and other necessary assistance in carrying out the provisions of Article 2 of Chapter 87 of the General Statutes.

Authority G.S. 87-18.

21 NCAC 50 .0106 LOCATION OF OFFICE

The mailing address is the State Board of Examiners of Plumbing, Heating and Fire Sprinkler Contractors, 3801 Wake Forest Road, Suite 201, Raleigh, NC 27609. The office hours are 7:00 8:00 a.m. to 6:00 5:00 p.m., Monday through Friday.

Authority G.S. 87-16; 87-18.

SECTION .0300 – EXAMINATIONS

21 NCAC 50 .0301 QUALIFICATIONS

DETERMINED BY EXAMINATION

(a) In order to determine the qualifications of an applicant, the Board shall provide ~~a written examination in writing or by computer~~ in the following categories:

- Plumbing Contracting, Class I
- Plumbing Contracting, Class II
- Heating, Group No. 1 - Contracting, Class I
- Heating, Group No. 1 - Contracting, Class II
- Heating, Group No. 2 - Contracting, Class I
- Heating, Group No. 3 - Contracting, Class I
- Heating, Group No. 3 - Contracting, Class II
- Fuel Piping

(b) Each applicant shall be required to read, interpret and provide ~~written~~ answers to all parts of the examinations required by G.S. ~~87-21(b). 87-21(b), except during oral examinations provided pursuant to G.S. 87-21(b).~~

(c) Applicants for licensure as a fire sprinkler contractor must submit evidence of current certification by the National Institute for Certification and Engineering Technology (NICET) for Fire Protection Engineering Technician, Level III, subfield of Automatic Sprinkler System Layout as the prerequisite for ~~licensure. licensure except that NICET, Level II certification is required for license limited to residential systems.~~ Current certification by NICET is in lieu of separate examination conducted by the Board.

Authority G.S. 87-18; 87-21(a); 87-21(b).

21 NCAC 50 .0304 SPECIAL EXAMINATIONS

~~The Board may implement a program of additional regular examinations, on dates other than April and October, at the same cost as set for the regular examinations.~~

Authority G.S. 87-18; 87-21(a); 87-21(b).

21 NCAC 50 .0306 APPLICATIONS: ISSUANCE OF LICENSE

(a) All applicants for ~~regular~~ examinations shall file an application in the ~~office of the executive secretary on or before the date set out on the examination application form, which date shall be no more than 60 days prior to the examination. Board office on a form provided by the Board.~~

(b) Applicants for each plumbing or heating examination shall present evidence at the time of application on forms provided by the Board to establish two years on-site full-time experience in the ~~design and installation installation, maintenance, service or repair~~ of plumbing or heating systems related to the category for which license is sought, whether or not license was required for the work performed. One year of experience in the design or installation of fuel piping is required for fuel piping license. Practical experience shall directly involve plumbing, heating or fuel piping and may include work as a field superintendent, project manager, journeyman, mechanic or plant stationary operator directly involved in the installation, maintenance, service or repair of such systems. ~~Service, maintenance or repair activity~~ Work work as a local government inspector of plumbing or heating systems while qualified by the Code Officials Qualification Board, work as a field representative of this Board or work by a graduate of an ABET accredited engineering or engineering technology program with direct on-site involvement with plumbing or heating system construction, construction

supervision, plant engineering or operation may be used utilize ~~such work~~ as evidence of one-half the practical experience required; provided that Board members and employees may not sit for examination during their tenure with the Board. After review, the Board may request additional evidence. Up to one-half the experience may be in academic or technical training directly related to the field of endeavor for which examination is requested. The Board shall pro rate part-time work of less than 40 hours per week or part-time academic work of less than 15 semester or quarter hours or work which involves the kinds of work set out hereafter only part of the time.

(c) The Board shall issue a license certificate bearing the license number assigned to the qualifying individual.

(d) Fire Sprinkler contractors shall meet experience requirements in accordance with NICET examination criteria.

Authority G.S. 87-18; 87-21(b).

21 NCAC 50 .0307 REFUND OF DEPOSIT

(a) ~~A~~ The application and examination fee for ~~a regular~~ examination will not be ~~refunded refunded, unless the applicant notifies the executive secretary, either orally or in writing, at least three days before the examination that the applicant will be unable to attend the examination. To be effective, an oral notification must be confirmed in writing within three days.~~

(b) ~~In the event an applicant fails to pass the examination, fails to appear for examination, or abandons an examination, the license fee deposit will be refunded.~~

Authority G.S. 87-18; 87-21(b); 87-22; 87-22.1.

21 NCAC 50 .0308 REVIEW OF EXAMINATION

(a) Any person who fails to pass an examination may, on written request, review the examination paper at a time and place determined by the Board.

(b) ~~In the event an applicant fails an examination for a particular qualification three times, the applicant must present evidence of six months practical education directly involving both design and installation of systems of the type for which license is sought together with 50 contact hours of classroom education in the subjects covered by the examination.~~

Authority G.S. 87-18; 87-21(b); 87-25.

21 NCAC 50 .0309 EXPANDING SCOPE OF LICENSE

(a) Any licensee holding a license as an individual, or a licensee whose name appears on the certificate of license issued in the name of a corporation, partnership, or business that has a trade name, may be examined for the purpose of expansion of his license qualifications ~~without deposit of an additional annual license fee~~ upon payment of the required application and examination fee fee. ~~except that licensees seeking to add qualification as a fire sprinkler contractor must pay the license fee for that qualification.~~

(b) ~~A current license limited to cities or towns of less than 10,000 population may be expanded to statewide in scope without examination, upon payment of the license fee as prescribed by Rule .1103 of this Chapter.~~

Authority G.S. 87-18; 87-21(b); 87-25.

SECTION .0400 – GENERAL PROCEDURES

21 NCAC 50 .0404 ACTIVE EMPLOYMENT

(a) In each business location, branch or facility of any kind from which work requiring a license pursuant to G.S. 87, Article 2 is solicited or proposed, or from which contracts for such work are negotiated or entered into, or from which requests for such work are received or accepted, or from which such work is carried out or dispatched, there shall be on-site at least one individual who holds qualification in the classification needed for the work being proposed or performed, whose license is listed in the name of the particular firm or business at that location, and who is engaged in the work of the firm at the business location or at firm job sites at least 1500 hours annually, and who has the responsibility to make, modify, terminate and set the terms of contracts, and to exercise general supervision, as defined in Rule .0505 of this Chapter, of all work falling within his license qualification. Evidence of compliance may be required as a condition of renewal or retention of license, and falsification shall constitute fraud in obtaining license. The standards set forth in 21 NCAC 50 .0512 may be applied.

(b) A temporary field office used solely to conduct the work requiring license involved in an existing contract or contracts entered into by the main license office and from which no new business is solicited or conducted shall not be deemed a separate place of business or branch thereof.

Authority G.S. 87-18; 87-21(a)(5); 87-21(a)(6); 87-26.

21 NCAC 50 .0409 REINSTATEMENT OF EXPIRED LICENSE

A license which expires may be reinstated within three years of the date of expiration upon written ~~request request. Upon presentation of satisfactory evidence that the licensee has not engaged in the business of either plumbing, heating or fire sprinkler contracting since the expiration of his license, payment of the license fee for the current year only will be required. In the absence of such evidence, the license may be reinstated within three years of the date of expiration and~~ upon payment of the current license fee, the license fee for the ~~year for which such evidence is omitted and all subsequent years, unpaid prior years~~ together with the ~~penalty processing fee~~ imposed by G.S. 87-22.

Authority G.S. 87-18; 87-22.

21 NCAC 50 .0411 PUBLICATIONS

(a) The following publications are available from the Board:

- (1) laws applicable to plumbing, heating and fire sprinkler contracting in the State of North Carolina;
- (2) rules of the Board; and
- (3) suggested study references for the qualifying examinations conducted by the ~~Board; Board.~~
- (4) ~~register of licensees and supplements thereto.~~

(b) A Register of licensees is made available electronically on-line at all times.

Authority G.S. 87-18.

SECTION .0500 - POLICY STATEMENTS AND INTERPRETATIVE RULES

21 NCAC 50 .0501 AIR CONDITIONING FURTHER DEFINED

(a) ~~An air conditioning system~~ Heating Group 2 systems are defined in G.S. 87-21(a)(3) is an aggregation or assemblage of objects united by some form of interaction or interdependence, or a group of single or multiple units so combined as to form an integral whole, that requires a total of more than 15 tons of mechanical refrigeration to function or operate, which produces conditioned air by the lowering of temperature for comfort cooling, and requires air distribution ducts. Multiple units serving interconnected space and aggregating more than 15 tons are included in the foregoing whether or not separately ducted or controlled.

(b) All heating or cooling systems utilizing ductwork and located in single family residences, and not requiring a Heating Group 1 license requires a Heating Group 3 license.

Authority G.S. 87-18; 87-21(a)(3).

21 NCAC 50 .0505 GENERAL SUPERVISION AND STANDARD OF COMPETENCE

(a) The general supervision required by G.S. 87-26 is that degree of supervision which is necessary and sufficient to ensure that the contract is performed in a workmanlike manner and with the requisite skill and that the installation is made properly, safely and in accordance with applicable codes and rules. General supervision requires that review of the work done pursuant to the license be performed while the work is in progress.

(b) The Board recognizes the provisions of the North Carolina Building Code, including the provisions of ~~the Southern Building Code codes and standards incorporated by reference,~~ to the extent adopted by the Building Code Council of North Carolina from time to time as the minimum standard of competence applicable to contractors licensed by the Board. Licensees are required to design and install systems which meet or exceed the minimum standards of the North Carolina State Building ~~Code, Code and~~ Manufacturer's specifications and installation instructions and accepted standards prevailing in the industry.

Authority G.S. 87-18; 87-23; 87-26.

21 NCAC 50 .0508 HEATING: LICENSE REQUIRED

(a) A license in heating, group No. 3 is required for the installation or replacement of a furnace, ductwork or condenser in a heating, group No. 3 system.

(b) A license in heating, group No. 3 is required to install or replace a self-contained fireplace unit if the unit utilizes ducts or a blower to distribute air to areas not immediately adjacent to the fireplace itself.

(c) A license in heating, group No. 3 is required when air conditioning of less than 15 tons is added to an already installed heating, group No. 3 system, provided the existing heating system is altered or modified, or there are changes in the duct or control system.

(d) A Heating Group No. 2 license is required for the installation or replacement of equipment or ductwork in a Heating Group No. 2 ~~system.~~ system, unless exempted by G.S. 87-21(a)(3).

Authority G.S. 87-18; 87-21(a)(3); 87-21(a)(5); 87-21(c).

21 NCAC 50 .0511 FUEL PIPING

The contracting or installation of fuel piping extending from an approved fuel source at or near the premises, to a point within the premises, requires either Plumbing, Heating Group 1, Heating Group 2, Heating Group 3, or Fuel Piping license, if such piping is or may be used partly or entirely to supply fuel to plumbing or heating systems or equipment or if, by the installation of such piping, the fuel supply to plumbing or heating systems or equipment within the meaning of G.S. 87-21(a) may be altered or affected, regardless the nature of the system, equipment or appliance served. The term fuel refers to flammable gas, flammable liquefied gas, or flammable liquid as those terms are defined in Volume V of the North Carolina Building Code, and to combustible liquid so defined when used in a non-residential application. This provision does not alter the restriction of Class II license to single family detached residential dwellings.

Authority G.S. 87-18; 87-21.

SECTION .1100 - FEES

21 NCAC 50 .1101 EXAMINATION FEES

(a) An application to reissue or transfer license to a different corporation, partnership or individual name requires a fee of twenty-five dollars (\$25.00), consistent with G.S. 87-26.

(b) An application to issue or transfer license to the license of an existing licensee requires a fee of twenty-five dollars (\$25.00), consistent with G.S. 87-26.

(c) ~~An application for license~~ License by examination requires ~~a an application fee of twenty dollars (\$20.00) and an examination fee of sixty dollars (\$60.00), which is nonrefundable, fee of fifty dollars (\$50.00) for the examination and a fee for issuance of license as set forth in 21 NCAC 50 .1102 or this Rule. Upon passage of the examination, the license fee set forth in 21 NCAC 50 .1102 or this Rule must be paid to obtain the license within 45 days of notification of the result of the examination, except that anyone passing the examination after November 1 of any year may elect to obtain license for the following year rather than the year in which the exam was passed.~~

Authority G.S. 87-18; 87-22.1; 87-22; 87-26.

21 NCAC 50 .1102 LICENSE FEES

(a) Except as set out in this Rule, the annual license fee for statewide licenses by this Board is ~~seventy-five dollars (\$75.00), one hundred dollars (\$100.00).~~

~~(b) The annual license fee for a license limited in territory to cities or towns less than 10,000 population forty-five dollars (\$45.00).~~

~~(e)(b)~~ The annual license fee for a licensed individual who is not actively engaged in business requiring license by reason of full-time employment as a local government plumbing, heating or mechanical inspector and who holds qualifications from the Code Officials Qualification Board is fifteen dollars (\$15.00).

~~(d)(c)~~ The initial application fee for license as a fire sprinkler contractor is seventy-five dollars (\$75.00). The annual license fee for statewide licenses issued to a fire sprinkler contractor in the name of an individual, corporation, partnership or business with a trade name is two-hundred seventy-five dollars (\$275.00).

~~(e)(d)~~ The annual license fee for an individual whose qualifications are listed as the second or subsequent individual on a corporation, partnership, or business with a trade name under Paragraphs (a), (b) or (d) of this Rule is ten dollars (\$10.00).

Authority G.S. 87-18; 87-21; 87-22.

21 NCAC 50 .1103 EXPANDING SCOPE OF LICENSE

~~A current license limited to cities or towns of less than 10,000 population may be expanded to statewide in scope upon payment of a thirty dollars (\$30.00) fee to the Board.~~

Authority G.S. 87-18; 87-22.

21 NCAC 50 .1104 FEES FOR COPIES OF RECORDS AND RETURNED CHECKS

The Board charges the following fees:

(1)	copy of the Register of Licensees	\$4.00 each
(1)(2)	copies of license	\$15.00
(2)(3)	abstract of license record	\$15.00
(3)(4)	processing fee for returned checks	
		maximum allowed by law
(4)(5)	copy of Board rules	\$10.00
(5)	processing fee for late renewal	\$25.00

Authority G.S. 25-3-512; 87-18; 150B-19.

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 RESOURCES

Rule-making Agency: *NC Division of Facility Services, DHHS*

Rule Citation: *10 NCAC 03R .1125-.1126*

Effective Date: *January 1, 2002*

Findings Reviewed and Approved by: *Julian Mann*

Authority for the rulemaking: *G.S. 131E-175; 131E-176; S.L. 2001, c. 234*

Reason for Proposed Action: *The NC General Assembly recently ratified Senate Bill 937 (SL 2001-234). This legislation amends G.S. 131E-175 and G.S. 131E-176 to add Adult Care Homes (with 7 or more beds) to the Certificate of Need (CON) review. The Division is proposing to adopt temporary amendments to 10 NCAC 03R .1125 - .1226 to meet this legislative mandate.*

Comment Procedures: *Written comments concerning this rule-making action must be submitted to Mark Benton, Rule-making Coordinator or Lee Hoffman, Chief, Certificate of Need Section, NC Division of Facility Services, 2701 Mail Service Center, Raleigh, NC 27699-2701.*

CHAPTER 03 – FACILITY SERVICES

SUBCHAPTER 03R – CERTIFICATE OF NEED REGULATIONS

SECTION .1100 – CRITERIA AND STANDARDS FOR NURSING FACILITY OR ADULT CARE HOME SERVICES

10 NCAC 03R .1125 INFORMATION REQUIRED OF APPLICANT

- (a) An applicant proposing to establish new nursing facility or adult care home beds shall project an occupancy level for the entire facility for each of the first eight calendar quarters following the completion of the proposed project. All assumptions, including the specific methodologies by which occupancies are projected, shall be clearly stated.
- (b) An applicant proposing to establish new nursing facility or adult care home beds shall project patient origin by percentage by county of residence. All assumptions, including the specific methodology by which patient origin is projected, shall be clearly stated.
- (c) An applicant proposing to establish new nursing facility or adult care home beds shall show that at least 85 percent of the anticipated patient population in the entire facility lives within 45 minutes normal automobile driving time (one-way) from the facility, with the exception that this standard may be waived for

facilities that are located in isolated or remote locations, fraternal or religious facilities, or facilities that are part of licensed continuing care facilities which make services available to large or geographically diverse populations.

(d) An applicant proposing to establish new nursing facility or adult care home beds shall specify the site on which the facility will be located. If the proposed site is not owned by or under the control of the applicant, the applicant shall specify at least one alternate site on which the services could be operated should acquisition efforts relative to the proposed site ultimately fail, and shall demonstrate that the proposed and alternate sites are available for acquisition.

(e) An applicant proposing to establish new nursing facility or adult care home beds shall document that the proposed site and alternate sites are suitable for development of ~~a nursing~~ the facility with regard to water, sewage disposal, site development and zoning including the required procedures for obtaining zoning changes and a special use permit after a certificate of need is obtained.

(f) An applicant proposing to establish new nursing facility or adult care home beds shall provide documentation to demonstrate that the physical plant will conform with all requirements as stated in 10 NCAC 03H or 10 NCAC 42D, whichever is applicable.

History Note: Authority G.S. 131E-177(1); 131E-183; 131E-175; 131E-176; S.L. 2001, c. 234; Eff. November 1, 1996; Temporary Amendment Eff. January 1, 2002.

10 NCAC 03R .1126 REQUIRED PERFORMANCE STANDARDS

(a) An applicant proposing to add nursing facility beds to an existing facility shall not be approved unless the average occupancy, over the nine months immediately preceding the submittal of the application, of the total number of licensed nursing facility beds within the facility in which the new beds are to be operated was at least 90 percent.

(b) An applicant proposing to establish a new nursing facility or add nursing facility beds to an existing facility shall not be approved unless occupancy is projected to be at least 90 percent for the total number of nursing facility beds proposed to be operated, no later than two years following the completion of the proposed project. All assumptions, including the specific methodologies by which occupancies are projected, shall be clearly stated.

(c) An applicant proposing to add adult care home beds to an existing facility shall not be approved unless the average occupancy, over the nine months immediately preceding the submittal of the application, of the total number of licensed adult care home beds within the facility in which the new beds are to be operated was at least 85 percent.

(d) An applicant proposing to establish a new adult care home facility or add adult care home beds to an existing facility shall not be approved unless occupancy is projected to be at least 85

percent for the total number of adult care home beds proposed to be operated, no later than two years following the completion of the proposed project. All assumptions, including the specific methodologies by which occupancies are projected, shall be clearly stated.

History Note: Authority G.S. 131E-177(1); 131E-183; 131E-175; 131E-176; S.L. 2001, c. 234; Eff. November 1, 1996; Temporary Amendment Eff. January 1, 2002.

Rule-making Agency: Division of Mental Health, Developmental Disabilities and Substance Abuse Services

Rule Citation: 10 NCAC 14G .0102; 14V .0104, .0202-.0204

Effective Date: November 1, 2001

Findings Reviewed and Approved by: Beecher R. Gray

Authority for the rulemaking: G.S. 122C-3; 122C-4; 122C-25; 122C-26; 122C-51; 122C-53(f); 143B-147

Reason for Proposed Action: Session Law 200-55 rewrote G.S. 122C-26 to amend the powers and duties of the Commission for MH/DD/SAS to include adoption of rules applicable to facilities licensed under Article 2 of Chapter 122C that established personnel requirements for staff and qualifications of administrators or directors. The legislation also gave the Commission the authority to adopt temporary rules to implement the amended statute. Temporary rules were adopted effective January 1, 2001 and were published in Volume 15, Issue 14 of the NC Register.

Comment Procedures: Written comments should be submitted to Cindy Kornegay, Program Accountability Section, Division of Mental Health, Developmental Disabilities and Substance Abuse Services (MH/DD/SAS), 3012 Mail Service Center, Raleigh, NC 27699-3012, phone 919-881-2446.

CHAPTER 14 – MENTAL HEALTH: GENERAL

SUBCHAPTER 14G – COMMITTEES AND PROCEDURES

SECTION .0100 - PURPOSE: SCOPE: DEFINITIONS

10 NCAC 14G .0102 DEFINITIONS

(a) In addition to the definitions contained in this Rule, the terms defined in G.S. 122C-3, 122C-4 and 122C-53(f) also apply to all rules in Subchapters 14G, 14H, 14I, and 14J of this Chapter.

(b) As used in the rules in Subchapters 14G, 14H, 14I and 14J of this Chapter, the following terms have the meanings specified:

- (1) "Abuse" means the infliction of physical or mental pain or injury by other than accidental means, or unreasonable confinement, or the deprivation by an employee of services which

are necessary to the mental and physical health of the client. Temporary discomfort that is part of an approved and documented treatment plan or use of a documented emergency procedure shall not be considered abuse.

(2) "Associate Professional (AP)" within the DMH/DD/SAS system of care means an individual who is a:

(A) graduate of a college or university with a Masters degree in a related human service field with less than one year of full-time, post-graduate accumulated MH/DD/SA experience with the population served, and a substance abuse professional with less than one year of full-time, post-graduate accumulated supervised experience in alcoholism and drug abuse counseling. Upon hiring, an individualized supervision plan shall be developed and supervision shall be provided by a qualified professional with the population served until the individual meets one year of experience; or

(B) graduate of a college or university with a baccalaureate degree in a related human service field with less than two years of full-time, post-baccalaureate accumulated MH/DD/SA experience with the population served, and a substance abuse professional with less than two years of full-time, post-baccalaureate accumulated supervised experience in alcoholism and drug abuse counseling. Upon hiring, an individualized supervision plan shall be developed and reviewed annually. Supervision shall be provided by a qualified professional with the population served until the individual meets two years of experience; or

(C) graduate of a college or university with a baccalaureate degree in a field not related to human services with less than four years of full-time, post-baccalaureate accumulated MH/DD/SA experience with the population served, and a substance abuse professional with less than four years of full-time, post-baccalaureate accumulated supervised experience in alcoholism and drug abuse counseling. Upon hiring, an individualized supervision plan shall be developed and reviewed annually. Supervision shall be provided by a qualified professional with the population served until the individual meets four years of experience; or

- (D) a registered nurse who is licensed to practice in the State of North Carolina by the North Carolina Board of Nursing and has less than four years of full-time accumulated experience in psychiatric mental health nursing.
- (2)(3) "Basic necessities" ~~means—mean~~ the essential items or substances needed to support life and health which include, but are not limited to, a nutritionally sound diet balanced during three meals per day, access to water and bathroom facilities at frequent intervals, seasonable clothing, medications to control seizures, diabetes and other like physical health conditions, and frequent access to social contacts.
- (3)(4) "Client record" means any record made of confidential information.
- (4)(5) "Clinically ~~privileged~~—competent" means authorization by the State Facility Director for a qualified professional to provide specific treatment/habilitation services to clients, within well-defined limits, based on the professional's education, training, experience, competence and judgment.
- (5)(6) "Complaint" means an informal verbal or written expression of dissatisfaction, discontent, or protest by a client concerning a situation within the jurisdiction of the state facility. A complaint would usually but not necessarily precede a grievance.
- (6)(7) "Consent" means concurrence by a client or his legally responsible person following receipt of ~~sufficient~~ information ~~by—from~~ the qualified professional who will administer the proposed treatment or procedure. Informed consent implies that the client or his legally responsible person was provided with ~~sufficient~~ information concerning proposed treatment, including both benefits and risks, in order to make an educated decision with regard to such treatment.
- (7)(8) "Dangerous articles or substances" ~~—means,~~ mean, but ~~is—are~~ not limited to, any weapon or potential weapon, heavy blunt object, sharp objects, potentially harmful chemicals, or drugs of any sort, including alcohol.
- (8)(9) "Deputy Director" means a member of the management staff of the Division with responsibility for the state facilities relative to a specific disability area. Such directors may include the Deputy Director of Mental Health, Deputy Director of Mental Retardation, Deputy Director of Substance Abuse, or such deputy's designee.
- (9)(10) "Director of Clinical Services" means Medical Director, Director of Medical Services or such person acting in the position of Director of Clinical Services, or his designee.
- (10)(11) "Division Director" means the Director of the Division or his designee.
- (11)(12) "Emergency" means a situation in a state facility in which a client is in imminent danger of causing abuse or injury to self or others, or when substantial property damage is occurring as a result of unexpected and severe forms of inappropriate behavior, and rapid intervention by the staff is needed. [See Subparagraph (b)(22) of this Rule for definition of medical emergency].
- (12)(13) "Emergency surgery" means an operation or surgery performed in a medical emergency [as defined in Subparagraph (b)(22) of this Rule] where informed consent cannot be obtained from an authorized person, as specified in G.S. 90-21.13, because the delay would seriously worsen the physical condition or endanger the life of the client.
- (13)(14) "Exclusionary time-out" means the removal of a client to a separate area or room from which exit is not barred for the purpose of modifying behavior.
- (14)(15) "Exploitation" means the use of a client or his resources for another person's profit, business or advantage. "Exploitation" includes borrowing, taking or using personal property from a client with or without the client's permission.
- (15)(16) "Forensic Division" means the inpatient facility at Dorothea Dix Hospital which serves clients who are:
- (A) admitted for the purpose of evaluation for capacity to proceed to trial;
 - (B) found not guilty by reason of insanity;
 - (C) determined incapable of proceeding to trial; or
 - (D) deemed to require a more secure environment to protect the health, safety and welfare of clients, staff and the general public.
- (16)(17) "Grievance" means a formal written complaint by or on behalf of a client concerning a circumstance would usually but not necessarily follow a complaint.
- (17)(18) "Human Rights Committee" means a committee, appointed by the Secretary, to act in a capacity regarding the protection of client rights.
- (18)(19) "Independent psychiatric consultant" means a licensed psychiatrist not on the staff of the state facility in which the client is being treated. The psychiatrist may be in private practice, or be employed by another state facility, or be employed by a facility other than a state facility as defined in G.S. 122C-3(14).
- (19)(20) "Interpreter services" means specialized communication services provided for the hearing impaired by ~~certified—interpreters.~~ interpreters certified by the National Registry

of Interpreters for the Deaf or the National Association of the Deaf.

- ~~(20)~~(21) "Involuntary client" means a person admitted to any regional psychiatric hospital or alcoholic rehabilitation center under the provisions of Article 5, Parts 7, 8 or 9 of G.S. 122C and includes but it is not limited to clients detained pending a district court hearing and clients involuntarily committed after a district court hearing. This term shall also include individuals who are defendants in criminal actions and are being evaluated in a state facility for mental responsibility or mental competency as a part of such criminal proceedings as specified in G.S. 15A-1002 unless a valid order providing otherwise is issued from a court of competent jurisdiction and the civil commitment of defendants found not guilty by reason of insanity as specified in G.S. 15A-1321.
- ~~(21)~~(22) "Isolation time-out" means the removal of a client to a separate room from which exit is barred but which is not locked and where there is continuous supervision by staff for the purpose of modifying behavior.
- ~~(22)~~(23) "Major physical injury" means damage caused to the body resulting in substantial-profuse bleeding or contusion of tissues; fracture of a bone; damage to internal organs; loss of consciousness; loss of normal neurological function (inability to move or coordinate movement); or any other painful condition caused by such injury.
- ~~(23)~~(24) "Medical emergency" means a situation where the client is unconscious, ill, or injured, and the reasonably apparent circumstances require prompt decisions and actions in medical or other health care, and the necessity of immediate health care treatment is so reasonably apparent that any delay in the rendering of the treatment would seriously worsen the physical condition or endanger the life of the client.
- ~~(24)~~(25) "Minimal risk research" means that the risks of harm anticipated in the proposed research are not greater, considering probability and magnitude, than those ordinarily encountered in daily life or during the performance of routine physical or psychological examinations or tests.
- ~~(25)~~(26) "Minor client" means a person under 18 years of age who has not been married or who has not been emancipated by a decree issued by a court of competent jurisdiction or is not a member of the armed forces.
- ~~(26)~~(27) "Neglect" means the failure to provide care or services necessary to maintain the mental health, physical health and well-being of the client.
- ~~(27)~~(28) "Neuroleptic medication" means a category of psychotropic drugs used to treat schizophrenia

and related disorders. Neuroleptics are the only category of psychotropic drugs with long-term side effects of major consequence (e.g., tardive dyskinesia). Examples of neuroleptic medications are Chlorpromazine, Thioridazine and Haloperidol.

- ~~(28)~~(29) "Normalization" means the principle of helping the client to obtain an existence as close to normal as possible, taking into consideration the client's disabilities and potential, by making available to him patterns and conditions of everyday life that are as close as possible to the norms and patterns of the mainstream of society.
- (30) "Paraprofessional" within the DMH/DD/SAS system of care means an individual who has:
(A) a GED or high school diploma; or
(B) no GED or high school diploma, employed prior to November 1, 2001 to provide a MH/DD/SA service; and
(C) upon hiring, an individualized supervision plan shall be developed and supervision shall be provided by a qualified professional or associate professional with the population served.
- ~~(29)~~(31) "Person standing in loco parentis" means one who has put himself in the place of a lawful parent by assuming the rights and obligations of a parent without formal adoption.
- (32) "Physical Restraint" means the application or use of any manual method of restraint that restricts freedom of movement, or the application or use of any physical or mechanical device that restricts freedom of movement or normal access to one's body, including material or equipment attached or adjacent to the client's body that he or she cannot easily remove. Holding a client in a therapeutic hold or any other manner that restricts his or her movement constitutes manual restraint for that client. Mechanical devices may restrain a client to a bed or chair, or may be used as ambulatory restraints. Examples of mechanical devices include cuffs, ankle straps, sheets or restraining shirts, arm splints, mittens and helmets. Excluded from this definition of physical restraint are physical guidance, gentle physical prompting techniques, escorting and therapeutic holds used solely for the purpose of escorting a client who is walking, soft ties used solely to prevent a medically ill client from removing intravenous tubes, indwelling catheters, cardiac monitor electrodes or similar medical devices, and prosthetic devices or assistive technology which are designed and used to increase client adaptive skills. Escorting means the temporary touching or holding of the hand, wrist, arm, shoulder or back for the

- purpose of inducing a client to walk to a safe location.
- ~~(30)~~(33) "Protective devices" means an intervention which provides support for weak and feeble clients or enhances the safety of behaviorally disordered clients. Such devices may include posey vests, geri-chairs or table top chairs to provide support and safety for clients with ~~major~~ physical handicaps; devices such as helmets and mittens for self-injurious behaviors; or devices such as soft ties used to prevent medically ill clients from removing intravenous tubes, indwelling catheters, cardiac monitor electrodes or similar medical devices. As provided in Rule .0207 of Subchapter 14J, the use of a protective device for behavioral control shall comply with the requirements specified in Rule .0203 of Subchapter 14J.
- ~~(31)~~(34) "Psychosurgery" means surgical procedures for the intervention in or alteration of a mental, emotional or behavior disorder.
- ~~(32)~~(35) "Psychotropic medication" means medication with the primary function of treating mental illness, personality or behavior disorders. It includes, but is not limited to, antipsychotics, anti-depressants, minor tranquilizers and lithium.
- ~~(33)~~ "Qualified professional" means any person with appropriate training or experience in the professional fields of mental health care, mental illness, mental retardation, or substance abuse, including but not limited to, physicians, psychologists, social workers, registered nurses, ~~qualified mental retardation professionals and qualified alcoholism or drug abuse professionals~~, as these terms are defined in 10 NCAC 14K .0103, "Licensure Rules for Mental Health, Mental Retardation and Other Developmental Disabilities, and Substance Abuse Facilities", division publication APSM 40-2. In addition, qualified professionals shall include special education instructors, physical therapists, occupational therapists, speech therapists and any other recognized professional group designated by the State Facility Director
- (36) "Qualified professional" means, within the MH/DD/SAS system of care, an individual serving in the following categories:
- (A) Independent Practitioner. An independent practitioner is an individual who holds an unrestricted license, certificate, registration issued by the board regulating the profession in the following disciplines: Ph.D. Psychologist, Psychiatrist, Certified Clinical Social Worker, Clinical Nurse Specialist certified in Psychiatric Mental Health Advanced Practice Nursing, Licensed Clinical

- Social Worker, Licensed Occupational, Physical and Speech Therapists who provide and bill MH/DD/SA services under their own provider number and through employment or contract with an area program or other billing provider; or
- (B) Independent Practitioner Provisional. An independent practitioner provisional has a limited, provisional and temporary license, certificate, registration or permit in the disciplines as specified in Paragraph (b)(36)(A) of this Rule issued by the governing board regulating the profession and requires clinical supervision by an independent practitioner and provides and bills MH/DD/SA services under their own provider number and through employment or contract with an area program or other billing provider; or
- (C) Qualified Professional of MH/DD/SA Services:
- (i) a graduate of a college or university with a Masters degree in a related human service field and has one year of full-time, post-graduate accumulated MH/DD/SA experience with the population served, and a substance abuse professional shall have two years of full-time, post-graduate accumulated supervised experience in alcoholism and drug abuse counseling; or
- (ii) a graduate of a college or university with a baccalaureate degree in a related human service field and has two years of full-time, post-baccalaureate accumulated MH/DD/SA experience with the population served, and a substance abuse professional shall have two years of full-time, post-baccalaureate accumulated supervised experience in alcoholism and drug abuse counseling; or
- (iii) a graduate of a college or university with a baccalaureate degree in a field not related to human services and has four years of full-time, post-baccalaureate accumulated MH/DD/SA experience with

the population served, and a substance abuse professional shall have four years of full-time, post-baccalaureate accumulated supervised experience in alcoholism and drug abuse counseling; or

(iv) a substance abuse professional who has a counseling certification by the North Carolina Substance Abuse Professional Certification Board; or

(v) a registered nurse who is licensed to practice in the State of North Carolina by the North Carolina Board of Nursing and has four years of full-time accumulated experience in psychiatric mental health nursing.

~~(34)~~(37) "Regional alcoholic rehabilitation center" means a state facility for substance abusers as specified in G.S. 122C-181(a)(3).

~~(35)~~(38) "Regional mental retardation center" means a state facility for the mentally retarded as specified in G.S. 122C-181(a)(2).

~~(36)~~(39) "Regional psychiatric hospital" means a state facility for the mentally ill as specified in G.S. 122C-181(a)(1).

~~(37)~~(40) "Representative payee" means the person, group, or facility designated by a funding source, such as Supplemental Security Income (SSI), to receive and handle funds according to the guidelines of the source on behalf of a client.

~~(38)~~(41) "Research" means inquiry involving a trial or special observation made under conditions determined by the investigator to confirm or disprove an hypothesis or to explicate some principle or effect.

~~(39)~~(42) "Respite client" means a client admitted to a mental retardation center for a short-term period, normally not to exceed 30 days. The primary purpose of such admission is to provide a temporary interval of rest or relief for the client's regular caretaker.

~~(40)~~(43) "Responsible professional" shall have the meaning as specified in GS. 122C-3 except the "responsible professional" shall also be a qualified professional as defined in Subparagraph ~~(b)(32) in (b)(36)~~ of this Rule.

~~(41)~~ "Restraint" means the limitation of one's freedom of movement. In accordance with G.S. 122C-60, restraint includes the following:
~~(A) mechanical restraint which is restraining a client with the intent of controlling behavior with mechanical devices which include, but are not limited to, cuffs, ankle straps, sheets~~

~~or restraining shirts. This does not include handcuffs used for the purpose of escorting forensic clients;~~
~~(B) physical restraint which is restraining a client by physically holding or subduing the client until he is calm.~~

~~(42)~~(44) "Seclusion" means isolating a client in a separate locked room for the purpose of controlling a client's behavior, except that in the Forensic Division at Dorothea Dix Hospital, seclusion shall not include the routine use of locked rooms, isolation of clients admitted for evaluation of capacity to proceed to trial who are considered to be an escape risk, or separation of juveniles requiring separation from adult clients.

~~(43)~~(45) "State Facility Director" means the chief administrative officer or manager of a state facility or his designee.

~~(44)~~(46) "Strike" means, but is not limited to, hitting, kicking, slapping or beating whether done with a part of one's body or with an object.

~~(45)~~(47) "Timeout" means the removal of a client from other clients to another space within the same activity area for the purpose of modifying behavior.

~~(46)~~(48) "Treatment" means the act, method, or manner of habilitating or rehabilitating, caring for or managing a client's physical or mental problems.

~~(47)~~(49) "Treatment plan" means a written individual plan of treatment or habilitation for each client to be undertaken by the treatment team and includes any documentation of restriction of client's rights.

~~(48)~~(50) "Treatment team" means an interdisciplinary group of qualified professionals sufficient in number and variety by discipline to adequately assess and address the identified needs of the client.

~~(49)~~(51) "Unit" means an integral component of a state facility distinctly established for the delivery of one or more elements of service to which specific staff and space are assigned, and for which responsibility has been clearly assigned to a director, supervisor, administrator, or manager.

~~(50)~~(52) "Voluntary client" means a person admitted to a state facility under the provisions of Article 5, Parts 2, 3, 4 or 5 of G.S. 122C.

History Note: Authority G.S. 122C-3; 122C-4; 122C-51; 122C-53(f); 143B-147; Eff. October 1, 1984; Amended Eff. June 1, 1990; April 1, 1990; July 1, 1989; Temporary Amendment Eff. January 1, 1998; Amended Eff. April 1, 1999; Temporary Amendment Eff. January 1, 2001; Temporary Amendment Expired October 13, 2001; Temporary Amendment Eff. November 1, 2001.

SUBCHAPTER 14V - RULES FOR MENTAL HEALTH, DEVELOPMENTAL DISABILITIES, AND SUBSTANCE ABUSE FACILITIES AND SERVICES

SECTION .0100 – GENERAL INFORMATION

10 NCAC 14V .0104 STAFF DEFINITIONS

The following credentials and qualifications apply to staff described in this Subchapter:

- (1) "Associate Professional (AP)" within the DMH/DD/SAS system of care means an individual who is a:
 - (a) graduate of a college or university with a Masters degree in a related human service field with less than one year of full-time, post-graduate accumulated MH/DD/SA experience with the population served, and a substance abuse professional with less than one year of full-time, post-graduate accumulated supervised experience in alcoholism and drug abuse counseling. Upon hiring, an individualized supervision plan shall be developed and supervision shall be provided by a qualified professional with the population served until the individual meets one year of experience; or
 - (b) graduate of a college or university with a baccalaureate degree in a related human service field with less than two years of full-time, post-baccalaureate accumulated MH/DD/SA experience with the population served, and a substance abuse professional with less than two years of full-time, post-baccalaureate accumulated supervised experience in alcoholism and drug abuse counseling. Upon hiring, an individualized supervision plan shall be developed and reviewed annually. Supervision shall be provided by a qualified professional with the population served until the individual meets two years of experience; or
 - (c) graduate of a college or university with a baccalaureate degree in a field not related to human services with less than four years of full-time, post-baccalaureate accumulated MH/DD/SA experience with the population served, and a substance abuse professional with less than four years of full-time, post-baccalaureate accumulated supervised experience in alcoholism and drug abuse counseling. Upon hiring, an individualized supervision plan shall be developed and reviewed annually.

Supervision shall be provided by a qualified professional with the population served until the individual meets four years of experience; or

- (d) registered nurse who is licensed to practice in the State of North Carolina by the North Carolina Board of Nursing and has less than four years of full-time accumulated experience in psychiatric mental health nursing.
- ~~(4)~~(2) "Certified counselor" means a counselor who is certified as such by the North Carolina Counseling Association as a Licensed Professional Counselor (LPC).
- ~~(2)~~(3) "Certified alcoholism counselor (CAC)" means an individual who is certified as such by the North Carolina Substance Abuse Professional Certification Board.
- ~~(3)~~(4) "Certified drug abuse counselor (CDAC)" means an individual who is certified as such by the North Carolina Substance Abuse Professional Certification Board.
- ~~(4)~~(5) "Certified substance abuse counselor (CSAC)" means an individual who is certified as such by the North Carolina Substance Abuse Professional Certification Board.
- ~~(5)~~(6) "Clinical" means having to do with the active direct treatment/habilitation of a client.
- ~~(6)~~(7) "Clinical staff member" means a professional who provides active direct treatment/habilitation to a client.
- ~~(7)~~(8) "Clinical/professional supervision" means regularly scheduled assistance by a qualified mental health professional, a qualified substance abuse professional or a qualified developmental disabilities professional to a staff member who is providing direct, therapeutic intervention to a client or clients. The purpose of clinical supervision is to ensure that each client receives appropriate treatment or habilitation which is consistent with accepted standards of practice and the needs of the client.
- ~~(8)~~(9) "Clinical social worker" means a social worker who is licensed as such by the N.C. Board of Social Work.
- (10) "Director" means the individual who is responsible for the operation of the facility.
- ~~(9)~~(11) "Licensed Psychologist" means an individual who is licensed to practice psychology in the State of North Carolina.
- ~~(40)~~(12) "Nurse" means a person licensed to practice in the State of North Carolina either as a registered nurse or as a licensed practical nurse.
- (13) "Paraprofessional" within the DMH/DD/SAS system of care means an individual who has:
 - (a) a GED or high school diploma; or
 - (b) no GED or high school diploma, employed prior to November 1, 2001 to provide a MH/DD/SA service; and

- (c) upon hiring, an individualized supervision plan shall be developed and supervision shall be provided by a qualified professional or associate professional with the population served.
- ~~(14)~~ "Psychiatric nurse" means an individual who is licensed to practice as a registered nurse in the State of North Carolina by the North Carolina Board of Nursing and who is a graduate of an accredited master's level program in psychiatric mental health nursing with two years of experience, or has a master's degree in behavioral science with two years of supervised clinical experience, or has four years of experience in psychiatric mental health nursing.
- ~~(12)~~(14) "Psychiatric social worker" means an individual who holds a master's degree in social work from an accredited school of social work and has two years of clinical social work experience.
- ~~(13)~~(15) "Psychiatrist" means an individual who is licensed to practice medicine in the State of North Carolina and who has completed an accredited training program in psychiatry.
- ~~(14)~~ "Qualified alcoholism professional" means an individual who is certified as such by the North Carolina Substance Abuse Professional Certification Board or who is a graduate of a college or university with a baccalaureate or advanced degree in a human service related field with documentation of at least two years of supervised experience in the profession of alcoholism counseling.
- ~~(15)~~(16) "Qualified client record manager" means an individual who is a graduate of a curriculum accredited by the Council on Medical Education and Registration of the American Health Information Management Association and who is currently registered or accredited by the American Health Information Management Association.
- (17) "Qualified professional" means, within the MH/DD/SAS system of care, an individual serving in the following categories:
- (a) Independent Practitioner. An independent practitioner is an individual who holds an unrestricted license, certificate, registration, issued by the board regulating the profession in question, in the following disciplines: Ph.D., Psychologist, Psychiatrist, Certified Clinical Social Worker, Clinical Nurse Specialist certified in Psychiatric Mental Health Advanced Practice Nursing, Licensed Clinical Social Worker, Licensed Occupational, Physical and Speech Therapist and who provides and bills
- MH/DD/SA services under their own provider number and through employment or contract with an area program or other billing provider; or
- (b) Independent Practitioner Provisional. An independent practitioner provisional has a limited, provisional and temporary license, certificate, registration or permit in the disciplines listed above issued by the governing board regulating the profession and requires clinical supervision by a qualified independent practitioner and provides and bills MH/DD/SA services under their own provider number and through employment or contract with an area program or other billing provider; or
- (c) Qualified Professional of MH/DD/SA Services:
- (i) a graduate of a college or university with a Masters degree in a related human service field and has one year of full-time, post-graduate accumulated MH/DD/SA experience with the population served and a substance abuse professional shall have one year of full-time post-graduate accumulated supervised experience in alcoholism and drug abuse counseling; or
- (ii) a graduate of a college or university with a baccalaureate degree in a related human service field and has two years of full-time, post-baccalaureate accumulated MH/DD/SA experience with the population served and a substance abuse professional shall have two years of full-time post-graduate accumulated supervised experience in alcoholism and drug abuse counseling; or
- (iii) a graduate of a college or university with a baccalaureate degree in a field not related to human services and has four years of full-time, post-baccalaureate accumulated MH/DD/SA experience with the population served and a substance abuse professional shall have four years of full-

- ~~time post-graduate accumulated supervised experience in alcoholism and drug abuse counseling; or~~
- (iv) ~~a substance abuse professional who has a counseling certification by the North Carolina Substance Abuse Professional Certification Board; or~~
- (v) ~~a registered nurse who is licensed to practice in the State of North Carolina by the North Carolina Board of Nursing and has four years of full-time accumulated experience in psychiatric mental health nursing.~~
- (16) ~~"Qualified developmental disabilities professional" means an individual who is:~~
- (a) ~~a graduate of a college or university with a baccalaureate degree in a discipline related to developmental disabilities and at least one year of supervised habilitative experience in working with individuals with developmental disabilities;~~
- (b) ~~a graduate of a college or university with a baccalaureate degree in a human service related field and at least two years of supervised habilitative experience in working with individuals with developmental disabilities; or~~
- (c) ~~a graduate of a college or university with a baccalaureate degree in a field other than one related to developmental disabilities and at least three years of supervised habilitative experience in working with individuals with developmental disabilities.~~
- (17) ~~"Qualified drug abuse professional" means an individual who is:~~
- (a) ~~certified as such by the North Carolina Substance Abuse Professional Certification Board;~~
- (b) ~~a graduate of a college or university with an advanced degree in a human service related field with documentation of at least one year of supervised experience in the profession of drug abuse counseling; or~~
- (c) ~~a graduate of a college or university with a baccalaureate or advanced degree in a human service related field with documentation of at least two years of supervised experience in~~

- ~~the profession of drug abuse counseling.~~
- (18) ~~"Qualified mental health professional" means an individual who is:~~
- (a) ~~a psychiatrist, psychiatric nurse, licensed psychologist, or a psychiatric social worker;~~
- (b) ~~graduate of a college or university with an advanced degree in a related human service field and two years of supervised clinical experience in mental health services; or~~
- (c) ~~a graduate of a college or university with a baccalaureate degree in a related human service field and four years of supervised clinical experience in mental health services.~~
- (19) ~~"Qualified substance abuse professional" means an individual who is:~~
- (a) ~~certified as such by the North Carolina Substance Abuse Professional Certification Board; or~~
- (b) ~~a graduate of a college or university with an advanced degree in a human service related field with documentation of at least one year of supervised experience in the profession of alcoholism and drug abuse Counseling; or~~
- (c) ~~a graduate of a college or university with a baccalaureate degree in a human service related field with documentation of at least two years of supervised experience in the profession of alcoholism and drug abuse counseling.~~

History Note: Authority G.S. 122C-3; 122C-25; 122C-26; 143B-147; Eff. May 11, 1996; Temporary Amendment Eff. January 1, 2001; Temporary Amendment Expired October 13, 2001; Temporary Amendment Eff. November 1, 2001.

SECTION .0200 – OPERATION AND MANAGEMENT RULES

10 NCAC 14V .0202 PERSONNEL REQUIREMENTS

- (a) All facilities shall have a written job description for the director and each staff position which:
- (1) specifies the minimum level of education, competency, work experience and other qualifications for the position;
 - (2) specifies the duties and responsibilities of the position;
 - (3) is signed by the staff member and the supervisor; and
 - (4) is retained in the staff member's file.
- (b) All facilities shall ensure that the director, each staff member or any other person who provides care or services to clients on behalf of the facility:

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- (1) is at least 18 years of age;
(2) is able to read, write, understand and follow directions;
(3) meets the minimum level of education, competency, work experience, skills and other qualifications for the position; and
(4) has no substantiated findings of abuse or neglect listed on the North Carolina Health Care Personnel Registry.

(c) All facilities or services shall require that all applicants for employment disclose any criminal conviction. The impact of this information on a decision regarding employment shall be based upon the offense in relationship to the job for which the applicant is applying.

(d) Staff of a facility or a service shall be currently licensed, registered or certified in accordance with applicable state laws, as appropriate laws for the services provided.

(e) A personnel record file shall be maintained for each individual employed indicating the training, experience, and other qualifications for the position, including verification appropriate to licensure, registration or certification.

(f) Continuing education shall be documented.

(g) Orientation programs shall be provided. Employee training programs shall be provided and, at a minimum, shall consist of the following:

- (1) general organizational orientation;
(2) training on client rights and confidentiality;
(3) training to assist clients with MH/DD/SA needs or clients with dual diagnoses; and
(4) training in infectious diseases and bloodborne pathogens.

(f) Staff training including training in infectious diseases and blood-borne pathogens.

(h) Except as permitted under 10 NCAC 14V .5602(b), at least one staff member shall be available in the facility at all times when a client is present. That staff member shall be who is trained in basic first aid including seizure management, currently trained to provide cardiopulmonary resuscitation, resuscitation seizure management, and trained in the Heimlich maneuver or other approved Red Cross First Aid first aid techniques such as those provided by Red Cross, the American Heart Association or their equivalence for relieving airway obstruction shall be available at all times, obstruction.

(i) The governing body shall develop and implement policies and procedures for identifying, reporting, investigating and controlling infectious and communicable diseases of personnel and clients. may require medical statements from all direct care providers except those in facilities that provide only periodic services. When, in these Rules, a medical statement is required, the following shall apply:

- (1) The staff member shall submit to the program at the time of initial approval and annually thereafter a medical statement from a licensed physician, nurse practitioner, or physician's assistant.
(2) The medical statement may be in any written form but shall be signed by the physician, nurse practitioner, or physician's assistant and indicate the general good physical and mental health of the individual, the evidence of the

absence of any indication of active tuberculosis and communicable diseases, or any other condition that poses a threat to clients.

(3) The facility or program shall keep the most recent medical statement on file.

History Note: Authority G.S. 122C-26; Eff. May 1, 1996; Temporary Amendment Eff. January 3, 2001; Temporary Amendment Expired October 13, 2001; Temporary Amendment Eff. November 1, 2001.

10 NCAC 14V .0203 COMPETENCIES OF QUALIFIED PROFESSIONALS AND ASSOCIATE PROFESSIONALS

(a) Qualified professionals and associate professionals shall demonstrate knowledge, skills and abilities required to serve the client based on the individualized treatment/habilitation plan.

(b) The governing body for each facility shall develop and implement policies and procedures for the initiation of an individualized supervision plan upon hiring each associate professional.

(c) The associate professional shall be supervised by a qualified professional with the population served for the period of time as specified in Rule .0104 of this Subchapter.

History Note: Authority G.S. 122C-26; Temporary Adoption Eff. January 1, 2001; Temporary Adoption Expired October 13, 2001; Temporary Adoption Eff. November 1, 2001.

10 NCAC 14V .0204 COMPETENCIES AND SUPERVISION OF PARAPROFESSIONALS

There shall be no privileging requirements for paraprofessionals.

(1) Paraprofessionals shall be supervised by an associate professional or by a qualified professional as specified in Rule .0104 of this Subchapter.

(2) Paraprofessionals shall demonstrate knowledge, skills and abilities required to serve the client based on the individualized treatment/habilitation plan.

History Note: Authority G.S. 122C-26; Temporary Adoption Eff. January 1, 2001; Temporary Adoption Expired October 13, 2001; Temporary Adoption Eff. November 1, 2001.

Rule-making Agency: DHHS – Division of Medical Assistance

Rule Citation: 10 NCAC 26H .0102, .0211, .0502, .0506, .0602

Effective Date: November 9, 2001

Findings Reviewed and Approved by: Julian Mann, III

Authority for the rulemaking: G.S. 108A-25(b); 108A-54; 108A-55; 131D-4.2; 29 C.F.R. 1910, Subpart Z; 42 C.F.R. 440.70; 42 C.F.R. 440.170(f); 42 C.F.R. 447, Subpart C; S.L.

1991, c. 689, s. 95; S.L. 1985, c. 479, s. 86; S.L. 1995 c. 507, s. 23.10

Reason for Proposed Action:

10 NCAC 26H .0102, .0211, .0506 – This amendment limits annual inflation increases to the amount calculated per the state plan but not to exceed the percentage increase approved by the NC General Assembly.

10 NCAC 26H .0502 – This amendment authorizes a change in the public health departments cost settlement period from the fiscal year ended June 30. This change also allows the settlement to be performed in nine months, rather than the previous six months.

10 NCAC 26H .0602 – This amendment limits the annual inflation adjustment to the lesser of the state plan formula or the amount approved by the North Carolina General Assembly. This amendment allows the Division of Medical Assistance to limit annual inflation, based on action by the General Assembly.

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

CHAPTER 26 – MEDICAL ASSISTANCE

SUBCHAPTER 26H – REIMBURSEMENT PLANS

SECTION 0100 - REIMBURSEMENT FOR NURSING FACILITY SERVICES

10 NCAC 26H .0102 RATE SETTING METHODS

(a) A rate for skilled nursing care and a rate for intermediate nursing care shall be determined annually for each facility to be effective for dates of service for a twelve month period beginning each October 1. Each patient shall be classified in one of the two categories depending on the services needed. Rates are derived from either filed, desk, or field audited cost reports for a base year period to be selected by the state. Rates developed from filed cost reports may be retroactively adjusted if there is found to exist more than a two percent difference between the filed direct per diem cost and either the desk audited or field audited direct per diem cost for the same reporting period. Cost reports shall be filed and audited under provisions set forth in 10 NCAC 26H .0104. The minimum requirements of the 1987 OBRA are met by these provisions.

(b) Each prospective rate consists of two components: a direct patient care rate and an indirect rate computed and applied as follows:

- (1) The direct rate shall based on the Medicaid cost per day incurred in the following cost centers:
 - (A) Nursing;
 - (B) Dietary or Food Service;
 - (C) Laundry and Linen;
 - (D) Housekeeping;
 - (E) Patient Activities;
 - (F) Social Services;
 - (G) Ancillary Services (includes several cost centers).

(2) To compute each facility's direct rate for skilled care and intermediate care, the direct base year cost per day shall be increased by adjustment factors for price changes as set forth in Rule .0102(c) of this Section.

(A) A facility's direct rates cannot exceed the maximum rates set for skilled nursing or intermediate nursing care. However, the Division of Medical Assistance may negotiate direct rates that exceed the maximum rate for ventilator dependent patients. Payment of such special direct rates shall be made only after specific prior approval of the Division of Medical Assistance.

(B) A standard per diem amount shall be added to each facility's direct rate, including facilities that are limited to the maximum rates, for the projected statewide average per diem costs of the salaries paid to replacement nurse aides for those aides in training and testing status and other costs deemed by HCFA to be facility costs related to nurse aide training and testing. The standard amount shall be based on the product of multiplying the average hourly wage, benefits, and payroll taxes of replacement nurse aides by the number of statewide hours required for training and testing of all aides divided by the projected total patient days.

(3) If a facility did not report any costs for either skilled or intermediate nursing care in the base year, the state average direct rate shall be assigned as determined in Rule .0102(d) of this Section for the new type of care.

(4) The direct maximum rates shall be developed by ranking base-year per diem costs from the lowest to the highest in two separate arrays, one for skilled care and one for intermediate care. Each array shall be weighted by total patient days. The per diem cost at the 80th percentile in each array shall be selected as the base for the maximum rate. The base cost in each array shall be adjusted for price changes as set forth in Rule .0102(c) of this Section to determine the maximum statewide direct rates for skilled care and intermediate care.

(5) Effective October 1, 1990, the direct rates shall be adjusted as follows:

(A) A standard per diem amount shall be added to each facility's skilled and intermediate rate to account for the combined expected average additional costs for the continuing education of nurses' aides; the residents' assessments, plans of care, and charting of nursing hours for each

- patient; personal laundry and hygiene items; and other non-nursing staffing requirements. The standard amount is equal to the sum of:
- (i) the state average annual salary, benefits, and payroll taxes for one registered nurse position multiplied by the number of facilities in the state and divided by the state total of patient days;
 - (ii) the total costs of personal laundry and hygiene items divided by the total patient days as determined from the FY 1989 cost reports of a sample of nursing facilities multiplied by the annual adjustment factor described in Rule .0102(c)(4)(B) of this Section; and
 - (iii) the state average additional pharmacy consultant costs divided by 365 days and then divided by the average number of beds per facility.
- (B) A standard amount shall be added to the intermediate rate of facilities that were certified only for intermediate care prior to October 1, 1990. This amount will be added to account for the additional cost of providing eight hours of RN coverage and 24 hours of licensed nursing coverage. The standard amount is equal to the state average hourly wage, benefits and payroll taxes for a registered nurse multiplied by the 16 additional hours of required licensed nursing staff divided by the state average number of beds per nursing facility. A lower amount will be added to a facility only if it can be determined that the facility's intermediate rate prior to October 1, 1990 already includes licensed nursing coverage above eight hours per day. The add-on amount in such cases shall be equal to the exact additional amount required to meet the licensed nursing requirements.
- (C) The standard amounts in Subparagraphs (2)(B), (5)(A), and (5)(B) of this Rule, will be retained in the rates of subsequent years until the year that the rates are derived from the actual cost incurred in the cost reporting year ending in 1991 which shall reflect each facility's actual cost of complying with all OBRA '87 requirements.
- (6) Upon completion of any cost reporting year any funds received by a facility from the direct patient care rates which have not been spent on direct patient care costs as defined herein shall be repaid to the State. This shall be applied by comparing a facility's total Medicaid direct costs with the combined direct rate payments received for skilled and intermediate care. Costs in excess of a facility's total prospective rate payments shall not be reimbursable.
 - (7) The indirect rate is intended to cover the following costs of an efficiently and economically operated facility:
 - (A) Administrative and General,
 - (B) Operation of Plant and Maintenance,
 - (C) Property Ownership and Use,
 - (D) Mortgage Interest.
 - (8) Effective for dates of service beginning October 1, 1984 and ending September 30, 1985 the indirect rates shall be fourteen dollars and sixty cents (\$14.60) for each SNF day of care and thirteen dollars and fifty cents (\$13.50) for each ICF day of care. These rates represent the first step in a two step transition process from the different SNF and ICF indirect rates paid in 1983-84 and the nearly equal indirect rates that shall be paid in subsequent years under this plan as provided in this Rule.
 - (9) Effective for dates of service beginning October 1, 1985 and annually thereafter per diem indirect rates shall be computed as follows:
 - (A) The average indirect payment to all facilities in the fiscal year ending September 30, 1983 [which is thirteen dollars and two cents (\$13.02)] shall be the base rate.
 - (B) The base rate shall be adjusted for estimated price level changes from fiscal year 1983 through the year in which the rates shall apply in accordance with the procedure set forth in Rule .0102(c) of this Section to establish the ICF per diem indirect rate.
 - (C) The ICF per diem indirect rate shall be multiplied by a factor of 1.02 to establish the SNF per diem indirect rate. This adjustment shall be made to recognize the additional administrative expense incurred in the provision of SNF patient care.
 - (10) Effective for dates of service beginning October 1, 1989, a standard per diem amount will be added to provide for the additional administrative costs of preparing for and complying with all nursing home reform requirements. The standard amount shall be based on the average annual salary, benefits and payroll taxes of one clerical position

- multiplied by the number of facilities in the state divided by the state total of patient days.
- (11) Effective for dates of service beginning October 1, 1990, the indirect rate will be standard for skilled and intermediate care for all facilities and shall be determined by applying the 1990-91 indirect cost adjustment factors in Rule .0102(c) of this Section to the indirect rate paid for SNF during the year beginning October 1, 1989. Thereafter the indirect rate shall be adjusted annually by the indirect cost adjustment factors.

(c) Adjustment factors for changes in the price level. The rate bases established in Rule .0102(b), shall be adjusted annually to reflect increases or decreases in prices that are expected to occur from the base year to the year in which the rate applies. The price level adjustment factors shall be computed using aggregate base year costs in the following manner:

- (1) Costs shall be separated into direct and indirect cost categories.
- (2) Costs in each category shall be accumulated into the following groups:
 - (A) labor;
 - (B) other;
 - (C) fixed.
- (3) The relative weight of each cost group shall be calculated to the second decimal point by dividing the total costs of each group (labor, other, and fixed) by the total costs for each category (direct and indirect).
- (4) Price adjustment factors for each cost group shall be established as follows:
 - (A) Labor. The expected annual percentage change in direct labor costs as determined from a survey of nursing facilities to determine the average hourly wages for RNs, LPNs, and aides paid in the current year and projected for the rate year. The percentage change for indirect labor costs shall be based on the projected average hourly wage of N.C. service workers.
 - (B) Other. The expected annual change in the implicit price deflator for the Gross National Product as provided by the North Carolina Office of State Budget and Management.
 - (C) Fixed. No adjustment shall be made for this category, thus making the factor zero.
 - (D) The weights computed in (c)(3) of this Rule shall be multiplied times the percentage change computed in (c)(4)(A),(B) and (C) of this Rule. These products shall be added separately for the direct and indirect categories.
 - (E) The sum computed for each category in (c)(4)(D) of this Rule shall be the price level adjustment factor for that

category of rates (direct or indirect) for the coming fiscal year.

- (F) However, effective October 1, 1997 for fiscal year 1998, the price level adjustment factors calculated in Part (c)(4)(E) of this Rule shall be adjusted to 2.04% for direct rates and 1% for indirect rates, in order to produce fair and reasonable reimbursement of efficient operators.

- (G) Effective October 1, 2001, the price level adjustment factors calculated in Part (c)(4)(E) of this Rule shall not exceed that approved by the North Carolina General Assembly.

(d) The skilled and intermediate direct patient care rates for new facilities shall be established at the lower of the projected costs in the provider's Certificate of Need application inflated to the current rate period or the average of industry base year costs and adjusted for price changes as set forth in Rule .0102(c) of this Section. A new facility receives the indirect rate in effect at the time the facility is enrolled in the Medicaid program. In the event of a change of ownership, the new owner receives the same rate of payment assigned to the previous owner.

(e) Each out-of-state provider shall be reimbursed at the lower of the appropriate North Carolina maximum rate or the provider's payment rate as established by the State in which the provider is located. For patients with special needs who must be placed in specialized out-of-state facilities, a payment rate that exceeds the North Carolina maximum rate may be negotiated.

(f) Specialized Service Rates:

- (1) Head Injury Intensive Rehabilitation Services.
 - (A) A single all-inclusive prospective per diem rate combining both the direct and indirect cost components may be negotiated for nursing facilities that specialize in providing intensive rehabilitation services for head-injured patients. The rate may exceed the maximum rate applicable to other Nursing Facility services. A facility must specialize to the extent of staffing at least 50 percent of its Nursing Facility licensed beds for intensive head-injury rehabilitation services. The facility must also be accredited by the Commission for the Accreditation of Rehabilitation Facilities (CARF).
 - (B) A facility's initial rate is negotiated based on budget projections of revenues, allowable costs, patient days, staffing and wages. A complete description of the facility's medical program must also be provided. Rates in subsequent years are determined by applying the average annual skilled nursing care adjustment factors to the rate in the previous year, unless either the provider or the State requests a

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- renegotiation of the rate within 60 days of the rate notice.
- (C) Cost reports for this service must be filed in accordance with the rules in 10 NCAC 26H .0104, but there will be no cost settlements for any differences between cost and payments. Since it is appropriate to include all financial considerations in the negotiation of a rate, a provider shall not be eligible to receive separate payments for return on equity as defined in 10 NCAC 26H .0105.
- (2) Ventilator Services.
- (A) Ventilator services approved for nursing facilities providing intensive services for ventilator dependent patients shall be reimbursed at higher direct rates as described in Subparagraph (b)(2)(A) of this Rule. Ventilator services shall be paid by combining the enhanced direct rate with the nursing facility indirect rate determined under Subparagraph (b)(11) of this Rule.
- (B) A facility's initial direct rate shall be negotiated based on budget projections of revenues, allowable costs, patient days, staffing and wages. Rates in subsequent years shall be determined by applying the nursing facility direct adjustment factor to the previous 12 month cost report direct cost.
- (C) Cost reports and settlements for this service shall be in accordance with 10 NCAC 26H .0104 and return on equity shall be allowed as defined in 10 NCAC 26H .0105.
- (D) A single all-inclusive prospective per diem rate combining both the direct and indirect cost components may be negotiated for nursing facilities that specialize in providing intensive services for ventilator-dependent patients. The rate may exceed the maximum rate applicable to other Nursing Facility services. For ventilator services, the only facilities that shall be eligible for a combined single rate are small freestanding facilities with fewer than 21 Nursing Facility Beds and that serve only patients requiring ventilator services. Ventilator services provided in larger facilities shall be reimbursed at higher direct rates as described in Subparagraph (b)(2)(A) of this Rule.
- (g) Effective October 1, 1994 the bloodborne pathogen cost required under Title 29, Part 1910, Subpart 2, Section 1910.0130 of the Code of Federal Regulations shall be included in the nursing facility's direct cost reimbursement. The initial per diem amount shall be set at the lower of the actual or eightieth percentile of bloodborne pathogen costs incurred in fiscal year 1993.
- (h) Religious Dietary Considerations.
- (1) A standard amount may be added to a nursing facility's skilled and intermediate care rates, that may exceed the maximum rates determined under Paragraph (b) of this Rule, for special dietary need for religious reasons.
- (2) Facilities must apply to receive this special payment consideration. In applying, facilities must document the reasons for special dietary consideration for religious reasons and must submit documentation for the increased dietary costs for religious reasons. Facilities must apply for this special benefit each time rates are determined from a new data base. Fifty or more percent of the patients in total licensed beds must require religious dietary consideration in order for the facility to qualify for this special dietary rate add-on.
- (3) The special dietary add-on rate may not exceed more than a 30 percent increase in the average skilled and intermediate care dietary rates calculated for the 80th percentile of facilities determined under Subparagraph (b)(4) of this Rule and adjusted for annual inflation factors. This maximum add-on will be adjusted by the direct rate inflation factor each year until a new data base is used to determine rates.
- (4) This special dietary add-on rate shall become part of the facility's direct rates to be reconciled in the annual cost report settlement.
- (i) Effective October 1, 1994 nursing facilities shall be responsible for providing medically necessary transportation for residents, unless ambulance transportation is needed. Reimbursement shall be included in the nursing facility's direct cost. The initial amount shall be based on a per diem fee derived from estimated industry cost for transportation and associated salaries.
- (j) This reimbursement limitation shall become effective in accordance with the provisions of G.S. 108A -55(c).
- History Note: Filed as a Temporary Amendment Eff. July 1, 1992 for a Period of 180 Days to Expire on December 31, 1992; Filed as a Temporary Amendment Eff. October 1, 1991 for a Period of 180 Days to Expire on March 31, 1992; Filed as a Temporary Amendment Eff. October 1, 1984 for a Period of 120 Days to Expire on January 28, 1985; Authority G.S. 108A-25(b); 108A-54; 108A-55; 29 C.F.R. 1910, Subpart Z; 42 C.F.R. 447, Subpart C; S.L. 1991, c. 689, s. 95; Eff. January 1, 1978; Amended Eff. May 1, 1995; February 1, 1993; January 1, 1993; April 1, 1992; Temporary Amendment Eff. January 22, 1998; Amended Eff. April 1, 1999; [Temporary Amendment Eff. November 9, 2001.](#)*

**SECTION .0200 - HOSPITAL INPATIENT
REIMBURSEMENT PLAN**

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

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

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

**10 NCAC 26H .0211 DRG RATE SETTING
METHODOLOGY**

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

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

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

- 385 Neonate, died or transferred, length of stay less than 3 days
- 801 Birthweight less than 1,000 grams
- 802 Birthweight 1,000 - 1,499 grams
- 803 Birthweight 1,500 - 1,999 grams
- 804 Birthweight >=2,000 grams, with Respiratory Distress Syndrome
- 805 Birthweight >= 2,000 grams, premature with major problems
- 810 Neonate with low birthweight diagnosis, age greater than 28 days at admission
- 389 Birthweight >= 2,000 grams, full term with major problems
- 390 Birthweight >= 2,000 grams, full term with other problems or premature without major problems
- 391 Birthweight >= 2,000 grams, full term without complicating diagnoses

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

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

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

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

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

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

- (4) Hospitals are ranked in order of increasing CMI adjusted cost per discharge. The DRG Unit Value for hospitals at or below the 45th percentile in this ranking is set using 75% of the hospital's own adjusted cost per discharge and 25% of the cost per discharge of the hospital at the 45th percentile. The DRG Unit Value for hospitals ranked above the 45th percentile is set at the cost per discharge of the 45th percentile hospital. The DRG unit value for new hospitals and hospitals that did not have a Medicaid discharge in the base year is set at the cost per discharge of the 45th percentile hospital.
- (5) The hospital unit values calculated in Subparagraph (d)(4) of this Rule shall be updated annually by the National Hospital Market Basket Index as published by Medicare and applied to the most recent actual and projected cost data available from the North Carolina Office of State Budget and Management. This annual update shall not exceed the update amount approved by the North Carolina General Assembly. Effective October 1, 1997, for fiscal year ended September 30, 1998 only, the hospital unit values calculated in Subparagraph (d)(4) of this Rule shall be updated by the lower of the National Hospital Market Basket Index as published by Medicare and applied to the most recent actual and projected cost data available from the North Carolina Office of State Budget and Management or the Medicare approved Inpatient Prospective Payment update factor.
- (6) Allowable and reasonable costs will be reimbursed in accordance with the provisions of the Medicare Provider Reimbursement Manual referred to as HCFA Publication 15-1.
- (e) Reimbursement for capital expense is included in the DRG hospital rate described in Paragraph (d) of this Rule.
- (f) Hospitals operating Medicare approved graduate medical education programs shall receive a DRG payment rate adjustment which reflects the reasonable direct and indirect costs of operating those programs.
- (1) The Division defines reasonable direct medical education costs consistent with the base year cost per resident methodology described in 42 CFR 413.86. The ratio of the aggregate approved amount for graduate medical education costs at 42 CFR 413.86 (d) (1) to total reimbursable costs (per Medicare principles) is the North Carolina Medicaid direct medical education factor. The direct medical education factor is based on information supplied in the 1993 cost reports and the factor will be updated annually as soon as practicable after July 1 based on the latest cost reports filed prior to July 1.
- (2) Effective October 1, 2001, and for each subsequent year, the The North Carolina Medicaid indirect medical education factor is equal to the Medicare indirect medical education factor in effect on October 1 each year, computed by the following formula:

$$1.89 \left(\frac{1 + R}{1} - 1 \right)$$
 where R equals the number of approved full time equivalent residents divided by the number of staffed beds, not including nursery beds. ~~The indirect medical education factor will be updated annually as soon as practicable after July 1 based on statistics contained in the latest cost reports filed prior to July 1.~~
- (3) Hospitals operating an approved graduate medical education program shall have their DRG unit values increased by the sum of the direct and indirect medical education factors.
- (g) Cost outlier payments are an additional payment made at the time a claim is processed for exceptionally costly services. These payments shall be subject to retrospective review by the Division of Medical Assistance, on a case-by-case basis. Cost Outlier payments may be reduced if and to the extent that the preponderance of evidence on review supports a determination that the associated cost either exceeded the costs which must be incurred by efficiently and economically operated hospitals or was for services that were not medically necessary or for services not covered by the North Carolina Medical Assistance program.
- (1) A cost outlier threshold shall be established for each DRG at the time DRG relative weights are calculated, using the same information used to establish those relative weights. The cost threshold is the greater of twenty-five thousand dollars (\$25,000) or mean cost for the DRG plus 1.96 standard deviations.
- (2) Charges for non-covered services and services not reimbursed under the inpatient DRG methodology (such as professional fees) shall be deducted from total billed charges. The remaining billed charges are converted to cost using a hospital specific cost to charge ratio. The cost to charge ratio excludes medical education costs.
- (3) If the net cost for the claim exceeds the cost outlier threshold, a cost outlier payment is made at 75% of the costs above the threshold.
- (h) Day outlier payments are an additional payment made for exceptionally long lengths of stay on services provided to children under six at disproportionate share hospitals and children under age one at non-disproportionate share hospitals. These payments shall be subject to retrospective review by the Division of Medical Assistance, on a case-by-case basis. Day outlier payments may be reduced if and to the extent that the preponderance of evidence on review supports a determination that the associated cost either exceeded the costs which must be incurred by efficiently and economically operated hospitals or was for services that were not medically necessary or for services not covered by the North Carolina Medical Assistance program.
- (1) A day outlier threshold shall be established for each DRG at the time DRG relative weights are calculated, using the same information

used to establish the relative weights. The day outlier threshold is the greater of 30 days or the arithmetical average length of stay for the DRG plus 1.50 standard deviations.

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

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

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

Eff. March 1, 1995;

Temporary Amendment Eff. January 22, 1998;

Amended Eff. April 1, 1999;

Temporary Amendment Eff. November 9, 2001.

SECTION .0500 - REIMBURSEMENT FOR SERVICES

10 NCAC 26H .0502 CLINIC SERVICES

~~Reimbursement for clinic services will be made based on a fee schedule as developed by the Division of Medical Assistance.~~

~~(a) Payments will be based on negotiated fee, not to exceed reasonable cost:~~

- ~~(1) For services provided by or through the memorandum of understanding between the Division of Medical Assistance and the Division of Public Health, a supplemental payment will be made between September 20, 1995 and September 30, 1995, in an amount which represents the difference between the estimated cost of services for the 12-month period ending September 30, 1995, and the estimate of payments made by the Division of Medical Assistance for these services. The amount of the supplement payment will be set by the Director of the Division of Medical Assistance and will not exceed fifteen million dollars (\$15,000,000). Effective with dates of services for the fiscal period beginning October 1, 1995, and for subsequent periods beginning October 1 an interim payment for services will be made by the Division of Medical Assistance.~~

- ~~(2) To assure payments do not exceed the upper payment limits set forth at 42 CFR 447.321, the payments made by this Paragraph will be cost settled on a statewide average per service to determine the difference between the reasonable cost of services provided as determined by the Division of Medical Assistance and the amount of payment made for the services for each fiscal period corresponding to the payment periods specified. Cost settlements for the September 30, 1995, and September 30, 1996, fiscal period will occur within six months after the approval date of the initial state plan~~

~~amendment, subsequent fiscal periods will be cost settled within six months of the end of each fiscal period.~~

~~(b) This cost methodology does not apply to the reimbursement of services which are billed by health departments for physicians, nurse midwives, and nurse practitioners who are not salaried employees of a health department and whose compensation is not included in the service cost of a health department. These services are reimbursed in accordance with the fees established in 10 NCAC 26H .0401 and 10 NCAC 26H .0404.~~

~~(c) Effective October 1, 2001 the cost settlement period shall be the 12 months ended June 30. The first settlement period after the change shall be short period from October 1, 2001 to June 30, 2002. Subsequent cost settlement periods shall be the 12 months ended June 30.~~

~~(d) Effective July 1, 2001, the cost settlement shall occur within nine months of the end of the settlement period.~~

History Note: Authority G.S. 108A-25(b); S.L. 1985, c. 479, s. 86;

Eff. February 1, 1984;

Temporary Amendment Eff. November 9, 2001.

10 NCAC 26H .0506 PERSONAL CARE SERVICES

(a) Payment for personal care services in recipient's home, prescribed in accordance with a plan of treatment and provided by a qualified person under supervision of a registered nurse, shall be based on a negotiated hourly fee not to exceed reasonable cost.

(b) The Division of Medical Assistance will enter into contracts with private and public non-medical inpatient institutions using 42 CFR 434-12 for the provision of personal care services for State/County Special Assistance clients residing in adult care homes.

- (1) Effective August 1, 1995 reimbursement for private providers ~~is shall be~~ determined by the Division of Medical Assistance based on a capitation per diem fee (~~fee~~) derived from review of industry costs and determination of reasonable costs with annual inflation adjustments. The initial ~~basic per diem~~ fee is based on one hour of services per patient day. Additional payments may be made utilizing the ~~basic one hour per diem~~ fee as a factor, for Medicaid eligibles that have a demonstrated need for additional care. The initial ~~basic one hour~~ fee is computed by ~~determining adding~~ together the estimated salary, fringes, direct supervision and allowable overhead. ~~Effective January 1, 2000 the cost of medication administration and additional personal care services direct supervision shall be added to the fee.~~ The ~~per diem fee(s)~~ may be recalculated ~~from a cost reporting period selected by each year based on the most current annual cost report available to~~ the state. ~~This annual adjustment shall not exceed the amount approved by the North Carolina General Assembly.~~ Payments may not exceed the limits set in 42 CFR 447.361. ~~Effective~~

January 1, 2000, private provider payments shall be cost settled with any overpayment repaid to the Division of Medical Assistance. No additional payment to the provider shall be made due to cost settlement. The first cost settlement period shall be the nine months ended September 30, 2000. Subsequently, the annual cost settlement shall be the 12 months ended September 30.

- (2) Effective January 1, 1996 public providers ~~will~~ shall be paid on an interim basis using the above method. Payments ~~are to shall~~ be cost settled with any overpayment repaid to the Division of Medical Assistance. No additional payments ~~to the provider shall will~~ be made due to cost settlement.

(c) ~~These changes~~ Changes to the Payment for Services Prospective Plan for Personal Care Services will become effective when the Centers for Medicare and Medicaid Services (CMS) Health Care Financing Administration, U.S. Department of Health and Human Services, approves amendment submitted to HCFA-CMS by the Director of the Division of Medical Assistance as #TN 01-14 #MA00-01.

History Note: Authority G.S. 108A-25(b); 108A-54; 108A-55; 131D-4.1; 131D-4.2; S.L. 1995 c. 507, s. 23.10; 42 C.F.R. 440.170(f); Eff. January 1, 1986; Temporary Amendment Eff. April 22, 1996; January 9, 1997; Amended Eff. August 1, 1998; Temporary Amendment Eff. January 1, 2000; Temporary Amendment Expired on October 28, 2000; Temporary Amendment Eff. November 9, 2001.

SECTION .0600 - HOME HEALTH PROSPECTIVE REIMBURSEMENT

10 NCAC 26H .0602 REIMBURSEMENT METHODS

- (a) A maximum rate per visit is established annually for each of the following services:
 - (1) Registered or Licensed Practical Nursing Visit;
 - (2) Physical Therapy Visit;
 - (3) Speech Therapy Visit;
 - (4) Occupational Therapy Visit;
 - (5) Home Health Aide Visit.
- (b) The maximum rates for the services identified in Paragraph (a) of this Rule are computed and applied as follows:
 - (1) Payment of claims for visits is based on the lower of the billed customary charges or the maximum rate of the particular service. Governmental providers with nominal charges may bill at cost. For this purpose, a charge that is less than 50 percent of cost is considered a nominal charge. For such governmental providers, the payment amount is equal to the lower of the cost as billed or the applicable maximum rate.
 - (2) Maximum per visit rates effective July 1, 1996, for Registered or Licensed Practical Nursing, Physical Therapy, Speech Therapy,

and Occupational Therapy shall be equal to the rates in effect on July 1, 1995. To compute the annual maximum rates effective each July 1 subsequent to July 1, 1996, the maximum rates per visit are adjusted as described in Subparagraphs (4), (5), and (6) of this Paragraph.

- (3) Maximum per visit rate effective July 1, 1996 for Home Health Aide shall be equal to the rate in effect on July 1, 1995. To compute the annual maximum rates effective each July 1 subsequent to July 1, 1996, perform the following steps:
 - (A) Sort all providers by the cost per visit using the 1994 cost reports (low to high);
 - (B) Run a cumulative total on visits from each provider based on the sorting;
 - (C) When the cumulative total number of visits reaches the fiftieth percentile, the cost per visit rate associated with that provider shall be adjusted as described in Subparagraphs (4), (5), and (6) of this Paragraph.
- (4) Each year maximum rates are adjusted by an annual cost index factor. The cost index has a labor component with a relative weight of 75 percent and a non-labor component with a relative weight of 25 percent. The relative weights are derived from the Medicare Home Health Agency Input Price Index published in the Federal Register dated May 30, 1986. Labor cost changes are measured by the annual percentage change in the average hourly earnings of North Carolina service wages per worker. Non-labor cost changes are measured by the annual percentage change in the GNP Implicit Price Deflator.
- (5) The annual cost index equals the sum of the products of multiplying the forecasted labor cost percentage change by 75 percent and multiplying the forecasted non-labor cost percentage change by 25 percent. For services included under Subparagraph (2) of this Paragraph, the July 1, 1996 effective rates are multiplied by the cost index factor for each subsequent year up to the year in which the rates apply. For services included under Subparagraph (3) of this Paragraph, base year costs per visit are multiplied by the cost index factor for each subsequent year up to the year in which rates apply. The annual cost index factor shall not exceed the amount approved by the North Carolina General Assembly.
- (6) Other adjustments may be necessary for home health services to comply with federal or state laws or rules.
- (c) Medical supplies except those related to provision and use of Durable Medical Equipment are reimbursed at the lower of a provider's billed customary charges or a maximum amount determined for each supply item. Fees will be established based

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on average, reasonable charges if a Medicare allowable amount cannot be obtained for a particular supply item. Estimates of reasonable cost will be used if a Medicare allowable amount cannot be obtained for a particular supply or equipment item. The Medicare allowable amounts will be those amounts available to the Division of Medical Assistance as of July 1 of each year.

(d) ~~These changes~~ Changes to the Payment for Services Prospective Reimbursement Plan for Home Health Agencies will become effective when the ~~Health—Care—Financing Administration, Centers for Medicare and Medicaid Services (CMS)~~ Health—Care—Financing Administration, Centers for Medicare and Medicaid Services (CMS), US Department Health and Human Services, approves amendment submitted to ~~HCFA—CMS~~ HCFA—CMS by the Director of the Division of Medical Assistance as ~~TN#01-16, on or about July 1, 1997 as #MA97-06 wherein the Director proposes amendments~~

~~of the State Plan to amend Payment for Services—Prospective Reimbursement Plan for Home Health Agencies.~~

History Note: Authority G.S. 108A-25(b); 108A-54; 108A-55; S.L. 1985, c.479, s. 86; 42 C.F.R. 440.70; Eff. October 1, 1987; Amended Eff. October 1, 1992; May 1, 1990; Temporary Amendment Eff. October 4, 1996; Amended Eff. April 1, 1997; Temporary Amendment Eff. July 25, 1997; Amended Eff. August 1, 1998; Temporary Amendment Eff. November 9, 2001.

APPROVED RULES

*This Section includes the Register Notice citation to Rules approved by the Rules Review Commission (RRC) at its meeting of October 18, 2001 pursuant to G.S. 150B-21.17(a)(1) and reported to the Joint Legislative Administrative Procedure Oversight Committee pursuant to G.S. 150B-21.16. The full text of rules is published below when the rules have been approved by RRC in a form different from that originally noticed in the Register or when no notice was required to be published in the Register. The rules published in full text are identified by an * in the listing of approved rules. Statutory Reference: G.S. 150B-21.17.*

These rules, unless otherwise noted, will become effective on the 31st legislative day of the 2001 Session of the General Assembly or a later date if specified by the agency unless a bill is introduced before the 31st legislative day that specifically disapproves the rule. If a bill to disapprove a rule is not ratified, the rule will become effective either on the day the bill receives an unfavorable final action or the day the General Assembly adjourns. Statutory reference: G.S. 150B-21.3.

APPROVED RULE CITATION				REGISTER CITATION TO THE NOTICE OF TEXT
10	NCAC	22L	.0101-.0102*	15:21 NCR
10	NCAC	50B	.0311	16:02 NCR
10	NCAC	50B	.0403*	16:02 NCR
10	NCAC	50B	.0408*	16:02 NCR
12	NCAC	09A	.0103*	16:02 NCR
12	NCAC	09G	.0102*	16:02 NCR
12	NCAC	09G	.0204*	16:02 NCR
12	NCAC	09G	.0304-.0306*	16:02 NCR
12	NCAC	09G	.0309*	16:02 NCR
12	NCAC	09G	.0311*	16:02 NCR
12	NCAC	09G	.0316*	16:02 NCR
12	NCAC	09G	.0402-.0404*	16:02 NCR
12	NCAC	09G	.0408-.0409*	16:02 NCR
12	NCAC	09G	.0415-.0416*	16:02 NCR
15A	NCAC	02D	.1412*	15:11 NCR
15A	NCAC	02D	.1415-.1417*	15:11 NCR
15A	NCAC	02D	.1421*	15:11 NCR
15A	NCAC	18A	.1301*	16:02 NCR
15A	NCAC	18A	.1302	16:02 NCR
15A	NCAC	18A	.1304-.1306*	16:02 NCR
15A	NCAC	18A	.1307-.1310	16:02 NCR
15A	NCAC	18A	.1312*	16:02 NCR
15A	NCAC	18A	.1313-.1314	16:02 NCR
15A	NCAC	18A	.1315*	16:02 NCR
15A	NCAC	18A	.1316	16:02 NCR
15A	NCAC	18A	.1317*	16:02 NCR
15A	NCAC	18A	.1318	16:02 NCR
15A	NCAC	18A	.1319-.1320*	16:02 NCR
15A	NCAC	18A	.1322*	16:02 NCR
15A	NCAC	18A	.1323	16:02 NCR
15A	NCAC	18A	.1324*	16:02 NCR
15A	NCAC	18A	.1327*	16:02 NCR
19A	NCAC	03J	.0201-.0202*	15:23 NCR
19A	NCAC	03J	.0501-.0502*	15:23 NCR
19A	NCAC	03J	.0801*	15:23 NCR
19A	NCAC	03J	.0901*	15:23 NCR
19A	NCAC	03J	.0902-.0904*	15:23 NCR
19A	NCAC	03J	.0906*	15:23 NCR
21	NCAC	34A	.0101*	not required (G.S. 150B-21.5(a)(4), Eff. November 1, 2001)

TITLE 10 – DEPARTMENT OF HEALTH AND HUMAN SERVICES

10 NCAC 22L .0101 DEFINITIONS AND SCOPE OF

INFORMATION AND ASSISTANCE

(a) SCOPE. Information and Assistance is identified as a critical service which assists older adults, their families and others acting on behalf of older adults, in their efforts to acquire

information about programs and services and to obtain appropriate services to meet their needs.

(b) **DEFINITIONS.** The following definitions shall apply throughout this Section:

- (1) "Agency" is any agency who receives Home and Community Care Block Grant Funds for the provision of Information and Assistance Services.
- (2) "Information" includes informing people about programs and services, identifying the types of assistance they need and connecting them to appropriate service providers.
- (3) "Assistance" is a more intensive service for those persons who require additional help with negotiating the service delivery system. Assistance includes the provision of planning, referral, coordination of services, follow-up and advocacy activities on behalf of the older adult or their family, or both, in an effort to ensure that needed assistance is received and that the assistance provided meets identified needs. Assistance may also include a home visit to more clearly identify a client's needs for the purpose of initiating the development of a care plan.

History Note: Authority G.S. 143B-181.1(c); 143B-181.1(a)(11); Eff. November 1, 1991; Amended Eff. July 15, 2002.

10 NCAC 22L. 0102 SERVICE PROVISION

Any agency offering Information and Assistance shall have the capacity and capability to provide all of the following functions:

- (1) **Assess/Evaluate:** Determine the immediate problem or concern of the individual; probe for other problems or concerns.
- (2) **Inform:** Provide individuals with information related to the assessed problems or concerns on services and opportunities available within the community.
- (3) **Refer:** Link the individual with the service or provide information on how to access or connect with available services.
- (4) **Research:** Locate information requested, but not immediately available, relevant to meeting the individual's needs.
- (5) **Plan:** Assist individual in identifying the desired outcome(s) and method(s) for obtaining what the individuals needs.
- (6) **Coordinate:** Directly connect the individual to the service desired; monitor on a short-term basis the person's success in making the connection to needed services.
- (7) **Follow-up:** Re-contact the individual or service provider to determine the outcome of the situation and provide additional services if requested.
- (8) **Advocate:** Intervene on behalf of an individual or a group of individuals in an effort to obtain

a positive change in the availability or delivery of one or more essential services.

History Note: Authority G.S. 143B-181.1(c); 143B-181.1(a)(11); Eff. July 15, 2002.

10 NCAC 50B .0403 RESERVE

(a) The value of resources held by the client or by a financially responsible person shall be considered available to the client in determining countable reserve for the budget unit.

(b) Jointly owned resources shall be counted as follows:

- (1) The value of resources owned jointly with a non-financially responsible person who is a recipient of another public assistance budget unit shall be divided equally between the budget units;
- (2) The value of liquid assets and personal property owned jointly with a non-financially responsible person who is not a client of another public assistance budget unit shall be available to the budget unit member if he can dispose of the resource without the consent and participation of the other owner or the other owner consents to and, if necessary, participates in the disposal of the resource;
- (3) The client's share of the value of real property owned jointly with a non-financially responsible person who is not a member of another public assistance budget unit shall be available to the budget unit member if he can dispose of his share of the resource without the consent and participation of the other owner or the other owner consents to and, if necessary, participates in the disposal of the resource.

(c) The terms of a separation agreement, divorce decree, will, deed or other legally binding agreement or legally binding order shall take precedence over ownership of resources as stated in (a) and (b) of this Rule, except as provided in Paragraph (k) of this Rule.

(d) For all aged, blind, and disabled cases, the resource limit, financial responsibility, and countable and non-countable assets are based on standards and methodology in Title XVI of the Social Security Act except as specified in Items (4) and (5) in Rule .0311 of this Subchapter.

(e) Countable resources for Family and Children's related cases shall be determined as follows:

- (1) The resources of a spouse, who is not a stepparent, shall be counted in the budget unit's reserve allowance if the spouses live together or one spouse is temporarily absent in long term care and the spouse is not a member of another public assistance budget unit;
- (2) The resources of a client and a financially responsible parent or parents shall be counted in the budget unit's reserve limit if the parents live together or one parent is temporarily absent in long term care and the parent is not a member of another public assistance budget unit;

(3) The resources of the parent or parents shall not be considered if a child under age 21 requires care and treatment in a medical institution and his physician certifies that the care and treatment are expected to exceed 12 months.

(f) Real property shall be excluded from countable resources for Family and Children's related cases.

(g) One motor vehicle per adult shall be excluded for Family and Children's related cases.

(h) For medically needy family and children's related cases, income producing vehicles and personal property shall be excluded from countable resources.

(i) For family and children's related cases the value of non-excluded motor vehicles is the Current Market Value, less encumbrances. If the applicant/recipient disagrees with the assigned value, he has the right to rebut the value.

(j) For a married individual:

(1) Resources available to the individual are available to his or her spouse who is a noninstitutionalized applicant or recipient and who is either living with the individual or temporarily absent from the home, irrespective of the terms of any will, deed, contract, antenuptial agreement, or other agreement, and irrespective of whether or not the individual actually contributed the resources to the applicant or recipient. All resources available to an applicant or recipient under this Section must be considered when determining his or her countable reserve.

(2) For an institutionalized spouse as defined in 42 U.S.C. 1396r-5(h), available resources shall be determined in accordance with 42 U.S.C. 1396r-5(c), except as specified in Paragraph (m) of this Rule.

(k) For an institutionalized individual, the availability of resources are determined in accordance with 42 U.S.C. 1396r-5. Resources of the community spouse are not counted for the institutionalized spouse when:

(1) Resources of the community spouse cannot be determined or cannot be made available to the institutionalized spouse because the community spouse cannot be located; or

(2) The couple has been continuously separated for 12 months at the time the institutionalized spouse enters the institution.

History Note: Authority G.S. 108A-54; 108A-55; S.L. 1983, c. 1116; 42 U.S.C. 1396r-5; 42 U.S.C. 1396a(a)(17); 42 U.S.C. 1396a(a)(51); 42 C.F.R. 435.602; 42 C.F.R. 435.711; 42 C.F.R. 435.712; 42 C.F.R. 435.723; 42 C.F.R. 435.734; 42 C.F.R. 435.821; 42 C.F.R. 435.822; 42 C.F.R. 435.823; 42 C.F.R. 435.845; 45 C.F.R. 233.20; 45 C.F.R. 233.51; Deficit Reduction Act of 1984 (P.L. 98-369), Section 2373; Correll v. DSS/DMA/DHR, No. 406PA91 (North Carolina Supreme Court); Schweiker v. Gray Panthers, 453 U.S. 34, 101 S.Ct. 2633, 69 L. Ed.2d 460 (1981); Eff. September 1, 1984; Amended Eff. January 1, 1995; November 1, 1994; September 1, 1993; April 1, 1993; Temporary Amendment Eff. September 13, 1999;

Temporary Amendment Expired June 27, 2000; Temporary Amendment Eff. September 12, 2000; Amended Eff. August 1, 2002.

10 NCAC 50B .0408 CLASSIFICATION

(a) The following individuals shall be classified as categorically needy:

- (1) Individuals described in Item (1) of Rule .0101 of this Subchapter;
- (2) Deemed recipients of SSI described in Item (19) of Rule .0101 of this Subchapter; and individuals who are eligible for public assistance cash payments but who choose not to apply for cash payments;
- (3) Individuals described in Items (2), (3), and (4) of Rule .0101 of this Subchapter;
- (4) Pregnant women described in:
 - (A) Item (5) or (15) of Rule .0101 of this Subchapter; or
 - (B) Sub-item (1)(d) of Rule .0102 of this Subchapter;
- (5) Individuals under 21 described in:
 - (A) Item (6) or (16) of Rule .0101 of this Subchapter; or
 - (B) Sub-item (1)(a) of Rule .0102 of this Subchapter; or
 - (C) Sub-item (1)(d) of Rule .0102 of this Subchapter who meet the eligibility requirements for categorically needy in this Subchapter;
- (6) Qualified Medicare Beneficiaries described in Item (14) of Rule .0101 of this Subchapter;
- (7) Individuals described in Item (11), (12), or (13) of Rule .0101 of this Subchapter who were receiving cash assistance payments in December 1973;
- (8) Individuals described in Item (7) of Rule .0101 of this Subchapter who were classified categorically needy when pregnancy terminated;
- (9) Individuals described in Item (8) of Rule .0101 of this Subchapter whose mother is classified as categorically needy;
- (10) Individuals described in Sub-item (1)(c) of Rule .0102 of this Subchapter; or
- (11) Individuals described in Sub-item (1)(d) of Rule .0102 of this Subchapter.

(b) The following individuals who are not eligible as categorically needy and meet the requirements for medically needy set forth in this Subchapter shall be classified medically needy:

- (1) Pregnant women described in:
 - (A) Item (7) of Rule .0101 of this Subchapter who were classified medically needy when their pregnancy terminated; or
 - (B) Sub-item (4)(b) of Rule .0102 of this Subchapter;
- (2) Individuals under age 21;
- (3) Caretaker relatives of eligible dependent children; or

- (4) Aged, blind or disabled individuals not eligible for a public assistance cash payment.

History Note: Filed as a Temporary Amendment Eff. October 1, 1994, for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Filed as a Temporary Amendment Eff. September 12, 1994, for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Authority G.S. 108A-54; 42 C.F.R. 435.2; 42 C.F.R. 435.4;
Eff. September 1, 1984;
Amended Eff. January 1, 1995; August 1, 1990;
Temporary Amendment Eff. September 13, 1999;
Temporary Amendment Expired June 27, 2000;
Temporary Amendment Eff. September 12, 2000;
Amended Eff. August 1, 2002.

TITLE 12 - DEPARTMENT OF JUSTICE

12 NCAC 09A .0103 DEFINITIONS

The following definitions apply throughout Subchapters 12 NCAC 09A through 12 NCAC 09F, except as modified in 12 NCAC 09A .0107 for the purpose of the Commission's rule-making and administrative hearing procedures:

- (1) "Agency" or "Criminal Justice Agency" means those state and local agencies identified in G. S. 17C-2(2).
- (2) "Alcohol Law Enforcement Agent" means a law enforcement officer appointed by the Secretary of Crime Control and Public Safety as authorized by G.S. 18B-500.
- (3) "Commission of an offense" means a finding by the North Carolina Criminal Justice Education and Training Standards Commission or an administrative body that a person performed the acts necessary to satisfy the elements of a specified criminal offense.
- (4) "Convicted" or "Conviction" means and includes, for purposes of this Chapter, the entry of:
 - (a) a plea of guilty;
 - (b) a verdict or finding of guilt by a jury, judge, magistrate, or other duly constituted, established adjudicating body, tribunal, or official, either civilian or military; or
 - (c) a plea of no contest, nolo contendere, or the equivalent.
- (5) "Criminal Justice Officer(s)" means those officers identified in G.S. 17C-2(3) and excluding Correctional officers, Probation/parole officers, and Probation/parole officers-surveillance.
- (6) "Criminal Justice System" means the whole of the State and local criminal justice agencies described in Item (1) of this Rule.
- (7) "Department Head" means the chief administrator of any criminal justice agency and specifically includes any chief of police or agency director. "Department Head" also

- (8) includes a designee formally appointed in writing by the Department head.
- (8) "Director" means the Director of the Criminal Justice Standards Division of the North Carolina Department of Justice.
- (9) "Educational Points" means points earned toward the Professional Certificate Programs for studies satisfactorily completed for semester hour or quarter hour credit at a regionally accredited institution of higher education. Each semester hour of college credit equals one educational point and each quarter hour of college credit equals two-thirds of an educational point.
- (10) "Enrolled" means that an individual is currently actively participating in an on-going formal presentation of a Commission-accredited basic training course which has not been concluded on the day probationary certification expires. The term "currently actively participating" as used in this definition means:
 - (a) for law enforcement officers, that the officer is then attending an approved course presentation averaging a minimum of twelve hours of instruction each week; and
 - (b) for Department of Juvenile Justice and Delinquency Prevention personnel, that the officer is then attending the last or final phase of the approved training course necessary for fully satisfying the total course completion requirements.
- (11) "High School" means graduation from a high school that meets the compulsory attendance requirements in the jurisdiction in which the school is located.
- (12) "In-Service Training" means any and all training prescribed in 12 NCAC 09E .0102 which must be satisfactorily completed by all certified law enforcement officers during each full calendar year of certification.
- (13) "Lateral Transfer" means the employment of a criminal justice officer, at any rank, by a criminal justice agency, based upon the officer's special qualifications or experience, without following the usual selection process established by the agency for basic officer positions.
- (14) "Law Enforcement Code of Ethics" means that code adopted by the Commission on September 19, 1973, which reads:
 As a law enforcement officer, my fundamental duty is to serve the community; to safeguard lives and property; to protect the innocent against deception, the weak against oppression or intimidation, and the peaceful against violence or disorder; and to respect the constitutional rights of all to liberty, equality, and justice.

I will keep my private life unsullied as an example to all, and will behave in a manner that does not bring discredit to me or to my agency. I will maintain courageous calm in the face of danger, scorn, or ridicule; develop self-restraint; and be constantly mindful of the welfare of others. Honest in thought and deed both in my personal and official life, I will be exemplary in obeying the law and the regulations of my department. Whatever I see or hear of a confidential nature or that is confided to me in my official capacity will be kept ever secret unless revelation is necessary in the performance of my duty.

I will never act officiously or permit personal feelings, prejudices, political beliefs, aspirations, animosities or friendships to influence my decisions. With no compromise for crime and with relentless prosecution of criminals, I will enforce the law courteously and appropriately without fear or favor, malice or ill will, never employing unnecessary force or violence and never accepting gratuities.

I recognize the badge of my office as a symbol of public faith, and I accept it as a public trust to be held so long as I am true to the ethics of the police service. I will never engage in acts of corruption or bribery, nor will I condone such acts by other police officers. I will cooperate with all legally authorized agencies and their representatives in the pursuit of justice.

I know that I alone am responsible for my own standard of professional performance and will take every reasonable opportunity to enhance and improve my level of knowledge and competence.

I will constantly strive to achieve these objectives and ideals, dedicating myself before God to my chosen profession...law enforcement.

(15) "Law Enforcement Officer" means an appointee of a criminal justice agency or of the State or of any political subdivision of the State who, by virtue of his office, is empowered to make arrests for violations of the laws of this State. Specifically excluded from this title are sheriffs and their sworn appointees with arrest authority who are governed by the provisions of Chapter 17E of the General Statutes.

(16) "Law Enforcement Training Points" means points earned toward the Law Enforcement Officers' Professional Certificate Program by successful completion of Commission-approved law enforcement training courses. Twenty classroom hours of Commission-approved law enforcement training equals one law enforcement training point.

(17) "LIDAR" means a speed-measuring instrument that electronically computes, from transmitted infrared light pulses, the speed of a vehicle under observation.

(18) "Local Confinement Personnel" means any officer, supervisor or administrator of a local confinement facility in North Carolina as defined in G.S. 153A-217; any officer, supervisor or administrator of a county confinement facility in North Carolina as defined in G.S. 153A-218; or, any officer, supervisor or administrator of a district confinement facility in North Carolina as defined in G.S. 153A-219.

(19) "Misdemeanor" means those criminal offenses not classified under the laws, statutes, or ordinances as felonies. Misdemeanor offenses are classified by the Commission as follows:

(a) "Class A Misdemeanor" means a misdemeanor committed or omitted in violation of any common law, duly enacted ordinance or criminal statute of this state which is not classified as a Class B Misdemeanor pursuant to Sub-item (20)(b) of this Rule. Class A Misdemeanor also includes any act committed or omitted in violation of any common law, duly enacted ordinance, criminal statute, or criminal traffic code of any jurisdiction other than North Carolina, either civil or military, for which the maximum punishment allowable for the designated offense under the laws, statutes, or ordinances of the jurisdiction in which the offense occurred includes imprisonment for a term of not more than six months. Specifically excluded from this grouping of "Class A Misdemeanor" criminal offenses for jurisdictions other than North Carolina, are motor vehicle or traffic offenses designated as misdemeanors under the laws of other jurisdictions, or duly enacted ordinances of an authorized governmental entity with the exception of the offense of impaired driving which is expressly included herein as a Class A Misdemeanor if the offender could have been sentenced for a term of not more than six months. Also specifically included herein as a Class A Misdemeanor is the offense of impaired driving, if the offender was sentenced under punishment level three [G.S. 20-179(i)], level four [G.S. 20-179(j)], or level five [G.S. 20-179(k)]. Class A Misdemeanor shall also include acts committed or

omitted in North Carolina prior to October 1, 1994 in violation of any common law, duly enacted ordinance or criminal statute, of this state for which the maximum punishment allowable for the designated offense included imprisonment for a term of not more than six months.

- (b) "Class B Misdemeanor" means an act committed or omitted in violation of any common law, criminal statute, or criminal traffic code of this state which is classified as a Class B Misdemeanor as set forth in the Class B Misdemeanor Manual as published by the North Carolina Department of Justice which is hereby incorporated by reference and shall automatically include any later amendments and editions of the incorporated material as provided by G.S. 150B-21.6. Copies of the publication may be obtained from the North Carolina Department of Justice, Post Office Box 629, Raleigh, North Carolina 27602. There is no cost per manual at the time of adoption of this Rule. Class B Misdemeanor also includes any act committed or omitted in violation of any common law, duly enacted ordinance, criminal statute, or criminal traffic code of any jurisdiction other than North Carolina, either civil or military, for which the maximum punishment allowable for the designated offense under the laws, statutes, or ordinances of the jurisdiction in which the offense occurred includes imprisonment for a term of more than six months but not more than two years. Specifically excluded from this grouping of "Class B Misdemeanor" criminal offenses for jurisdictions other than North Carolina, are motor vehicle or traffic offenses designated as being misdemeanors under the laws of other jurisdictions with the following exceptions: Class B Misdemeanor does expressly include, either first or subsequent offenses of driving while impaired if the maximum allowable punishment is for a term of more than six months but not more than two years, driving while license permanently revoked or permanently suspended, and those traffic offenses occurring in other jurisdictions which are comparable to the traffic offenses specifically listed in the Class B

Misdemeanor Manual. "Class B Misdemeanor" shall also include acts committed or omitted in North Carolina prior to October 1, 1994 in violation of any common law, duly enacted ordinance, criminal statute, or criminal traffic code of this state for which the maximum punishment allowable for the designated offense included imprisonment for a term of more than six months but not more than two years.

- (20) "Pilot Courses" means those courses approved by the Education and Training Committee of the Commission, consistent with 12 NCAC 09C .0404, which are utilized to develop new training course curricula.
- (21) "Qualified Assistant" means an additional staff person designated as such by the School Director to assist in the administration of a course when an accredited institution or agency assigns additional responsibilities to the certified School Director during the planning, development, and implementation of an accredited course.
- (22) "Radar" means a speed-measuring instrument that transmits microwave energy in the 10,500 to 10,550 MHZ frequency (X) band or transmits microwave energy in the 24,050 to 24,250 MHZ frequency (K) band and either of which operates in the stationary or moving mode. "Radar" further means a speed-measuring instrument that transmits microwave energy in the 33,400 to 36,000 MHZ (Ka) band and operates in either the stationary or moving mode.
- (23) "Resident" means any youth committed to a facility operated by Department of Juvenile Justice and Delinquency Prevention.
- (24) "School" or "criminal justice school" means an institution, college, university, academy, or agency which offers criminal justice, law enforcement, or traffic control and enforcement training for criminal justice officers or law enforcement officers. "School" includes the criminal justice training course curriculum, instructors, and facilities.
- (25) "School Director" means the person designated by the sponsoring institution or agency to administer the criminal justice school.
- (26) "Speed-Measuring Instruments" (SMI) means those devices or systems, including radar time-distance, and LIDAR, formally approved and recognized under authority of G.S. 17C-6(a)(13) for use in North Carolina in determining the speed of a vehicle under observation and particularly includes all named devices or systems as specifically referenced in the approved list of 12 NCAC 09C .0601.

- (27) "Standards Division" means the Criminal Justice Standards Division of the North Carolina Department of Justice.
- (28) "Time-Distance" means a speed-measuring instrument that electronically computes, from measurements of time and distance, the average speed of a vehicle under observation.
- (29) "State Youth Services Officer" means an employee of the Department of Juvenile Justice and Delinquency Prevention whose duties include the evaluation, treatment, instruction, or supervision of juveniles committed to that agency.

- (6) "Director" means the Director of the Criminal Justice Standards Division of the North Carolina Department of Justice.
- (7) "Educational Points" means points earned toward the State Correction Officers' Professional Certificate Program for studies satisfactorily completed for semester hour or quarter hour credit at a regionally accredited institution of higher education. Each semester hour of college credit equals one educational point and each quarter hour of college credit equals two-thirds of an educational point.
- (8) "High School" means graduation from a high school that meets the compulsory attendance requirements in the jurisdiction in which the school is located.

- (9) "Misdemeanor" for corrections officers means those criminal offenses not classified under the laws, statutes, or ordinances as felonies. Misdemeanor offenses for corrections officers are classified by the Commission as follows:

- (a) 14-2.5 Punishment for attempt (offenses that are Class A-1 misdemeanor)
- (b) 14-27.7 Intercourse and sexual offenses with certain victims (If defendant is school personnel other than a teacher, school administrator, student teacher or coach)
- (c) 14-32.1(f) Assault on handicapped persons
- (d) 14-32.2(b)(4) Patient abuse and neglect, punishments
- (e) 14-32.3(c) Exploitation by caretaker of disabled/elder adult in domestic setting; resulting in loss of less than one thousand dollars (\$1000)
- (f) 14-33(b)(9) Assault, battery against sports official
- (g) 14-33(c) Assault, battery with circumstances
- (h) 14-34 Assault by pointing a gun
- (i) 14-34.6(a) Assault on Emergency Personnel
- (j) 14-54 Breaking or Entering into buildings generally (14-54(b))
- (k) 14-72 Larceny of property; receiving stolen goods etc.; less than one thousand dollars (\$1000.00) (14-72(a))
- (l) 14-72.1 Concealment of merchandise (14-72.1(e); 3rd offense)
- (m) 14-76 Larceny, mutilation, or destruction of public records/papers
- (n) CH 14 Art. 19A False/fraudulent use of credit device (14-113.6)
- (o) CH 14 Art. 19B Financial transaction card crime (14-113.17(a))
- (p) 14-114(a) Fraudulent disposal of personal property on which there is a security interest

History Note: Filed as a Temporary Amendment Eff. October 1, 1994 for a period of 180 days to expire on April 1, 1995; Filed as a Temporary Amendment Eff. December 14, 1983 for a period of 120 days to expire on April 12, 1984; Authority G.S. 17C-2; 17C-6; 17C-10; 153A-217; Eff. January 1, 1981; Amended Eff. November 1, 1981; August 15, 1981; Readopted Eff. July 1, 1982; Amended Eff. August 1, 2000; April 1, 1999; August 1, 1998; January 1, 1995; November 1, 1993; March 1, 1990; July 1, 1989; Temporary Amendment Eff. January 1, 2001; Amended Eff. August 1, 2002; April 1, 2001.

12 NCAC 09G .0102 DEFINITIONS

The following definitions apply throughout this Subchapter only:

- (1) "Commission of an offense" means a finding by the North Carolina Criminal Justice Education and Training Standards Commission or an administrative body that a person performed the acts necessary to satisfy the elements of a specified offense.
- (2) "Convicted" or "Conviction" means and includes, for purposes of this Subchapter, the entry of:
 - (a) a plea of guilty;
 - (b) a verdict or finding of guilt by a jury, judge, magistrate, or other duly constituted, established adjudicating body, tribunal, or official, either civilian or military; or
 - (c) a plea of no contest, nolo contendere, or the equivalent.
- (3) "Correctional Officer" means an employee of the North Carolina Department of Correction, Division of Prisons, responsible for the custody of inmates or offenders.
- (4) "Corrections Officer" means any or all of the three classes of officers employed by the North Carolina Department of Correction: correctional officer; probation/parole officer; and probation/parole officer-surveillance.
- (5) "Criminal Justice System" means the whole of the State and local criminal justice agencies including the North Carolina Department of Correction.

APPROVED RULES

(q)	14-118 Blackmailing		insignia, or by operating a red light (14-277 (d1) & (e))
(r)	14-118.2 Obtaining academic credit by fraudulent means (14-118.2(b))	(ss)	14-277.2(a) Weapons at parades, etc., prohibited
(s)	14-122.1 Falsifying documents issued by a school (14-122.1(c))	(tt)	14-277.3 Stalking (14-277.3(b))
(t)	14-127 Willful and wanton injury to real property	(uu)	CH 14 Art. 36A Riot (14-288.2(b))
(u)	14-160 Willful and wanton injury to personal property greater than two hundred dollars (\$200.00) (14-160(b))	(vv)	CH 14 Art. 36A Inciting to riot (14-288.2(d))
(v)	14-190.5 Preparation of obscene photographs	(ww)	CH 14 Art. 36A Looting; trespassing during emergency (14-288.6(a))
(w)	14-190.9 Indecent Exposure	(xx)	CH 14 Art. 36A Transporting weapon or substance during emergency (14-288.7(c))
(x)	14-190.14 Displaying material harmful to minors (14-190.14(b))	(yy)	CH 14 Art. 36A Assault on emergency personnel; punishments (14-288.9(c))
(y)	14-190.15 Disseminating harmful material to minors (14-190.15(d))	(zz)	14-315(a) Selling or giving weapons to minors
(z)	14-202.2 Indecent liberties between children	(aaa)	14-315.1 Storage of firearms to protect minors
(aa)	14-202.4 Taking indecent liberties with a student	(bbb)	14-316.1 Contributing to delinquency
(bb)	14-204 Prostitution (14-207; 14-208)	(ccc)	14-318.2 Child abuse
(cc)	14-223 Resisting officers	(ddd)	14-360 Cruelty to animals
(dd)	14-225 False, etc., reports to law enforcement agencies or officers	(eee)	14-361 Instigating or promoting cruelty to animals
(ee)	14-230 Willfully failing to discharge duties	(fff)	14-401.14 Ethnic intimidation; teaching any technique to be used for (14-401.14(a) and (b))
(ff)	14-231 Failing to make reports and discharge other duties	(ggg)	14-454(a) or (b) Accessing computers
(gg)	14-232 Swearing falsely to official records	(hhh)	14-458 Computer trespass (Damage less than two thousand five hundred dollars (\$2500.00))
(hh)	14-239 Allowing prisoners to escape punishment	(iii)	15A-266.11 Unauthorized use of DNA databank; willful disclosure (15A-266.11(a) and (b))
(ii)	14-255 Escape of working prisoners from custody	(jjj)	15A-287 Interception and disclosure of wire etc. communications
(jj)	14-256 Prison breach and escape	(kkk)	15B-7(b) Filing false or fraudulent application for compensation award
(kk)	14-258.1(b) Furnishing certain contraband to inmates	(lll)	18B-902(c) False statements in application for ABC permit (18B-102(b))
(ll)	14-259 Harboring or aiding certain persons	(mmm)	20-37.8 Fraudulent use of a fictitious name for a special identification card (20-37.8(b))
(mm)	CH 14 Art. 34 Persuading inmates to escape; harboring fugitives (14-268)	(nnn)	20-102.1 False report of theft or conversion of a motor vehicle
(nn)	14-269.2 Weapons on campus or other educational property (14-269.2(d), (e) & (f))	(ooo)	20-111(5) Fictitious name or address in application for registration
(oo)	14-269.3(a) Weapons where alcoholic beverages are sold and consumed	(ppp)	20-130.1 Use of red or blue lights on vehicles prohibited (20-130.1(e))
(pp)	14-269.4 Weapons on state property and in courthouses	(qqq)	20-137.2 Operation of vehicles resembling law-enforcement vehicles (20-137.2(b))
(qq)	14-269.6 Possession and sale of spring-loaded projectile knives prohibited (14-269.6(b))		
(rr)	14-277 Impersonation of a law-enforcement or other public officer verbally, by displaying a badge or		

APPROVED RULES

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|--------|---|--------|---|
| (rrr) | 20-138.1 Driving while impaired (punishment level 1 (20-179(g)) or 2 (20-179(h)) | (pppp) | 113-290.1(a)(3) Criminally negligent hunting; bodily disfigurement |
| (sss) | 20-138.2 Impaired driving in commercial vehicle (20-138.2(e)) | (qqqq) | 113-290.1(a)(4) Criminally negligent hunting; death results |
| (ttt) | 20-141.5(a) Speeding to elude arrest | (rrrr) | 113-290.1(d) Criminally negligent hunting; person convicted/suspended license |
| (uuu) | 20-166(b) Duty to stop in event of accident or collision | (ssss) | 143-58.1(a) Use of public purchase or contract for private benefit (143-58.1(c)) |
| (vvv) | 20-166(c) Duty to stop in event of accident or collision | (tttt) | 148-45(d) Aiding escape or attempted escape from prison |
| (www) | 20-166(c1) Duty to stop in event of accident or collision | (uuuu) | 162-55 Injury to prisoner by jailer |
| (xxx) | 50B-4.1 Knowingly violating valid protective order | (vvvv) | Common-Law misdemeanors: |
| (yyy) | 58-33-105 False statement in applications for insurance | (i) | Going Armed to the Terror of the People |
| (zzz) | 58-81-5 Careless or negligent setting of fires | (ii) | Common-Law Mayhem |
| (aaaa) | 62A-12 Misuse of 911 system | (iii) | False Imprisonment |
| (bbbb) | 90-95(d)(2) Possession of schedule II, III, IV | (iv) | Common-Law Robbery |
| (cccc) | 90-95(d)(3) Possession of Schedule V | (v) | Common-Law Forgery |
| (dddd) | 90-95(d)(4) Possession of Schedule VI (when punishable as Class 1 misdemeanor) | (vi) | Common-Law Uttering of Forged paper |
| (eeee) | 90-95(e)(4) Conviction of 2 or more violations of Art. 5 | (vii) | Forcible Trespass |
| (ffff) | 90-95(e)(7) Conviction of 2 or more violations of Art. 5 | (viii) | Unlawful Assembly |
| (gggg) | 90-113.22 Possession of drug paraphernalia (90-113.22(b)) | (www) | Those offenses occurring in other jurisdictions which are comparable to the offenses specifically listed in (a) through (vvvv) of this Rule. |
| (hhhh) | 90-113.23 Manufacture or delivery of drug paraphernalia (90-113.23(c)) | (10) | "Pilot Courses" means those courses approved by the Education and Training Committee, consistent with 12 NCAC 09G .0404, which are utilized to develop new training course curricula. |
| (iiii) | 97-88.2(a) Misrepresentation to get worker's compensation payment | (11) | "Probation/Parole Officer" means an employee of the North Carolina Department of Correction, Division of Community Corrections, whose duties include supervising, evaluating, or otherwise instructing offenders placed on probation, parole, post release supervision, or assigned to any other community-based program operated by the Division of Community Corrections. |
| (jjjj) | 108A-39(a) Fraudulent misrepresentation of public assistance | (12) | "Probation/Parole Officer-Surveillance" means an employee of the North Carolina Department of Correction, Division of Community Corrections, other than a regular probation/parole officer who is trained in corrections techniques, and is an authorized representative of the courts of North Carolina and the Department of Correction, Division of Community Corrections, whose duties include supervising, investigating, reporting, and surveillance of serious offenders in an intensive probation, parole, or post release supervision program operated by the Division of Community Corrections. |
| (kkkk) | 108A-53 Fraudulent misrepresentation of foster care and adoption assistance payments | (13) | "Qualified Assistant" means an additional staff person designated as such by the School |
| (llll) | 108A-64(a) Medical assistance recipient fraud; less than four hundred dollars (\$400.00) (108-64(c)(2)) | | |
| (mmmm) | 108A-80 Recipient check register/list of all recipients of AFDC and state-county special assistance (108A-80(b)) | | |
| (nnnn) | 108A-80 Recipient check register/ list of all recipients of AFDC and state-county special assistance; political mailing list (108A-80(c)) | | |
| (oooo) | 113-290.1(a)(2) Criminally negligent hunting; no bodily disfigurement | | |

- Director to assist in the administration of a course when an accredited institution or agency assigns additional responsibilities to the certified School Director during the planning, development, and implementation of an accredited course.
- (14) "School" means an institution, college, university, academy, or agency which offers penal or corrections training for correctional officers, probation/parole officers, or probation/parole officers-surveillance. "School" includes the corrections training course curricula, instructors, and facilities.
- (15) "School Director" means the person designated by the Secretary of the North Carolina Department of Correction to administer the "School."
- (16) "Standards Division" means the Criminal Justice Standards Division of the North Carolina Department of Justice.
- (17) "State Corrections Training Points" means points earned toward the State Corrections Officers' Professional Certificate Program by successful completion of Commission-approved corrections training courses. 20 classroom hours of Commission-approved corrections training equals one State Corrections training point.

History Note: Authority G.S. 17C-2; 17C-6; 17C-10; 153A-217; Temporary Adoption Eff. January 1, 2001; Eff. August 1, 2002.

12 NCAC 09G .0204 EDUCATION

- (a) Every person employed as a correctional officer by the North Carolina Department of Correction shall be a high school graduate or have passed the General Educational Development Test indicating high school equivalency.
- (b) Every person employed as a probation/parole officer by the North Carolina Department of Correction shall be a graduate of a regionally accredited college or university and have attained at least the baccalaureate degree.
- (c) Every person employed as a probation/parole officer-surveillance by the North Carolina Department of Correction shall be a high school graduate or have passed the General Educational Development Test indicating high school equivalency.
- (d) Each applicant for employment as a corrections officer shall furnish to the North Carolina Department of Correction documentary evidence that the applicant has met the educational requirements for the corrections field of expected employment.
- (1) Documentary evidence of educational requirements shall consist of official transcripts of courses completed or diplomas received from a school which meets the requirements of: the North Carolina Department of Public Instruction, the Division of Non-Public Instruction, a comparable out-of-state agency, or is a regionally accredited college or university. The Director of the

- Standards Division shall determine whether other types of documentation will be permitted in specific cases consistent with this rule. High school diplomas earned through correspondence enrollment are not recognized toward these minimum educational requirements.
- (2) Documentary evidence of completion of the General Educational Development "GED" Test shall be satisfied by a certified copy of GED test results showing successful completion. A certified copy of a military GED diploma may be used as alternate evidence of GED completion.

History Note: Authority G.S. 17C-6; 17C-10; Temporary Adoption Eff. January 1, 2001; Eff. August 1, 2002.

12 NCAC 09G .0304 GENERAL CERTIFICATION

- (a) The Commission shall grant an officer General Certification when evidence is received by the Standards Division that an officer has successfully completed the training requirements of 12 NCAC 09G .0400 within the officer's probationary period and the officer has met all other requirements for General Certification.
- (b) General Certification is continuous from the date of issuance, so long as the certified officer remains continuously employed as a correctional officer, probation/parole officer, or probation/parole officer-surveillance in good standing with the North Carolina Department of Correction and the certification has not been suspended or revoked pursuant to Rule .0503 of this Subchapter.
- (c) Certified officers who, through promotional opportunities, move into non-certified positions within the Department, may have their certification reinstated without re-completion of the basic training requirements of 12 NCAC 09G .0400 and are exempted from reverification of employment standards of 12 NCAC 09G .0202 through .0206 when returning to a position requiring certification if they have maintained continuous employment within the Department.
- (d) Documentation of General Certification shall be maintained with the officer's personnel records with the North Carolina Department of Correction and the Commission.
- (e) Upon transfer of a certified officer from one type of corrections officer to another, the North Carolina Department of Correction shall submit a Notice of Transfer to the Standards Division.
- (1) Upon receipt of the Notice of Transfer, the Standards Division shall cancel the officer's current General Certification and upon receipt of documentary evidence that the officer has met the requisite standards for the specified type of corrections officer certification, the Commission shall issue Probationary Certification reflecting the officer's new corrections position.
- (2) The Commission shall grant an officer General Certification as the new type of corrections officer when evidence is received by the Standards Division that an officer has

successfully completed the training requirements of 12 NCAC 09G .0400 within the officer's probationary period and the officer has met all other requirements for General Certification.

- (6) documentation of the officer's psychological examination results;
- (7) documentation and verification of the officer's age;
- (8) documentation and verification of the officer's citizenship;
- (9) documentation of any prior criminal record; and
- (10) miscellaneous documents to include, but not limited to, letters, investigative reports, and subsequent charges and convictions.

History Note: Authority G.S. 17C-2; 17C-6; 17C-10; Temporary Adoption Eff. January 1, 2001; Eff. August 1, 2002.

12 NCAC 09G .0305 RECERTIFICATION FOLLOWING SEPARATION

(a) Previously certified corrections officers, with a minimum of one year of service who have been separated from the North Carolina Department of Correction for less than two years, may have their certification reinstated following a reverification of employment standards in 12 NCAC 09G .0202, .0203, and .0206 (excluding 12 NCAC 09G .0206(4)(b)), but are exempt from the job appropriate basic training course described in 12 NCAC 09G .0400.

(b) Previously certified corrections officers with less than one year of service who have been separated from the North Carolina Department of Correction for less than two years, may have their certification reinstated following a reverification of employment standards 12 NCAC 09G .0202, .0203, and .0206 (excluding 12 NCAC 09G .0206(d)(2)), and shall complete the job appropriate basic training course described in 12 NCAC 09G .0400.

(c) Previously certified corrections officers who have been separated from the North Carolina Department of Correction for more than two years, upon their return shall complete the verification of employment standards and shall complete the job appropriate basic training course described in 12 NCAC 09G .0400.

History Note: Authority G.S. 17C-2; 17C-6; 17C-10; Temporary Adoption Eff. January 1, 2001; Eff. August 1, 2002.

12 NCAC 09G .0306 RETENTION OF RECORDS OF CERTIFICATION

(a) The North Carolina Department of Correction shall place in the officer's certification file the official notification from the Commission of either Probationary or General Certification for each correctional officer, probation/parole officer, and probation/parole officer-surveillance employed or appointed by the North Carolina Department of Correction. The certification file shall also contain:

- (1) the officer's Report of Appointment/Application for Certification including the State Personnel Application;
- (2) the officer's Medical History Statement and Medical Examination Report to be maintained at the officer's local unit;
- (3) documentation of the officer's drug screening results;
- (4) documentation of the officer's educational achievements;
- (5) documentation of all corrections training completed by the officer;

(b) All files and documents relating to an officer's certification shall be available for examination and utilization at any reasonable time by representatives of the Commission for the purpose of verifying compliance with the Rules in this Subchapter. These records shall be maintained in compliance with the North Carolina Department of Correction's Records Retention Schedule.

History Note: Authority G.S. 17C-2; 17C-6; Temporary Adoption Eff. January 1, 2001; Eff. August 1, 2002.

12 NCAC 09G .0309 TERMS AND CONDITIONS OF GENERAL INSTRUCTOR CERTIFICATION

(a) An applicant meeting the requirements for certification as a general instructor shall, for the first 12 months of certification, be in a probationary status. The General Instructor Certification, Probationary Status, shall automatically expire 12 months from the date of issuance.

(b) The probationary instructor shall be eligible for full general instructor status if the instructor, through application at the end of the probationary period, submits to the Commission:

- (1) a favorable recommendation from a School Director accompanied by certification on a Commission Instructor Evaluation Form that the instructor successfully taught a minimum of eight hours in a Commission-accredited course or a Commission-recognized in-service training course during the probationary year. The results of the student evaluation of the instructor must be considered by the School Director when determining recommendation; or
- (2) a written evaluation by a staff member, based on an on-site classroom evaluation of the probationary instructor in a Commission-accredited course or a Commission-recognized in-service training course. Such evaluation shall be certified on a Commission Instructor Evaluation Form. In addition, instructors evaluated by a staff member must also teach a minimum of eight hours in a Commission-accredited training course or a Commission-recognized in-service training course.

(c) The term of certification as a general instructor is two years from the date the Commission issues the certification. The certification may subsequently be renewed by the Commission for two-year periods. The application for renewal shall contain, in addition to the requirements listed in 12 NCAC 09G .0308 of

this Section, documentary evidence indicating that the applicant has remained active in the instructional process during the previous two-year period. Such documentary evidence shall include, at a minimum, the following:

- (1) proof that the applicant has, within the two year period preceding application for renewal, instructed a minimum of eight hours in a Commission-accredited training course or a Commission-recognized in-service training course; and
- (2) either:
 - (A) a favorable written recommendation from a School Director accompanied by certification on a Commission Instructor Evaluation Form that the instructor successfully taught a minimum of eight hours in a Commission-accredited training course or a Commission-recognized in-service training course during the two-year period of general certification; or
 - (B) a written evaluation by a staff member, based on an on-site classroom evaluation of a presentation by the instructor in a Commission-accredited training course or a Commission-recognized in-service training course, during the two-year period of General Instructor Certification.

(d) If an instructor does not teach a minimum of eight hours during the period of certification, the certification shall not be renewed, and the instructor shall file application for General Instructor Certification, Probationary Status. Such applicants shall be required to meet the minimum requirements of 12 NCAC 09G .0308 of this Section.

History Note: Authority G.S. 17C-6; Temporary Adoption Eff. January 1, 2001; Eff. August 1, 2002.

12 NCAC 09G .0311 TERMS AND CONDITIONS OF SPECIALIZED INSTRUCTOR CERTIFICATION

(a) An applicant meeting the requirements for Specialized Instructor Certification shall be issued a certification to run concurrently with the existing General Instructor Certification. The applicant must apply for certification as a specialized instructor within 60 days from the date of completion of a specialized instructor course.

(b) The terms of certification as a specialized instructor shall be determined by the expiration date of the existing General Instructor Certification. The following requirements shall apply during the initial period of certification:

- (1) where certification for both general probationary instructor and Specialized Instructor Certification is issued on the same date, the instructor shall only be required to satisfy the teaching requirement for the general probationary instructor certification. The instructor may satisfy the teaching requirement

- (2) for the general probationary instructor certification by teaching any specialized topic for which certification has been issued; when Specialized Instructor Certification is issued during an existing period of General Instructor Certification, either probationary status or full general status, the specialized instructor may satisfy the teaching requirement for the General Certification by teaching the specialized subject for which certification has been issued; and
- (3) where Specialized Instructor Certification becomes concurrent with an existing 24 month period of General Instructor Certification, the instructor must teach a minimum of eight hours for each specialized topic for which certification has been issued.

(c) The term of certification as a specialized instructor shall not exceed the 24 month period of full General Instructor Certification. The certification may subsequently be renewed by the Commission at the time of renewal of the full General Instructor Certification. The application for renewal shall contain, in addition to the requirements listed in 12 NCAC 09G .0310 of this Section, documentary evidence that the applicant has remained active in the instructional process during the previous two-year period. Such documentary evidence shall include, at a minimum, the following:

- (1) proof that the applicant has, within the two year period preceding application for renewal, instructed at least eight hours in each of the topics for which Specialized Instructor Certification was granted and such instruction must be in a Commission-accredited training course or a Commission-recognized in-service training course. Acceptable documentary evidence shall include official Commission records submitted by School Directors and written certification from a School Director; and
- (2) either:
 - (A) a favorable written recommendation from a School Director accompanied by certification that the instructor successfully taught at least eight hours in each of the topics for which Specialized Instructor Certification was granted. Such teaching must have occurred in a Commission-accredited training course or a Commission-recognized in-service training course during the two year period of Specialized Instructor Certification; or
 - (B) a written evaluation by a staff member, based on an on-site classroom evaluation of a presentation by the instructor in a Commission-accredited training course or a Commission-recognized in-service training course, during the

two-year period of Specialized Instructor Certification.

(d) If an instructor does not teach at least eight hours in each of the topic areas for which certification is granted, the certification shall not be renewed for those topics in which the instructor failed to successfully teach. Any specialized instructor training courses previously accepted by the Commission for purposes of certification shall no longer be recognized if the instructor does not successfully teach at least eight hours in each of the specialized topics during the two-year period of which certification was granted. Upon application for re-certification, such applicants shall be required to meet the minimum requirements of 12 NCAC 09G .03 10 of this Section.

History Note: Authority G.S. 17C-6; Temporary Adoption Eff. January 1, 2001; Eff. August 1, 2002.

12 NCAC 09G .0316 PROFESSIONAL LECTURER CERTIFICATION

(a) The Commission may issue Professional Lecturer Certification to a person in a profession, who, by virtue of academic degrees and professional expertise, has developed special knowledge in one or more of the following areas:

- (1) Law;
- (2) Psychology;
- (3) Medicine.

(b) To be eligible for such certification, an applicant shall:

- (1) be a graduate of a regionally accredited law school, medical school, or other school accredited for conferring degrees in law, psychology or medicine;
- (2) obtain the endorsement of a Commission-certified School Director who shall:
 - (A) recommend the applicant for certification as a professional lecturer;
 - (B) describe the applicant's expected participation, topical areas, duties, and responsibilities in a delivery of Commission-accredited training course conducted by the school; and
 - (C) describe the attributes showing the applicant to be a beneficial contributor to the delivery or presentation in a Commission-accredited training program.

History Note: Authority G.S. 17C-6; Temporary Adoption Eff. January 1, 2001; Eff. August 1, 2002.

12 NCAC 09G .0402 ACCREDITATION OF CORRECTIONS SCHOOLS

(a) The Commission shall establish a standing subcommittee of the Education and Training Committee for the purposes of evaluating Request for School Accreditation applications and making recommendations to the Education and Training Committee on the granting of accreditation to institutions and agencies. The Accreditation Committee shall be comprised of

two members appointed by the School Directors' Advisory Committee and two members who shall be commission members to include the North Carolina Community Colleges System's representative to the Commission. The Chairman of the Commission shall appoint the Chairman of the Accreditation Committee.

(b) Any school meeting the minimum requirements contained in 12 NCAC 09G .0400 must submit a properly completed Request for School Accreditation application. Upon receipt of a properly completed Request for School Accreditation application:

- (1) the Standards Division staff shall review the application for any omissions and clarifications and conduct a site visit to tour facilities, confirm information on the application, and determine if and where deficiencies exist;
- (2) the applying institution or agency shall be contacted concerning deficiencies and assistance shall be given on correcting problem areas;
- (3) the application and staff reports are submitted to the Accreditation Committee for review;
- (4) a recommendation shall be submitted to the Education and Training Committee on the approval or denial of the application; and
- (5) the Education and Training Committee shall recommend to the full Commission at its next regularly scheduled meeting the approval or denial of accreditation for the applicant institution or agency.

(c) Accreditation of a school shall remain effective for five years from issuance unless earlier suspended or revoked for just cause.

(d) The identity of those schools accredited under this Rule shall be published and distributed annually by the Standards Division together with the name and business address of the School Director and the schedule of corrections training courses planned for delivery during the succeeding year.

(e) A school may apply for reaccreditation to the Commission by submitting a properly completed Request for School Accreditation application. The application for reaccreditation shall contain information on changes in facilities, equipment, and staffing. Upon receipt of a properly completed application:

- (1) the Standards Division staff shall review the application for any omissions and clarification;
- (2) copies of the site visits conducted during the last period of certification shall be attached to the application;
- (3) the application and staff reports shall be submitted to the Accreditation Committee for review;
- (4) a recommendation shall be submitted to the Education and Training Committee on the approval or denial of the application; and
- (5) the Education and Training Committee shall recommend to the full Commission at its next regularly scheduled meeting the approval or denial of reaccreditation of the applicant institution or agency.

(f) In instances where accredited schools have been found to be in compliance with 12 NCAC 09G .0400 through favorable site

visit reports, Standards Division staff shall be authorized to reaccredit on behalf of the Commission. Such action shall be reported to the Commission through the Accreditation Committee and the Education and Training Committee at its next scheduled meeting.

(g) The Commission may suspend or revoke a school's accreditation when it finds that the school has failed to meet or continuously maintain any requirement, standard, or procedure for school or course accreditation.

*History Note: Authority G.S. 17C-6;
Temporary Adoption Eff. January 1, 2001;
Eff. August 1, 2002.*

12 NCAC 09G .0403 ACCREDITATION OF TRAINING COURSES

(a) An accredited corrections school shall apply for accreditation for each of its courses by submitting a completed Request for Training Course Accreditation Form.

(b) One of two types of accreditation may be sought by the school, depending upon the nature of the course for which accreditation is sought.

- (1) Temporary accreditation shall apply to courses being offered by an accredited school on a one-time basis and will remain effective for the duration of the specified course offering, not in excess of one year.
- (2) Continuing accreditation shall apply to courses offered by an accredited school and will remain effective until surrendered, revoked, or the school's accreditation expires, or is suspended, or is revoked.

(c) The Commission may suspend or revoke the accreditation of a course when it finds that the school has failed to meet or to continuously maintain any requirement, standard, or procedure for course accreditation.

*History Note: Authority G.S. 17C-6;
Temporary Adoption Eff. January 1, 2001;
Eff. August 1, 2002.*

12 NCAC 09G .0404 PILOT COURSE PRESENTATION/PARTICIPATION

(a) The Education and Training Committee shall recommend to the Commission the most efficient and effective delivery system and developer of course curricula for the implementation of newly developed training courses based upon the size of the target population, the nature and complexity of the training problem, and the availability of resources. Designation of the developer of course curricula by the Commission shall be deemed as approval of the developer to conduct pilot courses.

(b) Individuals who successfully complete a pilot course offering shall not be required by other rules of this Subchapter to complete additional training for that specific certification program. Such pilot training courses shall be recognized for purposes of certification or recertification.

*History Note: Authority G.S. 17C-6;
Temporary Adoption Eff. January 1, 2001;
Eff. August 1, 2002.*

12 NCAC 09G .0408 RESPONSIBILITIES OF THE SCHOOL DIRECTOR

In planning, developing, coordinating, and delivering each Commission-approved corrections training course, the School Director shall:

- (1) formalize and schedule the course curriculum in accordance with the curriculum standards established in this Subchapter;
- (2) schedule course presentation for delivery such that each training course required for certification shall be presented on a regular basis; and
- (3) select and schedule instructors who are certified by the Commission.

*History Note: Authority G.S. 17C-6;
Temporary Adoption Eff. January 1, 2001;
Eff. August 1, 2002.*

12 NCAC 09G .0409 ADMISSION OF TRAINEES AND COURSE ENROLLMENT

The school may not enroll any trainee later than the second day of delivery of an accredited training course unless the trainee's enrollment is pursuant to prescribed supplementary or remedial training required under 12 NCAC 09G .0410 of this Section.

*History Note: Authority G.S. 17C-6; 17C-10;
Temporary Adoption Eff. January 1, 2001;
Eff. August 1, 2002.*

12 NCAC 09G .0415 CORRECTIONS SPECIALIZED INSTRUCTOR TRAINING - FIREARMS

(a) The instructor training course requirement for corrections specialized firearms instructor certification shall consist of a minimum of 80 hours of instruction presented during a continuous period of not more than two weeks.

(b) Each corrections specialized firearms instructor training course shall be designed to provide the trainee with the skills and knowledge to perform the function of a corrections firearms instructor in the "Basic Training--Correctional Officer" course, "Basic Training--Probation/Parole Officer" course, "Basic Training--Probation/Parole Officer-Surveillance" course, and in-service training courses for correctional officers, PERT teams, and probation/parole officers-surveillance.

(c) Each corrections specialized firearms instructor training course shall include as a minimum the following topical areas:

- (1) Overview;
- (2) Legal Considerations for Firearms Instructors;
- (3) Firearms Safety;
- (4) Range Operations;
- (5) Range Medical Emergencies;
- (6) Revolver - Operation, Use, and Maintenance;
- (7) Advanced Revolver Training;
- (8) Revolver Night Firing;
- (9) Rifle Training and Qualification;
- (10) Shotgun Training and Qualification;
- (11) Maintenance and Repair of Rifles and Shotguns;
- (12) Special Techniques, Training Aids, and Methods;
- (13) Chemical Weapons;

- (14) Situational Use of Firearms;
- (15) Day and Night Practical Courses of Fire; and
- (16) Administrative Matters, Testing, and Evaluation.

(d) Commission-accredited schools that are accredited to offer the "Corrections Specialized Instructor Training - Firearms" course are: The Office of Staff Development and Training of the North Carolina Department of Correction.

History Note: Authority G.S. 17C-6; Temporary Adoption Eff. January 1, 2001; Eff. August 1, 2002.

12 NCAC 09G .0416 CORRECTIONS SPECIALIZED INSTRUCTOR TRAINING - UNARMED SELF-DEFENSE

(a) The instructor training course requirement for corrections specialized unarmed self-defense instructor certification shall consist of a minimum of 80 hours of instruction presented during a continuous period of not more than two weeks .

(b) Each corrections specialized unarmed self-defense instructor training course shall be designed to provide the trainee with the skills and knowledge to perform the function of a corrections unarmed self-defense instructor in the "Basic Training-Correctional Officer" course, "Basic Training-Probation/Parole Officer" course, "Basic Training-Probation/Parole Officer-Surveillance" course, and in-service training courses for correctional officers, PERT teams, probation/parole officer-surveillance, and all Department of Juvenile Justice and Delinquency Prevention unarmed self-defense courses.

(c) Each corrections specialized unarmed self-defense instructor training course shall include, as a minimum, the following topical areas:

- (1) Introduction to Unarmed Self-Defense;
- (2) Basic Exercises, Techniques and Methods;
- (3) Basic Come-A-Longs and Control Techniques;
- (4) Restraint Application;
- (5) Instructional Methods/Techniques; and
- (6) Program Evaluation.

(d) Commission-accredited schools that are accredited to offer the "Corrections Specialized Instructor Training/Unarmed Self-Defense" course are: The Office of Staff Development and Training of the North Carolina Department of Correction.

History Note: Authority G.S. 17C-6; Temporary Adoption Eff. January 1, 2001; Eff. August 1, 2002.

TITLE 15A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

15A NCAC 02D .1412 PETITION FOR ALTERNATIVE LIMITATIONS

(a) If the owner or operator of a source subject to the requirements of Rules .1407, .1408, or .1409(a) of this Section:

- (1) cannot achieve compliance with the applicable limitation after reasonable effort to satisfy the requirements of Rules .1407, .1408, or .1409 of this Section or if the requirements of Rules

- .1407, .1408, or .1409 of this Section are not RACT for the particular source; and
- (2) cannot provide reasonable assurance for overall compliance at a facility through the implementation of an emissions averaging plan as provided for in Rule .1410 of this Section;

the owner or operator may petition the Director for an alternative limitation according to Paragraph (b) or (c) of this Rule.

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

- (1) the name and location of the facility;
- (2) information identifying the source for which an alternative limitation is being requested;
- (3) the maximum heat input rate for the source;
- (4) the fuel or fuels combusted in the source;
- (5) the maximum allowable NO_x emission rate proposed for the source for each fuel;
- (6) a demonstration that the source has satisfied the requirements to apply for an alternative limitation under Paragraph (a) of this Rule; and
- (7) a demonstration that the proposed alternative limitation is RACT for that source.

(c) If the source is required to comply with best achievable control technology under Rule .0530, Prevention of Significant Deterioration, of this Subchapter, the owner or operator of the source shall provide the information required under Subparagraphs (b)(1) through (b)(6) of this Rule and documentation that the source is required to use best available control technology and is complying with that requirement. For this source, its best available control technology shall be considered RACT without any further demonstrations.

(d) The Director shall approve the alternative limitation if he finds that:

- (1) all the information required by Paragraph (b) of this Rule has been submitted;
- (2) the requirements of Paragraph (a) of this Rule have been satisfied; and
- (3) the proposed alternative limitation is RACT for that source.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.107(a)(5), (7), (10); Eff. April 1, 1995; Temporary Amendment Eff. August 1, 2001; November 1, 2000; Amended Eff. July 15, 2002.

15A NCAC 02D .1415 TEST METHODS AND PROCEDURES

(a) For stationary combustion turbines, Method 20 at 40 CFR Part 60, Appendix A or other equivalent method approved by Director shall be used when source testing is used to demonstrate compliance with a limitation established according to this Section. For all other sources, Method 7E or Method 19 at 40 CFR Part 60, Appendix A or other equivalent method approved by the Director shall be used when source testing is used to demonstrate compliance with a limitation established according to this Section. The procedures specified in Methods 1, 2, 2F, 2G, 3, 3A, 3B, and 4 of 40 CFR Part 60, Appendix A, shall be used to measure velocity, flow rate, and molecular

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weight and to calculate heat input, as necessary, to determine compliance.

(b) When compliance with a limitation established according to this Section is determined using source testing, such testing shall be conducted according to this Rule.

(c) Before conducting a source test, the owner or operator of the sources to be tested shall submit to the Director a testing protocol describing what is to be tested and the test method or methods that will be used. The Director shall approve or disapprove the protocol within 45 days after receipt.

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

- (1) a statement of the purpose of the proposed test;
- (2) the location and a description of the facility where the test is to take place;
- (3) the proposed test method and a description of the test procedures, equipment, and sampling points; and

(4) a schedule setting forth the dates that:

- (A) the test will be conducted and data collected;
- (B) the final test report will be submitted.

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

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

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

History Note: Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(5), (7), (10); Temporary Amendment Eff. November 1, 2000; Eff. April 1, 1995; Temporary Amendment Eff. August 1, 2001; Amended Eff. July 15, 2002.

15A NCAC 02D .1416 EMISSION ALLOCATIONS FOR UTILITY COMPANIES

(a) After November 1, 2000 but before the EPA promulgation of revisions to 40 CFR Part 51, Subpart G, revising the nitrogen oxide budget for North Carolina, the following limits apply:

- (1) Carolina Power & Light. The total emissions from all the coal-fired boilers and combustion turbines that are not listed in Rule .1417 of this Section at Carolina Power & Light Company's Asheville, Cape Fear, Lee, Mayo, Roxboro, Sutton, and Weatherspoon facilities shall not exceed:
 - (A) 12,019 tons per ozone season for 2004;
 - (B) 15,566 tons per ozone season for 2005;
 - (C) 14,355 tons per ozone season for 2006 and each year thereafter until revised according to Rule .1420 of this Section; and

Furthermore, except as allowed under Paragraph (d) of this Rule, individual sources at these facilities named in the table in this Subparagraph shall not exceed during the ozone season the nitrogen oxide emission allocations in the table.

FACILITY	SOURCE	EMISSION ALLOCATIONS (tons/ozone season) 2004	EMISSION ALLOCATIONS (tons/ozone season) 2005	EMISSION ALLOCATIONS (tons/ozone season) 2006 and later
Asheville, Buncombe Co.	1	551	714	659
	2	538	697	643
Cape Fear Chatham Co	5	286	371	342
	6	406	526	485
Lee Wayne Co	1	145	188	173
	2	159	206	190
	3	465	603	556
Mayo Person Co	1	1987	2572	2373
Roxboro Person Co	1	861	1115	1028
	2	1602	2075	1914
	3	1773	2295	2116
	4	1698	2199	2028
L V Sutton New Hanover Co.	1	182	236	217
	2	198	256	236
	3	806	1044	962
Weatherspoon Robeson Co.	1	85	110	102
	2	97	125	116
	3	180	234	215

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- (2) Duke Power. The total emissions from all the coal-fired boilers and combustion turbines that are not listed in Rule .1417 of this Section at Duke Power Company's Allen, Belews Creek, Buck, Cliffside, Dan River, Marshall, and Riverbend facilities shall not exceed:
- (A) 17,816 tons per ozone season for 2004;
 - (B) 23,072 tons per ozone season for 2005;
 - (C) 21,278 tons per ozone season for .2006 and each year thereafter until revised according to Rule .1420 of this Section; and

Furthermore, except as allowed under Paragraph (d) of this Rule, individual sources at these facilities named in the table in this Subparagraph shall not exceed during the ozone season the nitrogen oxide emission allocations in the table.

FACILITY	SOURCE	EMISSION ALLOCATIONS (tons/ozone season) 2004	EMISSION ALLOCATIONS (tons/season) 2005	EMISSION ALLOCATIONS (tons/season) 2006 and later
G G Allen Gaston Co.	1	350	453	418
	2	355	460	424
	3	590	764	705
	4	528	683	630
	5	678	748	690
Belews Creek Stokes Co.	1	2591	3356	3095
	2	3020	3911	3608
Buck Rowan Co.	5	66	86	79
	6	73	95	87
	7	78	101	93
	8	319	413	381
	9	337	437	403
Cliffside Cleveland Co.	1	76	98	91
	2	82	106	98
	3	107	138	128
	4	120	156	144
	5	1326	1717	1584
Dan River Rockingham Co.	1	132	171	157
	2	144	186	172
	3	304	394	363
Marshall Catawba Co.	1	1011	1309	1207
	2	1056	1367	1261
	3	1784	2311	2131
	4	1764	2285	2107
Riverbend Gaston Co.	10	299	387	357
	7	216	280	258
	8	225	291	268
	9	285	369	340

(b) After November 1, 2000, and after any EPA promulgation of revisions to 40 CFR Part 51, Subpart G, revising the nitrogen oxide budget for North Carolina, the following limits apply:

- (1) Carolina Power & Light. The total emissions from all the coal-fired boilers and combustion turbines that are not listed in Rule .1417 of this Section at Carolina Power & Light Company's Asheville, Cape Fear, Lee, Mayo, Roxboro, Sutton, and Weatherspoon facilities shall not exceed:
- (A) 12,019 tons per ozone season in 2004;
 - (B) 15,024 tons per ozone season for 2005;
 - (C) 11,320 tons per ozone season for 2006 and each year thereafter until revised according to Rule .1420 of this Section; and

Furthermore, except as allowed under Paragraph (d) of this Rule, individual sources at these facilities named in the table in this Subparagraph shall not exceed during the ozone season the nitrogen oxide emission allocations in the table.

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FACILITY	SOURCE	EMISSION ALLOCATIONS (tons/ozone season) 2004	EMISSION ALLOCATIONS (tons/ozone season) 2005	EMISSION ALLOCATIONS (tons/ozone season) 2006 and later
Asheville Buncombe Co	1	551	689	519
	2	538	672	507
Cape Fear Chatham Co	5	286	358	270
	6	406	508	382
Lee Wayne Co.	1	145	182	137
	2	159	199	150
	3	465	582	438
Mayo Person Co	1	1987	2483	1872
Roxboro Person Co	1	861	1076	811
	2	1602	2003	1509
	3	1773	2215	1669
	4	1698	2122	1599
L V Sutton New Hanover Co.	1	182	228	171
	2	198	247	186
	3	806	1007	759
Weatherspoon Robeson Co.	1	85	107	80
	2	97	121	91
	3	180	225	170

(2) Duke Power. The total emissions from all the coal-fired boilers and combustion turbines that are not listed in Rule .1417 of this Section at Duke Power Company's Allen, Belews Creek, Buck, Cliffside, Dan River, Marshall, and Riverbend facilities shall not exceed:

(A) 17,816 tons per ozone season;

(B) 22,270 tons per ozone season for 2005;

(C) 16,780 tons per ozone season for 2006 and each year thereafter until revised according to Rule .1420 of this Section; and

Furthermore, except as allowed under Paragraph (d) of this Rule, individual sources at these facilities named in the table in this Subparagraph shall not exceed during the ozone season the nitrogen oxide emission allocations in the table.

FACILITY	SOURCE	EMISSION ALLOCATIONS (tons/ozone season) 2004	EMISSION ALLOCATIONS (tons/ozone season) 2005	EMISSION ALLOCATIONS (tons/ozone season) 2006 and later
G G Allen Gaston Co.	1	350	437	329
	2	355	444	334
	3	590	737	556
	4	528	660	497
	5	578	722	544
Belews Creek Stokes Co.	1	2591	3239	2441
	2	3020	3775	2846
Buck Rowan Co.	5	66	83	63
	6	73	91	69
	7	78	97	73
	8	319	399	300
	9	337	422	318
Cliffside Cleveland Co.	1	76	95	71
	2	82	102	77
	3	107	134	101
	4	120	150	113
	5	1326	1658	1249
Dan River Rockingham Co.	1	132	165	124
	2	144	180	135

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FACILITY	SOURCE	EMISSION ALLOCATIONS (tons/ozone season) 2004	EMISSION ALLOCATIONS (tons/ozone season) 2005	EMISSION ALLOCATIONS (tons/ozone season) 2006 and later
	3	304	380	286
Marshall Catawba Co.	1	1011	1263	952
	2	1056	1320	994
	3	1784	2230	1680
	4	1764	2206	1662
Riverbend Gaston Co.	10	299	374	282
	7	216	270	204
	8	225	281	212
	9	285	356	268

(c) Posting of emission allocation. The Director shall post the emission allocations for sources covered under this Rule on the Division's web page.

(d) Trading. Sources may comply with the requirements of this Rule using the nitrogen oxide budget trading program set out in Rule .1419 of this Section.

(e) Monitoring. The owner or operator of a source subject to this Rule shall show compliance using a continuous emission monitor that meets the requirements of 40 CFR Part 75, Subpart H, with such exceptions as allowed under 40 CFR Part 75, Subpart H or 40 CFR Part 96.

(f) Operation of control devices. All emission control devices and techniques installed to comply with this Rule shall be operated during the ozone season in the manner in which they are designed and permitted to be operated.

(g) Days of violations. For the purposes of this Rule, the number of days of violation for a source shall be determined after the end of the ozone season as follows:

- (1) To the source's allocation in this Rule, the allocations acquired under Rule .1419 of this Section are added and the allocations transferred under Rule .1419 of this Section are subtracted.
- (2) The value calculated under Subparagraph (1) of this Paragraph is compared to the actual emissions from the source for the ozone season. If the value calculated under Subparagraph (1) of this Paragraph is greater than or equal to the actual emissions from the source for the ozone season, the source is in compliance. If the value calculated under

Subparagraph (1) of this Paragraph is less than the actual emissions from the source for the ozone season, the source is not in compliance.

- (3) If the source is not in compliance, beginning with September 30, the actual emissions for that day and each preceding day are subtracted from the actual emissions for the ozone season until the value calculated under Subparagraph (1) of this Paragraph is greater than or equal to the actual emissions. Each day that the source operated after this day to September 30 is a day of violation.

(h) Modification and reconstruction. The modification or reconstruction of a source covered under this Rule shall not make that source a "new" source under this Rule. A source that is modified or reconstructed shall retain its emission allocations under Paragraph (a) or (b) of this Rule.

(i) Additional controls. The Environmental Management Commission may specify through rulemaking a specific emission limit lower than that established under this Rule for a specific source if compliance with the lower emission limit is required as part of the State Implementation Plan to attain or maintain the ambient air quality standard for ozone.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5), (7), (10); Temporary Adoption Eff. November 1, 2000; Eff. April 1, 2001; Temporary Amendment Eff. August 1, 2001; Amended Eff. July 15, 2002.

15A NCAC 02D .1417 EMISSION ALLOCATIONS FOR LARGE COMBUSTION SOURCES

(a) Applicability. This rule applies to the sources listed in Paragraph (b) of this Rule or to the following types of sources that are permitted before November 1, 2000, and are not covered under Rule .1416 of this Section:

- (1) fossil fuel-fired stationary boilers, combustion turbines, or combined cycle systems serving a generator with a nameplate capacity greater than 25 megawatts electrical and selling any amount of electricity; or
- (2) fossil fuel-fired stationary boilers, combustion turbines, or combined cycle systems having a maximum design heat input greater than 250 million Btu per hour that are not covered under Subparagraph (1) of this Paragraph.

(b) Initial emission allocations.

- (1) After November 1, 2000 but before the EPA promulgation of revisions to 40 CFR Part 51, Subpart G, revising the nitrogen oxide budget for North Carolina, the emission allocations in the tables in this Subparagraph shall apply. Except as allowed under Paragraph (d) of this Rule, sources named in the tables in this Subparagraph shall not exceed during the ozone season the nitrogen oxide (NO_x) emission allocations in the tables until revised according to Rule .1420 of this Section:

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ELECTRICAL GENERATING UNITS

FACILITY	SOURCE	NO _x EMISSION ALLOCATIONS (tons/ozone season) 2004	NO _x EMISSION ALLOCATIONS (tons/ozone season) 2005	NO _x EMISSION ALLOCATIONS (tons/ozone season) 2006 and later
Butler Warner Generating, Cumberland Co.	Combustion Turbine 1	27	33	49
	Combustion Turbine 2	27	33	49
	Combustion Turbine 3	27	33	49
	Combustion Turbine 6	28	35	52
	Combustion Turbine 7	27	33	49
	Combustion Turbine 8	27	33	49
	Combustion Turbine 4	34	43	63
	Combustion Turbine 5	35	43	63
Cogentrix-Rocky Mount, Edgecombe Co.	Boiler ST unt	319	398	351
Cogentrix-Elizabethtown, Bladen Co.	Coal boiler ST-own	115	143	126
Cogentrix-Kenansville, Duplin Co.	Stoker boiler ST-LLE	103	128	113
Cogentrix-Lumberton, Robeson Co.	Coal boiler ST-TON	114	142	125
Cogentrix-Roxboro, Person Co.	ST-ORO	175	218	192
Cogentrix-Southport, Brunswick Co.	ST-ORT	356	443	391
Duke Power, Lincoln	Combustion Turbine 1	18	23	23
	Combustion Turbine 2	18	23	23
	Combustion Turbine 3	18	23	23
	Combustion Turbine 4	18	23	23
	Combustion Turbine 5	18	23	23
	Combustion Turbine 6	18	23	23
	Combustion Turbine 7	18	23	23
	Combustion Turbine 8	18	23	23
	Combustion Turbine 9	18	23	23
	Combustion Turbine 10	18	23	23
	Combustion Turbine 11	18	23	23

APPROVED RULES

FACILITY	SOURCE	NO _x EMISSION ALLOCATIONS (tons/ozone season) 2004	NO _x EMISSION ALLOCATIONS (tons/ozone season) 2005	NO _x EMISSION ALLOCATIONS (tons/ozone season) 2006 and later
	Combustion Turbine 12	18	23	23
	Combustion Turbine 13	18	23	23
	Combustion Turbine 14	18	23	23
	Combustion Turbine 15	18	23	23
	Combustion Turbine 16	19	24	24
Panda-Rosemary, Halifax Co.	CT-ary	35	43	32
	CW-ary	25	31	23
Roanoke Valley, Halifax Co.	1	447	557	492
	2	142	178	167
RJ Reynolds Tobbaccoville Facility, Forsyth Co.	Boiler 1	194	243	64
	Boiler 2	218	273	64
	Boiler 3	178	223	64
	Boiler 4	190	238	64
UNC-CH, Orange Co.	Boiler no. 5, 6, and 7	116	145	128
	Boiler no. 8	120	150	113
CP&L, Lee Plant, Wayne County	Combustion Turbine 10	25	31	31
	Combustion Turbine 11	25	31	31
	Combustion Turbine 12	92	115	115
	Combustion Turbine 13	92	115	115
Dynergy, Rockingham County	Combustion Turbine 1	34	42	42
	Combustion Turbine 2	33	42	42
	Combustion Turbine 3	33	42	42
	Combustion Turbine 4	33	41	41
	Combustion Turbine 5	33	41	41
CP&L, Woodleaf, Rowan County	Combustion Turbine 1	22	27	27
	Combustion Turbine 2	22	27	27
	Combustion Turbine 3	22	27	27
	Combustion Turbine 4	21	27	27
	Combustion Turbine 5	22	27	27
CP&L, Mark's Creek, Richmond County	Combustion Turbine 1	22	27	27
	Combustion Turbine 2	22	27	27

APPROVED RULES

FACILITY	SOURCE	NO _x EMISSION ALLOCATIONS (tons/ozone season) 2004	NO _x EMISSION ALLOCATIONS (tons/ozone season) 2005	NO _x EMISSION ALLOCATIONS (tons/ozone season) 2006 and later
	Combustion Turbine 3	22	27	27
	Combustion Turbine 4	22	27	27
	Combustion Turbine 5	21	27	27
	Combustion Turbine 6	21	27	27
	Combustion Turbine 7	22	28	28
CP&L, Asheville, Buncombe County	Combustion Turbine	60	75	75
	Combustion Turbine	60	75	75

NON-ELECTRICAL GENERATING UNITS

FACILITY	SOURCE	NO _x EMISSION ALLOCATIONS (tons/ozone season) 2004	NO _x EMISSION ALLOCATIONS (tons/ozone season) 2005	NO _x EMISSION ALLOCATIONS (tons/ozone season) 2006 and later
Weyerhaeuser Paper Co., Martin Co.	Riley boiler	566	709	379
	Package boiler	20	25	25
Blue Ridge Paper Products, Haywood Co.	Pulverized coal dry bottom boiler – Big Ben	212	265	141
	Pulverized coal dry bottom boiler – Peter G	187	234	125
	Pulverized coal dry bottom boiler – Riley Coal	358	447	239
	Pulverized coal, wet bottom boiler – No. 4	365	456	244
	Boiler – Riley Bark	135	169	90
International Paper Corp., Halifax Co.	Wood/ bark, no. 6 oil, pulverized coal dry bottom boiler	518	648	346
Weyerhaeuser Co. New Bern Mill, Craven Co.	#1 power boiler	181	226	121
	#2 power boiler	58	72	72
International. Paper, Columbus Co.	No. 3 Power Boiler	126	158	84

APPROVED RULES

FACILITY	SOURCE	NO _x EMISSION ALLOCATIONS (tons/ozone season) 2004	NO _x EMISSION ALLOCATIONS (tons/ozone season) 2005	NO _x EMISSION ALLOCATIONS (tons/ozone season) 2006 and later
	No. 4 Power Boiler	334	418	223
Fieldcrest-Cannon, Plant 1 Cabarrus Co.	Boiler	174	217	116

- (2) After November 1, 2000, and after any EPA promulgation of revisions to 40 CFR Part 51, Subpart G, revising the nitrogen oxide budget for North Carolina, the emission allocations in the tables in this Subparagraph shall apply. Except as allowed under Paragraph (d) of this Rule, sources named in the tables in this Subparagraph shall not exceed during the ozone season the nitrogen oxide (NO_x) emission allocations in the tables until revised according to Rule .1420 of this Section:

ELECTRIC GENERATING UNITS

FACILITY	SOURCE	NO _x EMISSION ALLOCATIONS (tons/ozone season) 2004	NO _x EMISSION ALLOCATIONS (tons/ozone season) 2005	NO _x EMISSIONS ALLOCATIONS(tons/ozone season) 2006 and later
Butler Warner Generating, Cumberland Co.	Combustion Turbine 1	27	33	49
	Combustion Turbine 2	27	33	49
	Combustion Turbine 3	27	33	49
	Combustion Turbine 6	28	35	52
	Combustion Turbine 7	27	33	49
	Combustion Turbine 8	27	33	49
	Combustion Turbine 4	34	23	63
	Combustion Turbine 5	35	43	63
Cogentrix-Rocky Mount, Edgecombe Co.	Boiler ST-unt	319	398	351
Cogentrix-Elizabethtown, Bladen	Coal boiler ST-OWN	115	143	126
Cogentrix-Kenansville, Duplin Co.	Stoker boiler ST-LLE	103	128	113
Cogentrix-Lumberton, Robeson Co.	Coal boiler ST-TON	114	142	125
Cogentrix-Roxboro, Person Co.	ST-ORO	175	218	192
Cogentrix-Southport, Brunswick Co.	ST-ORT	356	444	392
Duke Power, Lincoln	Combustion Turbine 1	18	23	26
	Combustion Turbine 2	18	23	26
	Combustion Turbine 3	18	23	26
	Combustion Turbine 4	18	23	26

APPROVED RULES

FACILITY	SOURCE	NO _x EMISSION ALLOCATIONS (tons/ozone season) 2004	NO _x EMISSION ALLOCATIONS (tons/ozone season) 2005	NO _x EMISSIONS ALLOCATIONS(tons/ozone season) 2006 and later
	Combustion Turbine 5	18	23	26
	Combustion Turbine 6	18	23	26
	Combustion Turbine 7	18	23	26
	Combustion Turbine 8	18	23	26
	Combustion Turbine 9	18	23	26
	Combustion Turbine 10	18	23	26
	Combustion Turbine 11	18	23	26
	Combustion Turbine 12	18	23	26
	Combustion Turbine 13	18	23	26
	Combustion Turbine 14	18	23	26
	Combustion Turbine 15	18	23	26
	Combustion Turbine 16	19	24	27
	Panda-Rosemary, Halifax Co.	CT-ary	35	43
CW-ary		25	31	23
Roanoke Valley, Halifax Co.	1	447	558	493
	2	142	178	167
RJ Reynolds Tobbaccoville Facility, Forsyth Co.	Boiler 1	194	243	64
	Boiler 2	218	273	64
	Boiler 3	178	223	64
	Boiler 4	190	238	64
UNC-CH, Orange Co.	Boiler no. 5, 6, and 7	116	145	128
	Boiler no. 8	120	150	113
CP&L, Lee Plant, Wayne County	Combustion Turbine 10	25	31	31
	Combustion Turbine 11	25	31	31
	Combustion Turbine 12	92	115	115
	Combustion Turbine 13	92	115	115
Dynegy, Rockingham County	Combustion Turbine 1	34	42	42
	Combustion Turbine 2	33	42	42
	Combustion Turbine 3	33	42	42
	Combustion Turbine 4	33	41	41
	Combustion Turbine 5	33	41	41

APPROVED RULES

FACILITY	SOURCE	NO _x EMISSION ALLOCATIONS (tons/ozone season) 2004	NO _x EMISSION ALLOCATIONS (tons/ozone season) 2005	NO _x EMISSIONS ALLOCATIONS(tons/ozone season) 2006 and later
CP&L, Woodleaf, Rowan County	Combustion Turbine 1	22	27	27
	Combustion Turbine 2	22	27	27
	Combustion Turbine 3	22	27	27
	Combustion Turbine 4	21	27	27
	Combustion Turbine 5	22	28	28
CP&L, Mark's Creek, Richmond County	Combustion Turbine 1	22	27	27
	Combustion Turbine 2	22	27	27
	Combustion Turbine 3	22	27	27
	Combustion Turbine 4	22	27	27
	Combustion Turbine 5	21	27	27
	Combustion Turbine 6	21	27	27
	Combustion Turbine 7	22	28	28
CP&L, Asheville, Buncombe County	Combustion Turbine	60	75	75
	Combustion Turbine	60	75	75

NON-ELECTRIC GENERATING UNITS

FACILITY	SOURCE	NO _x EMISSION ALLOCATIONS (tons/ozone season) 2004	NO _x EMISSION ALLOCATIONS (tons/ozone season) 2005	NO _x EMISSION ALLOCATIONS (tons/ozone season) 2006 and later
Weyerhaeuser Paper Company, Martin Co.	Riley boiler	566	708	379
	Package boiler	20	25	25
Blue Ridge Paper Products, Haywood Co.	Pulverized coal dry bottom boiler – Big Ben	212	265	141
	Pulverized coal dry bottom boiler – Peter G	187	234	125
	Pulverized coal dry bottom boiler – Riley Coal	358	447	239

APPROVED RULES

FACILITY	SOURCE	NO _x EMISSION ALLOCATIONS (tons/ozone season) 2004	NO _x EMISSION ALLOCATIONS (tons/ozone season) 2005	NO _x EMISSION ALLOCATIONS (tons/ozone season) 2006 and later
	Pulverized coal, wet bottom boiler – No. 4	365	456	244
	boiler–Riley Bark	135	169	90
International Paper Corp., Halifax Co.	Wood/bark, no. 6 oil, pulverized coal dry bottom boiler	518	648	346
Weyerhaeuser Co. New Bern Mill, Craven Co.	#1 power boiler	181	226	121
	#2 power boiler	58	72	72
International. Paper, Columbus Co.	No. 3 Power Boiler	126	158	84
	No. 4 Power Boiler	334	418	223
Fieldcrest-Cannon, Plant 1, Cabarrus Co.	Boiler	174	217	116

(3) Any source covered under this Rule but not listed in Subparagraph (b)(1) or (2) of this Paragraph shall have a nitrogen oxide emission allocation of zero tons per season during the ozone season.

(c) Posting of emission allocations. The Director shall post the emission allocations for sources covered under this Rule on the Division's web page.

(d) Trading. Sources may comply with the requirements of this Rule using the nitrogen oxide budget trading program set out in Rule .1419 of this Section.

(e) Monitoring. The owner or operator of a source subject to this Rule shall show compliance using a continuous emission monitor that meets the requirements of Rule .1404(d) of this Section.

(f) Operation of control devices. All emission control devices and techniques installed to comply with this Rule shall be operated beginning May 1 through September 30 in the manner in which they are designed and permitted to be operated.

(g) Days of violations. For the purposes of this Rule, the number of days of violation for a source shall be determined after the end of the ozone season as follows:

- (1) To the source's allocation in this Rule, the allocations acquired under Rule .1419 of this Section are added and the allocations transferred under Rule .1419 of this Section are subtracted.
- (2) The value calculated under Subparagraph (1) of this Paragraph is compared to the actual

emissions from the source for the ozone season. If the value calculated under Subparagraph (1) of this Paragraph is greater than or equal to the actual emissions from the source for the ozone season, the source is in compliance. If the value calculated under Subparagraph (1) of this Paragraph is less than the actual emissions from the source for the ozone season, the source is not in compliance.

(3) If the source is not in compliance, beginning with September 30, the actual emissions for that day and each preceding day are subtracted from the actual emissions for the ozone season until the value calculated under Subparagraph (1) of this Paragraph is greater than or equal to the actual emissions. Each day that the source operated after this day to September 30 is a day of violation.

(h) Modification and reconstruction, replacement, retirement, or change of ownership. The modification or reconstruction of a source covered under this Rule shall not make that source a "new" source under this Rule. A source that is modified or reconstructed shall retain its emission allocation under Paragraph (b) of this Rule. If one or more sources covered under this Rule is replaced, the new source shall receive the allocation of the source, or sources, that it replaced instead of an allocation under Rule .1421 of this Section. If the owner of a source changes, the emission allocations under this Rule and revised emission allocations made under Rule .1420 of this Section shall remain with the source. If a source is retired, the owner or operator of the source shall follow the procedures in 40 CFR 96.5. The

allocations of a retired source shall remain with the owner or operator of the retired source until a reallocation occurs under Rule .1420 of this Section when the allocation shall be removed and given to other sources if the retired source is still retired.

(i) Additional controls. The Environmental Management Commission may specify through rulemaking a specific emission limit lower than that established under this Rule for a specific source if compliance with the lower emission limit is required as part of the State Implementation Plan to attain or maintain the ambient air quality standard for ozone.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5), (7), (10); Temporary Adoption Eff. November 1, 2000; Temporary Amendment Eff. August 1, 2001; Amended Eff. July 15, 2002.

15A NCAC 02D .1421 ALLOCATIONS FOR NEW GROWTH OF MAJOR POINT SOURCES

(a) Purpose. The purpose of this Rule is to establish an allocation pool from which emission allocations of nitrogen oxides may be allocated to sources permitted after October 31, 2000.

(b) Eligibility. This Rule applies only to the following types of sources covered under Rule .1418 of this Section, and permitted after October 31, 2000:

- (1) fossil fuel-fired stationary boilers, combustion turbines, or combined cycle systems serving a generator with a nameplate capacity greater than 25 megawatts electrical and selling any amount of electricity; or
- (2) fossil fuel-fired stationary boilers, combustion turbines, or combined cycle systems having a maximum design heat input greater than 250 million Btu per hour that are not covered under Subparagraph (1) of this Paragraph;

(c) Requesting allocation. To receive emission allocations under this Rule, the owner or operator of the source shall provide the following written documentation to the Director before January 1 of the year preceding the ozone season for which the emission allocation is sought:

- (1) a description of the combustion source or sources including heat input;
- (2) evidence that the source complies with the emission limit under Rule .1418 of this Section;
- (3) an estimate of the actual emissions of nitrogen oxides in tons per ozone season;
- (4) the expected hours of operation during the ozone season;
- (5) the date on which the source is expected to begin operating if it is not already operating;
- (6) the tons per ozone season of emission allocations being requested (the amount requested shall be the lesser of the estimated actual emissions under Subparagraph (3) of this Paragraph or the product of the emission limit under Rule .1418 of this Section times the maximum design heat input in millions of Btu per hour times the number of hours that

(7) the source is projected to operate (not to exceed 3672 hours) divided by 2000); and a description of the monitoring, recordkeeping, and reporting plan that will assure continued compliance.

(d) Approving requests. The Director shall approve a request for emissions allocation if he finds that:

- (1) All the information and documentation required under Paragraph (c) of this Rule has been submitted;
- (2) The request was received before January 1;
- (3) The source is eligible for emission allocations under this Rule;
- (4) The source complies with Rule .1418 of this Section;
- (5) The requested emission allocations do not exceed the estimated actual emissions of nitrogen oxides;
- (6) The source has or is likely to have an air quality permit before the end of the upcoming ozone season; and
- (7) The source is operating or is scheduled to begin operating before the end of the upcoming ozone season.

(e) Preliminary allocations. By March 1 before each ozone season, the Director shall have calculated and posted on the Division's web page preliminary emission allocations for sources whose requests under this Rule he has approved. Preliminary emission allocations shall be determined as follows:

- (1) If the emission allocations requested do not exceed the amount in the pool, each source shall have a preliminary allocation equal to its request.
- (2) If the emission allocations requested exceed the amount in the pool, each source's emission allocations shall be calculated as follows:
 - (A) For each source, its maximum design heat input in millions of Btu per hour is multiplied by the number of hours that the source is projected to operate not to exceed 3672 hours; this product is the source's seasonal heat input.
 - (B) The seasonal heat inputs calculated under Part (A) of this Subparagraph are summed.
 - (C) For each source, its seasonal heat input calculated under Part (A) of this Subparagraph is multiplied by the tons of emission allocations in the allocation pool and divided by the sum of seasonal heat inputs calculated under Part (B) of this Subparagraph; this amount is the source's preliminary emission allocations.

The preliminary emission allocations computed under this Paragraph may be revised under Paragraph (f) of this Rule after the ozone season. Emissions allocations issued under this Paragraph are solely for planning purposes and are not reported to the EPA to be recorded in allowance tracking system account.

The emission allocations granted under Paragraph (f) of this Rule shall be the emission allocations granted the source to offset its emissions.

(f) Final allocations. According to Paragraph (g) of this Rule, the Director shall grant emission allocations for each source for which he has approved an allocation from the allocation pool as follows:

- (1) For each individual source, its allowable emission rate under Rule .1418 of this Section is multiplied by its heat input during the ozone season. This product is divided by 2000.
- (2) The lesser of the source's actual emissions of nitrogen oxides, the value calculated under Subparagraph (1) of this Paragraph, or the preliminary emission allocations determined under Paragraph (e) of this Rule shall be the source's emission allocation from the allocation pool. Emissions allocations granted under this Paragraph are reported to the EPA to be recorded in allowance tracking system account.

(g) Issuance of final allocations. By November 1 following each ozone season, the Director shall issue final allocations according to Paragraph (f) of this Rule and shall notify each source that receives an allocation of the amount of allocation that it has been granted. By November 1 following the ozone season, the Director shall also notify the EPA of allocations issued and to whom they have been issued and the amount issued to each source. The Director shall post the final allocations on the Division's web page.

(h) Allocation pool.

- (1) Before the EPA promulgation of revisions after November 1, 2000, to 40 CFR Part 51, Subpart G, revising the nitrogen oxide budget for North Carolina, the allocation pool shall contain the following:
 - (A) in 2004, 122 tons;
 - (B) in 2005, 599 tons plus emission allocations carried over from the previous year;
 - (C) in 2006, 505 tons plus emission allocations carried over from the previous year; and
 - (D) in 2007, 1,058 tons plus emission allocations carried over from the previous year.
- (2) After the EPA promulgates revisions after November 1, 2000, to 40 CFR Part 51, Subpart G, revising the nitrogen oxide budget for North Carolina, the allocation pool shall contain the following:
 - (A) in 2004, 122 tons;
 - (B) in 2005, 78 tons plus emission allocations carried over from the previous year;
 - (C) in 2006, 1117 tons plus emission allocations carried over from the previous year; and
 - (D) in 2007, 1670 tons plus emission allocations carried over from the previous year.

(i) Changes in the allocation pool. By July 1, 2006, the Commission shall begin to develop and adopt through rulemaking allocations for 2008 and later years.

(j) Carryover. Emission allocations remaining in the allocation pool at the end of the year shall be carried over into the next year for use during the next ozone season.

(k) Future requests. Once the owner or operator of a source has made a request under this Rule for emission allocations from the allocation pool, he does not have to request emission allocations under this Rule in future years. The request shall automatically be included in following years as long as the source remains eligible for emission allocations under this Rule.

(l) Loss of eligibility. Once a source receives emission allocations under Rule .1420 of this Section, it shall no longer be eligible for emission allocations under this Rule.

(m) Use of allocation. Allocations granted under this rule apply only to the ozone season immediately preceding the issuance of final allocations under Paragraph (g) of this Rule. Allocations issued under Paragraph (g) of this Rule for use in one year do not carry forward into any following ozone season. Allocations granted under this Rule shall be calculated for each ozone season.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143 215.107(a)(5), (7), (10); Temporary Adoption Eff. November 1, 2000; Temporary Amendment Eff. August 1, 2001; Amended Eff. July 15, 2002.

15A NCAC 18A .1301 DEFINITIONS

The following definitions shall apply throughout this Section in the interpretation and enforcement of this Section:

- (1) "Disinfect" means a process used on inanimate surfaces to destroy or irreversibly inactivate infectious fungi and bacteria but not necessarily their spores.
- (2) "Environmental Health Specialist" means a person authorized by the Department of Environment and Natural Resources under G.S. 130A-6 to enforce environmental health rules adopted by the Commission for Health Services.
- (3) "Institution" includes the following establishments providing room or board and for which a license or certificate of payment must be obtained from the Department of Health and Human Services, other than those operated exclusively by the State of North Carolina:
 - (a) hospital, as defined in G.S. 131E-76 including doctors' clinics with food preparation facilities;
 - (b) nursing home, as defined in G.S. 131E-101;
 - (c) sanitarium, sanatorium, and any similar establishment, other than hospital and nursing home, for the recuperation and treatment of 13 or more persons suffering from physical or mental disorders;

- (d) rest home, providing custodial care on a 24-hour basis for 13 or more persons, including homes for the aged;
- (e) orphanage, or children's home providing care on a 24-hour basis for 13 or more children.

However, the term shall not include a child day care facility, an adult day service facility as defined in 15A NCAC 18A .3300 or a residential care facility as defined in 15A NCAC 18A .1600.

- (4) "Department of Environment and Natural Resources" shall mean the Secretary, or his authorized representative.
- (5) "Local health director" shall mean local health director as defined in G.S. 130A-2(6) or his authorized representative.
- (6) "Patient" means a patient or resident living in an institution as defined in this Section.
- (7) "Person" shall mean an individual, firm, association, organization, partnership, business trust, corporation, or company.
- (8) "Personal Hygiene" means maintenance of personal health, including grooming, brushing teeth, showering, applying makeup, or washing/drying face, hands, and body.
- (9) "Potentially hazardous food" means any food or ingredient, natural or synthetic, in a form capable of supporting the growth of infectious or toxigenic microorganisms, including *Clostridium botulinum*. This term includes raw or heat treated foods of animal origin, raw seed sprouts, and treated foods of plant origin. The term does not include foods which have a pH level of 4.6 or below or a water activity (Aw) value of 0.85 or less.
- (10) "Sanitize" means a bactericidal treatment which meets the temperature and chemical concentration levels in 15A NCAC 18A .2619.

History Note: Authority G.S. 130A-235; Eff. February 1, 1976; Readopted Eff. December 5, 1977; Amended Eff. August 1, 2002; August 1, 1998; February 1, 1997; September 1, 1990; March 1, 1988.

15A NCAC 18A .1304 INSPECTIONS

- (a) Institutions shall be graded at least once each six months and food services at institutions which prepare and serve meals to 13 or more patients or residents shall be inspected at least once each quarter.
- (b) The grading of institutions shall be done on inspection forms furnished by the Department to local health departments. The form shall include at least the following information:
 - (1) the name and address of the facility;
 - (2) the name of the person in charge of the facility;
 - (3) the standards of construction and operation as listed in .1309 - .1324 of this Section;
 - (4) the score; and

- (5) the signature of the authorized agent of the Department.

(c) Whether or not a permit is required under G.S. 130A-248, inspections of food preparation and central dining areas in institutions serving meals to 13 or more patients or residents shall be documented separately using the inspection forms and grading system used for grading restaurants as specified in current "Rules Governing the Sanitation of Restaurants and Other Foodhandling Establishments" 15A NCAC 18A .2600. When grading the food preparation and central dining areas of institutional food services which are not required to obtain a permit under G.S. 130A-248, the provisions of Rule .1323(d) of this Section shall supercede the provisions of Rule 15A NCAC 18A .2610(e) regarding animals in dining areas.

History Note: Authority G.S. 130A-235; Eff. February 1, 1976; Readopted Eff. December 5, 1977; Amended Eff. August 1, 2002; September 1, 1990; June 30, 1980.

15A NCAC 18A .1305 GRADING RESIDENTIAL CARE FACILITIES IN INSTITUTIONS

If an institution includes one or more residential care facilities each providing room or board for 12 persons or fewer, the rules in 15A NCAC 18A .1600 shall apply and grading of the residential care facilities shall be in accordance with the residential care and these Rules do not apply.

History Note: Authority G.S. 130A-235; Eff. February 1, 1976; Readopted Eff. December 5, 1977; Amended Eff. August 1, 2002; September 1, 1990.

15A NCAC 18A .1306 PUBLIC DISPLAY OF GRADE CARD

(a) Whenever an inspection of an institution is made, the Environmental Health Specialist shall remove the existing grade card, issue a new grade card, and post the new grade card where it may be readily observed by the public upon entering the facility. The administrator shall be responsible for keeping the grade card posted at the location designated by the Environmental Health Specialist at all times. If the administrator objects to the location designated by the Environmental Health Specialist, then the administrator may suggest an alternative location which meets the criteria of this Rule.

(b) Private institutions are inspected and graded by Environmental Health Specialists employed by the local health departments, under the direction of the local health directors.

History Note: Authority G.S. 130A-235; Eff. February 1, 1976; Readopted Eff. December 5, 1977; Amended Eff. August 1, 2002; July 1, 1986.

15A NCAC 18A .1312 TOILET; HANDWASHING; LAUNDRY; AND BATHING FACILITIES

(a) All institutions shall be provided with toilet, handwashing, and bathing facilities which are conveniently located and readily

accessible. These facilities, and laundry facilities when provided, shall be kept clean and in good repair.

(b) Toilet facilities shall comply with the requirements of the state agency licensing the facility. Toilet rooms shall not be used for storage. Fixtures and furnishings shall be kept clean and in good repair. Durable, legible signs shall be posted or stenciled conspicuously in each toilet room for food service employees directing them to wash their hands before returning to work.

(c) Institutions in which bedpans, urinals or emesis basins are used shall provide facilities for emptying, cleaning, and disinfecting bedpans, urinals and emesis basins. Bedpans, urinals and emesis basins shall be cleaned after each use and shall be disinfected before use by other patients. Where bedpans are cleaned in patient rooms, minimum bedpan cleaning facilities shall consist of a water closet with bedpan lugs or spray arms. Where facilities for cleaning bedpans are not provided in patient rooms, bedpans shall be taken to a soiled utility room and be cleaned and disinfected using an EPA registered hospital disinfectant after each use. Where disposable bedpans are reused, they shall be labeled with the patient's name and date and shall not be used by more than one patient. Bedside commodes shall be cleaned after each use and shall be cleaned and disinfected before use by successive patients. Hand sinks shall not be used for cleaning bedpans or bedside commodes.

(d) Handwashing facilities shall be accessible to all areas where personnel can be exposed to bodily excretions or secretions and in sterile supply processing areas, medication rooms, laundry areas, nutrition stations, soiled utility rooms and clean utility rooms. All lavatories shall be supplied with hot and cold running water through a mixing faucet, or with tempered warm water, soap, and sanitary towels or approved hand-drying devices. Handwashing facilities shall be provided in kitchens and any other food preparation areas in addition to any lavatories which may be provided at employees' toilet rooms. Sinks used for washing utensils and equipment shall not be accepted as a substitute for required handwashing facilities. Handwash lavatories shall be used only for handwashing. Lavatories provided for use of patients or residents shall be used only for handwashing, personal hygiene, rinsing feeding tubes and obtaining water. Lavatories used for handwashing or personal hygiene shall not be used for disposal of body fluids or cleaning soiled linens.

(e) Water heating facilities shall provide hot water within the temperature range of 100 degrees F to 116 degrees F at all lavatories and bathing facilities.

(f) Bathing facilities as required by the licensing agency shall be provided, maintained and kept clean. Bathing facilities shall be supplied with hot and cold running water and a mixing device, or tempering device. Shared bathing equipment which has contact with patient's skin shall be cleaned with detergent and an EPA registered hospital disinfectant between patient uses. Manufacturer's instructions shall be followed for cleaning equipment with pumps. A supply of cleaning and disinfectant agents shall be accessible to bathing areas. Where disinfectants are mixed on site, the concentration of the mix shall be assured by use of a metering pump, measuring device or chemical test kit.

*History Note: Authority G.S. 130A-235;
Eff. February 1, 1976;*

Readopted Eff. December 5, 1977;

Amended Eff. August 1, 2002; September 1, 1990.

15A NCAC 18A .1315 LIQUID WASTES

All wastewater shall be disposed of in accordance with 15A NCAC 18A .1900 or 15A NCAC 02H .0200.

History Note: Authority G.S. 130A-235;

Eff. February 1, 1976;

Amended Eff. July 1, 1977;

Readopted Eff. December 5, 1977;

Amended Eff. August 1, 2002; September 1, 1990.

**15A NCAC 18A .1317 VERMIN CONTROL:
PREMISES: ANIMAL MAINTENANCE**

(a) Effective measures shall be taken to keep flies, rodents, cockroaches, and other vermin out of the establishment and to prevent their breeding or presence on the premises. All openings to the outer air shall be protected against the entrance of flies and other flying insects by self-closing doors, closed windows, 16-mesh or finer screening, controlled air currents, or other effective means.

(b) Only those pesticides shall be used which have been approved for a specific use and registered with the Environmental Protection Agency and with the North Carolina Department of Agriculture in accordance with the "Federal Insecticide, Fungicide and Rodenticide Act" and the "North Carolina Pesticide Law". Such pesticides shall be used as directed on the label and shall be so handled and stored as to avoid health hazards.

(c) The premises under control of the management shall be kept neat, clean, and free of litter. There shall be no fly or mosquito breeding places, rodent harborages, or undrained areas on the premises.

(d) Cleaning shall minimize accumulation of feces and other allergens generated by insects and other vermin.

(e) Animal pens, litter boxes, bird cages and other areas on the premises shall be cleaned to minimize accumulation of animal wastes, pet dander and allergens.

(f) Copies of veterinary records for all resident pets shall be kept on the premises.

History Note: Authority G.S. 130A-235;

Eff. February 1, 1976;

Readopted Eff. December 5, 1977;

Amended Eff. August 1, 2002; September 1, 1990.

**15A NCAC 18A .1319 FURNISHINGS AND PATIENT
CONTACT ITEMS**

(a) All furniture, bed springs, mattresses, sleeping mats, draperies, curtains, shades, venetian blinds, or other furnishings shall be kept clean and in good repair. Mattresses shall have non-absorbent cleanable covers.

(b) Clean bed linen in good repair shall be provided for each individual and shall be changed when soiled. Soiled linen shall be placed in a covered container or bag at the point of use and stored and handled so as to contain and minimize aerosolization of and exposure to any waste products. Soiled laundry shall be handled and stored separately from clean laundry using separate cleanable carts or bags. Carts used for soiled laundry shall be labeled for soiled laundry use only. If hot water is used, linen

shall be washed with a detergent in water at least 71°C (160°F) for 25 minutes. If low temperature (<70°C) laundry cycles are used, chemical laundry disinfectants shall be used in accordance with the manufacturer's instructions. Clean linen shall be stored and handled in a separate room or area, or in another manner that will prevent contamination of clean linen. Laundry areas and equipment shall be kept clean.

(c) Patient contact items shall be kept clean and in good repair. Soiled patient contact items shall be taken to a designated area for cleaning and shall be stored separately from clean items. A room or area shall be provided for cleaning patient contact equipment such as wheelchairs and other large items. Patient contact items such as diaper changing surfaces which become contaminated during use shall be cleaned and disinfected after each use. Shared toys subject to mouthing shall be washed and rinsed with soap and water and disinfected with 70 percent alcohol or 100 parts per million chlorine after each day's use. Shared plush toys shall be laundered after each day's use. Shared toys which are not washable shall be gas sterilized or disposed of when soiled.

History Note: Authority G.S. 130A-235; Eff. February 1, 1976; Readopted Eff. December 5, 1977; Amended Eff. August 1, 2002; August 1, 1998; February 1, 1997; September 1, 1990.

15A NCAC 18A .1320 FOOD SERVICE UTENSILS AND EQUIPMENT

(a) All food service equipment and utensils used for preparing meals for 13 or more people shall comply with the requirements of "Rules Governing the Sanitation of Restaurants and Other Foodhandling Establishments" 15A NCAC 18A .2600. Residential style rehabilitation activity kitchens with domestic utensils and equipment can be used by groups of 12 or less people to prepare meals only for members of the group. Potentially hazardous foods prepared in rehabilitation activity kitchens shall not be served to groups of more than 12 people. This shall not preclude the use of an activity kitchen as a serving area for meals catered from a main kitchen and served to groups of 13 or more people in connection with a planned event from which the public is excluded. For planned events, the equipment in the activity kitchen can be used for heating prepared foods received from a main kitchen or a commercial source. Bread machines, soup kettles and other food contact items used at nutrition stations shall be so constructed as to be easily cleanable.

(b) At activity kitchens or nutrition stations, provisions shall be made for cleaning all food service utensils and equipment and sanitizing utensils and equipment not continuously subjected to high temperatures. Where utensils and equipment are not returned to a central kitchen for cleaning, designated nutrition stations shall be equipped with at least a two compartment sink with 24 inch drainboards or counter top space at each end for handling dirty items and air drying clean items. Sinks shall be of sufficient size to submerge, wash, rinse and sanitize utensils and equipment. At nutrition stations, dish machines listed with NSF International shall meet this provision. Any area where food is portioned, served or handled shall be equipped with a separate handwash lavatory with hot and cold mixing faucet, soap and individual towels or hand drying device.

(c) All kitchenware and food-contact surfaces of equipment, exclusive of cooking surfaces of equipment, used in the preparation or serving of food or drink, and all food storage utensils, shall be cleaned after each use. Cooking surfaces of equipment shall be cleaned at least once each day. All utensils and food-contact surfaces of equipment used in the preparation, service, display, or storage of potentially hazardous foods shall be cleaned and sanitized prior to each use. Non-food-contact surfaces of equipment shall be cleaned at such intervals as to keep them in a clean and sanitary condition.

History Note: Authority G.S. 130A-235; Eff. February 1, 1976; Readopted Eff. December 5, 1977; Amended Eff. August 1, 2002; September 1, 1990.

15A NCAC 18A .1322 MILK AND MILK PRODUCTS
Milk and milk products shall comply with 15A NCAC 18A .1200 "Rules Governing Grade A Milk Sanitation".

History Note: Authority G.S. 130A-235; Eff. February 1, 1976; Readopted Eff. December 5, 1977; Amended Eff. August 1, 2002; September 1, 1990; July 1, 1979.

15A NCAC 18A .1324 EMPLOYEES

(a) While on duty, all employees shall wear visibly clean outer clothing and shall be clean as to their persons. No employee shall use tobacco in any form while engaged in the preparation and handling of food. Employees shall wash or decontaminate their hands:

- (1) before beginning work;
- (2) after each visit to the toilet;
- (3) before and after patient contact, including oral feeding;
- (4) after contact with a source of microorganisms (body fluids and substances, mucous membranes, nonintact skin, inanimate objects that are likely to be contaminated); and
- (5) after removing gloves.

(b) When hands are visibly soiled, routine handwashing shall include a vigorous rubbing together of all surfaces of lathered hands for at least 10 seconds followed by thorough rinsing under a stream of water and drying with individual disposable towels or hand drying devices. When hands are not visibly soiled, hand antiseptics with alcohol-based hand rubs shall be acceptable for decontamination of hands. In the event of interruption of water supply or in settings where handwashing facilities are inadequate or inaccessible, hand decontamination can be achieved by using detergent containing towelettes and alcohol-based hand rubs.

(c) No person who has a communicable or infectious disease that can be transmitted by foods, or who knowingly is a carrier of organisms that cause such a disease, or who has a boil, infected wound, or an acute respiratory infection with cough or nasal discharge, shall work in food service in any capacity in which there is a likelihood of such person contaminating food or food-contact surfaces, with disease-causing organisms or transmitting the illness to other persons.

History Note: Authority G.S. 130A-235; Eff. February 1, 1976;

Readopted Eff. December 5, 1977;

Amended Eff. August 1, 2002; September 1, 1990.

15A NCAC 18A .1327 INCORPORATED RULES

(a) The North Carolina "Rules Governing the Sanitation of Restaurants and Other Foodhandling Establishments" 15A NCAC 18A .2600 are incorporated by reference including any subsequent amendments or editions. This material is available for inspection at the Department of Environment and Natural Resources, Division of Environmental Health, 2728 Capital Boulevard, Raleigh, NC. Copies may be obtained from Environmental Health Services Section, 1632 Mail Service Center, Raleigh, NC 27699-1632 at no cost.

(b) The North Carolina "Rules Governing Public Water Systems" 15A NCAC 18C are incorporated by reference including any subsequent amendments or editions. This material is available for inspection at the Department of Environment and Natural Resources, Division of Environmental Health, 2728 Capital Boulevard, Raleigh, NC. Copies may be obtained from Public Water Supply Section, 1634 Mail Service Center, Raleigh, NC 27699-1634 at no cost.

(c) The North Carolina "Rules Governing Protection of Water Supplies" 15A NCAC 18A .1700 are incorporated by reference including any subsequent amendments or editions. This material is available for inspection at the Department of Environment and Natural Resources, Division of Environmental Health, 2728 Capital Boulevard, Raleigh, NC. Copies may be obtained from Environmental Health Services Section, 1632 Mail Service Center, Raleigh, NC 27699-1632 at no cost.

(d) The North Carolina "Solid Waste Rules" 15A NCAC 13B .1200 Medical Waste Management are incorporated by reference including any subsequent amendments or editions. This material is available for inspection at the Department of Environment and Natural Resources, Division of Environmental Health, 2728 Capital Boulevard, Raleigh, NC. Copies may be obtained from Solid Waste Section, 1646 Mail Service Center, Raleigh NC 27699-1646 at a cost of nine dollars (\$9.00).

(e) The North Carolina "Rules Governing Grade A Milk Sanitation" 15A NCAC 18A .1200 are incorporated by reference including any subsequent amendments or editions. This material is available for inspection at the Department of Environment and Natural Resources, Division of Environmental Health, 2728 Capital Boulevard, Raleigh, NC. Copies may be obtained from Environmental Health Services Section, 1632 Mail Service Center, Raleigh, NC 27699-1632 at no cost.

History Note: Authority G.S. 130A-235;

Eff. August 1, 2002.

TITLE 19A – DEPARTMENT OF TRANSPORTATION

19A NCAC 03J .0201 REQUIREMENTS

(a) The Division shall not issue a commercial driver training school license to any individual, partnership, group, association, or corporation unless:

- (1) The individual, partnership, group, association, or corporation has at least one motor vehicle registered or leased in the name of the school, which vehicle has been inspected by a representative of the Division and vehicle

insurance certified as required by this Subchapter for use by the school for driver training purposes and driver instruction.

(2) The individual, partnership, group, association, or corporation has at least one person licensed by the Division as a commercial driver training instructor for that school.

(3) Each manager or owner-operator of a commercial driver training school or branch shall:

- (A) be of good moral character which is defined as not having been convicted of a felony or misdemeanor involving moral turpitude in the five years immediately preceding the date of application;
- (B) be at least 18 years of age; and
- (C) not have had a revocation or suspension of his operator's or chauffeur's license in the two years immediately preceding the date of application.

(4) In the case of a foreign commercial driver training school, recruiting in North Carolina, the school submits the following items to the Division:

- (A) a copy of the school's license;
- (B) a course description, including topics taught and the length of the course;
- (C) a list of equipment available for training;
- (D) a copy of the contract complete with the fee charged; and
- (E) the names of the persons who represent the school in North Carolina;

provided, Subparagraphs (a)(1) and (a)(4)(C) of this Paragraph shall not apply to schools offering seminar training only.

(b) All commercial driver training schools recruiting in North Carolina shall submit to the Division a surety bond in the amount of thirty thousand dollars (\$30,000) for schools offering courses of instruction of 160 hours or more and ten thousand dollars (\$10,000) for schools offering seminar training only.

History Note: Authority G.S. 20-320; 20-321; 20-322; 20-323; 20-324; 20-325; 20-326; 20-327; 20-328;

Eff. May 1, 1987;

Amended Eff. August 1, 2002; January 1, 1994; February 1, 1991.

19A NCAC 03J .0202 ORIGINAL APPLICATION

Each original application for a commercial driver training school license shall consist of the following:

- (1) Application for license;
- (2) Personal history statement of owner-operator or manager to include full name, place of birth, date of birth, marital status, permanent address, social security number, employment history, and financial statement;
- (3) Proposed plan of operation;
- (4) Proof of liability insurance;

- (5) Sample copies of contracts;
- (6) A check or money order in the amount of eighty dollars (\$80.00). This fee is due for both original and renewal applications for license;
- (7) Certificate of assumed name; and
- (8) Surety bond.

Items (1), (2) and (3) of this Rule shall be provided upon forms issued by the Division.

History Note: Authority G.S. 20-320; 20-321; 20-322; 20-323; Eff. May 1, 1987; Amended Eff. August 1, 2002; January 1, 1994.

19A NCAC 03J .0501 REQUIREMENTS

(a) A Class I instructor may conduct driver training in the classroom, on the field and on the road. Each Class I instructor shall:

- (1) Be at least 21 years of age, have at least two years experience operating a Class A vehicle and hold a valid Class A license; provided, on and after April 1, 1992 each instructor must hold a valid Class A commercial license from his state of residence.
- (2) Not have been convicted of a felony, or convicted of a misdemeanor involving moral turpitude, in the ten years immediately preceding the date of application.
- (3) Not have had a revocation or suspension of his driver's license in the two years immediately preceding the date of application.
- (4) Have graduated from high school and submit high school diploma or submit a high school equivalency certificate.
- (5) Not have had convictions for moving violations totaling seven or more cumulative points within three years of the date of application.
- (6) Have at least two years of continuous commercial motor vehicle driving experience within the previous five years from the date of application.

(b) A Class II instructor may conduct driver training in the classroom and on the field only. Each Class II instructor shall:

- (1) Not have been convicted of a felony, or convicted of a misdemeanor involving moral turpitude, in the ten years immediately preceding the date of application.
- (2) Not have had a revocation or suspension of his driver's license in the two years immediately preceding the date of application.
- (3) Have graduated from high school and submit a high school diploma or a high school equivalency certificate.
- (4) Have at least two years of continuous commercial motor vehicle driving experience within the previous five years from the date of application.

(c) A Class I or II instructor-trainee may assist a licensed Class I or II instructor while his instructor's license application is

pending at the Division. The Division must be notified in writing within five days of the date the trainee is hired. An instructor-trainee of either class:

- (1) may work in that capacity for only 30 days from the date he is hired;
- (2) may instruct in the classroom and on the field only with a licensed instructor present at all times;
- (3) may not instruct or accompany students on the road until licensed; and
- (4) must wear an identification badge which clearly identifies the individual as an instructor-trainee.

History Note: Authority G.S. 20-320; 20-321; 20-322; 20-323; 20-324; 20-325; 20-326; 20-327; 20-328; Eff. May 1, 1987; Amended Eff. August 1, 2002; August 1, 1994; May 1, 1990.

19A NCAC 03J .0502 ORIGINAL APPLICATION

Each original application for a commercial driver training instructor license shall consist of:

- (1) A combination application and personal history form which must be completed and signed by the applicant.
- (2) A physical examination report completed and signed by a licensed physician.
- (3) Copy of high school diploma or equivalency certificate.
- (4) A driver license record check for the previous three years.
- (5) Consent form for background information.
- (6) A check or money order in the amount of sixteen dollars (\$16.00).
- (7) Five-year criminal history check.

History Note: Authority G.S. 20-320; 20-321; 20-322; 20-323; Eff. May 1, 1987; Amended Eff. August 1, 2002.

19A NCAC 03J .0801 GROUNDS FOR REVOCATION OR SUSPENSION

The license of any commercial driver training school may be suspended or revoked by the Division if the licensee violates any provision of Article 14, Chapter 20 of the North Carolina General Statutes, or if the licensee violates any rule adopted pursuant to that Article. In addition, a license may be suspended or revoked for any one of the following reasons:

- (1) Conviction of the owner, manager, or any agent or employee of the school of a felony or conviction of any misdemeanor involving moral turpitude.
- (2) Knowingly submitting to the Division false or misleading information relating to eligibility for a license.
- (3) Evidence of substance abuse by the owner, manager, any agent, or employee of the school.
- (4) Failure or refusal to permit an authorized representative of the Division to inspect the

school, equipment, records, or motor vehicles used to teach students or failure or refusal to furnish full information pertaining to any and all requirements set forth in the rules in this Subchapter or in the application for the license.

- (5) Failure to maintain licensed instructors or approved equipment sufficient to perform the course of instruction.
- (6) Employment of any instructor who is not licensed by the Division.
- (7) Failure of new owner to apply for and be licensed by the Division as a school under new ownership and also failure to notify the Division within the specified time of any change in management of the school.
- (8) Aiding or assisting any person to obtain a driver's license by fraud (revocation in this instance shall be permanent).
- (9) Unauthorized possession of application forms or examinations used by the Division to determine the qualification of an applicant for a driver's license.
- (10) Failure of the school to give the student a copy of his contract and also use by the school of a contract which has not been submitted to and approved by the Division of Motor Vehicles.

History Note: Authority G.S. 20-320; 20-321; 20-322; 20-323; 20-324; 20-325; 20-326; 20-327;
Eff. May 1, 1987;
Amended Eff. August 1, 2002; January 1, 1994.

19A NCAC 03J .0901 REQUIREMENTS

Recruiters working for commercial driver training schools shall comply with the requirements in 19A NCAC 03J .0601-.0606.

History Note: Authority G.S. 20-320; 20-321; 20-322; 20-323; 20-324; 20-325; 20-326;
Eff. October 1, 1991;
Amended Eff. August 1, 2002.

19A NCAC 03J .0902 ORIGINAL APPLICATION

History Note: Authority G.S. 20-320; 20-321; 20-322; 20-323; 20-324; 20-325;
Eff. October 1, 1991;
Amended Eff. January 1, 1994;
Repealed Eff. August 1, 2002.

19A NCAC 03J .0903 RENEWAL APPLICATION

History Note: Authority G.S. 20-320; 20-321; 20-322; 20-323; 20-324;
Eff. October 1, 1991;
Repealed Eff. August 1, 2002.

19A NCAC 03J .0904 DUPLICATE COPIES

History Note: Authority G.S. 20-320; 20-321; 20-322; 20-323; 20-324; 20-325;
Eff. October 1, 1991;
Repealed Eff. August 1, 2002.

19A NCAC 03J .0906 SURRENDER OF LICENSES

History Note: Authority G.S. 20-320; 20-321; 20-322; 20-323; 20-324; 20-325; 20-327;
Eff. October 1, 1991;
Repealed Eff. August 1, 2002.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS

CHAPTER 34 - BOARD OF MORTUARY SCIENCE

21 NCAC 34A .0101 AGENCY NAME: ADDRESS: OFFICE HOURS: MEETINGS: FORMS

The name of the agency promulgating the rules in this Chapter is the North Carolina Board of Mortuary Science. As used in these Rules, the word "Board" shall refer to this agency. The office of the Board is located at 2321 Crabtree Boulevard, Suite 100, Raleigh, North Carolina 27604, and its mailing address is Post Office Box 27368, Raleigh, North Carolina 27611-7368. Office hours are 8:30 a.m. until 4:30 p.m., Monday through Friday, with the exception of closings on those holidays observed by agencies of the State of North Carolina. Meetings of the Board may be called by the President or a majority of its members. Forms and information may be obtained at the office of the Board during regular office hours. Checks are to be made payable to "North Carolina Board of Mortuary Science."

History Note: Authority G.S. 90-210.22; 90-210.23(a);
Eff. February 1, 1976;
Readopted Eff. September 27, 1977;
Amended Eff. November 1, 2001; December 1, 1993;
July 1, 1991; October 1, 1983.

RULES REVIEW COMMISSION

This Section contains the agenda for the next meeting of the Rules Review Commission on Thursday, December 20, 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 Friday, December 14, 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

December 20, 2001	February 21, 2002
January 17, 2002	March 21, 2002

RULES REVIEW COMMISSION

November 15, 2001

MINUTES

The Rules Review Commission met on Thursday morning, November 15, 2001, in the Assembly Room of the Methodist Building, 1307 Glenwood Avenue, Raleigh, North Carolina. Commissioners present: Chairman Paul Powell, Jennie Hayman, Jeffrey Gray, Laura Devan, George Robinson, Robert Saunders and Walter Futch.

Staff members present were: Joseph J. DeLuca, Staff Director; Bobby Bryan, Rules Review Specialist; and Lisa Johnson.

The following people attended:

Elizabeth L. Oxley	NC Department of Justice
Jim Hayes	DENR/DEH
Cindy Kornegay	DHHS/DMH/DD/SAS
Susan Collins	DHHS/DMH/DD/SAS
Jessica Gill	DENR/Coastal Resources Commission
Mike Lopazanski	DENR/Coastal Resources Commission
Jean Stanley	NC Board of Nursing
Howard Kramer	NC Board of Nursing
Sally Malek	DHHS
Deborah Bryan	Lung Association of NC
Harry Wilson	State Board of Education
John Randall	Board of Speech & Language Pathologists & Audiologists
Thomas Allen	DENR-Division of Air Quality
Mark Benton	DHHS/Division of Facility Services
Lee Hoffman	DHHS/ Division of Facility Services
Jeff Manning	DENR/Division Medical Assistance
Portia Rochelle	DHHS/Division Medical Assistance
Dedra Alston	DENR
Warren Savage	Board of Pharmacy
Christine Heinberg	Carolina Legal Assistance/NAMI-NC

APPROVAL OF MINUTES

The meeting was called to order at 10:01 a.m. with Chairman Powell presiding. Chairman Powell asked for any discussion, comments, or corrections concerning the minutes of the October 18, 2001, meeting. The minutes were approved as written.

FOLLOW-UP MATTERS

7 NCAC 4S .0104: NC Department of Cultural Resources – No action was taken.
10 NCAC 45H .0203, .0204: Commission for Mental Health – The Commission approved the rewritten rules submitted by the agency.
10 NCAC 50B .0101: DENR/Division of Medical Assistance – The Commission approved the rewritten rule submitted by the agency.
12 NCAC 9G .0307; .0407: Criminal Justice Education & Training Standards Commission – No action was taken.
12 NCAC 9G .0401; .0405; .0406: Criminal Justice Education & Training Standards Commission – No action was taken.
15A NCAC 2B .0311: DENR/ Environmental Management Commission - The Commission approved the rewritten rule submitted by the agency.
15A NCAC 2D .1420: DENR/Environmental Management Commission – No action was taken.
15A NCAC 18A .1311; .1321: DENR/Commission for Health Services – The Commission approved the rewritten rules submitted by the agency with Commissioners Futch and Robinson opposed to approving .1311. The Chairman did not vote.

LOG OF FILINGS

Chairman Powell presided over the review of the log and all rules were approved with the following exceptions:

10 NCAC 3R .1615: DHHS/Division of Facility Services – The Commission objected to the rule due to ambiguity. In (d)(1), it is not clear what is meant by “each eight hours per week.”

10 NCAC 3R .1616: DHHS/Division of Facility Services – The Commission objected to the rule due to ambiguity. Because the use of the word “may” in the waiver provision in (b), it is not clear what standards the agency will use in determining whether to waive the 30-minute transport requirement.

10 NCAC 3R .3703: DHHS/Division of Facility Services – This rule was approved conditioned upon receiving a technical change by the end of the day. The technical change was subsequently received.

10 NCAC 3R .6320: DHHS/Division of Facility Services – This rule was approved conditioned upon receiving a technical change by the end of the day. The technical change was subsequently received.

10 NCAC 3R .6321: DHHS/Division of Facility Services – This rule was approved conditioned upon receiving a technical change by the end of the day. The technical change was subsequently received.

10 NCAC 3R .6336: DHHS/Division of Facility Services – The Commission objected to the rule due to ambiguity. In (g), it is not clear what would constitute “appropriate” services.

10 NCAC 14J .0201; .0204; .0205; .0207: DHHS/CHS – The agency joined in a request by Christine Heinberg of Carolina Legal Assistance/NAMI-NC to continue until at least next month any further review of these rules. The Commission so agreed.

10 NCAC 14P .0102: DHHS/CHS – The agency joined in a request by Christine Heinberg of Carolina Legal Assistance/NAMI-NC to continue until at least next month any further review of these rules. The Commission so agreed.

10 NCAC 14Q .0303: DHHS/CHS – The agency joined in a request by Christine Heinberg of Carolina Legal Assistance/NAMI-NC to continue until at least next month any further review of these rules. The Commission so agreed.

10 NCAC 14R.0101; .0105: DHHS/CHS – The agency joined in a request by Christine Heinberg of Carolina Legal Assistance/NAMI-NC to continue until at least next month any further review of these rules. The Commission so agreed.

10 NCAC 14V .0208; .0304; .0801; .0802; .0803; .6002: DHHS/CHS – The agency joined in a request by Christine Heinberg of Carolina Legal Assistance/NAMI-NC to continue until at least next month any further review of these rules. The Commission so agreed.

10 NCAC 45H .0205: DHHS/MH/DD/SAS – The Commission objected to the rule due to ambiguity. This rule tracks, and to a certain extent repeats, N.C.G.S. 90-92 Schedule IV Controlled Substances. However it is not consistent in either the identical listing or terminology. And the rule does not indicate that it presumably controls over the statute (which the legislature authorized) in the event of an inconsistency.

RULES REVIEW COMMISSION

15A NAC 2Q .0102: DENR/Environmental Management Commission - This rule was approved conditioned upon receiving a technical change by the end of the day. The technical change was subsequently received.

15A NAC 7H .0209: DENR/Environmental Management Commission – The rule was withdrawn by the agency.

21 NCAC 36 .0217: NC Board of Nursing – The Commission objected to the rule due to ambiguity. In (g) it is not clear if the staff may issue a “Letter of Charges” without formal Board action or whether the Board must officially determine that such a letter is warranted. It would seem that the former may be the preferred course, otherwise the Board may be subject to an accusation that it has judged the merits of the case without having a hearing. If it is either not necessary or not desirable for the Board to take formal action, then the rule should be rewritten to delete any reference to or mention of the Board. In (m) it is unclear whether the rule intends to require pre-hearing conferences to be conducted before “a majority of Board members” or does it mean that if the Board conducts such a conference, then it is to be held in Wake County. The previous rule at (l)(2) designated an administrative law counsel to conduct the hearing. At (l)(1) it also specifies that it can be held anywhere by mutual agreement. It seems that (m) is most likely directed to the contested case hearing. In (q) it is unclear what the differences in roles are between the presiding officer, a board member, and the administrative law counsel who is to “conduct the proceedings.” Note that there is provision for a separately designated “prosecuting attorney” with functions that are distinct and different from those of the administrative law procedural officer.

21 NCAC 64 .0210: NC Examiners for Speech and Language Pathologists and Audiologists - This rule was approved conditioned upon receiving a technical change by the end of the day. The technical change was subsequently received.

21 NCAC 64 .0211: NC Examiners for Speech and Language Pathologists and Audiologists – The Commission objected to this rule due to lack of statutory authority. There is no authority cited to waive the statutory identification badge required for “any reason deemed sufficient” by the Board. The statute in (d) restricts the waiver to two reasons: (1) necessary for the practitioner’s safety or (2) therapeutic concerns.

COMMISSION PROCEDURES AND OTHER BUSINESS

No new business was discussed.

The next meeting will be on Thursday, December 20, 2001.

The meeting adjourned at 11:35 a.m.

Respectfully submitted,
Lisa Johnson

**Commission Review/Administrative Rules
Log of Filings (Log #182)
October 22, 2001 through November 20, 2001**

DENR/SOIL AND WATER CONSERVATION COMMISSION

Allocation guidelines and procedures 15 NCAC 06E .0103 Amend

DENR/COASTAL RESOURCES COMMISSION

Planning Options 15 NCAC 07B .0701 Adopt
Elements of CAMA Core and Advanced Core 15 NCAC 07B .0702 Adopt
Intergovernmental 15 NCAC 07B .0703 Adopt
State Technical Assistance, Review and Comment 15 NCAC 07B .0800 Adopt
Public Hearing and Local Adoption 15 NCAC 07B .0801 Adopt
Presentation to Coastal Resources 15 NCAC 07B .0802 Adopt
CAMA Land Use Plan Amendments 15 NCAC 07B .0901 Adopt
Required Periodic Implementation Status Reports 15 NCAC 07B .0904 Adopt
Installation and Maintenance of Sand Fencing 15 NCAC 07H .0311 Adopt
Installation and Maintenance of Sand Fencing 15 NCAC 07K .0212 Adopt
Authority 15 NCAC 07L .0101 Amend
Purpose 15 NCAC 07L .0102 Amend
Eligible Applicants 15 NCAC 07L .0201 Repeal
Priorities for Funding 15 NCAC 07L .0202 Repeal
Eligible Projects 15 NCAC 07L .0203 Repeal
Project Duration 15 NCAC 07L .0204 Repeal

RULES REVIEW COMMISSION

Consistency with Plans and Guidelines	15 NCAC 07L .0205	Repeal
Relation to Other Funding	15 NCAC 07L .0206	Repeal
Application Form	15 NCAC 07L .0301	Repeal
Submittal	15 NCAC 07L .0302	Repeal
Procedure for Preliminary Approval or Disapproval	15 NCAC 07L .0303	Repeal
Assistance in Completing Applications	15 NCAC 07L .0304	Repeal
Contract Agreement	15 NCAC 07L .0401	Repeal
Accountability	15 NCAC 07L .0402	Repeal
Payment	15 NCAC 07L .0403	Repeal
Progress Reports and Grant Monitoring	15 NCAC 07L .0404	Repeal
Project Completion Report	15 NCAC 07L .0405	Repeal
Eligible Applicants	15 NCAC 07L .0501	Adopt
Consistency with Plans and Rules	15 NCAC 07L .0502	Adopt
Priorities for Funding CANA	15 NCAC 07L .0503	Adopt
Eligible Projects	15 NCAC 07L .0504	Adopt
Scoping of Planning Needs	15 NCAC 07L .0505	Adopt
Public Participation	15 NCAC 07L .0506	Adopt
Minimum CAMA Land Use Planning and Funding	15 NCAC 07L .0507	Amend
State Technical Assistance, Review and Comment	15 NCAC 07L .0508	Amend
Intergovernmental Coordination	15 NCAC 07L .0509	Amend
Public Hearing and Local Adoption Requirements	15 NCAC 07L .0510	Adopt
Required Periodic Implementation Status Reports	15 NCAC 07L .0511	Adopt
Sustainable Communities Component of the Planning	15 NCAC 07L .0512	Adopt
Project Duration	15 NCAC 07L .0513	Adopt
Relation to Other Funding	15 NCAC 07L .0514	Adopt
Application Form	15 NCAC 07L .0601	Adopt
Assistance In Completing Applications and Submit	15 NCAC 07L .0602	Adopt
Procedure for Approval or Disapproval	15 NCAC 07L .0603	Amend
Contract Agreement	15 NCAC 07L .0701	Amend
Progress Reports and Grant Monitoring	15 NCAC 07L .0702	Amend
Payment	15 NCAC 07L .0703	Amend
Project Completion Report	15 NCAC 07L .0704	Amend
Accountability	15 NCAC 07L .0705	Amend
DENR/COMMISSION FOR HEALTH SERVICES		
Definitions	15 NCAC 18A .2601	Amend
DENR/DHHS		
Reportable Diseases and Conditions	15 NCAC 19A .0101	Amend
Method of Reporting	15 NCAC 19A .0102	Amend
Duties of Local Health Director:	15 NCAC 19A .0103	Amend
Control Measures-HIV	15 NCAC 19A .0202	Amend
Control Measures-Hepatitis B	15 NCAC 19A .0203	Amend
Control Measures-Tuberculosis	15 NCAC 19A .0205	Amend
HIV and Hepatitis B Infected Health Care Workers	15 NCAC 19A .0207	Amend
Laboratory Testing	15 NCAC 19A .0209	Amend
Communicable Disease Financial Grants and Contracts	15 NCAC 19A .0801	Amend
Eligibility for Tuberculosis Hospitalization Ser	15 NCAC 19A .0802	Repeal
Eligibility for Tuberculosis Nursing Home Service	15 NCAC 19A .0803	Repeal
TRANSPORTATION, DEPARTMENT OF/DIVISION OF MOTOR VEHICLES		
Issuing of original certificate	19 NCAC 03G .0205	Amend
STATE BOARDS/N C LICENSING BOARD FOR GENERAL CONTRACTORS		
Structure of Board	21 NCAC 12 .0103	Amend
Classification	21 NCAC 12 .0202	Amend
Renewal of License	21 NCAC 12 .0503	Amend
Request for Hearing	21 NCAC 12 .0818	Amend
STATE BOARDS/N C PSYCHOLOGY BOARD		
Continuing Education	21 NCAC 54 .2104	Adopt

AGENDA
RULES REVIEW COMMISSION
December 20, 2001

- I. Call to Order and Opening Remarks
- II. Review of minutes of last meeting
- III. Follow Up Matters
 - A. Department of Cultural Resources – 7 NCAC 4S .0104 Objection on 12/21/00 (DeLuca) No response expected until April/May 2002
 - B. DHHS/Division of Facility Services – 10 3R NCAC .1615; .1616; .6336 Objection on 11/15/01 (Bryan)
 - C. DHHS/Commission for MH/DD/SAS – 10 NCAC 14J .0201; .0204; .0205; .0207 Continued on request of agency 11/15/01 (DeLuca)
 - D. DHHS/ Commission for MH/DD/SAS – 10 NCAC 14P .0102 Continued on request of agency 11/15/01 (DeLuca)
 - E. DHHS/ Commission for MH/DD/SAS – 10 NCAC 14Q .0303 Continued on request of agency 11/15/01 (DeLuca)
 - F. DHHS/ Commission for MH/DD/SAS – 10 NCAC 14R .0101; .0105 Continued on request of agency 11/15/01 (DeLuca)
 - G. DHHS/ Commission for MH/DD/SAS – 10 NCAC 14V .0208; .0304; .0801; .0802; .0803; .6002 Continued on request of agency 11/15/01 (DeLuca)
 - H. DHHS/ Commission for MH/DD/SAS – 10 NCAC 45H .0205 Objection on 11/15/01 (DeLuca)
 - I. Criminal Justice Education & Training Standards Commission – 12 NCAC 9G .0307; .0407 Objection on 9/20/01 (Bryan)
 - J. Criminal Justice Education & Training Standards Commission – 12 NCAC 9G .0401; .0405; .0406 Objection on 9/20/01 and 10/18/01 (Bryan)
 - K. DENR/Environmental Management Commission – 15A 2D .1420 Objection on 10/18/01 (DeLuca)
 - L. NC Board of Nursing – 21 NCAC 36 .0217 Objection on 11/15/01 (DeLuca)
 - M. NC Examiners for Speech and Language Pathologists & Audiologists – 21 NCAC 64 .0211 Objection on 11/15/01 (DeLuca)
- IV. Review of rules (Log Report #182)
- V. Commission Business
- VI. Next meeting: Thursday, January 17, 2001

CONTESTED CASE DECISIONS

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

OFFICE OF ADMINISTRATIVE HEARINGS

*Chief Administrative Law Judge
JULIAN MANN, III*

*Senior Administrative Law Judge
FRED G. MORRISON JR.*

ADMINISTRATIVE LAW JUDGES

*Sammie Chess Jr.
Beecher R. Gray
Melissa Owens Lassiter*

*James L. Conner, II
Beryl E. Wade
A.B. Elkins II*

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<u>ALCOHOL BEVERAGE CONTROL COMMISSION</u>				
C's Mini-Mart, Camille Stephens v. NC ABC Commission and City of Charlotte	00 ABC 1264	Lassiter	06/08/01	
NC ABC Commission v. Benjamin Franklin Black, B and M Convenience	01 ABC 0663	Morrison	07/23/01	
Deleon Christopher Izi v. NC Alcoholic Beverage Control Commission	01 ABC 0709	Gray	10/11/01	
NC Alcoholic Beverage Control Commission v. Henry Rudolph Brake T/A Horsin Around Country Club	01 ABC 0811	Lassiter	08/13/01	
<u>BOARD OF MORTUARY SCIENCE</u>				
NC Board of Mortuary Science v. Beasley's Funeral Home, Inc., Odell Beasley, Crystal Beasley-Walker	00 BMS 0469	Mann	07/17/01	
Board of Mortuary Science v. Hunter Funeral Home & Julius Hunter	00 BMS 0505	Reilly	11/01/00	
NC Board of Mortuary Science v. Robert Breece, Jr., and Osborne Owens and Rogers and Breece Funeral Home	00 BMS 1763	Morrison	08/22/01	
NC Board of Mortuary Science v. Kyle Garret Peacock, Philip Smoak and Peggy Peacock	01 BMS 0298	Lassiter	09/20/01	
<u>BOARD OF GEOLOGISTS</u>				
O. Phillip Kimbrell, P.G. v. NC Board for the Licensing of Geologists	99 BOG 1254	Conner	05/29/01	
<u>CRIME CONTROL AND PUBLIC SAFETY</u>				
Georgina Joyner v. NC Crime Victims Compensation Commission	95 CPS 0359	Gray	10/23/01	
Jerry W. Taylor v. NC Victims Compensation Commission	00 CPS 1052	Gray	05/23/01	
Clarence Forney v. NC Crime Victims Compensation Commission	00 CPS 1994	Elkins	10/11/01	
Sheree D Sirotnak v. NC Crime Victims Compensation Commission	00 CPS 2209	Wade	06/14/01	
Eddie N McLaughlin v. NC Crime Victims Compensation Commission	01 CPS 0086	Elkins	06/05/01	
Bobby Holmes, Jr. v. NC Crime Victims Compensation Commission	01 CPS 1095	Gray	10/09/01	
John R. Ackerman v. NC State Highway Patrol	01 CPS 1327	Morrison	09/24/01	
<u>HEALTH AND HUMAN SERVICES</u>				
Gregory Keith Millican v. NC DHHS, Div of Social Svcs, CSE Section	99 CRA 1008	Gray	10/12/01	
David P. Lemieux v. Department of Health & Human Services	01 CRA 0428	Gray	06/05/01	
Clayton E Reeves v. Department of Health & Human Services	01 CRA 0773 ²	Elkins	08/16/01	
Gerald Pelletier III v. Department of Health & Human Services	01 CRA 0882	Morrison	07/19/01	
Anthony B Smalling v. Department of Health & Human Services	01 CRA 0993	Conner	08/07/01	
Angelo Terry, Jr. v. NC DHHS, Div. of Social Svcs., CSE Section	01 CRA 1294	Wade	10/25/01	
<u>Child Support Enforcement Section</u>				
Sandra Ferrell Miller v. Department of Health & Human Services	99 CSE 1390	Gray	10/24/01	
Rafael Leon Garcia v. Department of Health & Human Services	99 CSE 1460	Mann	10/31/01	
John F McCollum v. Department of Health & Human Services	00 CSE 0252	Gray	07/18/01	
James J. Murphy v. Department of Health & Human Services	00 CSE 0320	Morrison	09/28/01	
Willie Montgomery v. Department of Health & Human Services	00 CSE 0379	Gray	10/11/01	
Deidra Dawn Andrews v. Department of Health & Human Services	00 CSE 0382	Morrison	09/13/01	
Steven D Hamrick v. Department of Health & Human Services	00 CSE 0383	Lassiter	09/17/01	

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Thellie Paul Casper v. Department of Health & Human Services	00 CSE 0587	Mann	10/12/01
Leverette Lillington Knighten II v. Department of Health & Human Services	00 CSE 0612	Gray	08/24/01
Bickett Fort v. Department of Health & Human Services	00 CSE 1169	Mann	08/10/01
Gary E Ligon v. Department of Health & Human Services	00 CSE 1344	Morrison	09/20/01
Gerald L. Coker v. Department of Health & Human Services	00 CSE 1396	Morrison	08/29/01
Marvin Gay Adams v. Department of Health & Human Services	00 CSE 1550	Wade	09/18/01
Dean E McCall v. Department of Health & Human Services	00 CSE 1575	Conner	10/04/01
Robert Boening v. Department of Health & Human Services	00 CSE 1583	Morrison	10/31/01
Edward Cozart v. Department of Health & Human Services	00 CSE 1594	Gray	09/14/01
Rita Caperoon v. Department of Health & Human Services	00 CSE 1597	Lassiter	08/27/01
Trina Player v. Department of Health & Human Services	00 CSE 1611	Wade	10/22/01
Robert B McKay v. Department of Health & Human Services	00 CSE 1620	Gray	09/14/01
Thomas L Larison v. Department of Health & Human Services	00 CSE 1649	Mann	10/29/01
Gary E Barker v. Department of Health & Human Services	00 CSE 1659	Mann	09/26/01
Mettie Hansley v. Department of Health & Human Services	00 CSE 1673	Morrison	08/24/01
David K. Rose v. Department of Health & Human Services	00 CSE 1681	Gray	06/05/01
Bruce E Carpenter v. Department of Health & Human Services	00 CSE 1683	Morrison	10/31/01
John T McDonald v. Department of Health & Human Services	00 CSE 1687	Wade	06/08/01
Darren S Boyd v. Department of Health & Human Services	00 CSE 1697	Wade	08/29/01
Ilian Tourloukis v. Department of Health & Human Services	00 CSE 1701	Gray	09/14/01
Terry Antonio Leath v. Department of Health & Human Services	00 CSE 1709	Morrison	10/16/01
Jarvis Williams v. Department of Health & Human Services	00 CSE 1712	Wade	10/22/01
Jerry McLean v. Department of Health & Human Services	00 CSE 1725	Mann	09/13/01
Raymond Stevens v. Department of Health & Human Services	00 CSE 1730	Mann	10/31/01
Richard Kevin Day v. Department of Health & Human Services	00 CSE 1735	Conner	08/20/01
Willie E Harris v. Department of Health & Human Services	00 CSE 1742	Morrison	07/26/01
Hugh Williams Jr v. Department of Health & Human Services	00 CSE 1753	Morrison	10/02/01
Michael Worthy v. Department of Health & Human Services	00 CSE 1756	Wade	09/18/01
Eduardo R Miranda v. Department of Health & Human Services	00 CSE 1768	Wade	09/18/01
Jacqueline Land v. Department of Health & Human Services	00 CSE 1773	Morrison	11/05/01
William Baxter v. Department of Health & Human Services	00 CSE 1776	Wade	05/30/01
Albert Hooks Jr. v. Department of Health & Human Services	00 CSE 1798	Lassiter	07/30/01
Walter Columbus Simmons v. Department of Health & Human Services	00 CSE 1831	Gray	10/10/01
Manargo Victor Boykin v. Department of Health & Human Services	00 CSE 1835 ¹	Wade	05/30/01
Manargo Victor Boykin v. Department of Health & Human Services	00 CSE 1837 ¹	Wade	05/30/01
Larry W Kiser v. Department of Health & Human Services	00 CSE 1840	Gray	06/08/01
Jason Parker v. Department of Health & Human Services	00 CSE 1853	Morrison	08/02/01
Michael A Gresham Sr. v. Department of Health & Human Services	00 CSE 1862	Gray	06/28/01
Barbara J Stacy v. Department of Health & Human Services	00 CSE 1903	Lassiter	09/17/01
Michael N Brack v. Department of Health & Human Services	00 CSE 1904	Lassiter	07/02/01
Gregory C McCauley v. Department of Health & Human Services	00 CSE 1915	Wade	08/03/01
Raymond N Strother v. Department of Health & Human Services	00 CSE 1910	Gray	07/18/01
Tamara J Mills-Cooper v. Department of Health & Human Services	00 CSE 1918	Gray	09/14/01
Donald E Scott v. Department of Health & Human Services	00 CSE 1919	Chess	08/08/01
Paul Clayton Shepard v. Department of Health & Human Services	00 CSE 1945	Lassiter	09/20/01
Tammie Sawyer v. Department of Health & Human Services	00 CSE 1946	Gray	09/26/01
Paula Morrill v. Department of Health & Human Services	00 CSE 1948	Conner	10/16/01
Marcus Dontez Chavis v. Department of Health & Human Services	00 CSE 1955	Gray	10/15/01
Robert Steven Preston v. Department of Health & Human Services	00 CSE 1958	Lassiter	06/05/01
John R Pyron v. Department of Health & Human Services	00 CSE 1960	Wade	08/10/01
Richard Stevens Jr. v. Department of Health & Human Services	00 CSE 1965	Morrison	08/07/01
Angela Wells v. Department of Health & Human Services	00 CSE 1967	Morrison	08/21/01
Bobby R. Mayo v. Department of Health & Human Services	00 CSE 1969	Conner	07/09/01
Steven Gregory Hotz v. Department of Health & Human Services	00 CSE 1978	Chess	07/24/01
Sylvia J Walter v. Department of Health & Human Services	00 CSE 1983	Wade	10/22/01
Eugene Little v. Department of Health & Human Services	00 CSE 1995	Gray	10/11/01
Howard Jacobs v. Department of Health & Human Services	00 CSE 1996	Morrison	11/05/01
April Cheeseman v. Department of Health & Human Services	00 CSE 2000	Wade	10/11/01
Terry Jacobs v. Department of Health & Human Services	00 CSE 2004	Lassiter	10/11/01
William Kay v. Department of Health & Human Services	00 CSE 2060	Conner	07/20/01
Patrick L Merrick v. Department of Health & Human Services	00 CSE 2061	Chess	07/12/01
Luther I Gore v. Department of Health & Human Services	00 CSE 2062	Gray	08/15/01
Darlene S Roush v. Department of Health & Human Services	00 CSE 2102	Gray	10/11/01
David Diaz v. Department of Health & Human Services	00 CSE 2149	Gray	09/21/01
Jerome Maddox v. Department of Health & Human Services	00 CSE 2153	Wade	08/07/01
Toney Cooper v. Department of Health & Human Services	00 CSE 2214	Gray	09/06/01
Winston H Powell v. Department of Health & Human Services	00 CSE 2274	Wade	05/30/01
Kendall L Taylor v. Department of Health & Human Services	00 CSE 0032	Conner	06/08/01
Toni M Rash v. Department of Health & Human Services	01 CSE 0040	Wade	10/02/01
Sue Diane Lambert v. Department of Health & Human Services	01 CSE 0069	Wade	07/13/01
Harlie J Turner v. Department of Health & Human Services	01 CSE 0095	Morrison	09/26/01
George A Snipes v. Department of Health & Human Services	01 CSE 0105	Lassiter	10/25/01
Michael Jarvis v. Department of Health & Human Services	01 CSE 0173	Wade	08/06/01
Samuel E Taylor v. Department of Health & Human Services	01 CSE 0181	Conner	06/08/01
Carlton Griffin Jr. v. Department of Health & Human Services	01 CSE 0211	Lassiter	08/20/01
Randall Blevins v. Department of Health & Human Services	01 CSE 0258	Gray	06/05/01
Jason O Smith v. Department of Health & Human Services	01 CSE 0266	Mann	07/19/01
Richard Brooks v. Department of Health & Human Services	01 CSE 0269	Wade	06/25/01
Carey Austin Spencer v. Department of Health & Human Services	01 CSE 0277	Conner	07/09/01
Ronnie William Foster v. Department of Health & Human Services	01 CSE 0280	Chess	07/09/01
Craig Darrell McLeod v. Department of Health & Human Services	01 CSE 0301	Gray	07/31/01
Nathaniel Gunter v. Department of Health & Human Services	01 CSE 0333	Morrison	06/25/01

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Cantabile Jones v. Department of Health & Human Services	01 CSE 0357	Chess	07/06/01
Arlene Locklear v. Department of Health & Human Services	01 CSE 0358	Conner	07/20/01
Nolan D Schrader v. Department of Health & Human Services	01 CSE 0362	Elkins	08/07/01
Harvey L Hughes Sr. v. Department of Health & Human Services	01 CSE 0366	Gray	06/29/01
Denise Renee Nunn v. Department of Health & Human Services	01 CSE 0368	Morrison	06/05/01
Myhammad Ali Sabakada v. Department of Health & Human Services	01 CSE 0378	Elkins	09/13/01
Eric L Woody v. Department of Health & Human Services	01 CSE 0387	Wade	08/10/01
Gilbert Monk v. Department of Health & Human Services	01 CSE 0390	Lassiter	07/02/01
David L Trammel Jr. v. Department of Health & Human Services	01 CSE 0391	Chess	06/26/01
Ralph A Terry v. Department of Health & Human Services	01 CSE 0405	Gray	06/29/01
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Kimberly L Shull v. Department of Health & Human Services	01 CSE 0431	Gray	09/27/01
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David Wilson v. Department of Health & Human Services	01 CSE 0463	Conner	07/20/01
Henry L Elliotte v. Department of Health & Human Services	01 CSE 0491	Lassiter	06/05/01
Gregory Morgan v. Department of Health & Human Services	01 CSE 0498	Elkins	05/24/01
Malik J Flamer v. Department of Health & Human Services	01 CSE 0501	Wade	07/12/01
Wade Freeman McPhatter Jr. v. Department of Health & Human Services	01 CSE 0504	Conner	10/17/01
Armenous Dobson III v. Department of Health & Human Services	01 CSE 0519	Morrison	09/06/01
George Foster Still v. Department of Health & Human Services	01 CSE 0526	Elkins	09/13/01
John Winstead v. Department of Health & Human Services	01 CSE 0562	Conner	06/08/01
Raymond A McDonald v. Department of Health & Human Services	01 CSE 0592	Gray	07/18/01
Carson C Clark Jr. v. Department of Health & Human Services	01 CSE 0600	Morrison	07/19/01
Paul Williams v. Department of Health & Human Services	01 CSE 0606	Lassiter	07/19/01
Thomas J Lipppa v. Department of Health & Human Services	01 CSE 0609	Elkins	06/27/01
Boyd H Tucker v. NC Child Support Centralized Collection	01 CSE 0618	Wade	05/31/01
Joseph E Rudd Jr. v. Department of Health & Human Services	01 CSE 0621	Gray	05/29/01
Shirley W Pendergrass v. Department of Health & Human Services	01 CSE 0622	Mann	09/11/01
Manuel Lee Thomas v. Department of Health & Human Services	01 CSE 0623	Morrison	07/19/01
Kirk M White v. Department of Health & Human Services	01 CSE 0625	Lassiter	06/05/01
Walter L Sloan Jr. v. Department of Health & Human Services	01 CSE 0626	Wade	08/03/01
Kevin R Ross v. Department of Health & Human Services	01 CSE 0631	Elkins	06/05/01
Kelvin R Leonard v. Department of Health & Human Services	01 CSE 0633	Elkins	06/05/01
Steven Rodger Malysz v. Department of Health & Human Services	01 CSE 0649	Gray	06/05/01
Forrest W Crutchfield v. Department of Health & Human Services	01 CSE 0651	Morrison	08/02/01
Raul Villanueva v. Department of Health & Human Services	01 CSE 0652	Morrison	08/02/01
Allen Getzinger v. Department of Health & Human Services	01 CSE 0654	Lassiter	08/08/01
Robert Lee Scott Jr. v. Department of Health & Human Services	01 CSE 0656	Conner	07/20/01
Randy L Wade v. Department of Health & Human Services	01 CSE 0664	Elkins	10/02/01
Christopher R Miller v. Department of Health & Human Services	01 CSE 0678	Lassiter	07/19/01
Larry O Anthony v. Department of Health & Human Services	01 CSE 0681	Lassiter	07/30/01
Dennis Green v. Department of Health & Human Services	01 CSE 0682	Gray	08/02/01
Tony Eugene Johnson v. Department of Health & Human Services	01 CSE 0684	Mann	09/11/01
Lynn S Jowers v. Department of Health & Human Services	01 CSE 0688	Elkins	06/25/01
Charles John DaBella v. Department of Health & Human Services	01 CSE 0690	Conner	07/20/01
Kou Yang v. Department of Health & Human Services	01 CSE 0692	Gray	08/02/01
George D Moore v. Department of Health & Human Services	01 CSE 0693	Wade	08/03/01
Anthony C Lambert v. Department of Health & Human Services	01 CSE 0696	Morrison	07/11/01
Benjamin R Norris v. Department of Health & Human Services	01 CSE 0698	Lassiter	07/30/01
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Clayton E Reeves v. Department of Health & Human Services	01 CSE 0705 ²	Elkins	08/16/01
James Balmer v. Department of Health & Human Services	01 CSE 0735	Elkins	08/16/01
Roger Dale Weaver v. Department of Health & Human Services	01 CSE 0739	Wade	09/18/01
Joshua V Harris v. Department of Health & Human Services	01 CSE 0757	Morrison	07/30/01
Nehemiah Patrick Holliday, Jr. v. Department of Health & Human Services	01 CSE 0764	Morrison	08/16/01
Ronald Rozzelle Mitchell v. Department of Health & Human Services	01 CSE 0765	Elkins	08/16/01
Steven G Adelman v. Department of Health & Human Services	01 CSE 0766	Wade	09/28/01
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Dennis D Miller v. Department of Health & Human Services	01 CSE 0824	Elkins	07/31/01
William A Bell v. Department of Health & Human Services	01 CSE 0828	Wade	09/21/01
James D Wright Jr. v. Department of Health & Human Services	01 CSE 0834	Conner	08/30/01
Michelle Dalton Painter v. Department of Health & Human Services	01 CSE 0838	Chess	07/09/01
James D Jackson Jr. v. Department of Health & Human Services	01 CSE 0839	Gray	07/31/01
Henry Joseph v. Department of Health & Human Services	01 CSE 0843	Morrison	08/20/01
Linda N Dixon v. Department of Health & Human Services	01 CSE 0844	Lassiter	08/08/01
Arthur Jackson v. Department of Health & Human Services	01 CSE 0872	Chess	07/25/01
Calvin Laverne Johnson v. Department of Health & Human Services	01 CSE 0886	Lassiter	07/26/01
Terronie T Purnell v. Department of Health & Human Services	01 CSE 0896	Mann	09/13/01
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3 Combined Cases
2 Combined Cases

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Matilda Thompson v. Department of Health & Human Services	01 CSE 0914	Gray	09/06/01
Sheraton Vincent Walker v. Department of Health & Human Services	01 CSE 0918	Morrison	09/06/01
Ronald Carl Ray v. Department of Health & Human Services	01 CSE 0927	Morrison	09/06/01
Larry Mims v. Department of Health & Human Services	01 CSE 0928	Elkins	09/06/01
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Charles Baron Camp v. Department of Health & Human Services	01 CSE 0979 ⁴	Morrison	09/13/01
Charles Baron Camp v. Department of Health & Human Services	01 CSE 0987 ⁴	Morrison	09/13/01
Edward Conner Gore v. Department of Health & Human Services	01 CSE 0988	Elkins	10/24/01
Joseph L Garland v. Department of Health & Human Services	01 CSE 0991	Wade	08/10/01
Sydell LeMay v. Department of Health & Human Services	01 CSE 1003	Lassiter	09/17/01
Anthony J Edwards v. Department of Health & Human Services	01 CSE 1005	Gray	09/11/01
Pierette Lynn Van Horn v. Department of Health & Human Services	01 CSE 1007	Morrison	09/20/01
Stephen Lee Pendleton v. Department of Health & Human Services	01 CSE 1009	Gray	08/21/01
Daren L Keyes v. Department of Health & Human Services	01 CSE 1017	Elkins	09/27/01
James W Quick v. Department of Health & Human Services	01 CSE 1044	Conner	08/07/01
Elijah Saunders v. Department of Health & Human Services	01 CSE 1052	Gray	08/02/01
Leonard Campbell v. Department of Health & Human Services	01 CSE 1062	Morrison	10/10/01
Franklyn A Barrera v. Department of Health & Human Services	01 CSE 1070	Lassiter	10/09/01
Michael W Campbell v. Department of Health & Human Services	01 CSE 1077	Mann	10/09/01
Richard W Spencer v. Department of Health & Human Services	01 CSE 1085	Elkins	10/05/01
Bobby D Cooper v. Department of Health & Human Services	01 CSE 1087	Wade	08/10/01
Christopher T Middleton v. Department of Health & Human Services	01 CSE 1131	Gray	09/06/01
Gary G Walker v. Department of Health & Human Services	01 CSE 1136	Morrison	10/10/01
Calvin D Alston v. Department of Health & Human Services	01 CSE 1143	Lassiter	10/09/01
Petre Capraru v. Department of Health & Human Services	01 CSE 1145	Morrison	08/28/01
David Diaz v. Department of Health & Human Services	01 CSE 1150	Elkins	09/13/01
Michael K Seaman v. Department of Health & Human Services	01 CSE 1157	Wade	08/29/01
Glenn R Lail v. Department of Health & Human Services	01 CSE 1183	Morrison	11/02/01
Ernest L Shine v. Department of Health & Human Services	01 CSE 1191	Lassiter	10/31/01
Darnell Walker v. Department of Health & Human Services	01 CSE 1201	Elkins	10/31/01
James Ray Wyatt v. Department of Health & Human Services	01 CSE 1262	Morrison	11/05/01
Thomas M Birdwell, III v. Department of Health & Human Services	01 CSE 1367	Chess	10/09/01
Corey Jones v. Department of Health & Human Services	01 CSE 1384	Elkins	11/02/01
Jennings Butler v. Department of Health & Human Services	01 CSE 1421	Wade	10/22/01
Christopher A Barrow v. Department of Health & Human Services	01 CSE 1494	Chess	10/22/01
Timothy C Autry v. Department of Health & Human Services	01 CSE 1532	Gray	10/31/01

James Purnell Jr. v. Department of Health & Human Services	00 DCS 0360	Lassiter	10/16/01
Cassandra Parrish v. Department of Health & Human Services	01 DCS 0701	Chess	10/03/01
Constance Drye v. Department of Health & Human Services	01 DCS 0707	Wade	06/25/01
Linda Warren v. Department of Health & Human Services	01 DCS 0803	Conner	08/17/01
LaVonya Ann Goods v. Department of Health & Human Services	01 DCS 0819	Lassiter	07/12/01
Kechia Bonita Howell v. Department of Health & Human Services	01 DCS 0848	Elkins	09/13/01
Faye D Brown v. Department of Health & Human Services	01 DCS 0923	Lassiter	07/19/01
Sheree R Jenkins v. Department of Health & Human Services	01 DCS 1051	Chess	07/24/01
Sharon McLean v. Department of Health & Human Services	01 DCS 1288	Lassiter	11/05/01

CULTURAL RESOURCES

Howard W & Rebecca Hoover v. NC Dept. of Cultural Resources State Historic Preservation Office	01 DCR 0243	Wade	06/26/01
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HEALTH AND HUMAN SERVICES

Wendy Gay Dayberry v. NC Dept. of Health & Human Services	00 DHR 1077 ³	Wade	08/16/01
Wendy Gay Dayberry v. NC Dept. of Health & Human Services	00 DHR 1324 ³	Wade	08/16/01
Salinda Smith v. NC Department of Health & Human Services	00 DHR 1779	Mann	09/20/01
Kenneth E. Frost v. DHHS, Julian F. Keith, ADATC	00 DHR 2278	Conner	07/30/01
Ruby L Laughter v. Dept. of Health & Human Services	01 DHR 0108	Gray	06/29/01
Merle Marie Kemp v. DHHR, Div. of Child Development	01 DHR 0207	Reilly	11/01/01
Renita Lewis-Walters v. (ADATC), Dept. of Health & Human Services	01 DHR 0286	Morrison	06/08/01
Thomas M Poole v. Dept. of Health & Human Services	01 DHR 0335	Lassiter	07/26/01
Terry Westmoreland v. John Umstead Hospital	01 DHR 0392	Elkins	08/15/01
Duane E McCoyle v. DHHS, Broughton Hospital	01 DHR 0398	Wade	06/19/01
Lara Beth Henrick v. DHHS, Dorothea Dix Hospital	01 DHR 0409	Mann	07/19/01
Terry W Hartsoe v. NC Dept. of Health & Human Services	01 DHR 0420	Chess	07/06/01
Richard L Foster, Reansia M Foster v. DHHS, Broughton Hospital	01 DHR 0454	Wade	06/25/01
Yvonne D Cole v. Cherry Hospital, Brenda Wells	01 DHR 0502	Morrison	07/23/01
Cheryl Holloway v. DHHS, Health Care Register	01 DHR 0513	Morrison	07/27/01
Adam Query Fisher, Jr. v. DHHS, Julian F Keith, ADATC	01 DHR 0559	Wade	06/19/01
Dennis E Partridge v. DHHS, Julian F Keith, ADATC	01 DHR 0560	Wade	06/19/01
Eunice L Walden v. NC DHHS	01 DHR 0589	Gray	09/11/01
Robert W Dietz & wife, Iris Dietz v. NC Dept. of Health & Human Svcs.	01 DHR 0603	Wade	10/11/01
Eric L Belton v. Dept. of Health & Human Services, ADATC	01 DHR 0610	Lassiter	06/04/01
Tawn Milteer-Ellerbe v. Dept. of Health & Human Services	01 DHR 0629	Conner	09/04/01
Charles Anthony Tart v. DHHS, Walter B Jones, ADATC	01 DHR 0665	Lassiter	06/22/01
Mable Barnes, CNA v. DHHS	01 DHR 0714	Conner	09/14/01
Calvin Lucas v. Butner Alcohol & Drug Abuse Treatment Center	01 DHR 0738	Morrison	07/02/01
Mollie Williams v. Dept. of Health & Human Services	01 DHR 0753	Conner	07/10/01

⁴ Combined Cases

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Elveter Johnson v. Office of Administrative Hearings	01 DHR 0779	Gray	08/16/01
Fannie Brown v. Caswell Center Healthcare Personnel Registry	01 DHR 0780	Gray	07/02/01
Helen Yoo, Happy Hill Garden v. NC Dept. of Public Health & Human Svcs.	01 DHR 0781	Conner	09/18/01
Margaret Rinkel Sanderlin v. NC Dept. of Health & Human Services	01 DHR 0831	Conner	09/12/01
Donovan Rogers v. Dept. of Health & Human Services	01 DHR 0840	Conner	09/19/01
Monique S. Wearren v. NC Dept. of Health & Human Services	01 DHR 0841	Conner	09/04/01
Donna Faye Smith v. Department of Human Resources	01 DHR 0887	Mann	11/02/01
Robert & Shirley Harmon on behalf of Gary Harmon v. NC DMH/DD/SAS	01 DHR 0955	Chess	06/25/01
Edward D Connor v. Dept. of Health & Human Services	01 DHR 0978	Chess	07/05/01
Subrenia Fillyow v. NC Dept. of Human Resources	01 DHR 0996	Lassiter	08/16/01
Portia A Davis v. Dept. of Health & Human Services	01 DHR 1055	Mann	08/06/01
Dorothy Davis v. Janet Jones RN, HCPR Nurse Investigator	01 DHR 1105	Conner	10/25/01
Shirley A Johnson v. Social Services, State Taxes	01 DHR 1126	Wade	09/19/01
Janet Elizabeth King v. Dept. of Health & Human Services	01 DHR 1185	Morrison	09/11/01
David C Spence v. Walter B Jones, ADATC & NC DHHS	01 DHR 1261	Elkins	10/24/01
Arnetta Thomas v. NC Department of Health & Human Services	01 DHR 1264	Wade	10/26/01
Lisa Dupree v. The State Board of Nurse Aid, Debbie Hockaday	01 DHR 1343	Mann	10/12/01
Constance Lindsey v. The Nurse Aid I Registry	01 DHR 1425	Gray	10/26/01
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Vickie L. Anderson, Camelot Academy v. DHHS, Division of Child Development	00 DHR 1270	Wade	05/22/01
Esther M Huntley, Treasurer, Rainbow Nursery Parents Club, Inc. v. DHHS, Division of Child Development	00 DHR 1419	Gray	09/24/01
Judy Woods Days Care v. DHHS, Div. of Child Development	01 DHR 0084	Wade	10/05/01
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Littleton Pharmacy, Inc. James A King v. DHHS, Division of Medical Assistance, Mary J Coward	01 DHR 0835	Conner	07/12/01
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Division of Facility Services			
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Wendy Denise Callender v. DHHS, Division of Facility Services	00 DHR 0608	Conner	08/17/01
Linda Gail Funke v. DHHS, Division of Facility Services	00 DHR 0625	Wade	06/04/01
Audrey E Alston v. DHHS, Division of Facility Services	00 DHR 1017	Gray	06/14/01
David Mull v. DHHS, Division of Facility Services	00 DHR 1495	Lassiter	06/12/01
Ethlyne Phipps v. DHHS, Division of Facility Services	00 DHR 1505	Conner	07/26/01
Yelton's Healthcare, Inc. v. DHHS, Division of Facility Services	00 DHR 1540	Chess	06/21/01
Jacqueline A Alexander v. DHHS, Division of Facility Services	00 DHR 1586	Gray	06/28/01
Debra Brown v. DHHS, Division of Facility Services	00 DHR 2009	Gray	06/28/01
Kama Kasiah v. DHHS, Division of Facility Services	00 DHR 2203	Lassiter	09/07/01
Dana McQueen v. DHHS, Division of Facility Services	00 DHR 2261	Elkins	06/27/01
Peter Lynn Mosher v. DHHS, Division of Facility Services	01 DHR 0178	Mann	05/30/01
Samuel McKinley Tugman v. DHHS, Division of Facility Services	01 DHR 0512	Gray	07/25/01
Keysha Lynn Ragas v. DHHS, Division of Facility Services	01 DHR 0214	Wade	06/28/01
Tabitha Perry v. DHHS, Division of Facility Services	01 DHR 0330	Mann	10/01/01
Tonitia Langlely v. DHHS, Division of Facility Services	01 DHR 0359	Lassiter	10/16/01
Davina Brook Grant v. DHHS, Division of Facility Services	01 DHR 0363	Conner	06/08/01
Inez M Stephens v. DHHS, Division of Facility Services	01 DHR 0418	Morrison	09/13/01
Tara Livingston v. DHHS, Division of Facility Services	01 DHR 0667	Conner	06/26/01
Dogwood Forest, Nicole Faiger Blackwell v. DHHS, Div. of Fac. Services	01 DHR 0737	Conner	09/19/01
Arlene E Jackson v. DHHS, Division of Facility Services	01 DHR 0740	Morrison	07/11/01
Genevieve McLean v. DHHS, Division of Facility Services	01 DHR 0808	Lassiter	07/03/01
Daphne Michelle Pressley v. DHHS, Division of Facility Services	01 DHR 0863	Morrison	07/27/01
Candice J Smith v. DHHS, Division of Facility Services	01 DHR 0911	Lassiter	07/27/01
Madge B Murray v. NC DHHS, Div. of Facility Services, Health Care Personnel Registry	01 DHR 0953	Conner	09/12/01
Margaret Rose Hiebler v. DHHS, Division of Facility Services	01 DHR 1002	Mann	10/02/01
Chrishana Lindsay-Dixon v. DHHS, Division of Facility Services	01 DHR 1012	Mann	10/12/01
Cleo James v. DHHS, Division of Facility Services	01 DHR 1054	Conner	08/16/01
Nora Michell Trafton v. DHHS, Division of Facility Services	01 DHR 1057	Gray	09/04/01
Rossie Nicole Home v. DHHS, Division of Facility Services	01 DHR 1198	Gray	10/11/01
Tiffany L Wilkerson v. NC DHHS, Div. of Facility Services (Rosemary H. Harrell, RN, BSN)	01 DHR 1279	Chess	09/07/01
Antonio Ray v. NC DHHS, Division of Facility Services	01 DHR 1344	Gray	09/24/01
Michelle Peebles v. NC DHHS, Division of Facility Services	01 DHR 1345	Lassiter	10/19/01
Katie V Parker, RN v. NC DHHS, Div. of Fac. Svcs., Adult Care Lic. Sec.	01 DHR 1423	Wade	10/17/01
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Delie L. Anthony v. Edgecombe Co. Dept. of Social Services Child Abuse and Neglect Dept. Tarsha McCray	01 DHR 0324	Wade	06/18/01
Angel McDowell v. Office of Administrative Hearings	01 DHR 0370	Conner	06/05/01
Kristie N Crabtree v. Greene County Social Services	01 DHR 0401	Lassiter	06/05/01
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Elizabeth Jackson v. DHHS, Dept. of Social Services	01 DHR 0601	Lassiter	06/22/01
John H Anderson v. Bladen County Dept. of Social Services	01 DHR 0605	Morrison	06/22/01
Kishja Marlin v. NC DHHS, Social Svcs. Program Integrity Section	01 DHR 0634	Elkins	07/11/01
Judy P Miller v. Ashe Co. Dept. of Social Services, NC DHHS, Division of	01 DHR 1363	Gray	09/18/01

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Facility Services, Health Care Personnel Registry

ADMINISTRATION

Fordion Packaging, Ltd., Bird Bailey v. Dept. of State Purchasing, J. Arthur Leaston 01 DOA 1001 Gray 08/24/01

JUSTICE

Deona Renna Hooper v. Co. Police Program, Co. Police Administrator 00 DOJ 2177 Wade 06/22/01

Alarm Systems Licensing Board

Edward James Summers v. Alarm Systems Licensing Board 01 DOJ 0352 Morrison 06/13/01
 Joseph Brian Moses v. Alarm Systems Licensing Board 01 DOJ 0582 Wade 06/01/01
 Arthur Eugene Corpening v. Alarm Systems Licensing Board 01 DOJ 0789 Morrison 06/13/01
 Donny Lamor Phillips v. Alarm Systems Licensing Board 01 DOJ 0997 Lassiter 07/24/01
 Stephen Wayne Farmer v. Alarm Systems Licensing Board 01 DOJ 0998 Lassiter 07/24/01
 Lisa Nichols Caviness v. Alarm Systems Licensing Board 01 DOJ 1258 Conner 10/08/01
 Benjamin Sabbath Krizon v. Alarm Systems Licensing Board 01 DOJ 1303 Conner 09/14/01
 James Kevin Hightower v. Alarm System Licensing Board 01 DOJ 1351 Gray 10/12/01

16:10 NCR 947

Private Protective Services Board

Linda Morton Kiziah v. Private Protective Services Board 01 DOJ 0353 Wade 06/01/01
 Willie Carl Wilson v. Private Protective Services Board 01 DOJ 0580 Morrison 06/04/01
 Emar I. Ifediora v. Private Protective Services Board 01 DOJ 0823 Conner 10/16/01
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 Calvin McNair v. Private Protective Services Board 01 DOJ 1000 Lassiter 07/03/01
 Michael David Faris v. Private Protective Services Board 01 DOJ 1271 Gray 10/12/01

Sheriffs' Education & Training Standards Commission

Larry Russell Jackson v. NC Criminal Justice & Trng. Stds. Comm. 00 DOJ 0721 Gray 07/20/01
 Joshua Craig Brothers v. NC Sheriffs' Educ. & Trng. Stds. Comm. 00 DOJ 1558 Elkins 06/12/01
 Wardell R.K. Scott v. NC Sheriffs' Educ. & Trng. Stds. Comm. 00 DOJ 1577 Gray 08/27/01
 Darrick Harris v. NC Sheriffs' Educ. & Training Standards Comm. 00 DOJ 2267 Wade 10/17/01
 Anita Allen Coats v. NC Criminal Justice & Training Stds. Comm. 01 DOJ 0023 Morrison 09/07/01
 Mark J Smith v. NC Sheriffs' Educ. & Training Stds. Comm. 01 DOJ 0470 Gray 10/11/01
 Marcus O Clark v. NC Sheriffs' Educ. & Training Stds. Comm. 01 DOJ 0500 Gray 10/12/01
 James D. Panther v. NC Sheriffs' Educ. & Trng. Stds. Comm. 01 DOJ 0616 Wade 08/29/01
 Christina Hilliard Davis v. NC Criminal Justice & Trng. Stds. Comm. 01 DOJ 0650 Gray 09/28/01
 Gary C Daugherty v. NC Sheriffs' Educ. & Trng. Stds. Comm. 01 DOJ 1267 Chess 10/04/01

DEPARTMENT OF STATE TREASURER

Gwen A Lindsey v. Timothy S Bryan, State of NC, Dept. of State Treasurer, Retirement Systems 00 DST 0727 Mann 08/06/01
 Bruce E. Colvin v. Board of Trustees of the Local Governmental Employees' Retirement System 00 DST 0776 Gray 07/06/01

16:04 NCR 384

ENVIRONMENT AND NATURAL RESOURCES

Leahman Coday, Jr. v. NC DENR 99 EHR 1651 Wade 06/21/01
 Hawley Farms, Inc. v. NC DENR, Div. of Water Quality 99 EHR 1740 Conner 10/25/01
 Roger M Oxindine Jr. v. NC DENR, Div. of Water Quality & Mid South Water Systems, Inc. 00 EHR 0438 Conner 08/17/01
 Thomas E Graham v. NC DENR, Div. of Water Quality & Mid South Water Systems, Inc. 00 EHR 0439 Conner 08/17/01
 Joe Fairlamb, Brenda Fairlamb v. NC DENR, Div. of Water Quality & Mid South Water Systems, Inc. 00 EHR 0440 Conner 08/17/01
 Thomas M Graham v. NC DENR, Div. of Water Quality & Mid South Water Systems, Inc. 00 EHR 0441 Conner 08/17/01
 Paul Blythe, Lori Blythe v. NC DENR, Div. of Water Quality & Mid South Water Systems, Inc. 00 EHR 0448 Conner 08/17/01
 Rusty Eller v. NC DENR, Div. of Water Quality & Mid South Water Systems, Inc. 00 EHR 0449 Conner 08/17/01
 Lisa Oxidine v. NC DENR, Div. of Water Quality & Mid South Water Systems, Inc. 00 EHR 0450 Conner 08/17/01
 Linda M Hickle v. NC DENR, Div. of Water Quality & Mid South Water Systems, Inc. 00 EHR 0501 Conner 08/17/01
 Shannon M Scharm, Alex F Schram v. NC DENR, Div. of Water Quality & Mid South Water Systems, Inc. 00 EHR 0508 Conner 08/17/01
 Jacqueline Smith v. NC DENR, Div. of Water Quality & Mid South Water Systems, Inc. 00 EHR 0509 Conner 08/17/01
 Gary Smith v. NC DENR, Div. of Water Quality & Mid South Water Systems, Inc. 00 EHR 0510 Conner 08/17/01
 Wyatt A Gordon v. NC DENR, Div. of Water Quality & Mid South Water Systems, Inc. 00 EHR 0554 Conner 08/17/01
 Chris Conder v. NC DENR, Div. of Water Quality & Mid South Water Systems, Inc. 00 EHR 0555 Conner 08/17/01
 E Dennis Spring v. NC DENR, Div. of Water Quality & Mid South Water Systems, Inc. 00 EHR 0698 Conner 08/17/01
 David T. Stephenson, owner, John P. Williams, Agent, Lot 86 v. NC DENR (Brunswick County Health Department) 00 EHR 0769¹ Gray 08/07/01
 Anson County Citizens Against Chemical Toxins in Underground 00 EHR 0938 Conner 06/05/01

16:05 NCR 463

16:01 NCR 40

¹ Combined Cases

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Storage, Blue Ridge Environmental Defense League, Inc., Mary Gaddy, Bobby Smith and Emma Smith v. DENR					
Larry Dale McKeel and Robert Morrison Getchell v. NC DENR, Division of Water Quality and NC Dept. of Transportation	00 EHR 1225	Conner	10/19/01	16:11 NCR	1043
Acreege Brokers, Inc., Doug Golightly, Officer, James T. Gullely Jr., (Agent) v. NC DENR (Brunswick County Health Department)	00 EHR 1214 ¹	Gray	08/07/01	16:05 NCR	463
Albert Galluzzo, James T. Gullely, Jr. (Agent) v. NC DENR	00 EHR 1245 ¹	Gray	08/07/01	16:05 NCR	463
David T. Stephenson, Lot 62 v. NC DENR (Brunswick County Health Department)	00 EHR 1249 ¹	Gray	08/07/01	16:05 NCR	463
David T. Stephenson, Lot 65 v. NC DENR (Brunswick County Health Department)	00 EHR 1250 ¹	Gray	08/07/01	16:05 NCR	463
David T. Stephenson, Lot 64 v. NC DENR (Brunswick County Health Department)	00 EHR 1251 ¹	Gray	08/07/01	16:05 NCR	463
David T. Stephenson, Lot 69 +½ 68 v. NC DENR, (Brunswick County Health Department)	00 EHR 1252 ¹	Gray	08/07/01	16:05 NCR	463
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David T. Stephenson, Lot 90 v. NC DENR, (Brunswick County Health Department)	00 EHR 1254 ¹	Gray	08/07/01	16:05 NCR	463
David T. Stephenson, Lot 66 v. NC DENR (Brunswick County Health Department)	00 EHR 1255 ¹	Gray	08/07/01	16:05 NCR	463
David T. Stephenson v. NC DENR, Lot 66					
Sammie Williams and Williams Seafood, Inc. v. NC DENR, Division of Coastal Management	00 EHR 1288	Gray	08/02/01	16:05 NCR	484
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David T. Stephenson v. NC DENR (Brunswick County Health Dept.)	00 EHR 1876 ¹	Gray	08/07/01	16:05 NCR	463
David T. Stephenson v. NC DENR (Brunswick County Health Dept.)	00 EHR 1877 ¹	Gray	08/07/01	16:05 NCR	463
David T. Stephenson v. NC DENR (Brunswick County Health Dept.)	00 EHR 1878 ¹	Gray	08/07/01	16:05 NCR	463
David T. Stephenson v. NC DENR (Brunswick County Health Dept.)	00 EHR 1879 ¹	Gray	08/07/01	16:05 NCR	463
David T. Stephenson v. NC DENR (Brunswick County Health Dept.)	00 EHR 1880 ¹	Gray	08/07/01	16:05 NCR	463
David T. Stephenson v. NC DENR (Brunswick County Health Dept.)	00 EHR 1881 ¹	Gray	08/07/01	16:05 NCR	463
Martin Properties, Mr. David Martin v. Town of Cary, Development Services Dept. Erosion Control Office	01 EHR 0088	Morrison	09/06/01		
Barbara Barham, Angels at Play v. Alamance Co. Health Dept.	01 EHR 0142	Morrison	08/16/01		
Paul J Williams v. NC Dept.of Env. Man. Comm. and Keith Overcash, PE Deputy Director	01 EHR 0212	Lassiter	07/12/01		
Laura Walters v. Environmental Management Commission	01 EHR 0230	Lassiter	07/19/01		
Brandon H Clewis, Christy Swails Clewis v. Chatham County Health Dept., Office of Environmental Health	01 EHR 0305	Lassiter	06/04/01		
James L. Horton v. NC DENR, Division of Land Resources	01 EHR 0310	Conner	08/30/01		
Robin R Moore v. NC DENR	01 EHR 0441	Conner	09/17/01		
David R Wells v. NC DENR, Division of Air Quality	01 EHR 0555	Morrison	10/05/01		
M/I Homes, Donald Fraley v. Durham County	01 EHR 0687	Conner	07/10/01		
Country Lake Estates, by & through David T. Hawks, Manager v. Wm G Ross, Sec. NC Dept of Env. & Natural Resources	01 EHR 0697	Conner	08/17/01		
Earnest F.D. Collier v. Wilson Co. Dept. of Public Health	01 EHR 0699	Mann	10/05/01		
Marc P Walch v. Haywood Co. Health Dept. c/o Daniel F McLawhorn NC DENR	01 EHR 0730	Morrison	06/26/01		
Richard W Brannock v. NC DENR, Div. of Waste Management	01 EHR 0767	Elkins	07/30/01		
Billy James Miller, Jr., Peggy Matthews Miller v. NC Dept. of Health/ Environmental Health Inspections, John Stucky (Inspector)	01 EHR 0934	Elkins	08/02/01		
Mercer Glass v. NC DENR	01 EHR 0935	Conner	09/11/01		
James A Brown v. NC DENR	01 EHR 1197	Elkins	09/17/01		
Southside Mobile Home Park, Southside Trust v. NC DENR	01 EHR 1313	Chess	10/22/01		
<u>ENGINEERS AND LAND SURVEYORS</u>					
NC Bd. of Examiners for Engineers and Surveyors v. C. Phil Wagoner	01 ELS 0078	Overby	07/11/01		
<u>HUMAN RELATIONS COMMISSION</u>					
NC Human Relations Commission on behalf of Jeanette Guffey and Harvey Myers	99 HRC 1383	Wade	08/06/01		
Sara E. Parker v. NC Human Relations Commission	01 HRC 1284	Chess	10/04/01		
<u>DEPARTMENT OF INSURANCE</u>					
Wellpath Select, Inc. v. NC Teachers' & State Employees' Comp.	01 INS 0388	Morrison	07/03/01		
<u>LICENSING BOARD FOR GENERAL CONTRACTORS</u>					
NC Licensing Bd. for Gen. Con. v. Alderman Brothers Construction, Inc. License No. 34455	01 LBC 1146	Elkins	10/10/01		
<u>MISCELLANEOUS</u>					
Tony L. Arnett v. Administrative Office of the Courts	00 MIS 0424	Wade	06/26/01		
Donald Jason Biles v. W -S/Forsyth Zoning Dept et.al., Forsyth Cty District Atty., et.al.	01 MIS 0905	Chess	10/04/01		
Sara Parker v. NC State Bar, Calvin E. Murphy	01 MIS 1714	Lassiter	11/06/01		
<u>OFFICE OF ADMINISTRATIVE HEARINGS</u>					
James Spencer, Jr. v. Office of Administrative Hearings	01 OAH 1115	Chess	10/22/01		
<u>OFFICE OF STATE PERSONNEL</u>					
Debbie Whitley v. Wake County Department of Health	96 OSP 1997	Chess	05/22/01		

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Timothy Ramey v. NC Department of Correction	99 OSP 1085	Chess	06/27/01	
Richard W. Lee v. NC Department of Transportation	99 OSP 1145	Wade	08/29/01	
Miriam Dukes v. Albemarle Mental Health Center Bd. of Directors	00 OSP 0234	Wade	05/22/01	
Angela Ellen Jones v. Mr. Weldon Freeman, Personnel Director, NC Dept. of Crime Control & Public Safety	00 OSP 0345	Lassiter	07/03/01	
Ivan Williams v. DOC, Division of Prisons	00 OSP 0877	Wade	09/17/01	
Andreas K. Dietrich v. NC Highway Patrol; NC Department of Crime Control & Public Safety	00 OSP 1039	Gray	08/13/01	16:06 NCR 550
A. Mark Esposito v. Dept. of Transportation	00 OSP 1333	Gray	06/13/01	
Bobbie D Sanders v. UNC-CH	00 OSP 1806	Chess	06/21/01	16:03 NCR 271
Robert J Lane v. NC Department of Correction, Central Engineering	00 OSP 1841	Elkins	06/26/01	
Natalynn P. Tollison v. NCSU <i>et al</i>	00 OSP 1909	Wade	06/01/01	
Jerrelle B Jones v. DHHS, O'Berry Center	01 OSP 0003	Lassiter	06/26/01	
Kit Locklear v. NC Department of Correction	01 OSP 0106	Elkins	07/17/01	
Andrew E Chambers v. NC Department of Corrections	01 OSP 0172	Morrison	07/12/01	
Roy Kevin Tripp v. NC Department of Correction	01 OSP 0231	Morrison	10/04/01	16:09 NCR 864
Lonnie Sessions v. Columbus Correction Inst.	01 OSP 0240	Gray	05/23/01	
Lee Woodburn v. NC State University	01 OSP 0275	Lassiter	06/21/01	
Marsha A Early v. County of Durham, Dept. of Social Services	01 OSP 0279	Lassiter	10/26/01	
Jamel O. Frazier v. NC Department of Transportation	01 OSP 0334	Anderson	07/06/01	
Arlene R. Burwell v. Warren Correctional Institute	01 OSP 0448	Mann	07/18/01	
Alecia M York v. Fayetteville State University	01 OSP 0598	Mann	10/04/01	
James H. Montayner v. NC Department of Correction	01 OSP 0637	Gray	08/16/01	
Leon Lewis, Jr. v. NC School of Science & Math	01 OSP 0639	Conner	08/17/01	
Lisa Scopee Lewis v. Carteret Correctional Facility	01 OSP 0801	Gray	07/17/01	
Antonio J Ballard Sr. v. Morrison Youth Institution (DOC)	01 OSP 0807	Elkins	10/05/01	
Margaret V Carroll v. Walter B Jones, Alcohol & Drug Treatment Center, Greenville, NC	01 OSP 0851	Conner	08/14/01	
Wanda Lou Mitchell v. Walter B Jones, Alcohol & Drug Treatment Center, Greenville, NC	01 OSP 0852	Conner	08/14/01	
William David Fox v. NC Department of Transportation	01 OSP 0853	Morrison	07/02/01	
Rita D Wilkins v. WNC Reg. Economic Dev. Commission	01 OSP 0857	Morrison	09/21/01	
Lisa M Franklin v. D.A.R.T. Program in DOC	01 OSP 0909	Gray	09/12/01	
Nancy T. Rimmer v. UNC School of Medicine	01 OSP 0952	Gray	08/24/01	
Jeffrey Scott Zaccari v. NC Department of Transportation	01 OSP 0970	Conner	08/17/01	
John A Smith v. Department of Corrections, State of NC	01 OSP 0984	Chess	07/25/01	
Faith J Jackson v. NC Department of Correction	01 OSP 0986	Lassiter	07/12/01	
Sharon Locklear Dean v. Dept. of Juvenile Justice & Delinquency Prevention	01 OSP 1063	Mann	09/17/01	
Steven Swearingen v. NC Department of Correction	01 OSP 1066	Wade	10/17/01	
Lisa C. Wells v. Hyde County	01 OSP 1113	Gray	09/04/01	
Earla Kate Simmons v. WIC Nutrition Program, Brunswick County Health Department, Bolivia, NC	01 OSP 1114	Lassiter	10/30/01	
William S T Young v. NC DOC, Pamlico Correctional Institution	01 OSP 1169	Lassiter	11/02/01	
Calvia Lynn Hill v. Lumberton Correctional Inst., DOC	01 OSP 1205	Conner	08/07/01	
Rose Beam v. Cabarrus County Board of Education	01 OSP 1233	Elkins	09/27/01	
Thomas H Glendinning v. Chatham County	01 OSP 1287	Chess	09/07/01	
James L Ragland v. The Harnett Co. Board of Education	01 OSP 1337	Gray	10/15/01	
<u>UNIVERSITY OF NORTH CAROLINA</u>				
Tammie Davis v. UNC Hospitals & UNC Physicians	01 UNC 0506	Mann	07/13/01	
Jerelle L Perry v. UNC Hospital	01 UNC 0800	Conner	09/18/01	
Lonnie D Watson v. UNC Hospitals	01 UNC 0837	Conner	09/18/01	
<u>WELL CONTRACTORS</u>				
Floyd V. Robertson v. Well Contractor's Certification Commission	01 WCC 0147	Conner	09/19/01	

CONTESTED CASE DECISIONS

STATE OF NORTH CAROLINA

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
00 EHR 1225

COUNTY OF DURHAM

LARRY DALE MCKEEL,)
Petitioner,)
AND)
ROBERT MORRISON GETCHELL,)
Petitioner-Intervenor)
v.)
NORTH CAROLINA DEPARTMENT OF)
ENVIRONMENT AND NATURAL RESOURCES,)
DIVISION OF WATER QUALITY,)
Respondent)
AND)
NORTH CAROLINA DEPARTMENT OF)
TRANSPORTATION,)
Respondent-Intervenor)

RECOMMENDED DECISION

This contested case was heard by the Honorable James L. Conner, II, Administrative Law Judge, on May 23, 24, 25 and June 4, 2001, in Raleigh, North Carolina. The parties filed proposed recommended decisions on August 16, 2001. On September 25, 2001, Chief Judge Mann entered an Order extending the time for filing this Recommended Decision to October 10, 2001, pursuant to 26 NCAC 03 .0126(d).

APPEARANCES

For Petitioner: Larry Dale McKeel, *pro se*, 3559 Hamstead Court, Durham, North Carolina 27707

For Petitioner-Intervenor: Nicole Gooding-Ray, Melany Earnhardt, North State Legal Services, P.O. Box 670, Hillsborough, North Carolina 27278

For Respondent: Jill B. Hickey, Assistant Attorney General, Department of Justice, Environmental Section, P.O. Box 629, Raleigh, North Carolina 27602-0629

For Respondent-Intervenor: Fred Lamar, Lisa C. Glover, Assistant Attorneys General, Department of Justice, Transportation Section, 1505 Mail Service Center, Raleigh, North Carolina 27699-1505

ISSUES

This matter involves issuance by the North Carolina Department of Environment and Natural Resources, Division of Water Quality (DWQ), of 401 Water Quality Certification, Number 3293 (the "Certification"), to the North Carolina Department of Transportation (NCDOT), for a 22 mile freeway in Wayne and Wilson Counties, North Carolina, on June 23, 2000.

The issues to be decided are, as set out by the parties in the Pre-Trial Order:

1. Whether Petitioner and Petitioner-Intervenor can show that DWQ exceeded its authority or jurisdiction, acted erroneously, failed to use proper procedure, acted arbitrarily and capriciously, or failed to act as required by law or rule in determining that there was no practical alternative to the proposed project?
2. Whether Petitioner and Petitioner-Intervenor can show that DWQ exceeded its authority or jurisdiction, acted erroneously, failed to use proper procedure, acted arbitrarily and capriciously, or failed to act as required by law or rule in determining that the project minimized adverse impacts to wetlands or surface waters?

CONTESTED CASE DECISIONS

3. Whether Petitioner and Petitioner-Intervenor can show that DWQ exceeded its authority or jurisdiction, acted erroneously, failed to use proper procedure, acted arbitrarily and capriciously, or failed to act as required by law or rule in determining that there would be no cumulative impacts that would cause a violation of downstream water quality standards?
4. Whether Petitioner and Petitioner-Intervenor can show that DWQ exceeded its authority or jurisdiction, acted erroneously, failed to use proper procedure, acted arbitrarily and capriciously, or failed to act as required by law or rule in determining that there was no alternative to construction of a new road in a Watershed Critical Area?
5. Whether Petitioner and Petitioner-Intervenor can show that DWQ violated the provisions of the North Carolina Environmental Policy Act in issuing the Certification?

WITNESSES

Petitioner and Petitioner-Intervenor presented testimony from the following witnesses, in order of appearance:

1. Robert Morrison Gilbert Getchell, Petitioner-Intervenor
2. Henry Franklin Vick, NCDOT employee (by subpoena)
3. Cynthia Dyson Sharer, NCDOT employee (by subpoena)
4. Cynthia Lynn Bell Karoly, DWQ employee (by subpoena)
5. John Edward Hennessy, DWQ employee (by subpoena)
6. Larry Dale McKeel, Petitioner

Respondent and Respondent-Intervenor presented testimony from the following witnesses, in order of appearance:

(Respondent-Intervenor witnesses)

1. Henry Franklin Vick, NCDOT employee, tendered as an expert in the field of NEPA documents and transportation planning. (T V.II pp. 126-127)
2. Joseph Thomas Peacock, Jr., RK&K Consulting Engineer, tendered as an expert in transportation design and preparation of NEPA documents for transportation projects. (T V.II pp. 173)
3. Cynthia Dyson Sharer, NCDOT employee, tendered as an expert in the field of preparation of NEPA documents and transportation planning. (T V.III p. 15)
4. Michael Gerard Wood, NCDOT employee, tendered as an expert in wetlands delineation and classification. (T V.III p. 83)

(Respondent witnesses)

1. Cynthia Lynn Bell Karoly, DWQ employee
2. John Edward Hennessy, DWQ employee
3. Kenneth Schuster, DWQ employee
4. John Robert Dorney, DWQ employee
5. Kerr T. Stevens, DWQ employee

EXHIBITS RECEIVED INTO EVIDENCE

Petitioner and Petitioner-Intervenor:

- | | |
|----|--|
| 1 | Final Environmental Impact Statement |
| 2 | Supplemental Draft Environmental Impact Statement |
| 3 | Draft Environmental Impact Statement |
| 17 | May 4, 1992 Memo from DEHNR Division of Environmental Management |
| 27 | August 10, 1995 Memo from DEHNR Division of Environmental Management |
| 28 | July 7, 1995 Memo from DENHR Division of Forest Resources |
| 29 | August 9, 1995 Memorandum from NCWRC |
| 30 | February 3, 1993 Letter from US Army Corps of Engineers |
| 31 | March 13, 1995 Letter from US Army Corps of Engineers |
| 32 | July 13, 1995 Letter from EPA |
| 34 | August 11, 1995 Letter from US Department of Interior |

43	Aerial Map of the Preferred Alternative
44	Aerial Map of the Preferred Alternative
45	September 26, 1997 Memo from DEHNR Division of Water Quality
47	October 3, 1997 Letter from EPA
50	Revised Record of Decision
51	April 20, 2000 Letter from the Division
52	June 5, 2000 Letter from NCDOT
56	July 1993 DOT Newsletter
61	Report "Comparison of the Preferred Alternative and Alternative 4X"
63	September 7, 1993 Letter from NCDOT to RK&K
64	NCDOT Response to Petitioner's Revised Discovery Request
65	June 9, 2000 Letter to Mr. Hennessy from Dale McKeel
68	Division Response to Petitioner-Intervenor's Discovery Request
69	Division Response to Petitioner's Discovery Request
70	NCDOT Response to Petitioner-Intervenor's Discovery Request
72A	Goldsboro Thoroughfare Plan
75	Photographs of US 117
76C	AASHTO Green Book on Single Point Interchanges
77	Final EIS for US 70 Project
82	March 6, 2000 letter from Dale McKeel to David King
83	Public Notice from the Army Corps
85	July 20, 1995 Letter from Mr. McKeel to Mr. Vick
86	August 9, 1995 Letter from Mr. Vick to Mr. McKeel
87	August 23, 1995 Letter from Mr. McKeel to Mr. Vick
88	September 20, 1995 Letter from Mr. Vick to Mr. McKeel

Respondent and Respondent-Intervenor:

The following exhibits were offered and received into evidence for Respondent and Respondent-Intervenor:

R1	Final Environmental Impact Statement
R1A	FEIS Table S.1 "Summary of Impacts: US 117 Bypass from US 13 to US 301"
R1B	FEIS Exhibit 2.1-1 "DEIS Preliminary Corridor Segments"
R1C	FEIS Exhibit 2.1-2 "DEIS Alternative Corridors"
R1D	FEIS Exhibit 2.1-3 "SDEIS Alternative Corridor Locations"
R1E	FEIS Exhibit 2.1-4 "FEIS Alternative Corridor Locations"
R2	March 25, 1997 letter from Michael Bell (COE) to H. Franklin Vick (DOT)
R3	April 28, 1997 letter from Michael Smith (COE) to H. Franklin Vick (DOT)
R4	October 7, 1997 letter from Chrys Baggett (DOA) to Whit Webb (DOT)
R5	Record of Decision dated December 2, 1997, with attachments
R6	Revised Record of Decision dated April 28, 1998, with attachments
R7	Memorandum to John Dorney (DWQ) from R.B. Davis (DOT) dated May 1, 1998, with attachments
R8	Memorandum to R.L. Hill (DOT) from William D. Gilmore (DOT) dated July 16, 1998
R9	Letter to William Gilmore (DOT) from John Dorney (DWQ) dated August 24, 1998
R10	Memorandum to Meeting Attendees from Dewayne Sykes, PE (DOT) dated November 9, 1998, with attachments
R11	Letter to Bill Gilmore from Mike Bell dated January 19, 1999
R12	Individual Permit Application for US 117 dated April 28, 1999
R13	Memorandum dated October 22, 1999 to Tommy Stevens from Hennessy and Dorney regarding McKeel's request for public hearing on 401 certification, attaching
R13A	McKeel letter dated Aug. 16, 1999
R13B	Gilmore letter to Dorney dated Sept. 23, 1999
R13C	COE Public Notice dated May 20, 1999
R13D	COE Revised Public Notice dated July 29, 1999
R14	Additional Information for Individual Permit Application for US117 dated March 24, 2000
R15	Letter dated April 10, 2000 to David Franklin (USCOE) from William Gilmore (DOT) enclosing "Comparison of Preferred Alternative and Alternative 4X" dated April 7, 2000, with enlargement of:
R15A	Figure 1. "Alternative Study"
R16	Letter to Bill Gilmore (DOT) from John Dorney (DWQ) dated April 20, 2000
R17	Letter to John Dorney (DWQ) from William Gilmore (DOT) dated June 5, 2000, with attachments

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- R18 Memorandum to Kerr T. Stevens (DWQ) from Kenneth Schuster (DWQ) dated June 25, 2000 enclosing Hearing Officer's Report
- R19 401 Water Quality Certification dated June 23, 2000
- R21 Letter from William Cox (EPA) to Col. James DeLony (COE) dated July 12, 2000
- R22 Letter to Cindy Sharer (DOT) from J.T. Peacock dated July 24, 2000
- R24 COE 404 Permit dated August 16, 2000
- R27 Petitioner's Responses to Respondent's Discovery Requests
- R28 Petitioner's Responses and Supplemental Responses to Respondent-Intervenor's Discovery Requests
- R29 Petitioner-Intervenor's Responses to Respondent's Discovery Requests
- R30 Petitioner-Intervenor's Responses and Supplemental Responses to Respondent-Intervenor's Discovery Requests
- R31 Memo to Mike Bell (COE) from Michael Wood (DOT) dated May 28, 1998
- R33 Memo to Meeting Attendees from Dewayne Sykes (DOT) dated August 3, 1998
- R34 Memo to Meeting Attendees from Dewayne Sykes (DOT) dated September 23, 1998
- R35 Memo to Roy Shelton (FHWA) from Dewayne Sykes (DOT) dated October 8, 1998
- R38 "Relocation Report" for Preferred Alternative and Alternative 4X dated May 15, 2000
- R40 NCDOT "Project Environmental Consultation Form" for R-1030, segment A
- R41 Functional Design Map - Alternative 4X
- R42 Design Map - Preferred Alternative
- R43 Design Map exhibited at Public Hearing

STATUTES AND RULES IN ISSUE

The substantive statutes involved are N.C. Gen. Stat. §§143-282 , 143-211, *et seq.*, and 143B-282(1)(u), the Water Quality Certification Rules at 15A NCAC 2H.0501 *et seq.*, the Water Quality Rules at 15A NCAC 02B .0101 *et seq.*, the North Carolina Environmental Policy Act at N.C. Gen. Stat. 113A-3, *et seq.*, the North Carolina Environmental Policy Act Rules at 1 NCAC 25.0101, *et seq.*, the Federal Water Pollution Control Act or Clean Water Act, 33 U.S.C. 1311 *et seq.*, and related statutes and rules.

MOTIONS FOR SUMMARY JUDGMENT

An Amended Scheduling Order was entered in the instant case on March 8, 2001. On April 19, 2001 Petitioner and Petitioner-Intervenor filed a Joint Motion for Summary Disposition requesting summary judgment on all issues. Respondents filed a Motion for Partial Summary Judgment on April 19, 2001 requesting that summary judgment be granted in their favor on whether the Division of Water Quality complied with the provisions of the North Carolina Environmental Policy Act ("NCEPA"). Respondent-Intervenor filed a Motion for Partial Summary Judgment on April 19, 2001 requesting that summary judgment be granted in its favor on whether the NCDOT complied with provisions of NCEPA or the National Environmental Policy Act (NEPA).

After a hearing on dispositive motions held on April 24, 2001, the court denied all the motions for summary judgment of Petitioner and Petitioner-Intervenor in an Order filed on April 26, 2001. In its April 26, 2001 Order, the court requested further briefing from the parties concerning the applicability of the North Carolina Environmental Policy Act ("NCEPA," N.C.G.S. §§ 113A-1-13) to DWQ's issuance of a 401 Certification for NCDOT projects. On May 16, 2001, after consideration of the briefs concerning the applicability of NCEPA to DWQ under the circumstances of this case, the court found that under NCEPA, the environmental documents prepared by NCDOT and DWQ's reliance on those environmental documents is reviewable in conjunction with the review of DWQ's 401 Certification action.

Pursuant to N.C. Gen Stat. 50B-34 and -36, these rulings on the motions for summary judgment are parts of this recommended decision. All such rulings are hereby incorporated herein.

PROCEDURAL BACKGROUND

1. Petitioner timely filed a Petition for a Contested Case on August 21, 2000 contesting the issuance of the Certification by the Division.
2. Respondent-Intervenor filed a Motion to Intervene as a Party on September 28, 2000. The undersigned issued an Order dated October 10, 2000 denying Respondent-Intervenor's Motion.
3. Petitioner-Intervenor filed a Motion to Intervene as a Party on November 27, 2000.
4. Respondent-Intervenor filed a Motion to Reconsider on December 12, 2000.
5. The undersigned issued an Order dated December 28, 2000, allowing the intervention of both Petitioner-Intervenor and Respondent-Intervenor.

FINDINGS OF FACT

Parties.

1. Petitioner Larry Dale McKeel grew up in the Little River Valley in close proximity to the proposed highway project. (Tr. 5/24/01, p.59). His parents still live in the house where he grew up. (Tr. 5/24/01, p.58). Mr. McKeel participated in public meetings about the proposed highway project and has worked on the project since the late 1980s. (Tr. 5/24/01, p.60-61). He has written approximately seventy-five letters to various state and federal agencies regarding the project. (Tr. 5/24/01, p.62).

2. Petitioner-Intervenor Robert Getchell lives at 1008 Guilford Street in Goldsboro, North Carolina. (Tr. 5/23/01 p. 47). His house is in the path of the proposed highway and if the project is built, he will lose his house and property. (Tr. 5/23/01 p.48-49). If the proposed highway was built, Mr. Getchell would have to relocate. (Tr. 5/23/01 p. 49) Mr. Getchell testified that he knew of no other sites available along the river where he could relocate. (Tr. 5/23/01 p. 49). Mr. Getchell operates a business, Little River Tours, which takes people on canoe trips down the Little River. (Tr. 5/23/01 p.50). If the proposed highway project is built, it will destroy his access to the Little River from his home. (Tr. 5/23/01 p. 50-51). Mr. Getchell testified that he was concerned about the quality of the water if the proposed highway was built. (Tr. 5/23/01 p. 53).

3. The Respondent is the North Carolina Department of the Environment and Natural Resources, Division of Water Quality, (the "Division"), the state agency authorized to issue 401 Water Quality Certifications and responsible for the review of the 401 Certification application and issuance of the 401 Certification that is the subject of this contested case.

4. The Respondent-Intervenor is the North Carolina Department of Transportation ("NCDOT"), the applicant for the 401 Water Quality Certification that is the subject of this contested case.

Background.

5. The agency action challenged by Petitioner and Petitioner-Intervenor is the issuance by the DWQ of a water quality certification to NCDOT pursuant to section 401 of the federal Clean Water Act, 33 U.S.C. § 1341. The 401 water quality certification certifies to the United States Army Corps of Engineers ("the Corps") that NCDOT's placement of fill material in 37.48 acres of jurisdictional wetlands and 4111 linear feet of streams in Wayne and Wilson Counties for the purpose of constructing improvements to US 117 from Wilson to Goldsboro (project R-1030) will not violate State water quality law.

6. Over fifteen years ago, NCDOT scheduled a project to make improvements along the US 117 Corridor between Wilson and Goldsboro, North Carolina to accommodate traffic growth ("Project R-1030"). (Tr. 5/24/01, p. 127).

7. NCDOT hired a consulting firm, Tams, Inc., to prepare a Draft Environmental Impact Statement ("DEIS") for Project R-1030 (Tr. 5/24/01, p.127). The DEIS was issued on March 24, 1992. (Petitioner's Exhibit 3.)

8. The Intermodal Surface Transportation Efficiency Act (ISTEA) was passed by the United States Congress in 1991. ISTEA appropriated money for an interstate connector between I-40 and I-95.

9. A Supplemental Draft Environmental Impact Statement ("SDEIS") for Project R-1030 was issued on April 25, 1995. (Petitioner's Exhibit 2).

10. A Final Environmental Impact Statement ("FEIS") for Project R-1030 was issued on July 31, 1997. (Petitioner's Exhibit 1).

11. A Record of Decision was issued on December 2, 1997. A Revised Record of Decision for Project R-1030 was issued on April 28, 1999. (Petitioner's Exhibit 50).

12. NCDOT applied for a 401 Water Quality Certification from the Division in 1999. Its application was considered complete on June 5, 2000. (Respondent's Exhibit 18).

13. On June 23, 2000, the Division issued a 401 Water Quality Certification No. 3293 (the "Certification"), to NCDOT for Project R-1030. (Petitioner's Exhibit 53).

Contested Issue #1 – Practical Alternatives to the Proposed Project

All findings of fact herein apply to all contested issues, as appropriate. Headings are aids to understanding only.

14. The original purpose of Project R-1030 was to evaluate the safety and traffic handling capacity of existing U.S. 117. (Tr. 5/23/01 p. 75).

15. The DEIS created a project “study area” to allow a thorough analysis of alternatives. (Tr. 5/24/01, p.129). From this study area, the DEIS examined a number of different alternatives and selected three for detailed study. These three alternatives were:

- a. Alternative 1, which consisted of widening the existing U.S. Highway 17 with a bypass around Pikeville and Fremont (Petitioner’s Exhibit 3; Tr. 5/23/01 p. 72-3);
- b. Alternative 2, which consisted of a freeway at a new location west of Goldsboro (Petitioner’s Exhibit 3; Tr. 5/23/01 p. 73); and
- c. Alternative 4, which consisted of widening the existing U.S. 117 at the southern end and then curving west as an expressway and then becoming a freeway (Petitioner’s Exhibit 3; Tr. 5/23/01 p. 73).

16. In order to determine whether the Alternatives met the project purpose, an analysis of traffic capacity and safety was performed. (Petitioner’s Exhibit 3).

a. Traffic Capacity was examined using a “Level of Service” (“LOS”) analysis. This analysis looks at the vehicle or traffic volumes based on the number of lanes, and as volumes increase and the ability of the facility to handle the traffic volume deteriorates, different Levels of Service are assigned. (Tr. 5/23/01 p. 76). The levels of service are given an ‘A’ through ‘F’ designation, with A being the very highest, completely free-flowing traffic and D, E and F having breakdowns in the travel lane. (Tr. 5/23/01 p. 76) Although NCDOT likes to design a highway so that a level of service of B or C is maintained in the design year (usually 20 to 25 years in the future), it has built facilities at level of service D. (Tr. 5/23/01 p. 76-7)

b. The DEIS indicated that if Alternative 1 was built, it would have operated at a LOS C (Tr. 5/23/01 p. 78); if Alternative 2 was built, it would have operated at an acceptable level of service, except certain segments which would operate at LOS ‘D’ (Tr. 5/23/01 p. 78-9); and if Alternative 4 was built, it would operate at LOS A-C (Tr. 5/23/01 p. 82-83).

c. The DEIS indicated that if Alternative 2 were built, the existing US 117 would operate at various levels of service from A to F. (Tr. 5/23/01 p. 81). If Alternative 4 were built, the existing US 117 would operate at LOS C. (Tr. 5/23/01 p. 84).

d. The DEIS also examined each alternative to determine the accident rate. (Tr. 5/23/01 p. 84). The DEIS indicated that for Alternative 1, there would be 3 fatal accidents and 262 total accidents (Tr. 5/23/01 p. 84); for Alternative 2, one fatal and 76 total; and for Alternative 4, 1 fatal and 85 total (Tr. 5/23/01 p. 84). The DEIS did not include information on how the alternatives would impact the safety of the existing US 117, except for Alternative 1. (Tr. 5/23/01 p. 85).

17. State and federal agencies provided comments on the DEIS, as follows:

a. The U.S. Environmental Protection Agency (“EPA”) stated a preference for Alternative 1. (Tr. 5/23/01 p. 85-6).

b. The North Carolina Department of the Environment and Natural Resources’ Division of Forest Resources stated a preference for Alternative 1 (Tr. 5/23/01 p. 86).

c. The North Carolina Wildlife Resources Commission stated a preference for Alternative 1. (Tr. 5/23/01 p. 86).

d. The North Carolina Department of the Environment and Natural Resources’ Division of Environmental Management commented as follows:

DEM recommends that Alternative 1 be the preferred route because it would not impact the Little River drinking water source. It has the lowest impact on acreages, both natural and prime farmland, wetlands, stream crossings, floodplains relocations and total cost.

(Tr. 5/23/01 p. 88). The Division of Environmental Management was the predecessor to the Division of Water Quality. (Tr. 6/04/01 p. 14)

e. The United States Army Corps of Engineers (“Army Corps”) also provided comments on the DEIS as follows:

Based on our review of the existing environmental documentation, alternative 1 is clearly the least damaging build alternative considered that would satisfy the project need and purpose as described in the existing environmental documentation.

(Tr. 5/23/01 p. 90).

18. The DEIS indicated that Alternative 1 would impact thirty-eight acres of wetlands, involve seven stream crossings, cause forty-nine total relocations and cost 46 million dollars. The DEIS indicated that Alternative 2 would impact ninety-three acres of wetlands, cross eighteen streams, cause fifty-four relocations and cost 75 million dollars. The DEIS indicated that Alternative 4 would impact sixty-five acres of wetlands, cross eleven streams, cause fifty relocations and cost 69 million dollars. (Petitioner's Exhibit 3).

19. NCDOT chose Alternative 2 as its "Preferred Alternative" on May 7, 1993, stating:

After careful review of the impacts on the human and natural environments, and after weighing comments on the project by the public and government agencies, the NCDOT identified Alternative 2 as the preferred route.... Alternative 2 was chosen because it provides the best design and can best handle future traffic needs of the area. This alternative has the support of the majority of the public and elected officials.

(Petitioner's Exhibit 2).

20. A NCDOT newsletter dated July 1993 indicated that if Alternative 1 was upgraded to a freeway it would cause 390 relocations and if Alternative 4 was upgraded to a freeway it would cause 158 relocations and traffic congestion and operation problems. (Tr. 5/23/01 p. 132-3, Exhibit 56).

21. After the DEIS was issued, NCDOT made a decision that ISTEPA required the Project R-1030 to be constructed as a freeway. (Tr. 5/23/01 p. 93; Petitioner's Exhibit No. 2). A freeway is a full controlled access facility – the only way one can get on the facility is through interchanges. (Tr. 5/23/01 p.117). The text of ISTEPA does not require Project R-1030 to be constructed as a freeway. (Petitioner's Exhibit 50).

22. At the request of the US Army Corps, a SDEIS was prepared in order to evaluate different freeway alignments. (Tr. 5/23/01 p. 113). RK&K consultants were hired to prepare the SDEIS. (Tr. 5/23/01 p. 126).

23. The purpose of the project changed in the SDEIS to include that the project function as an interstate connector. (Tr. 5/23/01 p. 134). The freeway alternatives were not evaluated to determine whether they would meet this project purpose. (Tr. 5/23/01 p. 134, Petitioner's Exhibit 2 and 3).

24. The consultants were asked to justify the selection of the preferred alternative. (Exhibit 63, Tr. 5/23/01 p. 129). The consultants were not asked to determine which location within the study area would be the best for a freeway. (Tr. 5/23/01 p. 129). Instead NCDOT outlined several alternatives for the consultants. (Tr. 5/24/01 p.177). These alternatives included the Preferred Alternative, Alternative 1A, which was Alternative 1 from the DEIS converted to a freeway, Alternative 4A, which was Alternative 4 from the DEIS converted to a freeway and a Western Alternative. (Tr. 5/23/01 p. 129-130).

25. The western alternative was eliminated in the SDEIS because it crossed the Little River twice, it was difficult to create an interchange with 70 and it impacted a larger quantity of wetlands than the other alternatives. (Tr. 5/24/01 p.180). The western alternative was not studied in detail in any of the environmental impact statements (Tr. 5/24/01 p.241; Petitioner's Exhibits 1, 2 and 3).

26. The SDEIS indicated that Alternative 1A would impact forty-nine acres of wetlands, the Preferred Alternative would impact sixty-two acres of wetlands and Alternative 4A would impact forty-eight acres of wetlands. (Tr. 5/23/01 p. 138).

27. The SDEIS and FEIS indicate that the Preferred Alternative was the only alternative studied that ran through the Critical Watershed Area. (Tr. 5/23/01 p. 138-9)

28. The FEIS was completed and signed by NCDOT on July 23, 1997 and by FHWA on July 31, 1997, and identified alternatives 1A, 4A and the Preferred Alternative as feasible alternatives that would meet the purpose and need of the project and function as freeway alternatives.

29. The FEIS examined the same alternatives that were examined in the SDEIS. (Tr. 5/23/01 p. 144). The FEIS indicates that the Preferred Alternative would affect sixty-two acres of wetlands prior to wetlands delineation and forty-two after delineation; Alternative 1A would affect forty-nine acres of wetlands (Tr. 5/23/01 p. 151) and Alternative 4A would affect 48 acres prior to wetlands delineation and 37 with the preliminary design (Tr. 5/23/01 p. 152).

30. Although the Preferred Alternative indicated greater impacts to wetlands than the other two feasible alternatives, Alternatives 1A and 4A were determined not to be reasonable because of their disproportionate impacts to residences (193 for 1A, 68 for 4A, and 46 for the Preferred Alternative), businesses (72 for 1A, 39 for 4A, and 7 for the Preferred Alternative), churches (5 for 1A, 1 for 4A, and 0 for the Preferred Alternative) and, in addition, Alternatives 1A and 4A impacted a public park (while the Preferred Alternative did not impact a public park).

31. The traffic analysis was updated in the FEIS. This analysis indicated that if the Preferred Alternative was built, it would operate at LOS A-C (Petitioner's Exhibit 1, p. 2-21); if Alternative 1A were built, it would operate at "satisfactory levels of service" except for two ramps and two weaving sections (Petitioner's Exhibit 1, p. 2-23); and if Alternative 4A were built, it would operate at "satisfactory levels of service (Petitioner's Exhibit 1, p. 2-24).

32. The FEIS provided an analysis of safety for the Preferred Alternative and a non-build alternative, but did not provide an analysis of safety for Alternatives 1A or 4A. (Petitioner's Exhibit 1, p. 1-10 – 1-13).

33. Federal and state agencies provided comments on the FEIS, including these:

- a. Cynthia Karoly wrote a memorandum for the Division of Water Quality commenting on the FEIS. (Tr. 5/24/01, p. 10). She stated that "[a]t no time has the Division concurred with NCDOT's Preferred Alternative." (Petitioner's Exhibit 45).
- b. The EPA commented:

Impacting a high quality resource with such a project is ill-advised, considering the river's present use, quality and fisheries habitat, when alternatives are available. Regardless of how well pollutants from construction activity are controlled, long term degradation is likely to result because of the relatively small watershed and exceptional quality compared to the Neuse River. If in the future the Little River cannot meet water supply and HQW criteria, this would be inconsistent with the goals and objectives of the Federal Clean Water Act.

(Petitioner's Exhibit 47). The EPA went on to point out a number of problems with the FEIS:

- The Preferred Alternative presents the greatest impacts to the Little River
- The Preferred Alternative is too close to the surface water
- The FEIS does not include an assessment of the secondary impacts of Economic development
- The FEIS is not specific enough about water quality protection
- The discussion of noise mitigation is confusing
- The compensatory mitigation of wetlands is not properly addressed

(Petitioner's Exhibit 47).

34. The FEIS concluded that the Preferred Alternative from the SDEIS would remain the Preferred Alternative. (Petitioner's Exhibit 1).

35. The Record of Decision (ROD) approving the selection of NCDOT's Preferred Alternative by FHWA was signed on November 11, 1997.

36. A revised Record of Decision (Revised ROD) was re-issued by FHWA on April 20, 1998, for the purpose of including comments from the public, and to include comments specifically from the Petitioner, his parents and the Neuse River Foundation.

37. Both the original and the Revised Record of Decision concluded that the Preferred Alternative would remain the Recommended Alternative. (Petitioner's Exhibit 50).

38. The basis for FHWA's approval of NCDOT's Preferred Alternative in the ROD includes (i) fewer total relocations for the Preferred Alternative (270 for 1A, 108 for 4A, and 53 for the Preferred Alternative); (ii) the Preferred Alternative provides the best connection with existing US 13 - US 117 in Goldsboro; (iii) the Preferred Alternative does not impact a "Section 4(f)" park property; (iv) the Preferred Alternative does not require upgrading and widening the existing US 13 - US 70 Bypass between US 117 Business and NC 581; and, (v) at the northern terminus of the project, the Preferred Alternative provides a better freeway to freeway connection and best meets the intent of ISTEA legislation which designates US 117 as an interstate connector route.

39. The Record of Decision (Petitioner's Exhibit 50) included comments from many different agencies on the FEIS and the Project itself. The Federal Highway Administration commented that

Although Section 1106 of the Intermodal Surface Transportation Efficiency Act of 1991 included special funding for an "Interstate link" between I-95 and I-40, the law did not require that this link be built entirely to freeway standards that would allow the highway to be incorporated into the Interstate System.

40. Mr. Henry Franklin Vick has a B.S. in civil engineering from North Carolina State University. (Tr. 5/24/01 p. 120) He is a Professional Engineer. (Tr. 5/24/01 p. 120) Mr. Vick is currently employed as the unit head for the feasibility studies unit of NCDOT. He has been employed in various capacities at NCDOT including as a Project Engineer, Assistant Manager and Manager of the Planning and Environmental Branch. (Tr. 5/24/01 p. 120)

41. Mr. Vick was involved in hiring consultants to prepare a DEIS for Project R-1030 (Tr. 5/23/01 p. 69) and in the decision to choose Alternative 2 as the Preferred Alternative (Tr. 5/23/01 p. 85). Mr. Vick reviewed documents received by the state clearinghouse in response to the DEIS (Tr. 5/23/01 p. 85); and provided oversight of preparation of the Supplemental Draft Environmental Impact Statement (Tr. 5/23/01 p. 94) and the Final Environmental Impact Statement (Tr. 5/23/01 p. 95).

42. Mr. Vick testified that without construction of the other portions of the interstate link, the project would not function as a link. (Tr. 5/24/01 p.148).

43. Ms. Cynthia Sharer, an employee of NCDOT, was involved in the preparation of Supplemental Draft Environmental Impact Statement for Project R-1030 and the preparation of the Final Environmental Impact Statement (TR 5/23/01 p. 126).

44. Cynthia Sharer testified that each of the freeway alternatives would meet the purpose and need for the project to function as an interstate connector (Tr. 5/23/01 p. 134).

45. Cynthia Bell Karoly, an employee of the Division, reviewed the final environmental impact statement for Project R-1030 and wrote a memorandum for the Division of Water Quality commenting on the FEIS. (Tr. 5/24/01, p. 10).

46. Cynthia Karoly testified that she did not know whether NCDOT took into account the costs associated with wetland and stream mitigation in its cost estimates for construction of different alternatives. (Tr. 6/4/01 p. 57-8)

47. During the NEPA environmental document preparation process, DWQ initially expressed preference for Alternative 4A, rather than the Preferred Alternative, because of the impact on the critical watershed and greater impacts to wetlands presented by the Preferred Alternative. After NCDOT committed to implementing site-specific wetland avoidance and minimization measures and agreed to comply with the newly issued Neuse Buffer Rules (15A N.C.A.C. 02B.0233), DWQ issued a letter dated August 24, 1998 to NCDOT, in which it concurred with NCDOT on the Preferred Alternative, in light of the range of impacts of the other alternatives on the human and natural environment, including the larger number of relocations required by the other alternatives.

48. On or about April 28, 1999, NCDOT submitted an application for a 404 permit to the Corps and a 401 Certification to DWQ pursuant to 15A N.C.A.C. 2H.0501 *et seq.* for the construction of R-1030 addressing various avoidance and minimization measures including the identification of mitigation for wetland impacts.

49. NCDOT presented only one route, with no alternatives, to the Division in its application for the 401 Water Quality Certification. (Tr. 5/24/01, p.17).

50. On or about August 16, 1999, Petitioner requested DWQ hold a public hearing concerning NCDOT's application for a 401 Certification for R-1030. DWQ held the public hearing on March 14, 2000 pursuant to 15A N.C.A.C. 2H.0503 and 2H.0504.

51. At the request of the Army Corps of Engineers, NCDOT prepared a report comparing Alternative 4X, originally discarded in 1991, with the Preferred Alternative (Tr. 5/23/01 p. 160). RK & K, who had prepared the Final Environmental Impact Statement, prepared this report. (TR 5/23/01 p. 160).

52. In a letter dated April 20, 2000, DWQ made an additional information request of NCDOT based upon comments made at the public hearing. DWQ requested that NCDOT (i) explain why it had eliminated "Alternative 4X" during the preliminary segment alternative analysis; (ii) discuss the "Missing Link" portion of planned improvements to US 117 south of Goldsboro; and (iii) discuss the location of the proposed project terminus.

53. DWQ's request for information about Alternative 4X was answered by a report from RK&K entitled "Comparison of Preferred Alternative and Alternative 4X" and dated April 7, 2000. Although Alternative 4X would avoid the critical watershed area, it would require 93 more relocations than the Preferred Alternative, would impact 18.8 more acres of wetlands, and would cost \$40 million more than the Preferred Alternative. Based on this information, NCDOT reaffirmed its previous position that Alternative 4X was not reasonable and feasible.

54. Tommy Peacock, a professional engineer with RK&K, worked on Project R-1030 while he was employed at the NCDOT. (Tr. 5/24/01 p. 173; Tr. 5/25/01 p. 127). He also worked on Project R-1030 at RK&K when they were awarded the contract to prepare the SDEIS and FEIS. (Tr. 5/24/01 p. 173). Mr. Peacock indicated that RK&K spent approximately 7 1/2 years developing the design for the Preferred Alternative and approximately 3 weeks developing the design for Alternative 4X (Tr. 5/25/01 p. 130-132).

55. In comparing Alternative 4X with the Preferred Alternative, a functional design was used for Alternative 4X and a preliminary design was used for the Preferred Alternative (TR 5/23/01 p. 161). A preliminary design is based on better mapping and is done with control aerial photography rather than aerial photography that has slight deviations in the scale. (Tr. 5/23/01 p. 151).

56. Efforts to minimize environmental, social and economic costs were greater for the Preferred Alternative than Alternative 4X (Tr. 5/23/01 p. 161-2).

57. In determining impacts on wetlands, a wetland delineation was done for the preferred alternative, but a determination, which is not as detailed a field study as a delineation, was done for Alternative 4X (Tr. 5/23/01, p. 177). Wetland delineation would allow the agency to adjust a highway to avoid impacts to wetlands. (Tr. 5/23/01 p. 177).

58. NCDOT later submitted the report on the Preferred Alternative and Alternative 4X to the Division. The Division did not examine any other alternatives during its review of NCDOT's application. (Tr. 5/24/01, p.18). The Division did not create its own alternatives during its review of NCDOT's application. (Tr. 5/24/01, p.17-18).

Contested Issue #2 – Minimizing Adverse Impacts to Wetlands

59. Mr. John Hennessy is the NCDOT Permit Coordinator for the Division of Water Quality .

60. Mr. Hennessy testified that every wetland is a distinct system in and of itself and provides distinct functions that have various effects upon water quality. (Tr. 5/24/01, p.21).

61. The Division did not determine the existing uses of the specific wetlands impacted by Project R-1030 (Tr. 5/24/01, p. 18-28; Tr. 6/04/01 p. 118).

62. Prior to submitting an application for a Section 401 Certification and Section 404 Permit, NCDOT staff walked the entire length of the corridor of the Preferred Alternative for R-1030 in the wetland and stream impact areas for the purpose of identifying significant water resources.

63. A field inspection and meeting was held on June 4 and 5 of 1998 between a NCDOT wetland specialist and various resource and regulatory agencies including personnel from DWQ and the Corps for the purpose of obtaining consensus on the high quality resources that should be avoided or upon which the impacts should be minimized and on special consideration for avoidance and minimization efforts near the crossing of Black Swamp, Great Swamp, Nahunta Swamp and Smith Mill Run.

64. Pursuant to DWQ and Corps requests, NCDOT agreed to numerous avoidance and minimization efforts, including: R-1030 was shifted away from the Little River such that a 25 meter buffer will be maintained between the construction footprint and the top of the slope which falls toward the Little River; a high quality riverine wetland at station 268+00 will be bridged at a cost of \$1.8 million; the riverine wetlands at Black Swamp, Great Swamp, and Nahunta Swamp will be bridged; Salem Church Road, a secondary road being relocated as part of the project, was shifted to cross the wetlands at Smith Mill Run at a narrower spot; and R-1030 was shifted east to avoid an uncommon, ephemeral wetland type at stations 18+040 to 18+200, which wetland was eventually purchased by NCDOT.

65. Wetlands destroyed by Project R-1030 are to be replaced with a mitigation site located at Wiggins Mill near Wilson, North Carolina. (Tr. 5/24/01, p.25). The Wiggins Mill site is up to 18 miles away from some of the wetlands that are being replaced. (Tr. 5/24/01, p.25).

Contested Issue #3 – Cumulative Impacts

66. The SDEIS did not examine cumulative impacts associated with Project R-1030. (Tr. 5/23/01 p. 135).

67. The FEIS did not examine cumulative impacts (Tr. 5/23/01 p. 154, Exhibit 50).

68. The section in the FEIS dealing with secondary impacts was boilerplate language that was used in another FEIS for the U.S. Highway 1 project. This language had no specific application to Project R-1030 and evinced no actual consideration of cumulative or secondary impacts associated with Project R-1030. (Tr. 5/24/01 p.158, Exhibits 1 and 59).

69. None of the Environmental Impact Statements prepared by NCDOT for Project R-1030 examined the cumulative impacts of the U.S. 70 Bypass Project planned for Goldsboro, North Carolina. (Tr. 5/23/01 p. 136, 154-155). Although there was an FEIS for the Highway 70 Bypass project, the Division of Water Quality did not examine this document (Tr. 5/24/01, p.29). The Highway 70 project was in the “immediate area” of R-1030, and the Division was aware of it. (Tr. 5/24/01 p. 29).

70. None of the Environmental Impact Statements prepared by NCDOT for Project R-1030 examined the cumulative impacts of the U.S. 264 Bypass project planned for Wilson, North Carolina. (Tr. 5/23/01 p. 136, 154-155). The Division did not consider cumulative impacts from the U.S. 264 Bypass and did not examine the FEIS for that project. (Tr. 5/24/01, p.30).

71. None of the Environmental Impact Statements prepared by NCDOT for Project R-1030 examined the cumulative impacts of the Global Transpark. (Tr. 5/23/01 p. 136, 154-155). The Division did not consider cumulative impacts from the Global Transpark. (Tr. 5/24/01, p.31). NCDOT recognized that the project would improve access to the Global Transpark and could encourage development at the Transpark. (P. Exhibit 52, p. 4).

72. None of the Environmental Impact Statements prepared by NCDOT for Project R-1030 examined the cumulative impacts of construction of the next part of the interstate link. (Tr. 5/23/01 p. 136, 154-155). The Division did not consider cumulative impacts from the other segments of the interstate connector (Tr. 5/24/01, p.34). The Division of Water Quality made a determination that project R-1030 had independent utility and was a “complete project” and therefore, it did not examine the entire interstate connector when reviewing the 401 Water Quality Certification. (Tr. 5/24/01, p.34-36). The Division made this determination based on the fact that Project R-1030 fulfilled a purpose of increasing traffic capacity. (Tr. 6/04/01, p. 113). Mr. Hennessy testified that he had never made a decision that any project was not a “complete project” after NCDOT had submitted its application for a water quality certification. (Tr. 5/24/01, p.36).

73. None of the Environmental Impact Statements prepared by NCDOT for Project R-1030 examined the cumulative impacts of runoff from golf courses or runoff from agricultural activities in the area. (Tr. 5/23/01 p. 136, 154-155).

74. There is no written documentation of any discussions or investigation into cumulative impacts of Project R-1030 by the Division. (Tr. 5/24/01, p.36).

75. The Division of Water Quality requested more information on cumulative and secondary impacts from NCDOT in a letter dated April 20, 2000 (Tr. 5/24/01, p.37-38, Exhibit 51). NCDOT responded with a letter dated June 5, 2000 (Tr. 5/24/01, p.38-39, Exhibit 52). This response did not include any reference to the U.S. 70 Bypass, the U.S. 264 Bypass, runoff, or impacts to wetlands or surface waters (Tr. 5/24/01, p.39-40). The response was primarily a justification of the failure to do cumulative impacts analysis, and a general recitation of what might be done in a cumulative impacts analysis. (Exhibit 52).

Contested Issue #4 – Critical Watershed Area

76. The DEIS did not mention the Little River Critical Watershed Area (Tr. 5/24/01 p.161, Petitioner’s Exhibit 3). However, the SDEIS did identify the critical watershed area.

77. Cynthia Karoly testified that NCDOT has complied with the Division’s requests regarding the critical watershed area because NCDOT had contacted the City of Goldsboro and the City of Goldsboro did not express a concern with NCDOT’s preferred alternative. (Tr. 6/04/01 p. 37).

78. In addition, however, final design plans for R-1030 incorporated measures to minimize impact to the critical watershed including the construction of hazardous spill catch basins, vegetated swales to divert storm water runoff through the project corridor, and elimination of weep holes in bridges that cross creeks.

79. As discussed above, there were several alternatives which the Division did not examine which would have avoided the Critical Watershed Area, including Alternatives 1, 1A, 4, 4A and 4X. The Division did not make its own analysis of these alternatives, but relied on NCDOT’s determination that these alternatives were not practicable.

Contested Issue #5 – NCEPA Violations

80. The Division did not issue an Environmental Assessment, Finding of No Significant Impact or Environmental Impact Statement for Project R-1030. The Division did not publish a Record of Decision for Project R-1030.

81. None of the documents produced by the Division were submitted to the State Clearinghouse for circulation to state and federal agencies.

CONTESTED CASE DECISIONS

82. None of the environmental documentation prepared by either NCDOT or the Division examined each alternative to determine whether it would satisfy the project purpose of providing an interstate link.

83. A public hearing was held by the Division. Ken Schuster was the Public Hearing Officer for this hearing. (Tr. 6/04/01 p. 125-6). He issued his hearing officer's report on June 25, 2000. (Tr. 6/04/01 p. 128). This was two days **after** the Water Quality Certification was issued, and therefore, the decision to issue the Certification was made without the benefit of this report, and therefore, the public's comments.

84. There is no written documentation that the Division of Water Quality ever considered cumulative impacts relating to Project R-1030. (Tr. 5/24/01, p. 36).

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, the undersigned makes the following Conclusions of Law regarding the Contested Issues:

1. The Office of Administrative Hearings has jurisdiction to hear this case pursuant to G.S. 150B-23.
2. All parties are properly before the Office of Administrative Hearings and the Office of Administrative Hearings has jurisdiction over the parties and the Contested Issues.
 - a. Petitioner is an aggrieved person who is directly and adversely affected by the construction and operation of Project R-1030 and the Division's issuance of the Certification and has standing to bring a petition for a contested case hearing.
 - b. Petitioner-Intervenor is an aggrieved person who is directly and adversely affected by the construction and operation of Project R-1030 and the Division's issuance of the Certification and has standing to bring a petition for a contested case hearing.
3. All parties have been correctly designated, and there is no question as to misjoinder or nonjoinder of parties.
4. Petitioner and Petitioner-Intervenor bear the burden of proof on the Contested Issues.
5. Sections 143B-282(1)(u) and 143-215.3(c) of the North Carolina General Statutes authorize the Environmental Management Commission to issue 401 water quality certifications pursuant to the federal Clean Water Act, 33 U.S.C. § 1341. The Environmental Management Commission, through the adoption of rules codified at 15A N.C.A.C. 2H .0500 *et seq.*, has conferred the power to issue 401 water quality certifications upon the Director of the Division of Water Quality.

Contested Issue No. 1 – Practical Alternatives to the Proposed Project

6. 15A NCAC 2H .0506 allows the Division of Water Quality to issue a 401 Water Quality Certification for a project affecting Class WL wetlands or surface waters if the project has no practical alternative or impacts less than three acres of Class WL wetlands. 15A NCAC 02H .0506(f) states that

[a] lack of practical alternatives may be shown by demonstrating that, considering the potential for a reduction in size, configuration or density of the proposed activity and all alternative designs the basic project purpose cannot be practically accomplished in a manner which would avoid or result in less adverse impact to surface waters or wetlands.

7. There are a number of troubling aspects of the Division's consideration of alternatives. First, the Division did not consider the potential for a reduction in size, configuration or density when making its determination that there was a lack of practical alternatives to the project. Second, the Division did not make its own determination of whether the Project R-1030 needed to be in a freeway configuration in order to meet the project purposes as outlined in the FEIS. This determination was made solely by NCDOT and was not mandated by any state or federal laws. The poor justification of the need for a freeway configuration is the most troubling of these shortcomings. Third, Alternative 4X may have resulted in fewer impacts to wetlands. The study prepared by NCDOT was flawed because the Comparison report did not compensate for the differences in design in the Preferred Alternative and Alternative 4X, including amount of time spent on the design, use of wetland delineation versus determination and use of a functional design versus a preliminary design. Therefore, the Division used a flawed analysis to conclude that Alternative 4X resulted in fewer impacts to wetlands than the Preferred Alternative. Finally, Alternatives 1, 1A and 4A would have resulted in fewer impacts to wetlands than the alternative chosen by NCDOT. Alternative 4 may have resulted in fewer impacts to wetlands. Each of these alternatives met the original project purpose of increasing traffic capacity and safety on Highway 117. The Alternatives were never examined to

determine whether they met the project purpose of functioning as an Interstate link. The Division did not consider these alternatives when making its determination that there was a lack of practical alternatives to the project.

8. Since the Division relied on alternatives presented by NCDOT and did not come up with its own alternatives, the alternatives analysis of NCDOT is relevant to the issues in this case. This analysis is troubling because it underwent a major change mid-stream—from traffic flow and safety to Interstate connector, and from highway upgrades to freeway design—without a restart of the alternatives analysis. This made the alternatives analysis that was done very confusing, and much like comparing apples and oranges.

9. However, despite all the troubling aspects, this court is convinced by the extensive testimony of DOT experts and those involved in the project that Petitioners have not carried their burden of showing that the alternatives analysis was arbitrary and capricious, erroneous, or otherwise invalid under the law. NCDOT had to consider a multitude of factors in locating this project, including impact on neighborhoods, impacts on minority neighborhoods, traffic safety issues, traffic flow issues, future connection issues, and all of the environmental concerns discussed herein. Another specific example is that under FHWA regulations and US DOT law, public parks must be avoided in the location of highways unless there are no prudent and feasible alternatives. 49 U.S.C. § 303. All factors considered, NCDOT did a reasonable, albeit not exemplary, job of considering alternatives and DWQ was reasonable—though it could have done more—in relying on that consideration.

Contested Issue No. 2 – Minimization of Impacts to Wetlands

10. 15A NCAC 2H.0506(c)(2) allows the Division to issue a 401 Certification for an activity only after a determination is made by that activity:

will minimize adverse impacts to the wetland based on consideration of existing topography, vegetation, fish and wildlife resources, and hydrological conditions under the criteria outlined in paragraph (g) of this Rule; or impacts less than one acre of wetland within 150 feet (including less than 1/3 acre of wetland within 50 feet) , of the mean high water line or normal water level of any perennial or intermittent water body as shown by the most recently published version of the United States Geological Survey 1:24,000 (7.5 minute) scale topographical map or other site specific data.

Minimization of impacts may be demonstrated by showing that the wetlands are able to continue to support the existing uses after project completion, or that the impacts are required due to:

- (1) The spatial and dimensional requirements of the project; or
- (2) The location of any existing structural or natural features that may dictate the placement or configuration of the proposed project; or
- (3) The purpose of the project and how the purpose relates to placement, configuration or density.

15A NCAC 2H .0506(g).

11. The Division failed to determine the specific existing uses of the wetlands affected by Project R-1030, thereby calling into question the Division’s wetland mitigation determination, and failed to examine several alternatives that would have resulted in fewer impacts to wetlands as described above.

12. However, the Division’s determination that Project R-1030 would minimize adverse impacts to wetlands was not arbitrary or capricious. The Division carefully examined the areas in question and, with the help of the U.S. Army Corps of Engineers, negotiated a number of significant wetland protection measures from DOT that went beyond mere mitigation. (See Findings of Fact, *supra*). Likewise, the Division did not exceed its authority, act erroneously, fail to use proper procedure, or fail to act as required by law or rule on this issue.

Contested Issue #3 - Cumulative Impacts

13. 15A NCAC 2H.0506(b)(4) and 15A NCAC 2H.0506(c)(4) prevent the Division from issuing a 401 Certification for an activity which results in “cumulative impacts, based upon past or reasonably anticipated future impacts, that cause or will cause a violation of downstream water quality standards.”

14. The Division did not meaningfully examine cumulative impacts associated with Project R-1030 when making a determination of whether or not to issue the 401 Water Quality Certification for Project R-1030. NCDOT’s application for a 401 Water quality Certification did not include information on the cumulative impacts associated with Project R-1030. Although the Division later requested information on cumulative impacts from NCDOT, meaningful information was not given. There was no

evidence that the Division rectified this failure on the part of NCDOT by performing its own cumulative impacts analysis. Instead, the Division's witnesses acted as if the requirement for cumulative impacts analysis is inconsequential and fulfilled by mere guessing about what protections might be provided by other laws or whether the area was slow or high growth. Cumulative impact analysis cannot be elevated above the other analyses required under the law, but it is clear that such analysis is not only required, but important.

15. The Division acted erroneously and failed to act as required by its own rules when it failed to examine cumulative impacts related to Project R-1030. This failure incapacitated the agency from making a decision that these impacts would or would not cause a violation of downstream water quality standards.

16. The Division's determination not to examine the cumulative impacts associated with NCDOT Project U-3125 was arbitrary and capricious. The Division assumed that Project R-1030 had to function as an interstate link and restricted its examination of alternatives accordingly, but did not perform a cumulative impacts analysis on the remaining links of the interstate connector, without which R-1030 would not function as specified.

Contested Issue #4 - Critical Watershed Area

17. 15A NCAC 2B.0104(m) states:

The construction of new roads and bridges and non-residential development shall minimize built-upon area, divert stormwater away from surface water supply waters as much as possible, and employ best management practices (BMPs) to minimize water quality impacts. To the extent practicable, the construction of new roads in the critical area shall be avoided. The Department of Transportation shall use BMPs as outlined in their document entitled "Best Management Practices for the Protection of Surface Waters" which is hereby incorporated by reference including all subsequent amendments and additions.

18. The Division failed to enforce this regulation and instead, indicated to the NCDOT that it was more interested in making sure that the Neuse Buffer Rules were followed. However, the fact that NCDOT agreed to comply with the Neuse Buffer Rules is irrelevant to the determination of whether there were any practicable alternatives to construction in the Critical Watershed Area. NCDOT had to follow Neuse Buffer Rules regardless of whether Project R-1030 was built in the Critical Watershed Area.

19. Although the Division testified that NCDOT had "done what we had asked" with regard to the critical area, assurances of the City of Goldsboro are irrelevant to whether the Division complied with its own regulations. The regulations do not ask the Division to make sure that the city or town is concerned about whether a project will impact the Critical Watershed Area, but that construction of roads be avoided wherever practicable.

20. Despite these flaws in the analysis of critical watershed issues by the Division, Petitioner and Petitioner-Intervenor did not meet their burden of showing that the Director of DWQ erred in determining that it was not practicable to relocate project R-1030 in order to avoid impacting a portion of the critical area of the water supply watershed for the Town of Goldsboro's secondary source of drinking water.

Contested Issue #5 – NCEPA Violations

21. The North Carolina Environmental Policy Act requires that:

Every state agency shall include in every recommendation or report on any action involving expenditure of public moneys or use of public land for projects and programs significantly affecting the quality of the environment of this State, a detailed statement by the responsible official setting forth the following:

- a. The environmental impact of the proposed action;
- b. Any significant adverse environmental effects which cannot be avoided should the proposal be implemented;
- c. Mitigation measures proposed to minimize the impact;
- d. Alternatives to the proposed action
- e. The relationship between the short-term uses of the environment involved in the proposed action and maintenance and enhancement of long-term productivity; and
- f. Any irreversible and irretrievable environmental changes which would be involved in the proposed action should it be implemented.

N.C. Gen. Stat. 113A-4(2).

22. Compliance with the NCEPA is achieved through the preparation of one or more of the following environmental documents:

- (1) an environmental assessment (EA)
- (2) a finding of no significant impact (FONSI) or
- (3) an environmental impact statement (EIS)

and a record of decision (ROD). 01 NCAC 25 .0401

23. The EA, FONSI or EIS must be submitted to the State Clearinghouse which “shall circulate these documents to state and local officials to obtain comments and shall publish a Notice of Availability in the Environmental Bulletin.” 01 NCAC 25 .0506 and 01 NCAC 25 .0605.

24. NCEPA requires that an EIS must set forth a comparison of alternatives and that:

To the extent possible, the comparison of alternatives shall quantify how the purpose and need would be satisfied by each alternative and the proposed activity. This section of the document shall be the heart of the EIS, sharply defining the issues and providing a clear basis for choice among options by decision makers and the public.

01 NCAC 25 .0603(4).

25. NCEPA requires that an EIS must analyze the environmental consequences of the different alternatives, including:

- a. direct effects and significance;
- b. indirect effects and significance;
- c. cumulative effects and significance

01 NCAC 25 .0603(6)(a), (b) & (c).

26. The Division was required to comply with NCEPA when issuing the 401 Water Quality Certification for Project R-1030, under the following analysis:

- a. Compliance with NCEPA is required (or, in the jargon of environmental law, “NCEPA is triggered”) when three conditions are met: (1) an expenditure of public monies on the activity or project; (2) an action by a state agency; and (3) a potential environmental effect. 1 NCAC 25 .0108; *see also* N.C. Gen. Stat. 113A-4(2).
- b. As is conceded by the Respondent and Respondent-Intervenor in their briefing, the activity or project at issue here is “the selection and implementation of . . . NCDOT Transportation Improvement Project . . . R-1030.”
- c. Project R-1030 unquestionably involves the expenditure of public monies and potential environmental effects. No one argues otherwise, and this is why the series of EISs were prepared for the project.
- d. Agency “action” is defined to include “licensing, certification, permitting . . . and other similar final agency decisions the absence of which would preclude the proposed activity.” 1 NCAC 25 .0108(b)(1).
- e. The issuance of the 401 Certification for R-1030 is an agency action with regard to Project R-1030.
- f. Clearly, all three conditions necessary to trigger NCEPA have been met. *See In re Environmental Management Commission*, 280 N.C.App. 520, 524-26 (1981)(certification by the EMC that would allow the Orange Water and Sewer Authority to institute eminent domain proceedings to obtain a reservoir site required an environmental impact statement. As in the present case, the State “action” that triggered NCEPA was merely a certification that allowed a larger government project to proceed).

27. This forum is the proper place and time for review of NCEPA compliance.

- a. Review of NCEPA compliance is not allowed at the time the NCEPA documents are prepared, pursuant to 1 NCAC 25 .0605(f).
- b. Administrative or judicial review of NCEPA compliance is allowed only “in connection with review of the agency action.” 1 NCAC 25 .0605(f).
- c. Agency “action” is defined to include “licensing, certification, permitting . . . and other similar final agency decisions the absence of which would preclude the proposed activity.” 1 NCAC 25 .0108(b)(1).
- d. The issuance of the 401 Certification for R-1030 is an agency action with regard to that project.
- e. This proceeding is a review of the 401 Certification, which is an agency action, and is therefore the proper place and time for review of the question whether the environmental documents comply with the requirements of NCEPA.

CONTESTED CASE DECISIONS

28. The Division did not create or publish for review an Environmental Assessment, Finding of No Significant Impact or Environmental Impact Statement for its issuance of the Certification. None of the documents created by the Division, including the Certification complied with the review process outlined by NCEPA.

29. Instead, the Division relied upon the Environmental Impact Statements and Record of Decision created by the NCDOT and, therefore, these were the documents subject to review as part of this hearing.

30. The Division did not examine how the purpose and need of acting as an interstate connector would be satisfied by each alternative and therefore failed to act as required by law.

31. The Division and the NCDOT environmental documents failed to make any determinations or even to identify and evaluate the cumulative impacts involved with Project R-1030. This was in violation of 1 NCAC 25 .0603(6).

32. A very important part of the cumulative impacts analysis that should have been done would have analyzed the impacts of building the rest of the road that will be necessary to complete the interstate link and thereby fulfill the stated purpose of R-1030 (the so-called "missing link"). NCDOT, and by extension DWQ, has tried to have its cake and eat it too. NCDOT rejected several alternatives for R-1030 on the basis that they would not serve the interstate link purpose. Then, in its environmental analysis, NCDOT refused to consider impacts from the missing link on the reasoning that it is not sure the missing link will ever be built. It is one or the other: either (1) R-1030 is a connector between I-95 and I-40, in which case it is reasonable to reject alternatives that do not serve that purpose AND the impacts of the whole connector must be considered, either as one project in one environmental document or as known cumulative impacts for the R1030 piece of the whole project, or (2) R-1030 is not a connector between I-95 and I-40, in which case rejection of alternatives that do not serve that purpose was arbitrary and capricious, but it would have been reasonable to exclude the completion of an interstate link from cumulative impacts analysis. NCDOT has made its choice: it says that R-1030 is part of an interstate link, and such purpose is mandated by ISTEA. Therefore, it must analyze the cumulative impacts of the complete project, and its failure to do was arbitrary and capricious and erroneous as a matter of law. Since the Division has elected to rely upon the NCDOT environmental documents as its own for purposes of its 401 Certification, these errors are attributed to the Division.

33. NCDOT and the Division also failed to analyze any other cumulative effects and their impacts, as enumerated above in the cumulative impacts section. This was erroneous and arbitrary and capricious, and the agencies failed to act as required by law or rule.

34. It should be noted that the requirement to study cumulative impacts under NCEPA is a legally separate requirement from the requirement to study cumulative impacts under the 401 Certification rules, 15A NCAC 2H.0506. While one document might conceivably satisfy both requirements, each failure stands alone as a matter of law.

RECOMMENDED DECISION

IT IS HEREBY RECOMMENDED that the Environmental Management Commission find:

1. That in issuing 401 Water Quality Certification Number 3293 to the North Carolina Department of Transportation for construction of Project R-1030 in Wayne and Wilson Counties, North Carolina, the Division of Water Quality acted erroneously, failed to follow proper procedure, acted arbitrarily or capriciously, and failed to act as required by law or rule in the ways set out in the Conclusions of Law above; and

2. That 401 Water Quality Certification No. 3293 is void.

ORDER

It is hereby ordered that the agency serve a copy of the final decision on the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, NC 27699-6714, in accordance with G.S. 150B-36(b).

NOTICE

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to this recommended decision and to present written arguments to those in the agency who will make the final decision. The agency making the final decision in this matter is the Environmental Management Commission.

The agency is required by G.S.150B-36(b) to serve a copy of the final decision on all parties.

This is the 10th day of October, 2001.

James L. Conner, II
Administrative Law Judge