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

TITLE/MAJOR DIVISIONS OF THE NORTH CAROLINA ADMINISTRATIVE CODE

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2	Agriculture	Architecture	2
3	Auditor	Athletic Trainer Examiners	3
4	Commerce	Auctioneers	4
5	Correction	Barber Examiners	6
6	Council of State	Certified Public Accountant Examiners	8
7	Cultural Resources	Chiropractic Examiners	10
8	Elections	Employee Assistance Professionals	11
9	Governor	General Contractors	12
10	Health and Human Services	Cosmetic Art Examiners	14
11	Insurance	Dental Examiners	16
12	Justice	Dietetics/Nutrition	17
13	Labor	Electrical Contractors	18
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16	Public Education	Geologists	21
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NORTH CAROLINA REGISTER
Publication Schedule for July 2003 – December 2003

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Volume & issue number	Issue date	Last day for filing	Earliest date for public hearing	End of required comment period	Deadline to submit to RRC for review at next meeting	Earliest Eff. Date of Permanent Rule	Delayed Eff. Date of Permanent Rule (first legislative day of the next regular session)	270th day from publication in the Register
17:13	01/02/03	12/06/02	01/17/03	03/03/03	03/20/03	05/01/03	05/10/04	09/29/03
17:14	01/15/03	12/19/02	01/30/03	03/17/03	03/20/03	05/01/03	05/10/04	10/12/03
17:15	02/03/03	01/10/03	02/18/03	04/04/03	04/21/03	06/01/03	05/10/04	10/31/03
17:16	02/17/03	01/27/03	03/04/03	04/21/03	04/21/03	06/01/03	05/10/04	11/14/03
17:17	03/03/03	02/10/03	03/18/03	05/02/03	05/20/03	07/01/03	05/10/04	11/28/03
17:18	03/17/03	02/24/03	04/01/03	05/16/03	05/20/03	07/01/03	05/10/04	12/12/03
17:19	04/01/03	03/11/03	04/16/03	06/02/03	06/20/03	08/01/03	05/10/04	12/27/03
17:20	04/15/03	03/25/03	04/30/03	06/16/03	06/20/03	08/01/03	05/10/04	01/10/04
17:21	05/01/03	04/09/03	05/16/03	06/30/03	07/21/03	09/01/03	05/10/04	01/26/04
17:22	05/15/03	04/24/03	05/30/03	07/14/03	07/21/03	09/01/03	05/10/04	02/09/04
17:23	06/02/03	05/09/03	06/17/03	08/01/03	08/20/03	10/01/03	05/10/04	02/27/04
17:24	06/16/03	05/23/03	07/01/03	08/15/03	08/20/03	10/01/03	05/10/04	03/12/04
18:01	07/01/03	06/10/03	07/16/03	09/02/03	09/22/03	11/01/03	05/10/04	03/27/04
18:02	07/15/03	06/23/03	07/30/03	09/15/03	09/22/03	11/01/03	05/10/04	04/10/04
18:03	08/01/03	07/11/03	08/16/03	09/30/03	10/20/03	12/01/03	05/10/04	04/27/04
18:04	08/15/03	07/25/03	08/30/03	10/14/03	10/20/03	12/01/03	05/10/04	05/11/04
18:05	09/02/03	08/11/03	09/17/03	11/03/03	11/20/03	01/01/04	05/10/04	05/29/04
18:06	09/15/03	08/22/03	09/30/03	11/14/03	11/20/03	01/01/04	05/10/04	06/11/04
18:07	10/01/03	09/10/03	10/16/03	12/01/03	12/22/03	02/01/04	05/10/04	06/27/04
18:08	10/15/03	09/24/03	10/30/03	12/15/03	12/22/03	02/01/04	05/10/04	07/11/04
18:09	11/03/03	10/13/03	11/18/03	01/02/04	01/20/04	03/01/04	05/10/04	07/30/04
18:10	11/17/03	10/24/03	12/02/03	01/16/04	01/20/04	03/01/04	05/10/04	08/13/04
18:11	12/01/03	11/05/03	12/16/03	01/30/04	02/20/04	04/01/04	05/10/04	08/27/04
18:12	12/15/03	11/20/03	12/30/03	02/13/04	02/20/04	04/01/04	05/10/04	09/10/04

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 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 60 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.

SUMMARY OF NOTICE OF
INTENT TO REDEVELOP A BROWNFIELDS PROPERTY

Berkshire-Hudson Capital IX, LLC

Pursuant to G.S. 130A-310.34, Berkshire-Hudson Capital IX, LLC has filed with the North Carolina Department of Environment and Natural Resources ("DENR") a Notice of Intent to Redevelop a Brownfields Property ("Property") in Zebulon, Wake County, North Carolina. The Property consists of 1.832 acres and is located at the southeast corner of the intersection of East Gannon and North Arendell Avenues. Environmental contamination exists on the Property in soil and groundwater. Berkshire-Hudson Capital IX, LLC has committed itself to excavation of the petroleum-contaminated soil on the Property. The Notice of Intent to Redevelop a Brownfields Property includes: (1) a proposed Brownfields Agreement between DENR and Berkshire-Hudson Capital IX, LLC, which in turn includes (a) a legal description of the Property, (b) a map showing the location of the Property, (c) a description of the contaminants involved and their concentrations in the media of the Property, (d) the above-stated description of the intended future use of the Property, and (e) proposed investigation and remediation; and (2) a proposed Notice of Brownfields Property prepared in accordance with G.S. 130A-310.35. The full Notice of Intent to Redevelop a Brownfields Property may be reviewed at the Zebulon Public Library, Dogwood Drive, Zebulon, NC 27597 by contacting Jean Ells at (919) 404-3610; or at 401 Oberlin Rd., Raleigh, NC 27605 by contacting Scott Ross at that address, at scott.ross@ncmail.net, or at (919)733-2801, ext. 328. Written public comments may be submitted to DENR within 60 days after the date this Notice is published in a newspaper of general circulation serving the area in which the brownfields property is located, or in the North Carolina Register, whichever is later. Written requests for a public meeting may be submitted to DENR within 30 days after the period for written public comments begins. All such comments and requests should be addressed as follows:

Mr. Bruce Nicholson
Head, Brownfields Program
Division of Waste Management
NC Department of Environment and Natural Resources
401 Oberlin Road, Suite 150
Raleigh, North Carolina 27605

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 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice *is hereby given in accordance with G.S. 150B-21.2 that the Social Services Commission intends to amend the rules cited as 10A NCAC 70E .0301, .0506; 70F .0102, .0205; 70I .0101, .0201-.0202. Notice of Rule-making Proceedings was published in the Register on May 15, 2003.*

Proposed Effective Date: *July 1, 2004*

Public Hearing:
Date: *September 17, 2003*
Time: *10:00 a.m.*
Location: *Albemarle Building, Room 832, 325 Salisbury St., Raleigh, NC*

Reason for Proposed Action: *Session Law 2002-164 (SB163) is very broad in scope affecting all agencies that serve children in the state. Session Law 2002-164 (SB 163) requires that the Department of Health and Human Services, Public Instruction and Juvenile Justice and Delinquency Prevention work together 1) to track all children places away from their homes, 2) to monitor the quality of care of such placements, 3) to report these findings to the General Assembly, 4) to prohibit persons or agencies/facilities from starting a new service if a license violation or revocation has occurred within 60 months, and 5) to ensure that special education funding follows children with special needs who are placed outside of their local school jurisdiction. In order to ensure that the Division of Social Services fully implements the provision of Session Law 2002-164 (SB163), APA rules in these Subchapters that govern the licensure of family foster homes, residential child care facilities and child-placing agencies will need to be amended or adopted by the Social Services Commission.*

Comment Procedures: *Anyone wishing to comment on these proposed rules should contact Vandella Bradley, APA Coordinator, Social Services Commission, NC Division of Social Services, 2401 Mail Service Center, Raleigh, NC 27699-2401, phone (919) 733-3055, and fax (919) 733-9386. Verbal comments may be expressed at the Commission meeting. Any written comments must be received by 10:00 a.m. on September 17, 2003.*

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

CHAPTER 70 – CHILDREN'S SERVICES

SUBCHAPTER 70E - LICENSING OF FAMILY FOSTER HOMES

SECTION .0300 – DEFINITIONS

10A NCAC 70E .0301 DEFINITIONS

The following ~~definition~~ definitions shall apply to the rules in ~~Subchapters 41F, 41N, 41O and 41P:~~Chapter 70:

(1) Agency means a county department of social services or a private child placing agency that is duly authorized by law to receive children for purposes of placement in family foster homes or adoptive homes.

(2) Owner means any individual who is a co-owner, partner or shareholder holding an ownership or controlling interest of five percent or more of the applicant entity. Owner includes a "principal" or "affiliate" of the agency.

Authority G.S. 131D, Art. 1A; 143B-153(See S. L. 2002-164).

SECTION .0500 - LICENSING REGULATIONS AND PROCEDURES

10A NCAC 70E .0506 REVOCATION OR DENIAL

(a) Licenses may be revoked when an agency duly authorized by law to investigate allegations of abuse or neglect finds the foster parent has abused or neglected a child.

(b) Revocation of a license may also occur when the foster family home is not in compliance with licensing standards.

(c) Revocation shall be based on the following:

(1) a child's circumstances;

(2) a child's permanency plan;

(3) the nature of the non-compliance; and

(4) the circumstances of the placement.

(d) Foster parents must be made aware of the reasons for the agency's decision to revoke a license.

(e) Foster parents must submit their license to the agency for it to be returned to the Division of Social Services, Children's Services Section.

(f) Licensure shall be denied to an applicant when an applicant meets any of the following conditions:

(1) Owns a facility or agency licensed under G.S. 122C or G.S. 131D and that facility or agency had its license revoked;

(2) Owns a facility or agency licensed under G.S. 122C and that facility or agency incurred a penalty for a Type A or B violation under Article 3 of G.S. 122C; or

(3) Owns a facility or agency licensed under G.S. 122C or G.S. 131D and that facility or agency had its license suspended or downgraded to provisional status as a result of violations under G.S. 122C-24.1(a) or G.S. 131D, Article 1A.

(g) The restriction on licensure shall be in accordance with G.S. 122C-23(e1) and G.S. 131D-10.3(h), incorporated by reference. A copy of these statutes may be obtained through the internet at http://www.ncleg.net/Statutes/Statutes.html .

~~(f)~~(h) Appeal procedures specified in ~~10 NCAC 41A .0107~~10A NCAC 70L .0102, WAIVER OF LICENSING RULES AND APPEAL PROCEDURES, shall be applicable for persons seeking an appeal to the Department's decision to revoke or deny a license. If the action is reversed on appeal, the applicant may re-apply for licensure and may be approved back to the date of the denied application if all qualifications are met.

Authority G.S. 131D-10.5; 143B-153(See S. L. 2002-164).

SUBCHAPTER 70F - CHILD PLACING AGENCIES: MATERNITY HOMES AND CHLDREN'S CAMPS

SECTION .0100 - GENERAL

10A NCAC 70F .0102 LICENSURE

(a) Licenses issued shall be in effect for a maximum of two years unless suspended or revoked. Appeal procedures specified in ~~10 NCAC 41A .0107~~ 10A NCAC 70L .0102 shall apply for persons seeking an appeal of the licensing authority's decision to deny, suspend, or revoke a license.

(b) Licensure shall be denied to an applicant when an applicant meets any of the following conditions:

(1) Owns a facility or agency licensed under G.S. 122C or G.S. 131D and that facility or agency had its license revoked;

(2) Owns a facility or agency licensed under G.S. 122C and that facility or agency incurred a penalty for a Type A or B violation under Article 3 of G.S. 122C; or

(3) Owns facility or agency licensed under G.S. 122C or G.S. 131D and that facility or agency had its license suspended or downgraded to provisional status as a result of violations under G.S. 122C-24.1(a) or G.S. 131D, Article 1A.

(c) The restriction on licensure shall be in accordance with G.S. 122C-23(e1) and G.S. 131D-10.3(h), incorporated by reference. A copy of these statutes may be obtained through the internet at http://www.ncleg.net/Statutes/Statutes.html .

Authority G.S. 131D-1; 131D-10.3; 131D-10.5; 143B-153 (See S. L. 2002-164).

SECTION .0200 - ORGANIZATION AND ADMINISTRATION

10ANCAC 70F .0205 RESPONSIBILITY TO LICENSING AUTHORITY

(a) The agency shall annually submit to the licensing authority the information and materials to document compliance and to support issuance of a license.

(b) The agency shall submit to the licensing authority an annual statistical report of program activities.

(c) The agency shall provide written notification immediately to the licensing authority of change in the administrator.

(d) When the agency receives a report alleging abuse or neglect in a home supervised or a facility operated by the agency, the agency shall immediately notify the legal custodian and the licensing authority.

(e) The agency shall submit to the licensing authority, within 30 days of the case decision, a report on the circumstances of the allegation and results of the investigation of the allegation of abuse or neglect. This report, along with other information the licensing authority may require, shall be reviewed and evaluated by the licensing authority and used in consultation and technical assistance with the agency and the county department of social services conducting the investigation to assist them in providing services to protect children in placement.

(f) When there is a death of a child in placement in a home supervised by the agency, the director or his designee shall immediately notify the licensing authority.

(g) In the case of ownership, the agency shall provide to the licensing authority, at the time of license application, the following information:

(1) the legal name and social security number of each individual who is an owner;

(2) written notification of a change in the legal name of any owner. The notification must be received within 30 business days following the change; and

(3) written notification of a change in individuals holding an interest of at least five percent. The notification must be received no later than 30 business days following the change.

(h) The agency shall contact the mental health area program or county program responsible for the catchment area where services are being provided within 24 hours that a child may require MH/SAS/DD services.

(i) If the agency is monitored by a mental health area program or county program, the agency shall provide data to the mental health area program or county program as required for monitoring and reporting to the General Assembly.

Authority G.S. 131D-1; 131D-10.5; 143B-153 (See S. L. 2002-164).

SUBCHAPTER 70I - MINIMUM LICENSING STANDARDS FOR RESIDENTIAL CHILD CARE

SECTION .0100 - GENERAL LICENSING REQUIREMENTS

10A NCAC 70I .0101 LICENSING ACTIONS

(a) License.

(1) The Department of Health and Human Services shall issue a license when it determines that the residential child-care facility is in compliance with rules in Subchapters ~~41S~~ 70I and ~~41T~~ 70J.

(2) A license may remain in effect for one year.

(3) The Department of Health and Human Services shall automatically provide a 90 day grace period at the expiration date of the license.

(4) If licensure materials are submitted after the license expires, but within the 90 day grace

period, the Department of Health and Human Services may issue a license one year from the expiration date of the previous license.

(b) Changes in any information on the license.

(1) The Department of Health and Human Services shall change a license during the period of time it is in effect if the change is in compliance with rules in Subchapters ~~41S~~ 70I and ~~41T~~ 70J.

(2) The Department of Health and Human Services shall not change a license during the 90 day grace period.

(3) A residential child-care facility must notify the Children's Services Section in writing of its request for a change in license, including such information as is necessary to assure that the change is in compliance with the rules in Subchapters ~~41S~~ 70I and ~~41T~~70J.

(c) Termination.

(1) When a residential child-care facility voluntarily discontinues child caring operations, either temporarily or permanently, the residential child care facility must notify the Children's Services Section in writing of the date, reason and anticipated length of closing.

(2) If a license is not renewed by the end of the 90 day grace period, the Department of Health and Human Services shall automatically terminate the license.

(d) Adverse Licensure Action.

(1) The Department of Health and Human Services shall deny, suspend or revoke a license when a residential child-care facility is not in compliance with the rules in Subchapters ~~41S~~ 70I and ~~41T~~ 70J and it determines that compliance cannot be accomplished within a reasonable time as established by the Children's Services Section of the Division of Social Services.

(2) The Department of Health and Human Services shall notify a residential child-care facility in writing of the decision to deny, suspend or revoke a license.

(3) Appeal procedures specified in ~~10 NCAC 41A .0107~~10A NCAC 70L .0107, WAIVER OF LICENSING RULES AND APPEAL PROCEDURES, are applicable for persons seeking an appeal to the Department's decision to deny, suspend or revoke a license.

(e) Licensure Restriction.

(1) Licensure shall be denied when an applicant meets any of the following conditions:

(A) Owns a facility or agency licensed under G.S. 122C or G.S. 131D and that facility or agency had its license revoked;

(B) Owns a facility or agency licensed under G.S. 122C and that facility or agency incurred a penalty for a Type A or B violation under Article 3 of G.S. 122C; or

(C) Owns a facility or agency licensed under G.S. 122C or G.S. 131D and that facility or agency had its license suspended or downgraded to provisional status as a result of violations under G.S. 122C-24.1(a) or G.S. 131D, Article 1A.

(2) The restriction on licensure shall be in accordance with G.S. 122C-23(e1) and G.S. 131D-10.3(h), incorporated by reference. A copy of these statutes may be obtained through the internet at http://www.ncleg.net/Statutes/Statutes.html .

Authority G.S. 131D-10.5; 143B-153(See S. L. 2002-164).

SECTION .0200 - MINIMUM LICENSURE STANDARDS

10A NCAC 70I .0201 DEFINITIONS

In addition to the definitions found in G.S. 131D–10.2, the following definitions apply to the rules in Subchapters ~~41S~~ 70I and ~~41T~~70J.

(1) Case Plan means a written document, the Family Services Case Plan, which describes the social and child welfare services and activities to be provided by the county department of social services or other state and local agencies for the purpose of achieving a permanent family relationship for the child.

(2) Child-Caring Institution means a residential child-care facility utilizing permanent buildings located on one site for 10 or more foster children.

(3) Children's Foster Care Camp means a residential child-care facility which provides foster care at either a permanent camp site or in a wilderness setting.

(4) Direct Service Personnel means staff responsible for the direct services provided to children and their families including, but not limited to, child-care workers, residential counselors, house/teaching parents, social workers, recreation and education staff.

(5) Director means the person who is in charge of the agency and who is responsible for developing and supervising the program of residential child care and services.

(6) Emergency Shelter Care means 24 hour care provided in a residential child-care facility for a period not to exceed 90 days, in accordance with ~~10 NCAC 41T .0200~~10A NCAC 70J .0200.

(7) Family Time means specific period arranged for a child who resides in a residential child-care facility to spend with kin either on-site or away from the residential child-care facility.

(8) Foster Child means an individual less than 18 years of age who has not been emancipated under North Carolina law, or one who is 18 to

21 years of age and continues to reside in the residential child-care facility, who is dependent, neglected, abandoned, destitute, orphaned, delinquent, or otherwise in need of care away from home and not held in detention.

(9) Full License means a license issued for one year when all minimum licensing requirements are met.

(10) Group Home means a residential child-care facility operated either under public or private auspices which receives for 24-hour care no more than nine children. This number includes the caregivers' own relatives residing in the home under the ages of 18. The composition of the group shall include no more than two children under the age of two, four children under the age of six, and six children under the age of 12. A group home shall not provide day care, nor shall it be available to adults in the community who wish to rent rooms.

(11) Individualized Service Plan means a written document which describes a child's needs, goals and objectives in a residential child-care facility and the direct services staff tasks and assignments to meet a child's and family's needs, goals and objectives.

(12) License means permission granted in writing to a corporation, agency or county government by the Department of Health and Human Services to engage in the provision of full-time child care or child-placing activities based upon an initial determination, and annually thereafter, that such corporation, agency, or a county government has met and complied with minimum standards set forth in this Subchapter.

(13) Owner means any individual who is a co-owner, partner or shareholder holding an ownership or controlling interest of five percent or more of the applicant entity. Owner includes a "principal" or "affiliate" of the residential child care facility.

~~(13)~~(14) Private Agency Residential Child-Care Facility means a residential child-care facility under the auspices of a licensed child-placing agency or another private residential child-care facility.

~~(14)~~(15) Private Residential Child-Care-Facility means a residential child-care facility under the control, management and supervision of a private non-profit or for-profit corporation, sole proprietorship or partnership which operates independently of a licensed child-placing agency or any other residential child-care facility.

~~(15)~~(16) Provisional License means a license issued for a maximum of six months enabling a facility to operate while some below standard component of the program is being corrected. A provisional license for the same below standard program component shall not be renewed.

~~(16)~~(17) Public Agency Residential Child-Care Facility means a residential child-care facility under the control, management or supervision of a county department of social services.

~~(17)~~(18) Public Residential Child-Care Facility means a residential child-care facility under the control, management or supervision of a county government other than a county department of social services.

~~(18)~~(19) Visiting Resource means volunteers from the community whose homes children visit on the weekends, holiday or vacations.

~~(19)~~(20) Volunteer means a person working in a staff position for an agency who is not paid.

Authority G.S. 131D-10.5; 143B-153(See S.L.2002-164).

10A NCAC 70I .0202 RESPONSIBILITY TO DIVISION OF SOCIAL SERVICES

(a) The residential child-care facility shall annually submit to the Division of Social Services the information and materials required by rules in Subchapters ~~41S~~ 70I and ~~41T~~ 70J to document compliance and to support issuance of a license.

(b) The residential child-care facility shall submit to the Division of Social Services an annual statistical report of program activities as required in Subchapters ~~41S~~ 70I and ~~41T~~70J.

(c) The residential child-care facility shall provide written notification to the Division of Social Services of a change in the director.

(d) The office of a residential child-care facility shall be maintained in North Carolina. The licensee shall carry out activities under the North Carolina license from this office.

(e) The current license of a residential child-care facility shall be posted at all times in a conspicuous place within the facility.

(f) When there is a report alleging abuse or neglect in a residential child-care facility, the director or his designee shall immediately notify the Division of Social Services.

(g) The residential child-care facility shall submit to the Division of Social Services a report on the circumstances of the allegation and results of the investigation of the allegation of abuse or neglect. This report, along with other information, shall be reviewed and evaluated by the Division of Social Services and used in consultation and technical assistance to the residential child-care facility to improve services to protect children in placement in the residential child-care facility.

(h) The residential child-care facility shall have and follow policies and procedures for handling any suspected incidents of child abuse or neglect involving staff. The policies and procedures must include:

(1) A provision for reporting any allegations of abuse or neglect to the appropriate county department of social services for investigation in accordance with G.S. 7B-301.

(2) A provision for recording any suspected incident of abuse or neglect and for promptly reporting it to the executive director or to the governing body or advisory board.

(3) A provision for promptly notifying the Division of Social Services of any allegations of abuse or neglect of any child in care.

(4) A provision for preventing a recurrence of the alleged incident pending investigation.

(5) A provision for written notification to the Division of Social Services of any findings of such an investigation of child abuse or neglect, specifying only whether there was substantiation or unsubstantiation of the case.

(i) When there is a death of a child who is a resident of a residential child-care facility, the director or his designee shall immediately notify the licensing authority.

(j) In the case of ownership, the residential child care facility shall provide to the licensing authority at the time of license application the following information:

(1) the legal name and social security number of each individual who is an owner;

(2) written notification of a change in the legal name of any owner. The notification must be received within 30 business days following the change; and

(3) written notification of a change in individuals holding an interest of at least five percent. The notification must be received no later than 30 business days following the change.

(k) The residential child care facility shall contact the mental health area program or county program responsible for the catchment area where services are being provided within 24 hours that a child may require MH/SAS/DD services.

(l) If the residential child care facility is monitored by a mental health area program or county program, the residential child care facility shall provide data to the mental health area program or county program as required for monitoring and reporting to the General Assembly.

Authority G.S. 131D-10.5; 143B-153(See S.L.2002-164).

***T**his Section contains the text of proposed rules. The agency must accept comments on the proposed rule for at least 60 days from the publication date, or until the public hearing, or a later date if specified in the notice by the agency. Statutory reference: G.S. 150B-21.*

TITLE 12 – DEPARTMENT OF JUSTICE

***Notice** is hereby given in accordance with G.S. 150B-21.2 that the NC Alarm Systems Licensing Board intends to amend the rule cited as 12 NCAC 11 .0505.*

Proposed Effective Date: *December 1, 2003*

Public Hearing:
Date: *September 2, 2003*
Time: *2:00 p.m.*
Location: *Conference Room, 1631 Midtown Place, Suite 104, Raleigh, NC*

Reason for Proposed Action: *The Board is attempting to amend its current continuing education rule to more clearly set forth the C.E. requirements.*

Comment Procedures: *Written comments should be submitted to W. Wayne Woodard, 1631 Midtown Place, Raleigh, NC 27699. Comments should be submitted by October 14, 2003.*

Procedure for Subjecting a Proposed Rule to Legislative Review: Any person who objects to the adoption of a permanent rule may submit written comments to the agency. A person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the 6th business day preceding the end of the month in which a rule is approved. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

Fiscal Impact
☐ **State**
☐ **Local**
☐ **Substantive (**≥$3,000,000**)**
☒ **None**

CHAPTER 11 - NC ALARM SYSTEMS LICENSING BOARD

SECTION .0500 - CONTINUING EDUCATION FOR LICENSEES

12 NCAC 11 .0505 RECORDING AND REPORTING CONTINUING EDUCATION CREDITS

Each licensee shall be responsible for recording and reporting continuing education credits to the Board at the time of license or registration renewal, and for each course taken such report shall include a certificate of course completion that is signed by at least one course instructor, indicates the name of the licensee or registrant who completed the course, indicates the date of course completion, and indicates the number of hours taken by the licensee or registrant. Credit shall not be given if a certificate of course completion is dated more than two years from the license or registration permit renewal date. Each course instructor shall be required to maintain a course roster. Said roster shall be delivered to the Board's office within two weeks of the completion date of the course. All applications for renewal of a license or registration permit shall have a CE Certificate(s) attached verifying completion of the required number of credit hours. If an applicant is filing an application designated as "new" and the applicant has been licensed or registered for any period of time within the previous two years, the applicant shall attach a CE Certificate(s) verifying completion of the required number of credit hours. An applicant

shall not be required to submit a CE Certificate if the applicant is filing an application designated as a "transfer" or "duplicate" and if the applicant has a current registration card issued by the Board.

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

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOSURCES

***Notice** is hereby given in accordance with G.S. 150B-21.2 that the Commission for Health Services intends to adopt the rule cited as15A NCAC 18A .1210.*

Proposed Effective Date: *January 1, 2004*

Public Hearing:
Date: *September 3, 2004*
Time: *2:00 p.m.*
Location: *1330 St. Mary's St., Conference Room G1-A, Raleigh, NC*

Reason for Proposed Action: *To address the Listeriosis outbreak in Forsyth County which resulted in 5 fetal deaths, 2 premature births, 2 near term infants were born affected and all 9 mothers were affected plus 2 non-pregnant adults. The outbreak was traced to homemade raw milk cheeses. All cases were associated with a Hispanic community in the Winston-Salem area. The home cheese processors were purchasing the milk from local dairy farmers. Raw milk is known to contain pathogens. Laboratory tests show the same genetic pattern in the raw milk, the cheese and the patients.*

Comment Procedures: *Comments from the public shall be directed to Kay Sigmon, 8297 Hagers Ferry Rd., Denver, NC 28037, phone (704) 483-6218, and email kay.sigmon@ncmail.net. Comments period ends October 14, 2003.*

Procedure for Subjecting a Proposed Rule to Legislative Review: Any person who objects to the adoption of a permanent rule may submit written comments to the agency. A person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the 6th business day preceding the end of the month in which a rule is approved. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

Fiscal Impact
☐ **State**
☐ **Local**
☐ **Substantive (≥$3,000,000)**
☒ **None**

CHAPTER 18 – ENVIRONMENTAL HEALTH

SUBCHAPTER 18A – SANITATION

SECTION .1200 - GRADE A MILK SANITATION

15A NCAC 18A .1210 RESTRICTIONS ON DISPENSING RAW MILK

Dairy farms shall dispense raw milk or raw milk products only to a permitted milk hauler or to a processing facility for which the processing of milk is permitted, graded or regulated by a state or federal agency. However, this Rule does not prohibit the farmer or the owner of the raw milk or raw milk products from destroying the milk or from dispensing it for animal feed in accordance with any applicable state and federal regulations.

Authority G.S. 130A-275.

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***Notice** is hereby given in accordance with G.S. 150B-21.2 that the Commission for Health Services intends to amend the rules cited as 15A NCAC 18A .1301, .1304, .1308, .1312-.1313, .1319-.1321, .2508, .2510-.2511; 2516-.2518, .2522-.2526, .2528-.2535, .2537, .2539, .2542-.2543.*

Proposed Effective Date: *January 1, 2004*

Public Hearing:
Date: *September 3, 2003*
Time: *2:00 p.m.*
Location: *1330 St. Mary's St., Conference Room G1-A, Raleigh, NC*

Reason for Proposed Action:
***15A NCAC 18A .1301, .1304, .1308, .1312-.1313, .1319-.1321 –** To address concerns from industry.*
***15A NCAC 18A .2508, .2510- .2511, .2516-.2518, .2522-.2526, .2528-.2535, .2537, .2539, .2542-.2543 –** To update the rules pertaining to the safety and sanitation of public swimming pools and to correct some technical errors that occurred when the rules were converted from Wordperfect to Microsoft Word.*

Comment Procedures: *Comments from the public shall be directed to Jim Hayes or Phil Thompson, 1632 Mail Service Center, Raleigh, NC 27699-1632, phone (919) 715-0924, fax (919) 715-4739, and email jim.hayes@ncmail.net or phil.thompson@ncmail.net. Comment period ends October 14, 2003.*

Procedure for Subjecting a Proposed Rule to Legislative Review: Any person who objects to the adoption of a permanent rule may submit written comments to the agency. A person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The

Commission will receive written objections until 5:00 p.m. on the 6th business day preceding the end of the month in which a rule is approved. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

Fiscal Impact

☐ **State**

☒ **Local** *15A NCAC 18A .2510, 15A NCAC 18A .2535*

☐ **Substantive (≥**$3,000,000**)**

☒ **None** *15A NCAC 18A .1301, .1304, .1308, .1312-.1313, .1319-.1321, .2508, .2511, .2516-.2518, .2522-.2526, .2528-.2534, .2537, .2539, .2542-.2543*

CHAPTER 18 – ENVIRONMENTAL HEALTH

SUBCHAPTER 18A – SANITATION

SECTION .1300 - SANITATION OF HOSPITALS: NURSING AND REST HOMES: SANITARIUMS SANATORIUMS: EDUCATIONAL AND OTHER INSTITUTIONS

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~~ adult care 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.

Authority G.S. 130A-235.

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. Except as required by G.S. 130A-247 through 250, food services at institutions shall not be required to obtain foodhandling establishment permits or upgrade existing facilities with approved sanitation scores.

Authority G.S. 130A-235.

15A NCAC 18A .1308 APPROVED INSTITUTIONS AND SCORING SYSTEM

(a) The sanitation grading of all institutions shall be based on a system of scoring wherein all institutions receiving a score of at least 90 percent shall be awarded Grade A; all institutions receiving a score of at least 80 percent and less than 90 percent shall be awarded Grade B; all institutions receiving a score of at least 70 percent and less than 80 percent shall be awarded Grade C; and all institutions receiving a score of less than 70 percent, do not meet the minimum sanitation standards. If an institution or an institutional food service fails to maintain a sanitation score of at least 70 percent or if the Environmental Health Specialist determines that conditions found at the institution at the time of any inspection are dangerous to the health of residents or the public, the Environmental Health Specialist shall notify the licensing agency within 24 hours. A copy of the inspection report documenting the dangerous conditions shall be sent to the licensing agency within two working days following the inspection.

(b) Sanitation scores for institutions shall be determined by an Environmental Health Specialist authorized by the Department by completing an inspection report Form DENR 1213. The score is a percentage compliance determined by deducting points from 100 percent for each item found not to be in compliance with the rules of this Section. The authorized Environmental Health Specialist has authority to deduct full or half credit for non-compliant items based on the severity, pervasiveness and persistence of the rule violation. The percentage point value of each item is determined as follows:

(1) Violation of Rule .1309 of this Section regarding cleanability of floors and provision of floor drains shall be assessed a value of two points

(2) Violation of Rule .1309 of this Section regarding cleaning and maintenance of floors and carpet shall be assessed a value of two points.

(3) Violation of Rule .1310 of this Section regarding cleanability and repair of walls and ceilings shall be assessed a value of two points.

(4) Violation of Rule .1311(a) of this Section regarding lighting levels shall be assessed a value of two points.

(5) Violation of Rule .1311(b) or (c) of this Section regarding ambient air temperatures and cleaning of ventilation equipment shall be assessed a value of two points.

(6) Violation of Rule .1311(d) of this Section regarding moisture control shall be assessed a value of three points.

(7) Violation of Rule .1311(e) of this Section regarding control of indoor smoke exposure shall be assessed a value of two points.

(8) Violation of Rules .1312(a), (b), or (f) of this Section regarding location, cleaning and repair of toilet, handwashing and bathing facilities shall be assessed a value of two points.

(9) Violation of Rule .1312(b) of this Section regarding toilet rooms shall be assessed a value of one point.

(10) Violation of Rule .1312(c) of this Section regarding bedpans, urinals, bedside commodes and emesis basins shall be assessed a value of one point.

(11) Violation of Rule .1312(c) or (d) of this Section regarding provision, accessibility and use of hand sinks shall be assessed a value of two points.

(12) Violation of Rule .1312(d) of this Section regarding equipment for handwashing facilities shall be assessed a value of three points.

(13) Violation of Rule .1312(e) of this Section regarding hot water temperature at lavatory and bathing facilities shall be assessed a value of two points.

(14) Violation of Rule .1312(f) of this Section regarding accessibility and mixing of cleaning and disinfectant agents shall be assessed a value of two points.

(15) Violation of Rule .1313(a) or (d) of this Section regarding water supply and cross-connections shall be assessed a value of four points.

(16) Violation of Rule .1313 (e) or (f) of this Section regarding quantity of hot water and backup water supply plans shall be assessed a value of two points.

(17) Violation of Rule .1314(a) of this Section regarding cleaning, repair and flow regulation of drinking fountains shall be assessed a value of two points.

(18) Violation of Rule .1314(a) of this Section regarding drinking utensils shall be assessed a value of two points.

(19) Violation of Rule .1314(b) of this Section regarding protection of ice and cleaning and repair of ice making and handling equipment and utensils shall be assessed a value of two points.

(20) Violation of Rule .1315 of this Section regarding wastewater disposal shall be assessed a value of four points.

(21) Violation of Rule .1316(a), (b) or (c) of this Section regarding solid waste storage and container cleaning facilities shall be assessed a value of four points.

(22) Violation of Rule .1316(d) of this Section regarding solid waste disposal and control of insect breeding or nuisance shall be assessed a value of two points.

(23) Violation of Rule .1316(e) of this Section regarding handling and disposal of medical wastes shall be assessed a value of two points.

(24) Violation of Rule .1317(a) of this Section regarding exclusion of vermin shall be assessed a value of three points.

(25) Violation of Rule .1317(b) of this Section regarding storage and handling of pesticides shall be assessed a value of two points.

(26) Violation of Rule .1317(c) of this Section regarding cleaning and maintenance of premises shall be assessed a value of two points.

(27) Violation of Rule .1317(e) or (f) of this Section regarding pet maintenance shall be assessed a value of two points.

(28) Violation of Rule .1318(a) of this Section regarding storage areas shall be assessed a value of one point.

(29) Violation of Rule .1318(b) of this Section regarding mop sinks shall be assessed a value of one point.

(30) Violation of Rule .1318(c) of this Section regarding medication carts shall be assessed a value of two points.

(31) Violation of Rule .1318(d) of this Section regarding feeding syringes, oral suction catheters and tube-feeding bags shall be assessed a value of two points.

(32) Violation of Rule .1319(a) of this Section regarding cleaning and repair of furniture and use of mattress covers shall be assessed a value of two points.

(33) Violation of Rule .1319(b) of this Section regarding linen changes and handling of soiled laundry shall be assessed a value of two points.

(34) Violation of Rule .1319 of this Section regarding laundry areas and equipment, cleaning and and sanitizing of laundry, and storage and handling of clean laundry shall be assessed a value of two points.

(35) Violation of Rule .1319(c) of this Section regarding repair, storage, cleaning and disinfection of patient contact items shall be assessed a value of one point.

(36) Violation of Rule .1320 of this Section regarding approval, cleaning and sanitizing food contact items shall be assessed a value of two points.

(37) Violation of Rule .1320 of this Section regarding approved uses of activity kitchens shall be assessed a value of one point.

(38) Violation of Rule .1320(b) of this Section regarding handwashing lavatories in foodhandling areas shall be assessed a value of two points.

(39) Violation or Rule .1321(a) of this Section regarding food sources and supplies shall be assessed a value of four points.

(40) Violation of Rule .1321(b) of this Section regarding disposition of food brought by employees or visitors shall be assessed a value of one point.

(41) Violation of Rule .1322 of this Section regarding milk and milk products shall be assessed a value of two points.

(42) Violation of Rule .1323(a) of this Section regarding food protection, temperature control and time in lieu of temperature shall be assessed a value of four points.

(43) Violation of Rule .1323(b) of this Section regarding hot and cold food storage and display units and thermometers shall be assessed a value of one point.

(44) Violation of Rule .1323(c) of this Section regarding food storage shall be assessed a value of one point.

(45) Violation of Rule .1323(d) of this Section regarding control of live animals in food service areas shall be assessed a value of two points.

(46) Violation of Rule .1324(a) of this Section regarding employee clothing and tobacco use while handling food shall be assessed a value of one point.

(47) Violation of Rule .1324(a) or (b) of this Section regarding employee hand washing and hand antisepsis shall be assessed a value of three points.

(48) Violation of Rule .1324(c) of this Section regarding exclusion of persons with infections from food service work shall be assessed a value of two points.

Authority G.S. 130A-235.

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,~~ and soiled utility ~~rooms and clean utility~~ rooms. Any area where personnel can be exposed to bodily excretions or secretions shall have handwashing facilities located in the same room or have a doorway connecting to an adjacent room or corridor containing handwashing facilities. 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. Lavatories in medication rooms used primarily for handwashing can be used for other purposes, such as disposal of medications, which do not interfere with effective handwashing.

(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.

Authority G.S. 130A-235.

15A NCAC 18A .1313 WATER SUPPLY

(a) Water supplies shall meet the requirements in 15A NCAC 18C or 15A NCAC 18A .1700.

(b) Non-community public water supplies shall be listed with the Public Water Supply Section, Division of Environmental Health.

(c) In institutions which use a non-community water supply, a sample of water shall be collected by the Department at least once a year and submitted to the Division of Laboratory Services or other laboratory certified by the Department to perform bacteriological examinations.

(d) Cross-connections with sewage lines, non-potable water supplies, or other potential sources of contamination are prohibited.

(e) Hot water heating facilities shall be provided. Hot and cold running water under pressure shall be provided to food preparation areas, and to any other areas in which water is required in sufficient quantities to carry out all operations.

(f) The local health department shall be immediately notified if the primary water supply is interrupted for more than four hours. Each institution shall have a plan to obtain a backup water supply in the event that the water supply is lost for more than four hours. ~~The backup water supply plan shall provide for a minimum of 25 gallons of potable water per day per patient or resident for all purposes for a minimum of three days.~~ The backup water supply plan shall provide for two liters of water per day per person for drinking and an additional 25 gallons per day per person for other purposes. The amount of water provided for uses other than drinking may be reduced if the plan includes alternatives for water use for services such as laundry and dishwashing. If an assessment determines that tap water is not to be used for drinking, sources shall be prominently labeled or hooded to restrict use and potable water shall be provided.

Authority G.S. 130A-235.

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.~~ Non-absorbent mattress covers shall be used as necessary to keep mattresses clean, dry and odor-free.

(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~~ an EPA Listed laundry sanitizer 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.

Authority G.S. 130A-235.

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. Separate handwashing lavatories shall not be required for activity kitchens used only by groups of 12 or less people.

(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.

Authority G.S. 130A-235.

15A NCAC 18A .1321 FOOD SUPPLIES

(a) All food and food supplies provided by the institution shall be from sources which comply with North Carolina "Rules Governing the Sanitation of Restaurants and Other Foodhandling Establishments" 15A NCAC 18A .2600 and shall be clean, free from spoilage, free from adulteration and misbranding, and safe for human consumption.

(b) Food brought from home by employees or visitors of patients or residents shall be stored separately from the institution's food supply and shall be labeled with the name of the person to receive the food and the date the food was brought in and shall be kept only as long as it is clean, and free from spoilage. Labeling shall not be required for food items stored in employee-designated or individual resident's refrigerators or rooms.

Authority G.S. 130A-235.

SECTION .2500 - PUBLIC SWIMMING POOLS

15A NCAC 18A .2508 DEFINITIONS

The following definitions shall apply throughout this Section:

(1) Equipment replacement means replacement of individual components of the hydraulic and disinfection systems such as pumps, filters, and automatic chemical feeders.

(2) Public swimming pool means public swimming pool as defined in G.S. 130A-280. Public swimming pools are divided into ~~three~~ four types:

(a) Swimming pools are ~~all~~ public swimming pools ~~except spas and wading pools.~~ used primarily for swimming.

(b) Spas are special facilities designed for recreational and therapeutic use which are not drained, cleaned, or refilled after each individual use. Spas may include, but not be limited to, units designed for hydrojet circulation, hot water, cold water mineral bath, air induction bubbles, or any combination thereof. Common terminology for spas includes "therapeutic pool", "hydrotherapy pool", "whirlpool", "hot spa", and "hot tub".

(c) Wading pools are small, shallow ~~swimming~~ pools ~~not more than 24 inches deep~~ designed for use by ~~children.~~ children, including wading pools for toddlers and children's activity pools designed for casual water play ranging from splashing activity to the use of interactive water features placed in the pool.

(d) Specialized water recreation attractions are pools designed for special purposes which differentiate them from swimming pools, wading pools and spas. They include, but are not limited to:

(i) water slide plunge pools and run out lanes;

(ii) wave pools;

(iii) rapid rides;

(iv) lazy rivers;

(v) interactive play attractions which incorporate devices using sprayed, jetted, or other water sources contacting the users and which do not incorporate standing or captured water as part of the user activity area;

(vi) interactive fountains designed to provide public physical contact with water from an artificial impoundment; and

(vii) training pools deeper than a 24 inch deep wading pool and shallower than a 36 inch deep swimming pool.

(3) Remodeled means renovations requiring disruption of major portions of the pool shell or deck, changes in the pool profile, or redesign of the pool hydraulic system. Remodeled does not include equipment ~~replacement or repair~~ replacement, repair, or addition of outlets for the purpose of reducing suction hazards.

(4) Repair means repair of existing equipment, replastering or repainting of the pool interior, replacement of tiles or coping and similar maintenance activities. This term includes replacement of pool decks where the Department has determined that no changes are needed to underlying pipes or other pool structures.

(5) Safety vacuum release system means a system or device capable of providing vacuum release at a suction outlet caused by a high vacuum occurrence due to suction outlet flow blockage.

(6) Splash zone means the area of an interactive play attraction that sheds water to a surge tank or container to be recirculated.

Authority G.S. 130A-282.

15A NCAC 18A .2510 PUBLIC SWIMMING POOL OPERATION PERMITS

(a) No public swimming pool shall commence or continue operation on or after May 1, 1990, unless the owner or operator has an operation permit issued by the Department for each public swimming pool. Prior to issuing an operation permit, the Department shall conduct an inspection to verify compliance with the rules of this Section. Unless suspended or revoked, the operation permit shall be valid for the period of operation specified in the application but in no event shall it be valid for more than 12 months. For public swimming pools which are constructed or remodeled on or after May 1, 1991, plans and specifications shall have been approved by the Department in accordance with Rule .2509. Compliance with the design and construction requirements in Rules .2512 - .2534 and approval of plans and specifications shall not be required for public swimming pools constructed or remodeled prior to May 1, 1993.

(b) On or after May 1, 1991, equipment replacement shall comply with Rules .2512 - .2534 and shall be approved by the Department prior to installation. However, for swimming pools with existing turnover rates of less than four times in 24 hours, wading pools with existing turnover rates of less than 12 times in 24 hours, and spas with existing turnover rates of less than 48 times in 24 hours, pumps are not required to comply with Rule .2518 of this Section. Repairs do not require prior approval by the Department.

(c) These Rules shall not apply until May 1, 1992 to public swimming pools in counties or districts where a local board of health has adopted rules prior to July 5, 1989 that establish public swimming pool standards. On or after May 1, 1992, all public swimming pools must meet these Rules. Construction, remodeling, or equipment replacement permitted under local rules prior to May 1, 1992 shall not be required to meet the design and construction requirements of these Rules.

(d) A separate application for an operation permit must be submitted for each public swimming pool. The owner or operator shall apply annually to the Department for an operator's permit. A form must be obtained from the Department to provide the following information:

(1) the owner's name, address, and phone number;
(2) the operator's name, address, and phone number;
(3) street address of the public swimming pool;
(4) the physical location of the public swimming pool;
(5) type of public swimming pool;
(6) construction date;
(7) proposed operating dates;
(8) type of disinfection;
(9) signature of owner or designated representative.

Authority G.S. 130A-282.

15A NCAC 18A .2511 INSPECTIONS

(a) Each public swimming pool shall be inspected by the Department to determine compliance with the rules of this Section. Pools which open on or after April 1 and close on or before October 31 shall be inspected at least once during the period of operation. All other pools shall be inspected at least twice a year.

(b) Inspections of public swimming pools shall be conducted by Environmental Health Specialists authorized by the Department to enforce the rules of this Section. Inspections shall be documented on Inspection of Swimming Pool Form DENR 3960. Demerits shall be assessed for each item found not to be in compliance with the rules of this Section. Demerits shall be assessed as follows:

(1) Violation of Rule 18A .2535(2) of this Section regarding water clarity shall be assessed six demerits.

(2) Violation of Rule 18A .2531(a)(11) .2531(b)(3), .2535(3), (4), (5), (7), (8), or (9), or .2543(d)(7) or (e)(2) of this Section regarding disinfectant residuals shall be assessed six demerits.

(3) Violation of Rule 18A .2535(1) of this Section regarding pool water pH shall be assessed six demerits.

(4) Violation of Rule 18A .2535(12) of this Section or regarding control of water temperature in heated pools shall be assessed six demerits.

(5) Violation of Rule 18A .2535(10), (11), or (13), .2537(c), or .2540 of this Section regarding pool operator training, water quality records and test kits shall be assessed four demerits.

(6) Violation of Rule 18A .2518(k), .2537(b)(7) or (16), or .2539 of this Section regarding pool drains and suction hazards shall be assessed six demerits.

(7) Violation of Rule 18A .2537(b)(3), (8), (9) or (14) of this Section regarding maintenance of pool walls and floor shall be assessed.

(8) Violation of Rule 18A .2518(l) or (m), .2531(5), .2532(4)(b) or .2537(b)(14) of this Section regarding water surface skimmers shall be assessed four demerits.

(9) Violation of Rule 18A .2523 or .2537(b)(6) of this Section regarding depth markers and no diving markers shall be assessed four demerits.

(10) Violation of Rule 18A .2515(d) or (f), .2523(d) or .2537(b)(12) of this Section regarding floating safety ropes and contrasting color bands at breakpoints shall be assessed two demerits.

(11) Violation of Rule 18A .2517, .2521, .2527, .2537(b)(10), .2527, or .2542 of this Section regarding diving equipment, slides, ladders, steps, handrails and in-pool exercise equipment shall be assessed two points.

(12) Violation of Rule 18A .2518(j) or .2537(b)(8) of this Section regarding inlets and other fittings shall be assessed four demerits.

(13) Violation of Rule 18A .2516(b), .2521(b)(4), .2532(13) or .2537(b)(12) of this Section regarding contrasting color bands on seats or benches shall be assessed four demerits.

(14) Violation of Rule 18A .2532(7) or ,2537(b)(11) of this Section regarding spa timers shall be assessed four demerits.

(15) Violation of Rule 18A .2530(a), or (b), or .2537(b)(1) of this Section regarding lifesaving equipment shall be assessed six demerits.

(16) Violation of Rule 18A .2528, .2531(a)(8) or .2537(b)(5) of this Section regarding fences, barriers and gates shall be assessed four demerits.

(17) Violation of Rule 18A .2522 or .2537(b)(2) of this Section regarding decks shall be assessed four demerits.

(18) Violation of Rule 18A .2530(c) of this Section regarding No Lifeguard warning signs shall be assessed four demerits.

(19) Violation of Rule 18A .2530(d) or .2543(d)(13) of this Section regarding pet and glass container signs shall be assessed four demerits.

(20) Violation of Rule 18A .2532(15) through (17), or .2537(b)(13) of this Section regarding caution signs at hot water spas shall be assessed four demerits.

(21) Violation of Rule 18A .2524, or .2537(b)(4) of this Section regarding pool and deck lighting and ventilation shall be assessed four demerits.

(22) Violation of Rule 18A .2530(e) of this Section regarding emergency telephones shall be assessed six demerits.

(23) Violation of Rule 18A .2535(6) of this Section regarding automatic chlorine or bromine feeders shall be assessed four demerits.

(24) Violation of Rule 18A .2518 .2519, .2525, .2531(a)(1) through (3), .2532(1) through (6), or .2543(b), (d)(1) through (6) or (e)(1) of this Section regarding pool filter and circulation systems shall be assessed four demerits

(25) Violation of Rule 18A .2533, .2534 or .2537(b)(15) of this Section regarding equipment rooms and chemical storage rooms shall be assessed two demerits.

(26) Violation of Rule 18A .2518(e) of this Section regarding identification of valves and pipes shall be assessed two demerits.

(27) Violation of Rule 18A .2513(b) of this Section regarding air gaps for filter backwash shall be assessed two demerits

(28) Violation of Rule 18A .2526 or .2543(d)(11) of this Section regarding accessible dressing and sanitary facilities shall be assessed two demerits.

(29) Violation of Rule 18A .2526 of this Section regarding maintenance and cleaning of dressing and sanitary facilities and fixtures shall be assessed two demerits.

(30) Violation of Rule 18A .2512 of this Section regarding water supplies shall be assessed two demerits.

(31) Violation of Rule 18A .2513(a) of this Section regarding sewage disposal shall be assessed two demerits.

(32) Violation of Rule 18A .2526(c) of this Section regarding floors in dressing and sanitary facilities shall be assessed two demerits.

(33) Violation of Rule 18A .2526(c),or (d) of this Section regarding hose bibs and floor drains in dressing and sanitary facilities shall be assessed two demerits.

Authority G.S. 130A-282.

15A NCAC 18A .2516 POOL PROFILE

(a) The vertical walls shall not exceed ~~11?~~ 11° from plumb. Corners formed by intersection of walls and floors shall be coved or radiused. Hopper bottomed pools shall be prohibited.

(b) Underwater ledges or protrusions shall be prohibited; except that underwater stairs, seats and benches may be installed in areas of the pool ~~less than 3.5 feet deep,~~ no more than 4 feet

deep, provided underwater seats and benches have a maximum seat depth of 2 feet, protrude no more than 18 inches into the pool and they are clearly marked by a contrasting color band on the leading edge and underwater stairs meet the requirements of Rule .2521 of this Section. Underwater seats shall not project into swim lanes.

(c) The slope of the bottom of any portion of any public swimming pool having a water depth of less than five feet (1.52 m) shall not be more than one foot vertical change in 10 feet (10 cm in one meter) of horizontal distance and the slope shall be uniform.

(d) In portions of pools with water depths greater than five feet (1.52 m), the slope of the bottom shall not be more than one foot vertical in three feet (33.3 cm in one meter) of horizontal distance.

(e) Design of diving areas shall be in accordance with Tables 1A and 1B of Rule .2517 of this Section.

(f) Fountains installed in public swimming pools shall be approved prior to installation and shall comply with the following:

(1) Shall not be installed in an area with a water depth exceeding 18 inches;

(2) Shall be recommended by the manufacturer for use in a public swimming pool;

(3) Shall be installed in accordance with the manufacturer's instructions;

(4) Shall be separate from the pool water recirculation system; and

(5) Shall not release water at a velocity greater than 10 feet per second.

Authority G.S. 130A-282.

15A NCAC 18A .2517 DIVING EQUIPMENT

(a) When diving equipment is installed, it shall be located in the diving area of the pool so as to provide the minimum dimensions as shown in Tables 1A and 1B of this Rule and shall conform to the following specifications:

(1) Diving equipment shall be designed for swimming pool use and shall be installed in accordance with the manufacturer's recommendations.

(2) Installation instructions and specifications shall be provided with each unit.

(3) A label shall be permanently affixed to the diving equipment and shall include:

(A) manufacturer's name and address;

(B) board length;

(C) type of diving board;

(D) fulcrum setting specifications if applicable.

(4) Diving equipment shall have slip-resistant tread surfaces.

(b) Supports, platforms, and steps for diving equipment shall be of substantial construction, and of sufficient strength to carry safely the maximum anticipated loads. Steps shall be of corrosion-resistant design. Handrails shall be provided at all steps and ladders leading to diving boards which are one meter or more above the water.

(c) There shall be a completely unobstructed clear vertical distance of 13 feet above any diving board measured from the center of the front end of the board. This area shall extend horizontally at least eight feet behind, eight feet to each side, and 16 feet ahead of Point A in Table 1A.

Table 1A

Maximum Board Length	Maximum Board Height Above Water	Board Overhang (Pt. A)		Minimum Water Depths		
		Max	Min	D1	D2	D3
12 feet	Up to 30 in	5 feet	4 feet	8'0"	9'0"	8'3"
16 feet	1 meter	6 feet	5 feet	8'6"	10'0"	8'6"
16 feet	3 meters	6 feet	5 feet	11'6"	12'0"	11'6"

KEY TO ABBREVIATIONS:

Pt A is the point on the water line of the pool directly beneath the end of the diving board.

D1 is the depth of the water measured from the water line to the floor at the beginning of the radius connecting the end wall with the floor at the deep end of the pool.

D2 is the depth of the water at the deepest point in the pool.

D3 is the depth of the water at the point where the deep area of the pool meets the transition to the shallow area of the pool.

Table 1B

Maximum Board Length	Horizontal Distances						Minimum Pool Width	Minimum Separation Distances	
	L1	L2	L3	L4	L5	L6		F	G

12 feet	3'	7'	10'3"	9'9"	30'	4'	20'	10'	10'
16 feet	5'	5'	11'6"	10'6"	32'	4'	24'	12'	10'
16 feet	5'	5'	7'6"	19'6"	37'	3'	28'	14'	12'

KEY TO ABBREVIATIONS:
L1 is the radius of the curve connecting the side wall to the floor at the deep end of the pool.
L2 is the distance between the center of the radius connecting the end wall to the floor at the deep end of the pool and the deepest point in the pool.
L3 is the distance between the deepest point in the pool and the beginning of the transition to the shallow area of the pool.
L4 is the length of the transition zone.
L5 is the total of L1 + L2 + L3 + L4.
L6 is the length of the shallow area of the pool.
F is the distance between the side wall of the pool and the centerline of the diving board.
G is the distance between the center lines of two adjacent diving boards.

(d) Public pools with diving facilities in excess of three meters in height, or pools designed for platform diving, shall be approved on a case-by-case basis. Diving pools which meet the Federation Internationale De Nation Amateur (FINA) guidelines shall be approved.
(e) Starting platforms used for racing starts during competition shall be secured from use when the pool is open for general use by removal, covering, or signage and active supervision. Minimum water depth for ~~diving~~ starting platforms ~~used for racing starts during competition and practice~~ shall be measured at a distance of 3 feet, 3 ½ inches (1.0 meter) to 16 feet, 5 inches (5.0 meters) from the end wall. Height of starting ~~blocks~~ platforms shall not exceed the following:

(1) In pools with water depth less than 3 feet, 6 inches (1.07 meters) at the starting end, raised starting platforms shall be prohibited.
(2) In pools with water depth 3 feet, 6 inches (1.07 meters) to less than 4 feet (1.22 meters) at the starting end, starting platforms shall be no more than 18 inches (0.46 meter) above the water surface.
(3) In pools with a water depth of 4 feet (1.22 meters) or greater at the starting end, starting platforms shall be no more than 30 inches (0.762 meter) above the surface of the water. Starting platforms shall be constructed to be easily removed from the deck when the swimming pool is used for other than competitive purposes.

Authority G.S. 130A-282.

15A NCAC 18A .2518 CIRCULATION SYSTEM
(a) Pools shall be equipped with a circulation system.
(b) The capacity of the circulation system shall be sufficient to clarify and disinfect the entire volume of swimming pool water four times in 24 hours. The system shall be operated 24 hours per day during the operating season.
(c) The piping of the circulation system shall be designed and installed so that the main drains, and the lines from the perimeter overflow system or the automatic surface skimmers shall be connected to the suction line of the circulation pump.
(d) The circulation piping shall be designed and installed with the necessary valves and pipes so that the flow from the swimming pool can be from main drains or the surface overflow system. The circulation piping shall be designed such that the flow of water from the swimming pool can be simultaneous from the surface overflow system and the main drains. Skimmer piping shall be sized to handle the maximum flow rate for the required number of skimmers, but in no case less than 50 percent of the design flow rate. Perimeter overflow system piping shall be sized to handle 50 percent of the design flow rate. The main drain piping shall be sized to handle 50 percent of the design flow rate.
(e) Piping shall be designed to reduce friction losses to a minimum and to carry the required quantity of water at a maximum velocity not to exceed six feet ~~(1.83 m)~~ per second for suction piping and not to exceed 10 feet ~~(2.44 m)~~ per second for discharge piping except for copper pipe where the velocity shall not exceed eight feet per second. Piping shall be of non-toxic material, resistant to corrosion, and able to withstand operating pressures. If plastic pipe is used, a minimum of Schedule 40 PVC shall be ~~required except that flexible PVC hoses which meet NSF Standard Number 50 shall be allowed.~~ required. Exposed pipes and valves shall be identified by a color code or labels.
(f) The circulation system shall include a strainer to prevent hair, lint, and other debris from reaching the pump. A spare basket shall be provided. Strainers shall be corrosion-resistant with openings not more than ~~3 inch~~ ¼ inch (6.4 mm) in size which shall provide a free flow area at least four times the cross-section area of pump suction line and shall be accessible for daily cleaning.
(g) A vacuum cleaning system shall be provided to remove debris and foreign material which settles to the bottom of the swimming pool. Pools with more than two skimmers shall be provided with a vacuum cleaning system which is an integral part of the circulation system. Connections shall be located at intervals sufficient to reach the entire pool with a 50 foot hose. Skimmer vacuums may be used in pools with two or fewer skimmers provided the skimmer basket remains in place while the vacuum is in operation. The vacuum cleaning system shall be provided with valves and protective caps.
(h) A rate-of-flow indicator, reading in liters or gallons per minute, shall be installed on the filtered water line and located so that the rate of circulation is indicated. The indicator shall be capable of measuring flows which are at least ~~12 times~~ 1 ½ times the design flow rate, shall be accurate within 10 percent of true flow, and shall be easy to read. The indicator shall be installed in accordance with manufacturers' specifications.
(i) A pump or pumps shall be provided with adequate capacity to recirculate the swimming pool water four times in 24 hours,

and shall be so located as to eliminate the need for priming. If the pump or pumps, or suction piping is located above the overflow level of the pool, the pump or pumps shall be self-priming. The pump or pumps shall be capable of providing a flow adequate for the backwashing of filters. Unless headloss calculations are provided by the designing engineer, pump design shall be based on an assumed total dynamic head of 65 feet of water. Pumps three horsepower or smaller shall be ~~National Sanitation Foundation~~ NSF International (NSF) listed or verified by an independent third-party testing laboratory to meet all applicable provisions of ~~NSF~~ NSF/ANSI Standard ~~Number~~ 50. Verification shall include testing and in-plant quality control inspections. Larger pumps for which NSF listing is not available shall be approved on a case-by-case basis.

(j) Inlets.

(1) Inlets shall be provided and arranged to produce a uniform circulation of water and maintain a uniform disinfectant residual throughout the pool.

(2) The number of inlets for any swimming pool ~~with a surface area of 2,000 square feet (186 sq m), or less,~~ will be determined based on return water flow. ~~Flow rates (in gallons per minute) through various sized inlet branches shall not exceed those listed in Table 2 of this Rule.~~ There shall be at least one inlet per 20 gallons per minute of return water flow. There shall be a minimum of four inlets for any swimming pool. ~~For any pool with a surface area greater than 2,000 square feet (186 sq m), the number of inlets shall be based on one inlet per 15 feet of perimeter or portion thereof.~~

~~Table 2~~

~~Inside Pipe Diameter~~	~~GPM~~
~~1inch~~	~~10~~
~~13 inches~~	~~20~~
~~12 inches~~	~~30~~
~~2 inches~~	~~50~~

(3) ~~When wall inlets are used, they shall be equally spaced around the perimeter. When floor inlets are used, they shall be spaced throughout the pool to accomplish a uniform recirculation.~~ Inlets shall be located so that no part of the swimming pool is more then 25 feet of horizontal distance from the nearest return inlet.

(4) Provision shall be made to permit adjustment of the flow through each inlet, either with an adjustable orifice or provided with replaceable orifices to permit adjustments of the flows.

(k) Drains.

(1) Swimming pools shall be provided with at least two main drain outlets which shall be located at the deepest section of the pool and connected by "T" piping. Connecting piping shall be sized and configured such that blocking any one drain will not result in flow through the remaining drains or pipes exceeding a velocity of six feet per second while handling 50 percent of the design flow rate. The drains shall be capable of permitting the pool to be emptied completely. Drains shall be spaced not more than 30 feet ~~(9.1 m)~~ apart, and not more than 15 feet ~~(4.6 m)~~ away from the side walls. There shall be at least three feet of clear separation between drain grates or covers.

(2) Other systems which require suction outlets shall be provided with two drains with "T" connection pipe. This provision does not apply to capped vacuum outlets.

(3) Outlet drain gratings shall have a total area of at least four times the area of the discharge pipe and shall be designed so as not to be readily removed by or create any hazard to bathers.

(4) The outlet grate open area shall be such that when maximum flow of water is being pumped through the floor outlet, the velocity through the open grate shall not be greater than one and one-half feet per second. Outlet grates shall be anchored and openings in grates shall be slotted and the maximum dimension of slots shall not be more than one-half inch. Where outlet fittings consist of parallel plates, of the anti-vortex type where the water enters the fittings from the sides, rather than through a grating facing upward, entrance velocities may be increased to six feet per second.

(l) Surface Overflow Systems.

(1) Swimming pools shall be provided with a surface overflow system which shall be an integral part of the circulation system and which shall consist of a built-in-place perimeter overflow system, a pre-fabricated perimeter overflow system, or recessed automatic surface skimmers.

(2) Whenever a built-in-place perimeter overflow system or a pre-fabricated perimeter overflow system is provided, it shall be designed and installed as follows:

(A) The system shall be capable of handling 50 percent of the circulation flow without the overflow troughs being flooded for any appreciable period of time;

(B) A surge capacity shall be provided either in the system or by use of a surge tank; and the total surge capacity shall be at least equal to one gallon per square foot ~~(41L per square meter)~~ of swimming pool water surface area;

(C) The water level of the swimming pool shall be maintained at, or slightly higher than, the level of the overflow rim of the perimeter overflows, except for the time needed to transfer all of the water which may be in the surge capacity back into the

swimming pool after a period of use; provided that this transfer time shall not be greater than 20 minutes;

(D) When installed the tolerance of the overflow rim shall not exceed 1/4 inch ~~(6.4 mm)~~ as measured between the highest point and the lowest point of the overflow rim;

(E) During quiescence, the overflow system shall be capable of providing continuously and automatically a skimming action to the water at the surface of the swimming pool;

(F) The overflow troughs shall be installed completely around the perimeter of the swimming pool, except at steps, recessed ladders and stairs;

(G) The exposed surfaces of the overflow trough shall be capable of providing a firm and safe hand-hold; and

(H) The overflow trough shall be cleanable and shall be of such configuration as to minimize accidental injury.

(3) Whenever a recessed automatic surface skimmer or skimmers are installed, they shall be designed and constructed in accordance with Section 8 of ~~the National Sanitation Foundation's~~ NSF/ANSI Standard ~~#50~~ 50 for circulation system components for swimming pools, spas, or hot tubs, which is hereby incorporated by reference including any subsequent amendments and editions. This material is available for inspection at the Department of Environment and Natural Resources, Division of Environmental Health, 2728 Capital Boulevard, Raleigh, North Carolina. Copies may be obtained from the NSF International, 3475 Plymouth Road, P.O. Box 130140, Ann Arbor, Michigan 48113-0140 at a cost of seventy dollars ($70.00). Recessed automatic surface skimmers shall be installed as follows:

(A) The flow-through rate through any one recessed automatic surface skimmer shall be between 20 and 30 gallons per minute. Piping shall be sized to allow a flow of 30 gallons per minute for each ~~skimmer;~~ skimmer except the maximum pipe size for skimmer piping shall not be required to exceed what is needed to handle 100 percent of the design flow rate for the pool, and;

(B) There shall be at least one recessed automatic surface skimmer for each 400 square feet ~~(46 sq. m)~~ of water surface area of the swimming pool or fraction ~~thereof;~~ thereof; and

(C) When two or more recessed automatic surface skimmers are required, they shall be so located as to minimize interference with each other and as to insure proper and complete skimming of the entire swimming pools water ~~surface;~~ surface; and

(D) Skimmers shall not protrude into the swimming pool. Automatic surface skimmer or skimmers without a perimeter overflow system, shall be installed so that the operating level of the pool is no more than nine inches below the finished deck level so that the deck can be used as a handhold.

(m) Where flooded suction on the pump is not possible to prevent cavitation and loss of prime, skimmers shall have a device or other protection to prevent air entrainment in the suction line. The inlet to the equalizer line shall be provided with a grate.

(n) Nothing in this Section shall preclude the use of a roll-out or deck-level type of swimming pool. Such designs shall conform to the general provisions relating to surface overflow systems. The design of the curb and handhold shall be approved by the Department based on detailed review of this feature of construction and evaluated in the light of proposed use of the swimming pool.

(o) Nothing in this Section shall preclude the use of a surface overflow system which combines both a perimeter overflow system and a recessed automatic surface skimmer or skimmers.

Authority G.S. 130A-282.

15A NCAC 18A .2522 DECKS

(a) Outdoor swimming pools shall have a continuous deck extending completely around the swimming pool. The width of the deck or walkway shall provide at least six feet of clear walking space at all points. If the swimming area of the pool is 1600 square feet or larger, at least eight feet of clear walking space is required.

(b) Indoor swimming pools shall have a continuous deck or walkway extending completely around the swimming pool. The width of the deck shall provide at least five feet of clear walking space at all points. Structures covering swimming pools, including temporary domes, shall be constructed to maintain a vertical clearance of at least seven feet from all parts of the required clear walk space.

(c) Wading pools shall have a continuous deck extending completely around the wading pool. The width of the deck or walkway shall provide at least four feet of clear walking space at all points.

(d) Spas shall have a continuous deck extending at least one-half way around the spa. The width of the deck or walkway shall provide at least four feet of clear walking space at all points.

~~(e) Whenever a diving board or slide is installed on a swimming pool, there shall be at least five feet (1.52 m) of unobstructed deck behind the diving board or slide.~~

(e) There shall be at least five feet of clear walking space around any diving board, handrail, slide or other permanent structure installed on a swimming pool deck.

(f) All deck areas and walkways shall be sloped at a grade of ~~3~~ one-fourth inch to ~~2~~ one-half inch per foot to a deck drain or sheet drain to deck edge. Deck drains shall not be connected to the circulation system in any manner.
(g) All decks and walkways shall have a slip-resistant, impervious surface.
(h) Sufficient hose bibs shall be provided to allow all areas of the deck to be reached with a 100 foot hose.
(i) Special purpose pools such as waterslides and wave pools may vary from the minimum deck area requirements to the extent necessary to accommodate the special features of the pool.
(j) Special structures necessary to provide access to a public swimming pool by persons with disabilities shall be allowed to vary from the provisions of this Section to the extent necessary to accommodate such access. Such structures shall be approved on a case-by-case basis and shall be designed so as to minimize obstruction of the deck.
(k) For all swimming pools constructed after April 1, 2000 decks shall be continuous with the top of the pool wall or gutter and shall not be more than nine inches above the standard operating water level.

Authority G.S. 130A-282.

15A NCAC 18A .2523 DEPTH MARKINGS AND SAFETY ROPES

(a) On swimming pools, the depth of the water shall be marked plainly, at or above, the water surface on the vertical wall of the swimming pool where possible, and on the edge of the deck next to the swimming pool. Where depth markers cannot be placed on the vertical walls at or above the water level, other means shall be used; provided said markings shall be plainly visible to persons in the swimming pool. Depth markers shall be placed at the following locations:

(1) at the points of maximum and minimum depths;
(2) at the transition point where the slope of the bottom changes from the uniform slope of the shallow area;
(3) if the pool is designed for diving, at appropriate points as to denote the water depths in the diving area;
(4) at both ends of the pool.

(b) Depth markers shall be so spaced that the distance between adjacent markers is not greater than 25 feet (7.5 m) when measured peripherally.
(c) Depth markers shall be in Arabic numerals at least four inches (10 cm) high and of a color contrasting with the background. Depth markings shall indicate the depth of the pool in feet of water and shall include the word "feet" or symbol "ft" to indicate the unit of measurement. Depth markings installed in pool decks shall provide a slip resistant walking surface.
(d) No Diving markers shall be provided on the pool deck adjacent to all areas of the pool less than five feet deep. No Diving markers shall consist of the words "No Diving" in letters at least four inches high and of a color contrasting with the background or at least a six-by-six inch international symbol for no diving in red and black on a white background. The distance between adjacent markers shall not be more than 25 feet. Posting of No Diving markers shall not preclude shallow diving for racing starts and supervised practice.
~~(d)~~(e) A minimum ~~of : inch~~ of ¾ inch diameter safety rope shall be provided at the breakpoint where the slope of the bottom changes to exceed a 1 to 10 vertical rise to horizontal distance at a water depth of five feet (1.5 m) or less. The position of the rope shall be marked with colored floats at not greater than a five-foot spacing and a two inch wide contrasting color band across the pool bottom.
~~(e) Notice shall be provided in the pool area that no diving is allowed in areas of the pool less than 5 feet (1.5m) deep. Posting of this notice shall not preclude shallow diving for racing starts and supervised practice.~~

Authority G.S. 130A-282.

15A NCAC 18A .2524 LIGHTING AND VENTILATION

(a) Artificial lighting shall be provided at all indoor and outdoor pools which are to be used at night, or when natural lighting is insufficient to provide clear visibility in the pool area.
(b) Lighting fixtures shall be of such number and design as to illuminate all parts of the pool, the water, the depth markers, signs, entrances, restrooms, safety equipment and the ~~entire deck area.~~ required deck area and walkways.
(c) Fixtures shall be installed so as not to create hazards such as burning, electrical shock, mechanical injury, or temporary blinding by glare to the bathers, and so that lifeguards, when provided, can clearly see every part of the pool area without being blinded by glare. The illumination shall be sufficient so that the floor of the pool can be seen at all times the pool is in use.
(d) If underwater lighting is used, it shall provide at least 0.5 watts or 8.35 lumens per square foot of water surface.
(e) If underwater lighting is used, area lighting shall provide at least 0.6 watts or 10 lumens per square foot of required deck area. Where underwater lighting is not used, and night swimming is permitted, area and pool lighting combined shall provide not less than 2.0 watts or 33.5 lumens per square foot of pool and required deck area.
(f) Mechanical ventilation shall be required for all indoor pools.

Authority G.S. 130A-282.

15A NCAC 18A .2525 HEATER AND TEMPERATURE REQUIREMENTS

~~(a) Gas heaters must be American Gas Association (AGA) design certified, display a rating data plate and AGA seal, and be certified as meeting the latest American National Standards Institute's (ANSI Z21.56) standard which is adopted by reference in accordance with G.S. 150B-14(c) or other applicable and equivalent standards.~~
(a) ~~(b) Electric heaters shall be tested by a recognized agency and~~ Pool heaters shall be designed for the purpose intended. ~~Current collectors having a separate ground shall be installed at each inlet and outlet of the electric heater.~~
(b) ~~(c)~~ Heaters shall be equipped with thermostatic controls capable of assuring that the maximum operating temperature of spa water does not exceed 104 degrees Fahrenheit (40 degrees C), and that the maximum operating temperature of ~~pool water~~ other heated public swimming pools does not exceed 90 degrees

Fahrenheit (32 degrees C). Such controls shall be accessible only to the operator.

Authority G.S. 130A-282.

15A NCAC 18A .2526 DRESSING AND SANITARY FACILITIES

(a) Dressing and sanitary facilities shall be provided at all pools, except for pools at hotels, motels, condominiums, and apartments where pool use is restricted to residents or guests. At hotels, motels, condominiums and apartments where the farthest unit is more than 300 feet from the pool, as measured along walkways provided for access by residents or guests to the pool area, a toilet and lavatory shall be provided. All public swimming pools shall post a sign visible upon entering the pool enclosure directing pool users to shower before entering the pool.

(b) Partitions shall be of durable material, not subject to damage by water and shall be designed so that a waterway is provided between partitions and floor to permit thorough cleaning of the walls and floor areas with hoses and brooms.

(c) ~~Floors of the dressing~~ Dressing facility floors shall be continuous throughout the areas. Floors shall have a slip-resistant surface that shall be relatively smooth, to insure complete cleaning. Floor drains shall be provided, and floors shall be sloped not less than ~~3 inch~~ ¼ inch per foot toward the drains to insure positive drainage.

(d) Hose bibs shall be provided such that all parts of the dressing facility interior can be reached with a 50 foot hose.

(e) The minimum criteria for dressing and sanitary facilities shall be based upon the maximum bather load.

(f) One water closet, one lavatory, and one urinal shall be provided for the first 100 male users. One additional water closet, lavatory, and urinal shall be provided for each additional 200 male users or major fraction thereof up to a total of 500 users. Where user load exceeds 500 male users, two additional water closets or urinals and one lavatory shall be provided for each additional 250 male users. Where the maximum bather load includes less than 50 male users, one water closet and one lavatory will be sufficient.

(g) Two water closets and two lavatories shall be provided for the first 100 female users. One additional water closet and lavatory shall be provided for each additional 100 female users or major fraction thereof up to a total of 500 users. Where user load exceeds 500 female users, two additional water closets and one lavatory shall be provided for each additional 250 female users. Where the maximum bather load includes less than 50 female users, one water closet and one lavatory will be sufficient.

(h) Showers shall be provided in the proportion of one for each 200 persons at the time of maximum bather load.

(i) The water heater shall be inaccessible to users. The system shall be designed such that water temperature at the shower heads and lavatories cannot exceed ~~110° Fahrenheit.~~ 128° Fahrenheit.

(j) Soap dispensers ~~for providing~~ with either liquid or powdered soap shall be provided at each lavatory or ~~inside~~ required shower. The dispenser shall be of all metal or plastic type, with no glass permitted in these units.

(k) If mirrors are provided, they shall be of shatterproof materials.

(l) Toilet paper holders with toilet paper shall be provided at each water ~~closet combination.~~ closet.

(m) Dressing and sanitary facilities shall be kept clean and in good repair.

Authority G.S. 130A-282.

15A NCAC 18A .2528 FENCES

Swimming pools shall be protected by a fence, wall, building, or other enclosure, or any combination thereof, which completely encloses the swimming pool area such that all of the following conditions are met:

(1) Constructed so as to afford no external handholds or footholds. However, the use of wire mesh fences with a mesh size of ~~23 inches~~ 2 1/4 inches or less is permitted;

(2) A four foot (1.22 m) minimum height (from the outside approach) is provided entirely around the swimming pool;

(3) The horizontal space between vertical members of the enclosure shall not exceed four inches; where the horizontal space between vertical members exceeds 1 3/4 inches there shall be at least 30 inches between any horizontal bottom rails or stringers and the next horizontal rails or stringers;

(4) The height of any opening under the bottom of the enclosure shall not exceed four inches (10 cm);

(5) Openings under and through a fringe or barrier with the gate(s) closed shall be sized so that a ~~42 inch~~ 4 inch diameter sphere cannot be passed through the openings;

(6) All gates and doors shall be equipped with self-closing and positive self-latching closure mechanisms and shall be equipped with locking devices. Gates provided to allow bathers access to the pool shall be located so as to open to the pool at a point where the water is ~~less than~~ no greater than five feet deep. On pools built after May 1, 1996, access gates shall open away from the pool except when natural topography or other conditions dictate that it open inward. Release of the latch on the self-latching device shall be activated:

(a) at a height no less than 54 inches above ~~grade for wire mesh access gates and at a height no less than 54 inches above the horizontal bottom rail of a picket/ornamental access gate;~~ grade; or

(b) on the pool side of the gate at a distance of no less than three inches below the top of the gate provided. On fences constructed after April 1, 2000 there shall be no opening greater than one-half inch within 18 inches of where the latch release is activated when the gate is ~~closed.~~ closed; or

(c) by a card reader, key, or combination lock;

(7) Gates provided specifically for access to equipment rooms shall be locked at all times when not in use by the pool operator;

(8) Ground level doors and windows opening inside the pool enclosure must be self-closing or child ~~protected;~~ protected by means of a barrier or audible alarm; and

(9) Self-closing, self-latching gates shall not be required for gates which are kept locked, or for entrances where access is controlled by a gate attendant and a lifeguard is on duty in the pool area.

Authority G.S. 130A-282.

15A NCAC 18A .2529 USER LOADING

In determining the maximum number of persons allowed in the pool at any one time, the following criteria shall govern:

(1) Fifteen square feet (1.39 sq m) of water surface area per person shall be provided in areas of the pool five feet (1.52 m) deep or less.

(2) Twenty-four square feet (2.23 sq m) of water surface area per person shall be provided in areas of the pool greater than five feet (1.52 m) deep. Three hundred square feet (27.87 sq m) of pool area around each diving board or platform, where provided, shall not be included in computing this area for the purpose of determining maximum bather load.

(3) Ten square feet (0.9 sq m) of water surface area per person shall be provided in spas.

(4) Twenty-five square feet of splash zone area per person shall be provided at interactive play attractions.

Authority G.S. 130A-282.

15A NCAC 18A .2530 SAFETY PROVISIONS

(a) Swimming pools shall have lifesaving equipment conspicuously and conveniently on hand at all times. A unit of lifesaving equipment shall include the following:

(1) A light, strong pole not less than 12 feet long, ~~including~~ with a body ~~hook.~~ hook securely attached. The pole attached to the body hook shall be non-telescoping, non-adjustable and non-collapsible.

(2) A minimum ~~3 inch~~ ¼ inch diameter throwing rope as long as one and one-half times the maximum width of the pool or 50 feet, whichever is less, to which has been firmly attached a U.S. Coast Guard approved ring buoy. A rescue tube or rescue can shall be accepted as a substitute for the ring buoy where it is accompanied by a lifeguard who has been trained to use it properly.

(b) Two units of lifesaving equipment must be provided for any pool which exceeds 3,000 square feet (186 sq m) of total surface area.

(c) When a swimming pool does not have at least one lifeguard on duty, a sign shall be posted which has clearly legible letters of at least four inches (10 cm) in height stating: "WARNING-NO LIFEGUARD ON DUTY." In addition there shall be signs clearly legible from all bather entrances with a minimum letter size of one inch stating: "CHILDREN SHOULD NOT USE THE SWIMMING POOL WITHOUT ADULT SUPERVISION", and: "ADULTS SHOULD NOT SWIM ALONE". Wading pools which do not have a lifeguard inside the wading pool enclosure shall have a sign posted stating "WARNING NO LIFEGUARD ON DUTY". Such signs shall be mounted permanently.

(d) A sign prohibiting pets and glass containers in the pool area shall be provided.

(e) Pool closed signs shall be provided and shall be posted at bather entrances whenever an operation permit is suspended for water quality or safety violations.

(f) ~~(e) Effective April 1, 2000 a~~ A telephone capable of directly dialing 911 or other emergency notification system shall be provided and accessible to all pool ~~users within 300 feet of the pool.~~ users. Effective April 1, 2005 the telephone shall be permanently affixed to a location inside the pool enclosure or outside the enclosure within 75 feet of a bather entrance. The telephone shall be visible from within the pool enclosure or a sign shall be posted indicating the location of the emergency telephone. A sign with clearly legible letters shall be posted at the telephone providing dialing instructions, address of the pool location and the telephone number. Where the telephone does not directly access 911, the emergency notification system shall:

(1) Provide 24 hour monitoring of all incoming calls by a telecommunicator who answers only emergency calls;

(2) Be capable of routing calls to the local 911 telecommunicator via the 911 dedicated emergency trunk line; and

(3) Electronically transfer Automatic Number Identification and Automatic Locator Identification for the emergency telephone at the pool to the Enhanced 911 system for all calls routed to 911.

Authority G.S. 130A-282.

15A NCAC 18A .2531 WADING POOLS

(a) Wading pools shall meet all design specifications for swimming pools and wading pools included in Rules .2512-.2530 of this Section with the following exceptions:

(1) Wading pools shall be physically separate from other public swimming pools except that a fill pipe and valve from a swimming pool recirculation system can be used to introduce water to a wading pool.

(2) Every wading pool shall be equipped with a circulation system which is separate from, and independent of, the circulation system of the swimming pool. Such circulation system shall at least consist of a circulating pump, piping, a filter, a rate-of-flow meter, a disinfectant feeder, two inlets, two main drains with "T" connecting piping, and one automatic surface skimmer. Individual components of a wading

pool system must meet the criteria of Rule .2518 of this Section.

(3) The capacity of the circulation system shall be capable of filtering and disinfecting the entire volume of water in the wading pool 12 times in every 24 hours.

(4) Wading pools shall be equipped with main drains located at the deepest point of the wading pool and covered by gratings which meet the requirements of Rule .2518(k) of this Section.

(5) Wading pools shall be equipped with a surface overflow system capable of removing floating material.

(6) Wading pools shall not be deeper than 24 inches (61 cm) at the deepest point.

(7) Wading pools' floor slope shall not exceed one foot in 12 feet.

(8) Wading pools shall be located in the vicinity of the shallow end of the swimming pool, and shall be separated from the swimming pool by a fence or structure similar to that described in Rule .2528 of this Section, which shall be equipped with self-closing and positive self-latching closure mechanisms, and shall be equipped with permanent locking devices. Wading pool entrance gates located inside another public swimming pool enclosure shall open away from the deeper pool. Wading pool fences constructed after April 1, 2000 shall be at least four feet high.

(9) Wading pools shall be designed to provide at least 10 square feet per child.

(10) Depth markers shall not be required at wading pools.

(11) The free chlorine residual in wading pools shall be maintained at no less than two parts per million.

(12) Wading pools shall not be required to provide the lifesaving equipment described in Rule .2530(a) of this Section.

(b) Children's activity pools shall be constructed and operated in accordance with the rules of this Section including the requirements for wading pools with the following exceptions:

(1) The filter circulation system shall be separate from any feature pump circulation system;

(2) The filter circulation system for stand-alone children's activity pools shall filter and return the entire water capacity in no more than one hour and shall operate 24 hours a day;

(3) The disinfectant residual in children's activity pools shall be maintained at a level of at least two parts per million of free chlorine measured in the pool water and at least one part per million in all water features;

(4) Valves shall be provided to control water flow to the features in accordance with the manufacturers' specifications and

(5) Children's activity pools built prior to (the effective date of this Rule) which do not comply with these design and construction requirements shall be permitted to operate as built if no water quality or safety violations occur.

Authority G.S. 130A-282.

15A NCAC 18A .2532 SPAS AND HOT TUBS

Spas and hot tubs shall meet all design specifications for swimming pools and wading pools included in Rules .2512-.2530 of this Section with the following exceptions:

(1) The circulation system equipment shall provide a turnover rate for the entire water capacity at least once every 30 minutes.

(2) The arrangement of water inlets and outlets shall produce a uniform circulation of water so as to maintain a uniform disinfectant residual throughout the spa.

(3) A minimum of two inlets shall be provided with inlets added as necessary to maintain required flowrate.

(4) Water outlets shall be designed so that each pumping system in the spa (filter systems or booster systems if so equipped) provides the following:

(a) Two drains connected by "T" piping. Connecting piping shall be of the same diameter as the main drain outlet. Filter system drains shall be capable of emptying the spa completely. In spas constructed after April 1, 2000 drains shall be installed at least three feet apart or located on two different planes of the pool structure.

(b) Filtration systems shall provide at least one surface skimmer per 100 square feet, or fraction thereof of surface area.

(5) The water velocity in spa or hot tub discharge piping shall not exceed 10 feet per second (3.05 m/second); except for copper pipe where water velocity shall not exceed eight feet per second (2.44 m/second). Suction water velocity in any piping shall not exceed six feet per second (1.83 m/second).

(6) Spa recirculation systems shall be separate from companion swimming pools.

(a) Where a two-pump system is used, one pump shall provide the required turnover rate, filtration and disinfection for the spa water. The other pump shall provide water or air for hydrotherapy turbulence without interfering with the operation of the recirculation system. The timer switch will activate only the hydrotherapy pump.

(b) Where a single two-speed pump is used, the pump shall be designed and installed to provide the required turnover rate for filtration and

disinfection of the spa water at all times without exceeding the maximum filtration rates specified in Rule .2519 of this Section. The timer switch shall activate only the hydrotherapy portion of the pump.

(c) Where a single one-speed pump is used, a timer switch shall not be provided.

(7) A timer switch shall be provided for the hydrotherapy turbulence system with a maximum of 15 minutes on the timer. The switch shall be placed such that bathers must leave the spa to reach the switch.

(8) The maximum operational water depth shall be four feet (1.22 m) measured from the water line.

(9) The maximum depth of any seat or sitting bench shall be two feet (61 cm) measured from the waterline.

(10) A minimum height between the top of the spa/hot tub rim and the ceiling shall be ~~72 feet.~~ 7 ½ feet.

(11) Depth markers shall not be required at spas.

(12) Steps, step-seats, ladders or recessed treads shall be provided where spa and hot tub depths are greater than 24 inches (61 cm).

(13) Contrasting color bands or lines shall be used to indicate the leading edge of step treads, seats, and benches.

(14) A spa or hot tub shall be equipped with at least one handrail (or ladder equivalent) for each 50 feet (15.2 m) of perimeter, or portion thereof, to designate points of entry and exit.

(15) Where water temperature exceeds 90° Fahrenheit (32° C), a caution sign shall be mounted adjacent to the entrance to the spa or hot tub. It shall contain the following warnings in letters at least ~~2~~ ½ inch in height:

(a) CAUTION:

(b) Pregnant women; elderly persons, and persons suffering from heart disease, diabetes, or high or low blood pressure should not enter the spa/hot tub without prior medical consultation and permission from their doctor;

(c) Do not use the spa/hot tub while under the influence of alcohol, tranquilizers, or other drugs that cause drowsiness or that raise or lower blood pressure;

(d) Do not use alone;

(e) Unsupervised use by children is prohibited;

(f) Enter and exit slowly;

(g) Observe reasonable time limits (that is, 10-15 minutes), then leave the water and cool down before returning for another brief stay;

(h) Long exposure may result in nausea, dizziness, or fainting;

(i) Keep all breakable objects out of the area.

(16) ~~A sign shall be posted in the immediate vicinity of the spa or hot tub stating the location of the nearest telephone and indicating that emergency telephone numbers are posted at that location. Those emergency telephone numbers shall include the name and telephone number of the nearest available police, fire or rescue unit, physician, ambulance service, or hospital.~~ Spas shall meet the emergency telephone and signage requirements for swimming pools in Rule 18A .2530(f) of this Section.

(17) A sign shall also be posted requiring a shower for each user prior to entering the spa or hot tub and prohibiting oils, body lotion, and minerals in the water.

(18) Spas shall not be required to provide the lifesaving equipment described in Rule .2530(a) of this Section.

Authority G.S. 130A-282.

15A NCAC 18A .2533 EQUIPMENT ROOM

(a) All pumps, chemical feeding apparatus and other mechanical and electrical equipment shall be enclosed in a weatherproof structure with a minimum ceiling height of seven feet. The equipment room shall be provided with a door with a permanent lock which must be kept locked when not in use by the pool operator. Filters located outside the equipment room shall be completely enclosed by a fence.

(b) Lighting to allow the operator to read all gauges and control devices shall be provided.

(c) Valves and control devices shall be readily accessible and clearly visible. At least three feet of clear walkway shall be provided to allow access to equipment.

(d) Drainage in and around the equipment room shall preclude the possibility of water entering or accumulating on any interior surface of the enclosure. Equipment room floors shall be relatively smooth and shall be sloped not less than ~~3 inch~~ ¼ inch per foot toward the drains.

(e) Natural cross draft or continuous forced ventilation ~~which directs vented air away from the pool area~~ is required. ~~The switch for the forced ventilation equipment shall be connected to the switch for the equipment room light.~~

(f) A permanent means of access shall be provided to all equipment rooms.

(g) A hose bib with an approved backflow prevention device shall be provided ~~in the equipment room.~~ within 50 feet of the equipment room.

Authority G.S. 130A-282.

15A NCAC 18A .2534 CHEMICAL STORAGE ROOM

A separate chemical storage ~~area~~ room which meets the following criteria shall be provided:

(1) The chemical storage ~~area~~ room shall be in a dry, weatherproof structure with a minimum ceiling height of seven feet.

(2) For public swimming pools built after May 1, 1996, chemical storage space shall be provided based on a minimum of five square feet for the first 10,000 gallons of pool water plus one additional square foot for each additional 3,000 gallons or portion thereof up to a total area of 100 square feet. Public swimming pools constructed after April 1, 2004 shall provide a separate room for storage of pool chemicals.

(3) Natural cross draft or continuous forced ventilation ~~which directs vented air away from the pool and other occupied areas~~ is required. ~~The switch for the forced ventilation equipment shall be wired into the switch for the lights.~~

(4) Provision shall be made for dry storage of all pool chemicals in waterproof containers or above the floor on shelves, pallets or dollies.

(5) The chemical storage ~~area~~ room shall be arranged so that chemicals which can react with other pool chemicals are stored separately and shall be constructed and arranged to permit easy cleanup of chemical spills.

(6) Lighting shall be provided in chemical storage rooms.

Authority G.S. 130A-282.

15A NCAC 18A .2535 WATER QUALITY STANDARDS

~~Water~~ Whenever a public swimming pool is open for use, water quality shall be maintained in accordance with the following:

(1) The chemical quality of the water shall be maintained in an alkaline condition at all times with the pH between 7.2 and 7.8.

(2) The clarity of the water shall be maintained such that the main drain grate is readily visible from the pool deck at all times.

(3) Disinfection shall be provided in accordance with manufacturers' instructions for all pools by a chemical or other process that meets the criteria listed as follows:

(a) registered with the U.S. Environmental Protection Agency for pool water or potable water;

(b) provides a residual effect in the pool water which can be measured by simple portable field test equipment;

(c) will not impart any immediate or cumulative adverse physiological effects to pool bathers when used as directed;

(d) will not produce any undue safety hazard when stored or used as directed;

(e) will not damage or cause excessive wear of pool components or equipment;

(f) will demonstrate reduction of total coliform and fecal coliform to a level at least equivalent to free chlorine at a level of one part per million in the same body of water.

(4) When chlorine is used as the disinfectant, a free chlorine residual of at least one part per million (ppm) shall be maintained throughout the pool whenever it is open or in use. Pools which use chlorine as the disinfectant must be stabilized with cyanuric acid except at indoor pools or where it can be shown that cyanuric acid is not necessary to maintain a stable free chlorine residual. The cyanuric acid level shall not exceed 100 parts per million.

(5) When bromine or compounds of bromine are used as the disinfectant, a free bromine residual of at least two parts per million, shall be maintained throughout the pool whenever it is open or in use.

(6) When chlorine or bromine are used as the disinfectant, automatic chemical feeders shall be used. Automatic chlorine or bromine feeders shall be manufactured and installed in accordance with ~~NSF~~ NSF/ANSI Standard ~~number~~ 50 which is incorporated by reference including any subsequent amendments and ~~editions.~~ additions. This material is available for inspection at the Department of Environment and Natural Resources, Division of Environmental Health, 2728 Capital Boulevard, Raleigh, North Carolina. Copies may be obtained from NSF International, 3475 Plymouth Road, PO Box 130140, Ann Arbor, Michigan 48311-0140 at a cost of seventy dollars ($70.00). Automatic chlorine and bromine feeder pumps shall be automatically prevented from operating when the circulation pump is not in operation.

(7) When biguanide is used as the disinfectant, a residual of 30 to 50 parts per million shall be maintained throughout the pool whenever it is open or in use.

(8) When silver/copper ion systems are used, the copper concentration in the pool water shall not exceed one part per million and a chlorine residual must be maintained in accordance with Paragraph (4) of this Rule.

(9) The use of chlorine in its elemental (gaseous) form for disinfection of public swimming pools is prohibited.

(10) Test kits or equipment capable of measuring disinfectant ~~level and~~ level,~~pH~~ pH, and total alkalinity must be maintained at all public swimming pools. Pools using cyanuric acid and or chlorinated isocyanurates must have a test kit capable of measuring cyanuric acid levels.

(11) The pool operator shall inspect the pool at least daily and maintain written records of the operating conditions of each pool. Records

shall be maintained at the pool site for a period of not less than six months. Records shall include the following:

(a) daily recording of the disinfectant residual in the pool;

(b) daily recording of pool water pH;

(c) daily recording of water temperature in heated pools; ~~and~~

(d) recording of activities pertaining to pool water maintenance including chemical additions and filter backwash ~~cycles.~~ cycles; and

(e) weekly recording of total alkalinity and cyanuric acid levels.

(12) Water temperature in heated swimming pools shall not exceed 90° Fahrenheit (32°C) and in heated spas shall not exceed 104° Fahrenheit (40°C).

(13) The pool operator shall take the following steps to manage fecal accidents:

(a) Direct everyone to leave all pools into which water containing the feces or vomit is circulated and do not allow anyone to enter the pool(s) until decontamination is completed;

(b) Remove as much of the feces or vomit as possible using a net or scoop and dispose of it in a sanitary manner;

(c) Raise the free available chlorine concentration to two ppm at a pH of 7.2 to 7.5 and test to assure the chlorine concentration is thoroughly mixed throughout the pool;

(d) For accidents involving formed stools, or vomit maintain the free available chlorine concentration at two ppm for at least 25 minutes or at three ppm for at least 19 minutes before reopening the pool. For accidents involving liquid stools increase the free chlorine residual and closure time to reach a CT inactivation value of 9600 then backwash the pool filter before reopening the pool. CT refers to concentration (C) of free available chlorine in parts per million multiplied by time (T) in minutes.

(e) Maintain a fecal accident log recording the date and time of the event, formed stool or diarrhea, free available chlorine concentration at the time of the event and before opening the pool, the pH, the procedures followed to respond to the fecal accident and the contact time.

Authority G.S. 130A-282.

15A NCAC 18A .2537 MAINTENANCE AND OPERATION

(a) All public swimming pools constructed or remodeled on or after May 1, 1991 shall be maintained and operated in accordance with the Rules of this Section.

(b) On or after May 1, 1993 all public swimming pools including those constructed prior to May 1, 1991 shall be maintained and operated in accordance with the following:

(1) All safety provisions of Rule .2530 of this Section shall be met.

(2) Decks shall be structurally sound and shall be maintained free of trip hazards or offsets greater than one-half inch resulting from deterioration or changes from the original deck profile.

(3) There shall be no loose coping.

(4) Artificial lighting shall be provided for all pools used when natural lighting is not sufficient to make all parts of the pool and pool area clearly visible.

(5) Swimming pools shall be protected by a fence, wall, building, or other enclosure, or any combination thereof, which completely encloses the swimming pool area. All gates and doors shall be equipped with self-closing and positive self-latching closure mechanisms. Existing waterslide flumes and other appurtenances are not required to be located inside the fence.

(6) Depth and safety markings shall be ~~provided~~. provided as required in Rule .2523 of this Section.

(7) Drain covers shall be in good condition and securely attached.

(8) Damaged face plates or fittings shall be repaired or replaced.

(9) Underwater light niches shall be maintained or covered so as not to present a potential hazard to bathers.

(10) Diving equipment and pool slides including stairs and railing shall be maintained in good working order.

(11) A timer switch which allows no more than 15 minutes of operation without manual resetting shall be used to control air blowers and hydrotherapy pumps on heated spas.

(12) All breaks in grade of the pool bottom including the leading edges of stair treads and seats and the tops of breakpoints where the slope of the bottom changes at a depth of five feet (15m) or less shall be marked with a contrasting color band by May 1, 2000. Contrasting color bands shall not be required where a registered engineer, registered architect or licensed swimming pool contractor certifies in writing that structural weakness or materials of construction prevent the installation of permanent markings.

(13) On or after May 1, 1996 all heated spas shall post a caution sign as specified in Rule .2532 of this Section.

(14) Pool maintenance shall include removal of debris from the water surface and bottom of the pool.

(15) All pool chemicals shall be stored in a clean, dry, well ventilated area and shall be organized so as to prevent chemicals from reacting.

(16) No submersible pumps or mechanical pool cleaning equipment shall be placed or used in the pool while bathers are in the pool.

(c) The owner of a public swimming pool shall provide for the operation of the pool by a person or persons who shall be responsible to the owner for operation, maintenance, pool safety and ~~recordkeeping.~~ record keeping. The pool owner shall maintain documentation that the person responsible for operating the pool has been trained on pool equipment operation, disease and injury prevention, pool water chemistry and regulatory requirements for public swimming pools. A pool and spa operator certificate issued by the National Swimming Pool Foundation or other organization which provides training on those subjects shall be accepted as meeting this requirement.

Authority G.S. 130A-282.

15A NCAC 18A .2539 SUCTION HAZARD REDUCTION

(a) At all public wading pools which use a single main drain for circulation of water, signs shall be posted stating: "WARNING To prevent serious injury do not allow children in wading pool if drain cover is broken or missing". Signs shall be in letters at least one-half inch in height and shall be posted where they are visible to people entering the wading pool. ~~No public swimming pool shall operate with a single drain as the only outlet to any pump. Where flow from a single drain is balanced with flow from a surface skimmer the skimmer valve shall be kept in the open position and secured against tampering.~~

(b) No public swimming pool shall operate with a single outlet to any pump. Where flow from a single drain is balanced with flow from a surface skimmer, the skimmer valve shall be kept in the open position and immobilized with a lock, tie or other method to secure against tampering. Effective April 1, 2006 all public swimming pools with a single main drain shall be protected from potential bather entrapment by a safety vacuum release system installed on the drain piping and single drains smaller than 12 inches in diameter shall be protected by an anti-entrapment drain cover meeting AMSE/ANSI A112 .19.8M Standard which is incorporated by reference including any subsequent amendments and additions. This material is available for inspection at the Department of Environment and Natural Resources, Division of Environmental Health, 2728 Capital Boulevard, Raleigh, North Carolina. Copies may be obtained from Global Engineering Documents, 15 Inverness Way East, Inglewood, CO 80112 at a cost of forty-one dollars ($41.00).

~~(b)~~(c) Operators of all public wading pools shall inspect pools daily to ensure the drain covers are in good condition and securely attached.

Authority G.S. 130A-282.

15A NCAC 18A .2542 IN POOL EXERCISE EQUIPMENT

(a) Exercise equipment such as steps, weights, or floats used in a public swimming pool shall be designed and constructed so as not to pose a threat to water quality or bather safety and shall be removed from the pool after each use.

(b) Where in-pool exercise equipment such as underwater treadmills remain in a swimming pool when not in use, the following conditions shall be met:

(1) The swimming pool shall be restricted to use only by adults or a lifeguard shall be on duty at all times when children are allowed in the pool.

(2) Exercise equipment shall meet Underwriters' Laboratories Standard Number 1647 for exercise equipment as verified in writing by an independent third party testing laboratory.

(3) The position of underwater equipment shall be marked with colored floats attached by a 3/4 inch diameter rope or other movable barrier which surrounds the equipment with a visible perimeter designed so as not to entangle or otherwise threaten bather safety.

(4) Equipment shall be verified by the manufacturer to be designed for use in a public swimming pool and to be free of grease or oil which might negatively impact pool water quality.

(5) Any cords or hoses attached to underwater exercise equipment shall not pose a threat of bather entanglement. Cords or hoses which cross a pool deck shall be covered or shielded to prevent tripping. Covers which protrude more than one-half inch from the deck surface shall be sloped at an angle of no more than ~~30?~~ 30° from the horizontal deck surface.

Authority G.S. 130A-282.

15A NCAC 18A .2543 WATER RECREATION ATTRACTIONS

(a) Water recreation attractions including water slides, wave pools, rapid rides, lazy ~~rivers, children's activity pools~~ rivers and other similar features can deviate from the requirements of this Section with respect to pool profile, depth, freeboard, flow dynamics and surface skimming systems. The designing engineer or equipment manufacturer shall provide the Department with information to justify such deviation as necessary for the proper function of the attraction. Water recreation attractions shall meet all other requirements of this Section.

(b) Water slide landing pools with a capacity of less than 60,000 gallons shall have a circulation and filtration system capable of turning over the entire pool capacity every two hours. Where automatic chemical controllers are used the turnover time shall be no more than three hours. Landing pool dimensions shall be consistent with the slide manufacturer's recommendation.

(c) When waterfalls are incorporated in water recreation attractions, they shall be constructed with no handholds or footholds to a height of four feet to discourage climbing.

(d) Interactive play attractions shall be constructed and operated in accordance with the rules of this Section and shall comply with the following:

(1) The recirculation system shall contain a water capacity equal to at least three minutes of maximum flow of all feature pumps and filter circulation pumps combined and shall not be less than 1,000 gallons. Where the water capacity exceeds 10,000 gallons, the minimum capacity shall be based on the lesser of three minutes of maximum feature flow or 7.5 gallons per square foot of splash zone watershed drained to the surge container;

(2) Access shall be provided to the surge water container;

(3) A filter circulation system shall be provided and shall be separate from the feature pump system except that both systems can draw water from a common drain pipe if the drain and pipe are sized to handle the flow of all pumps without exceeding the flow velocities specified in Rule .2518 of this Section;

(4) The filter circulation system shall draw water from the surge container through a variable height surface skimmer and a bottom drain located no more than six inches from the bottom of the container. Custom skimming systems which do not comply with ANSI/NSF Standard 50 shall be approved where the operational requirements make it necessary to deviate from that standard;

(5) The filter circulation system shall filter and return the entire water capacity in no more than 30 minutes and shall operate 24 hours a day;

(6) Automatic chemical controllers shall be provided to monitor and adjust the disinfectant residual and pH of the water contained in the system;

(7) The disinfectant residual in interactive play attractions shall be maintained at a level of at least two parts per million of free chlorine. Chlorine feeders shall be capable of producing 12 parts per million of free chlorine in the filter circulation piping;

(8) Valves shall be provided to control water flow to the features in accordance with the manufacturers' specifications;

(9) Splash zones shall be sloped to drains sized and located to remove all feature water to the surge tank without water accumulating on the surface;

(10) Deck or walkway space shall not be required outside the splash zone;

(11) Dressing and sanitary facilities shall be provided;

(12) Interactive play features shall not be required to have a fence except the wading pool fence requirements shall apply to interactive play features located inside a swimming pool enclosure;

(13) The safety provisions of Rule .2530 of this Section shall not apply except a sign shall be posted prohibiting pets and glass containers; and

(14) Interactive play attractions built prior to April 1, 2004, which do not comply with these design and construction requirements shall be permitted to operate as built if no water quality or safety violations occur.

(e) Training pools shall meet the requirements for swimming pools with the following exceptions:

(1) Training pools shall be equipped with a filter circulation system which filters and returns the entire pool capacity in no more than two hours; and

(2) The free chlorine residual in training pools shall be maintained at no less than two parts per million.

Authority G.S. 130A-282.

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***Notice** is hereby given in accordance with G.S. 150B-21.2 that the Commission for Health Services intends to amend the rule cited as 15A NCAC 18A .2620.*

Proposed Effective Date: *January 1, 2004*

Public Hearing:
Date: *September 3, 2004*
Time: *2:00 p.m.*
Location: *1330 St. Mary's Street, Conference Room G1-A, Raleigh, NC*

Reason for Proposed Action: *To offer more ways for industry to properly store and handle utensils in a sanitary manner.*

Comment Procedures: *Written comments should be submitted to Susan C. Grayson, DENR/EHSS, 1632 Mail Service Center, Raleigh, NC 27699-1632. Phone: (919) 733-2905, fax: (919) 736-4739, email: sue.grayson@ncmail.net . Comments should be submitted by October 14, 2003.*

Procedure for Subjecting a Proposed Rule to Legislative Review: Any person who objects to the adoption of a permanent rule may submit written comments to the agency. A person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the 6th business day preceding the end of the month in which a rule is approved. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

Fiscal Impact
☐ **State**

☐ **Local**
☐ **Substantive (**≥$3,000,000**)**
☒ **None**

CHAPTER 18 - ENVIRONMENTAL HEALTH

SUBCHAPTER 18A - SANITATION

SECTION .2600 - SANITATION OF RESTAURANTS AND OTHER FOODHANDLING ESTABLISHMENTS

15A NCAC 18A .2620 STORAGE AND HANDLING OF UTENSILS AND EQUIPMENT

(a) After bactericidal treatment, utensils shall be air-dried and stored above the floor in a clean place. Wherever practicable, containers and utensils shall be covered or inverted or stored in tight, clean cabinets; and glasses and cups shall be stored inverted in a sanitary manner. It shall not be considered practicable to invert plates and bowls which slide when inverted or to cover plates and bowls positioned for immediate use during business hours. Utensils and equipment shall be handled in such a manner as to prevent contamination, and employees shall avoid handling clean surfaces that will come in contact with customers' mouths.

(b) Drain racks, trays, and shelves shall be made of not readily corrodible material, and shall be kept clean. These items are not required to be made of plastic.

(c) ~~Spoons, spatulas, dippers, etc., used for dispensing frozen desserts shall be kept, when not in use, in dipper wells with running water or stored in the food product with the handle extending out of the food or dry stored on a clean surface. When these utensils are used to dispense food products other than frozen desserts, they shall be kept, when not in use, in the product or on a clean surface.~~ Spoons, spatulas, dippers, and other in-use utensils shall be stored between use in the food product with the handles extending out of the food, stored dry on a clean surface or in a container of water if the water is maintained at a temperature of at least 140F. When stored on a clean, dry surface those utensils used to dispense potentially hazardous foods shall be replaced with clean, sanitized utensils every four hours.

(d) When utensils are used to dispense frozen products or moist foods, the utensils may be stored in running water dipper wells only when the water has sufficient velocity to flush food residues into the overflow drain.

~~(d)~~(e) Single-service utensils shall be purchased only in sanitary containers, shall be stored therein in a clean, dry place until used, and shall be handled in a sanitary manner. Single-service cup dispensers or similar devices shall be used when single-service cups are used. Nothing in these Rules shall prohibit the use of plastic bags in which single-service cups or similar devices are received as the dispenser for those items.

Authority G.S. 130A-248.

TITLE 19A – DEPARTMENT OF TRANSPORTATION

***Notice** is hereby given in accordance with G.S. 150B-21.2 that the NC Department of Transportation – Division of Motor Vehicles intends to adopt the rules cited as 19A NCAC 03D .0232-.0236.*

Proposed Effective Date: *December 1, 2003*

Instructions on How to Demand a Public Hearing: *(must be requested in writing within 15 days of notice)*: *Any request for public hearing must be made in writing to Emily B. Lee, NC DOT, 1501 Mail Service Center, Raleigh, NC 27699.*

Reason for Proposed Action: *These rules are proposed for adoption to establish guidelines for the NC Division of Motor Vehicles to implement and administer the motor vehicle dealer civil penalty schedule which is authorized by G.S. 20-287.*

Comment Procedures: *Comments should be submitted to Emily B. Lee, NC DOT, 1501 Mail Service Center, Raleigh, NC 27699. Phone: (919) 733-2520, fax: (919) 733-9150, email: elee@dot.state.nc.us. Comments should submitted through October 16, 2003.*

Procedure for Subjecting a Proposed Rule to Legislative Review: Any person who objects to the adoption of a permanent rule may submit written comments to the agency. A person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the 6th business day preceding the end of the month in which a rule is approved. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

Fiscal Impact
☐ **State**
☐ **Local**
☐ **Substantive (**≥$3,000,000**)**
☒ **None**

CHAPTER 03 - DIVISION OF MOTOR VEHICLES

SUBCHAPTER 03D - ENFORCEMENT SECTION

SECTION .0200 - MOTOR VEHICLE DEALER, SALES, DISTRIBUTOR AND FACTORY REPRESENTATIVE LICENSE

19A NCAC 03D .0232 CIVIL PENALTY SCHEDULE FOR NON-LICENSED MOTOR VEHICLE DEALERS

The civil penalty schedule established in this Rule shall apply to a person acting as a dealer who has not obtained a license pursuant to Article 12 of the Motor Vehicle dealers and Manufacturers Licensing Law. The Division of Motor Vehicles shall apply the penalty schedule in the following manner:

(1) For a first offense of selling motor vehicles without a license against any person who is

required to obtain a license under G.S. 20-287 and has not obtained the license, the DMV shall levy and collect a civil penalty of one thousand dollars ($1000) in addition to any other punishment required under the law.

(2) For a second offense of selling motor vehicles without a license against any person who is required to obtain a license under G.S. 20-287 and has not obtained the license, the DMV shall levy and collect a civil penalty of three thousand dollars ($3,000) in addition to any other punishment under the law.

(3) For a third and subsequent offense of selling motor vehicles without a license against any person who is required to obtain a license under this statute and has not obtained the license, the Division shall levy and collect a civil penalty of five thousand dollars ($5,000) in addition to any other punishment under the law.

Authority G.S. 20-39; 20-287.

19A NCAC 03D .0233 CIVIL PENALTY SCHEDULE FOR LICENSED MOTOR VEHICLE DEALERS

The civil penalty schedule established in this Rule applies to motor vehicle dealers, motor vehicle sales representatives, manufacturers, factory branches, factory representatives, distributors, representatives, distributor branches, distributor representatives, and wholesalers. The schedule categorizes violations as Type I (serious) Violations, Type II (moderate/less serious) Violations, and Type III (minor) Violations. The DMV shall apply the Civil Penalty Schedule as follows:

(1) Type I Violation: For a first Type I violation within three years by a licensee, the Division shall assess a civil penalty of two hundred fifty dollars ($250.00) in addition to any other punishment or remedy under the law. For a second Type I violation within three years by a licensee, the Division shall assess a civil penalty of five hundred dollars ($500.00) in addition to any other punishment or remedy under the law. For a third or subsequent Type I violation within three years by a licensee, the Division shall assess a civil penalty of one thousand dollars ($1,000) in addition to any other punishment or remedy under the law.

(2) Type II Violation: For a first Type II violation within three years by a licensee, the Division shall assess a civil penalty of one hundred dollars ($100.00) in addition to any other punishment or remedy under the law. For a second Type II violation within three years by a licensee, the Division shall assess a civil penalty of two hundred fifty dollars ($250.00) in addition to any other punishment or remedy under the law. For a third or subsequent Type II violation within three years by a licensee, the Division shall assess a civil penalty of five hundred dollars ($500.00) in addition to any other punishment or remedy under the law.

(3) Type III Violation: For any Type III violation by a licensee, the Division shall assess a civil penalty of fifty dollars ($50.00) in addition to any other punishment or remedy under the law.

(4) Multiple Violations: If a licensee commits two or more violations in the course of a single transaction or occurrence, the division shall assess a civil penalty specified for the most significant violation only, based upon the schedule set out in this Rule.

Authority G.S. 20-39; 20-287.

19A NCAC 03D .0234 TYPE I OR SERIOUS VIOLATIONS

The Division of Motor Vehicles shall apply the Civil Penalty Schedule for Type I Violations against a licensed automobile dealer for any of the following:

(1) Failing to deliver manufacturer's certificate at time of transfer as required in G.S. 20-52.1;

(2) Failing to deliver certificate of title at time of transfer as required in G.S. 20-75;

(3) Altering or forging certificate of title, registration card, or application as addressed in G.S. 20-71;

(4) Reproducing or possessing blank certificate of title;

(5) Failing to disclose damage to a vehicle as addressed in G.S. 20-71.4;

(6) Knowingly making false statements about the date a vehicle was sold or acquired as addressed in G.S. 20-74;

(7) Receiving or transferring stolen vehicles as addressed in G.S. 20-106;

(8) Injuring or tampering with vehicle as addressed in G.S. 20-107;

(9) Buying, receiving, disposing of, selling, offering for sale, concealing, or possessing vehicles or component parts with manufacturer's numbers as addressed in G.S. 20-108;

(10) Altering or changing engine or other numbers as addressed in G.S. 20-109;

(11) Making material misstatement in application for a license as addressed in G.S. 20-294(1);

(12) Making material misstatement in application for dealer license plate as addressed in G.S. 20-294(12);

(13) Failing to maintain established salesroom or established office as required in G.S. 20-294(3);

(14) Defrauding retail buyer or any other person with whom business is conducted in a manner which damages the buyer as addressed in G.S. 20-294(4);

(15) Employing fraudulent devices, methods or practices in connection with the laws of this State regarding the retaking or repossessing motor vehicles under retail installment

contracts and resale of such vehicles as addressed in G.S. 20-294(5);

(16) Using unfair methods of competition or unfair deceptive acts or practices as addressed in G.S. 20-294(6);

(17) Knowingly advertising by any means, any untrue assertion or representation or statement of fact which is misleading or deceptive in any particular relating to the conduct of business licensed or for which a license is sought as addressed in G.S. 20-294(7);

(18) Knowingly advertising a used motor vehicle for sale as a new motor vehicle as addressed in G.S. 20-294(8);

(19) Being convicted of an offense set forth under G.S. 20l-106, 20-106.1, 20-107, or 20-112 while holding such a license or within five years prior to the date of filing the application as addressed in G.S. 20-294(9);

(20) Being convicted of a felony involving moral turpitude under the laws of this state, another state, or the United States as addressed in G.S. 20-294(9);

(21) Submitting a bad check to the Division of Motor Vehicles in payment of highway use taxes collected as addressed in G.S. 20-294(10);

(22) Knowingly giving an incorrect certificate of title, or failing to give a certificate of title to a purchaser, a lienholder, or the Division after a vehicle is sold as required in G.S. 20-294(11);

(23) Coercing or offering anything of value to any purchaser of a motor vehicle to provide any type of insurance coverage on said motor vehicle or accepting any policy as collateral on any vehicle sold to secure an interest in such vehicle in any company not qualified under the insurance laws of this state as addressed in G.S. 20-298;

(24) Failing to provide and deliver to buyer a written installment statement describing clearly the motor vehicle sold, the cash sale price thereof, the cash paid down by the buyer, the amount credited the buyer for any trade-in and a description of the motor vehicle traded, the amount of the finance charge, the amount of any other charge specifying its purpose, the net balance due from the buyer, the terms of the payment of such net balance and a summary of any insurance protected to be effected as addressed in G.S. 20-303; and

(25) Violating any statute included in or related to Article 15 of the Vehicle Mileage Act as addressed in G.S. 20-340 through 20-350.

Authority G.S. 20-39; 20-287.

19A NCAC 03D .0235 TYPE II MODERATE OR LESS SERIOUS VIOLATIONS

The Division of Motor Vehicles shall apply the Civil Penalty Schedule for Type II Violations against a licensed automobile dealer for any of the following:

(1) Failing to maintain in full force and effect a corporate surety bond as required by G.S. 20-288(c);

(2) Displaying motor vehicles for sale at retail at a location other than an established salesroom as required in G.S. 20-292;

(3) Failing to inspect new vehicles prior to retail sale and failing to inspect used vehicles before they are offered for sale as required in G.S. 20-183.4C;

(4) Failing to maintain and retain a record of all vehicles received and sold by the dealer to include all Division of Motor Vehicles' requirements for the period of time required by the Division as addressed in G.S. 20-297;

(5) Improperly issuing or using 30-day temporary markers as addressed in G.S. 20-79.1;

(6) Violating any rules in connection with the selling of vehicles on consignment as addressed in 19A NCAC 03D.0226; and

(7) Violating any laws concerning conspicuous disclosure of dealer administrative fees or finance yield charges as addressed in G.S. 20-101.1 and G.S. 20-101.2.

Authority G.S. 20-39; 20-287.

19A NCAC 03D .0236 TYPE III MINOR VIOLATIONS

The Division of Motor Vehicles shall apply the Civil Penalty Schedule for Type III Violations against a licensed automobile dealer for any of the following:

(1) Failure of licensed dealer to keep a current list of licensed salespeople posted in a conspicuous manner as required in G.S. 20-290(b);

(2) Failure of licensed dealer to include license type and serial number of license in any advertisement publication as required in G.S. 20-290(c);

(3) Failure of any sales representative, factory representative, or distributive representative to carry licenses when engaged in business and display the same upon request as required in G.S. 20-291;

(4) Failure of sales representative, factory representative, or distributive representative to report change of employment, make new application, and submit appropriate change of employment fee to the Division; and

(5) Failure to post "Buyers Guide" on every used motor vehicle offered for sale with warranty information as required by the Federal Trade Commission.

Authority G.S. 20-39; 20-287.

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 adopt the rules cited as 21 NCAC 50 .0413, .0513-.0515, amend the rules cited as 21 NCAC 50 .0301, .0306, .0308, .0402, .0404-.0406, .0408-.0409, .0502, .0505, .1006, .1014, .1101-.1102, .1104, .1401 and repeal the rule cited as 21 NCAC 50 .0103.*

Proposed Effective Date: *December 1, 2003*

Public Hearing:
Date: *September 15, 2003*
Time: *10:00 a.m.*
Location: *Office of the State Board of Examiners of Plumbing, Heating and Fire Sprinkler Contractors, 1109 Dresser Ct., Raleigh, NC*

Reason for Proposed Action: *Implementation of new license classifications has revealed ambiguities in present rules. In addition, recent legislation creates conflict with text within some rules. Also, some fees were inadvertently changed by 2001 Session Laws, while other fees may need to be established, increased or decreased. The rules relative to disciplinary processes, and rules adopted by reference may need modification for descriptive purposes.*

Comment Procedures: *Comments from the public shall be directed to Sandra R. O'Brien, State Board of Examiners of Plumbing, Heating and Fire Sprinkler Contractors, 1109 Dresser Ct., Raleigh, NC 27609, phone (919) 875-3612 and fax (919) 875-3616. Comment period ends October 15, 2003.*

Procedure for Subjecting a Proposed Rule to Legislative Review: Any person who objects to the adoption of a permanent rule may submit written comments to the agency. A person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the 6th business day preceding the end of the month in which a rule is approved. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

Fiscal Impact
☐ **State**
☐ **Local**
☐ **Substantive (**≥$3,000,000**)**
☒ **None**

SECTION .0100 – ORGANIZATION

21 NCAC 50 .0103 ORGANIZATION: OFFICERS: DUTIES

~~(a) For the purpose of carrying out the provisions of the General Statutes of North Carolina, Chapter 87, Article 2, there shall be elected from the members of the Board a chairman, vice-chairman and secretary-treasurer. The chairman, vice-chairman and secretary-treasurer shall be elected at the first regular meeting of each year and shall assume office on April 25 following election. It shall be the duty of the chairman to call and preside over all meetings of the Board and perform such other duties as may come within the jurisdiction of his office. It shall be the duty of the vice-chairman to function as chairman or secretary-treasurer in the event of their absence or inability. The secretary-treasurer shall be responsible for the keeping of all official records of the Board.~~

~~(b) The chairman, vice-chairman, secretary-treasurer, executive secretary and other employees designated by the Board, shall give an indemnity and faithful performance bond in such an amount as may be prescribed by the Board. The said bonds shall be written by some approved bonding company authorized to do business in the State of North Carolina, and the cost of same shall be paid from funds received by the Board.~~

Authority G.S. 87-12 to 87-20; 87-27.

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 an examination in writing or by computer in the following categories:

Plumbing Contracting, Class I
Plumbing Contracting, Class II
Heating, Group No. l - 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 answers to ~~all~~ both the business and the technical parts of the examinations required by G.S. 87-21(b).

(c) Applicants for licensure as a fire sprinkler contractor, unlimited classification, 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. Current certification by NICET is in lieu of separate examination conducted by the Board.

(d) After July 1, 2004, applicants for initial licensure in the Limited Fire Sprinkler Inspection Technician classification must submit evidence of Level II Certification in "Inspection and Testing of Water-based Protection Systems" by NICET in lieu of examination. License without examination shall be issued beginning July 1, 2003, and ending July 1, 2004, to applicants who meet the experience requirement in Rule .0306 of this Section. Where certification by NICET was not required at the time of initial licensure, such certification must be obtained by

December 31, 2005. After December 31, 2005, current NICET certification is required as a condition of license renewal.

~~(d)~~(e) ~~Licenses in the~~ After July 1, 2004, applicants for the Limited Fire Sprinkler Inspection Contractor classification must submit evidence of ~~is issued to persons who carry out inspections of fire sprinkler systems consistent with NFPA-25.~~ Level III certification in "Inspection and Testing of Water-based Fire Protection Systems" by NICET ~~is accepted~~ in lieu of examination. License without examination shall be issued beginning July 1, 2003, and ending July 1, 2004, to applicants who meet the experience requirement in Rule .0306 of this Section. Persons who obtain license by NICET certification must ~~In lieu of examination, all such licensees must present evidence of the foregoing certification on or before December 31, 2005, and~~ maintain such certification thereafter as a condition of license renewal.

~~(e)~~(f) Applicants for license in the Limited Fire Sprinkler Maintenance classification are qualified based on maintenance of the experience and job classification set forth in Rule. 0306 of this Section.

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

21 NCAC 50 .0306 APPLICATIONS: ISSUANCE OF LICENSE

(a) All applicants for examinations shall file an application in the 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 the equivalent of two years on-site full-time experience in the design and installation 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 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 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. No more than one-half the experience may be in academic or technical training, maintenance service or repair 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 in the unlimited classification shall meet experience requirements in accordance with NICET examination criteria.

(e) Applicants for licensure in the Limited Fire Sprinkler Inspection Technician classification must submit evidence adequate to establish that the applicant has 4000 hours experience involved in inspection and testing of previously installed fire sprinkler systems, consistent with NFPA-25, as a full-time employee of an Unlimited Fire Sprinkler Contractor or fire insurance underwriting organization, hospital, manufacturing, government or university facility together with training in fire sprinkler inspections consistent with AFSA by a recognized fire sprinkler organization or institution of higher education with fire suppression curriculum

~~(e)~~(f) Applicants for licensure in the Limited Fire Sprinkler Inspection Contractor classification must submit evidence adequate to establish that the applicant was engaged in business as an independent fire sprinkler inspection company full-time, during three of the five years immediately preceding December 31, 2003, or held license as an unlimited fire sprinkler contractor from this board and was actively and regularly engaged in carrying out fire sprinkler system inspections. ~~4000 hours experience as a full-time employee of a licensed fire sprinkler contractor holding unlimited license, or 4000 hours experience involved in inspection and testing of previously installed fire sprinkler systems, consistent with NFPA-25, as a full-time employee of a fire insurance underwriting organization.~~

~~(f)~~(g) Applicants for licensure in the Limited Fire Sprinkler Maintenance classification prior to July 1, 2004, must submit evidence of 4000 hours experience as a full-time maintenance employee in facility maintenance with exposure to periodic maintenance of fire protection systems consisting of minor repairs, replacing activated or damaged sprinklers, lubricating control valves, and resetting dry pipe valves. Applicants for licensure in the Limited Fire Sprinkler Maintenance classification after July 1, 2004, must submit evidence of 2000 hours experience as a full-time maintenance employee in facility maintenance with exposure to periodic maintenance of fire protection systems consisting of replacing activated or damaged sprinklers, lubricating control valves, and resetting dry pipe valves, or other repairs together with 20 hours classroom instruction in courses approved by the Board consisting entirely of training in fire system maintenance, repair and restoration to service. ~~This license is limited to work on the systems at the locations for which experience is certified. Upon termination of employment for the certifying employer, the Limited Fire Sprinkler Maintenance license shall lapse.~~

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

21 NCAC 50 .0308 REVIEW OF EXAMINATION

(a) Any person who fails to pass an examination may, on written request, review his or her ~~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~~ at least 32 contact hours of classroom education including all the subjects on ~~in the subjects covered by~~ the examination.

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

SECTION .0400 - GENERAL PROCEDURES

21 NCAC 50 .0402 PERMITS

(a) A licensed contractor shall ~~assure~~ensure that a permit is obtained from the local Code Enforcement official before commencing any work for which a license is required by the Board. The contractor shall also ensure that a request for final inspection is made within 10 days of substantial completion of the work for which license is required, absent agreement with the owner and the local Code Enforcement official. Absent agreement with the local Code Enforcement official the licensee is not relieved by the Board of responsibility to arrange inspection until a certificate of compliance or the equivalent is obtained from the local code enforcement official or the licensee has clear evidence of his effort to obtain same.

(b) A licensed contractor shall not allow a ~~authorize permits~~permit to be obtained or ~~allow~~ his license number to appear upon a ~~on permits~~permit except for work which he or his employees perform, over which he will provide general supervision until the completion of the work, for which he holds an executed ~~the~~ contract with the property owner. ~~and for which he receives all contractual payments.~~

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

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~~ the lesser of 1500 hours annually, or all hours during which the activities described herein are carried out 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 shall be required as a condition of renewal or retention of license, and falsification shall constitute fraud in obtaining license. The standards set forth in Rule 21 NCAC 50 .0512 shall 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 .0405 MULTIPLE LICENSES

(a) In order to maintain the identity of ~~firms,~~firms and allow effective supervision, each ~~a licensee~~ licensed contractor shall qualify only the business location where he is primarily located. ~~one place of business with his personal qualifications.~~

(b) A licensee may be listed on only one contractor license at any given time, whether the license is issued in the name of the individual or in the name of a ~~firm.~~firm; provided, however, that the fire sprinkler maintenance qualification may be listed separately in the name of the employer to which restricted.

(c) The licensee may, upon deletion of his name and qualifications from a firm license, reinstate his personal license, either as an individual or in the name of some other corporation, partnership, or business that has a trade name, upon compliance with G.S. 87-26.

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

21 NCAC 50 .0406 RESPONSIBILITY OF LICENSED PERSON EMPLOYED BY FIRM

(a) The licensed person, whether individually or for a corporation, partnership or business with a trade name, shall execute all proposals, bids, contracts, provide supervision to the extent of his qualifications and assure that permits are obtained.

(b) A contract, and the responsibility imposed on a licensed person to supervise work performed under a contract, may be assumed by another licensee upon written notice to and approval by the property owner and local inspection department. ~~in writing upon written notice to the Board of the assignment.~~

(c) The license number and qualification of the firm will be displayed on firm contracts, proposals, permit applications, and telephone yellow page advertising.

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

21 NCAC 50 .0408 CHANGE OF TRADE NAME

(a) The trade name under which a license is issued may be changed upon request to and approval by the Board. If the Board approves the name change, the last license issued to the licensee must be returned to the executive secretary.

(b) A contractor license will be issued or renewed using any corporate name, partnership name, or trade name which is not substantially similar ~~identical~~ to a name already in use according to the records of the Board.

(c) The licensee shall notify the Board of any change in location or mailing address from that shown on the last license renewal invoice within 30 days after the change takes place.

Authority G.S. 55B-5; 87-18; 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 and upon payment of the current license fee, the license fee for the unpaid prior ~~years~~years, ~~together with~~ the processing fee imposed by ~~G.S. 87-22.~~ G.S. 87-22, and evidence of continuing education for each prior year.

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

21 NCAC 50 .0413 PROPOSAL, BID OR ESTIMATE

(a) Retailers who comply with the requirements of G.S. 87-21(i) are not subject to the requirements of 21 NCAC 50, and the Board will apply the provisions of 21 NCAC 50 consistent with G.S. 87, Article 2, as amended.

(b) Proposal or bid refers to a firm offer or commitment to perform work, which becomes a contract upon acceptance by a property owner or other for whom the work is to be performed, but does not include a non-binding estimate.

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

SECTION .0500 - POLICY STATEMENTS AND INTERPRETATIVE RULES

21 NCAC 50 .0502 JOINT VENTURE

(a) A joint venture bid or proposal may be submitted provided the names and license numbers of those licensees who constitute the joint venture are indicated on the proposal and, in the case of bids, on the outside of the bid envelope.

(b) The licensees who constitute the joint venture must sign the contract to the extent of their qualifications and exercise general supervision over the work until its completion.

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

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 provisions of the North Carolina Building Code, including the provisions of codes and standards incorporated by reference, to the extent adopted by the Building Code Council of North Carolina from time to time is the minimum standard of competence applicable to contractors licensed by the Board. Licensees shall design and install systems which meet or exceed the minimum standards of the North Carolina State Building Code, Manufacturer's specifications and installation instructions and standards prevailing in the industry.

(c) Limited Fire Sprinkler Maintenance licensees and Limited Fire Sprinkler Inspection Technicians shall be present in person at all times work is being carried out on the ~~system.~~system pursuant to the license held by that person.

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

21 NCAC 50 .0513 LIMITED FIRE SPRINKLER INSPECTION TECHNICIAN LICENSE

License in the Limited Fire Sprinkler Inspection Technician classification is required of the technician who carries out periodic inspection of fire sprinkler systems consistent with NFPA-25. Licenses are issued based on demonstrated experience and examination, as described in Rules .0301 and .0306 of this Chapter. The duties of inspection technicians may be carried out as employees of inspection contractors or as full-time employees at a manufacturing, government, university or hospital facility.

Authority G.S. 87-21.

21 NCAC 50 .0514 LIMITED FIRE SPRINKLER INSPECTION CONTRACTOR LICENSE

License in the Limited Fire Sprinkler Inspection Contractor classification is required of persons who engage in the business of contracting to perform or performing independent testing and inspections of fire sprinkler systems consistent with NFPA-25. Licenses are issued based on demonstrated experience and examination, as described in Rules .0301 and .0306 of this Chapter.

Authority G.S. 87-21.

21 NCAC 50 .0515 LIMITED FIRE SPRINKLER MAINTENANCE LICENSE

License in the Limited Fire Sprinkler Maintenance classification is required of the technician who carries out periodic maintenance of fire protection systems consisting of minor repairs, replacing activated or damaged sprinklers, lubricating control valves, and resetting dry pipe valves. Licenses are issued based on demonstrated experience and training, as described in Rules .0301 and .0306 of this Chapter. This license is limited to work on the systems at the locations for which experience is certified. Upon termination of employment at the location for which certified, the Limited Fire Sprinkler Maintenance license shall lapse, and a new license be obtained for the new place of employment.

Authority G.S. 87-21.

SECTION .1000 - CONTESTED CASES

21 NCAC 50 .1006 INFORMAL PROCEDURES

(a) The Board and party or parties may agree at a pre-hearing conference to simplify the hearing by: decreasing the number of issues to be contested at the hearing; accepting the validity of certain proposed evidence; accepting the findings in certain other case with relevance to the case at hand; or agreeing to such other matters as may expedite the hearing.

(b) Prior to commencement ~~to~~of a contested case hearing, the Board may invite a licensee to participate in an informal conference with a committee of at least two persons, including one or more present or former board ~~members.~~members and senior Board staff, without a record of the proceeding. Board counsel may be, but is not usually, present. An informal conference ordinarily takes place when it appears there may not be a need for a formal hearing. Any party who does not agree with a proposal for resolution resulting from an informal conference may notify the Board within 30 days. The matter will subsequently be heard *de novo* by a majority of the Board or as otherwise provided by 21 NCAC 50 .1005, or this Rule. If there is no objection within a specified time, a proposed resolution will be received and considered by a majority of the Board with a recommendation for adoption by the staff, any Board member involved and the licensee.

(c) As a part of the contested case hearing process, the Board may elect to conduct a summary proceeding in a contested case. The procedure for a summary proceeding is substantially as follows:

(1) After issuance of a notice of hearing in accordance with 21 NCAC 50 .1004, the matter is considered by a single board member

without a record. Each party may tender affidavits, documents and a closing statement. Live testimony will not be received.

(2) Each party may present a suggestion as to the terms of a Recommended Order. The presiding board member will consider the materials and suggestions and issue a Recommended Decision in summary proceeding. If there is no objection within a specified time, a Summary Order will be received and considered by a majority of the Board with a recommendation for adoption by the staff, the Board member involved and the respondent.

(3) Any party who does not agree with the recommended decision may notify the Board. The matter will subsequently be heard de novo by a majority of the Board or as otherwise provided by 21 NCAC 50 .1005. The ~~de novo~~ *de novo* hearing shall be conducted as other contested case hearings are conducted pursuant to 21 NCAC 50 .1000. The Board member who conducted the summary proceedings shall be disqualified from the de novo hearing.

Authority G.S. 87-18; 150B-41.

21 NCAC 50 .1014 ADMINISTRATIVE HEARING PROCEDURES

(a) The Rules establishing procedures for contested cases adopted by the Office of Administrative Hearings as contained in Title 26, Chapter 3 of the North Carolina Administrative Code are hereby incorporated by reference, including subsequent amendments and editions, for contested cases for which the Board has authority to adopt rules under G.S. 150B-38(h). Provided, however, that if the case is conducted under G.S. 150B-40(b), the presiding officer shall have the powers and duties given to the Chief Administrative Law Judge or the presiding administrative law judge in Title 26, Chapter 3 of the North Carolina Administrative Code and that 26 NCAC 3 .0101(2), .0102(a)(2), .0103, .0104, .0107, ~~.0108,~~.0108(b), .0109, .0124, .0125, .0126, .0128 .0130, Section .0200 and Section .0300 shall not apply. The provisions of 26 NCAC 03 .0108(a) (prehearing conference) are modified to require a prehearing conference directly between counsel or the parties without participation by the Board at least 15 days in advance of any hearing by the Board, and to exchange all documents and witness information at that time. The provisions of 26 NCAC 03 .0113(b) are modified to authorize service of subpoenas by mail, facsimile, or e-mail likely to result in delivery. Copies of Title 26, Chapter 3 of the North Carolina Administrative Code are on file in the Board's office and may be obtained at the cost of ten cents per page.

Authority G.S. 87-18; 150B-38; 150B-40.

SECTION .1100 - FEES

21 NCAC 50 .1101 EXAMINATION FEES

(a) An application to reissue or transfer a 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 a 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 a license by examination requires a fee of ~~one hundred dollars ($100.00),~~one hundred twenty-five dollars ($125.00), consisting of an application fee of ~~twenty-five dollars ($25.00)~~fifty dollars ($50.00) and an examination fee of seventy-five dollars ($75.00), which is nonrefundable. 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 ~~one hundred dollars ($100.00),~~one hundred twenty-five dollars ($125.00).

(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).

(c) The initial application fee for license without examination conducted by the Board ~~as a fire sprinkler contractor~~ is ~~twenty dollars ($20.00).~~fifty dollars ($50.00). ~~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 one hundred dollars ($100.00).~~

(d) The annual license fee for ~~an individual~~ a contractor whose qualifications are listed as the second or subsequent individual on a corporation, partnership, or business with a trade name under Paragraphs ~~(a), (b)~~(a) or (c)~~(d)~~ of this Rule is ~~ten dollars ($10.00).~~twenty-five dollars ($25.00).

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

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

The Board charges the following fees:

(1)	copies of license	$15.00
(2)	abstract of license record	$15.00
(3)	processing fee for returned checks maximum allowed by law	
(4)	copy of Board rules	$10.00
(5)	processing fee for late renewal	$25.00
(6)	Business and Project Management for Contractors	$40.00

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

SECTION .1400 - CONTINUING EDUCATION

21 NCAC 50 .1401 CONTINUING EDUCATION REQUIREMENTS

(a) Beginning with renewals of license for years beginning on or after January 1, 2003, each holder of a Plumbing, Heating or Fuel Piping license, must have completed six hours of approved continuing education for each ~~during the preceding~~ calendar year as a condition of license renewal.
(b) Courses must be in areas related to plumbing, heating and air conditioning contracting such as the technical and practical aspects of the analysis of plans and specifications, estimating costs, fundamentals of installation and design, equipment, duct and pipe sizing, code requirements, fire hazards and other subjects as those may relate to engaging in business as a plumbing, heating or fuel piping contractor or to plumbing or heating systems. No more than two hours annually may be dedicated to business ethics, taxation, payroll, cash management, bid and contract preparation, customer relations or similar subjects as related to plumbing or heating contracting.
(c) At least once every three calendar years, each applicant for license renewal, other than fire sprinkler licensees, must complete four hours instruction devoted entirely to N. C. building codes including recent changes or amendments to those codes, minimum of two hours instruction in system design, two hours instruction in system installation and two hours instruction in business courses such as business ethics, taxation, payroll, cash management, bid and contract preparation, customer relations or similar subjects as related to plumbing or heating contracting. These hours are part of and not in addition to the requirements set out in Paragraph (a) of this Rule.
(d) Persons holding multiple qualifications from the Board must complete at least six hours annually, but are not required to take hours each year in each qualification. Licensees with multiple qualifications shall take instruction so as to remain current in all areas of contracting work in which actively engaged.
(e) Licenses may not be renewed without documentation of course attendance, course name, course number, content and teacher. Falsification or misstatement of continuing education information shall be grounds for failure to renew licenses and disciplinary action, including revocation or suspension of licenses.
(f) Continuing Education shall not be required of holders of Fire Sprinkler Contractor's licenses, licensed pursuant to the minimum requirements of certification for Level III, subfield of Automatic Sprinkler System Layout, National Institute for Certification of Engineering Technologies (NICET), or for persons holding NICET ~~Level III~~ certification in Inspection and Testing of water-based Fire Protection Systems provided such persons submit evidence of continued compliance with the continuing education requirements of NICET.
(g) Beginning with renewals of license for years beginning on or after January 1, 2003, each holder of a Fire Sprinkler ~~Contractor's~~Contractors or Inspection Technician license not required to be current on the continuing education requirements of NICET must complete six hours of approved continuing education in areas related to fire sprinkler contracting during the preceding calendar year as a condition of license renewal. Licensees in the Limited fire Sprinkler maintenance classification are required to obtain six hours continuing education annually relevant to the systems they maintain.

Authority G.S. 87-21(b)(3); 87-22.

TITLE 25 – OFFICE OF STATE PERSONNEL

***Notice** is hereby given in accordance with G.S. 150B-21.2 that the State Personnel Commission intends to adopt the rules cited as 25 NCAC 01E .1701-.1702, amend the rules cited as 25 NCAC 01C .0702; .01E .0901, .0905, .1005, .1305 and repeal the rules cited as 25 NCAC 01C .0602; 01J .0701-.0703.*

Proposed Effective Date: *December 1, 2003*

Public Hearing:
Date: *September 10, 2003*
Time: *10:30 a.m.*
Location: *Administration Building, Third Floor Conference Room, 116 West Jones St., Raleigh, NC*

Reason for Proposed Action:
25 NCAC 01C .0602 – *This Rule designated positions under the competitive service system. However, the competitive service system is no longer in existence.*
25 NCAC 01C .0702 – *This Rule is proposed to be amended because the approval of employees to engage in secondary employment is delegated to each agency head. The agency is responsible for establishing the criteria for approval of secondary employment based on work situation needs. The Office of State Personnel nor the State Personnel Commission reviews and/or approves the criteria.*
25 NCAC 01E .0901, .0905 – *It is proposed that these Rules will be amended in order to designate the holidays to be observed but to omit the number of days to be observed for each holiday so that when Christmas changes from 2 to 3 and vice versa it will not require a rule change.*
25 NCAC 01E .1005 – *Since the current rule only addresses suspension of services or office closings during adverse weather, it is proposed that this Rule be amended to address closings in case of emergencies other than weather conditions, such as terrorist acts, contamination by hazardous agents, disruption of power, equipment failures, etc.*
25 NCAC 01E .1305 – *This Rule is proposed to be amended in order to add community colleges to the entities required to allow the sharing of leave between immediate family members per H.B. 432 signed into law by Governor Mike Easley.*
25 NCAC 01E .1701-.1702 – *H.B. 173 was signed into law on June 6, 2003. It ensures that employees who receive vaccinations against smallpox incidents to the Administration of Smallpox Countermeasures by Health Professionals under 304 of the Federal Homeland Security Act of 2002 will be covered for adverse medical reactions due to the vaccination. This bill added a new section to the State Personnel Act, G.S. 126-8.4 which provides leave with pay in certain instances of an adverse reaction. Also, the recent occurrence of SARS in Chapel Hill has prompted the necessity to have provisions to require employees who may be exposed to a contagious disease to be away from the worksite.*
25 NCAC 01J .0701-.0703 – *These rules are proposed to be repealed because the Wellness Program is no longer in existence.*

Comment Procedures: *Comments from the public shall be directed to Ms. Peggy Oliver, Human Resources Policy Administrator, 1331 Mail Service Center, Raleigh, NC 27699-*

1331, (919) 733-7108, fax (919) 715-9750, and email poliver@ncsop.net . Comment period ends October 14, 2003.

Procedure for Subjecting a Proposed Rule to Legislative Review: Any person who objects to the adoption of a permanent rule may submit written comments to the agency. A person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the 6th business day preceding the end of the month in which a rule is approved. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

Fiscal Impact
☐ **State**
☐ **Local**
☐ **Substantive (**≥$3,000,000**)**
☒ **None**

CHAPTER 01 – OFFICE OF STATE PERSONNEL

SUBCHAPTER 01C - PERSONNEL ADMINISTRATION

SECTION .0600 - COMPETITIVE SERVICE

25 NCAC 01C .0602 POSITIONS UNDER COMPETITIVE SERVICE

~~(a) Positions designated by the Governor and Council of State shall be filled through a competitive system of selection and shall be subject to rules and regulations adopted by the State Personnel Commission to apply to the competitive service.~~

~~(b) The following positions are those which shall be filled through a competitive system of selection and are subject to those rules and regulations adopted by the State Personnel Commission to apply to the competitive service:~~

~~(1) Employment Security Commission. All employees of the Employment Security Commission are subject to competitive service except the members of the commission and members of unemployment insurance appeals tribunals and boards of review representing employer and employee interest, state and local officials serving ex officio and performing incidental administrative duties, members of local advisory boards, members of the State Advisory Council, and custodial employees.~~

~~(2) Department of Human Resources. All employees in the office of the Secretary, Department of Human Resources, except the secretary, his personal secretary, the deputy secretary, the Assistant Secretary for Administration, chief assistant to the secretary, and members of the Council of Developmental Disabilities are subject to competitive services.~~

~~(3) Social Services. All employees of the division of social services, Department of Human Resources, and the county departments of social services are subject to competitive service except the division director, the members of the state and local boards of social services, psychologists employed on a fee basis, state and local officials serving ex officio and performing incidental administrative duties, part-time professional persons who are not engaged in the performance of administrative duties, and custodial employees.~~

~~(4) Division of Health Services and Local Health Agencies. All employees of the division of health services, Department of Human Resources, and local health agencies are subject to competitive service except the division director, the chief medical examiner and employees of his office, persons employed by the specialty hospitals, members of the state and local boards of health, members of the advisory councils or committees, state and local officials serving ex officio and performing incidental administrative duties, part-time professional persons who are not engaged in the performance of administrative duties, part-time clerical employees in organized health clinics which are operated at times other than the regular office hours of the local health department and which require not more than 10 hours per week on the part of any one employee, and custodial employees.~~

~~(5) Division of Mental Health Services and Local Mental Health Center Programs. All employees of the administrative offices of the division of mental health services, Department of Human Resources, are subject to competitive service except the division director, research section employees, members of the state and local boards of mental health services, members of advisory councils or committees, state and local officials serving ex officio and performing incidental administrative duties, part-time professional persons who are not engaged in the performance of administrative duties, and custodial employees.~~

~~(6) Division of Medical Assistance. All employees of the division of medical assistance, Department of Human Resources, are subject to competitive service except the division director, part-time professional employees who are not engaged in the performance of administrative duties, and custodial employees.~~

~~(7) Division of Facility Services. All employees of the division of facility services, Department of Human Resources, are subject to~~

competitive service except the division director, employees in the rural health services program, employees administering the student loans and scholarship programs, and custodial employees.

(8) Division of Services for the Blind. All employees of the division of services for the blind, Department of Human Resources, are subject to competitive service except the division director, members of the Commission for the Blind, physicians employed part-time on a fee basis, blind individuals employed as vending stand operators, state and local officials serving ex officio and performing incidental administrative duties, workshop supervisors, and custodial employees.

(9) Office for Aging. All employees of the office for aging, Department of Human Resources, and public agencies of local government administering Title III or Title VII formula grants are subject to competitive service except the Assistant Secretary for Aging, state and local officials serving ex officio members of the Governor's Coordinating Council of Aging, citizen members of the council, members of advisory councils, advisory committees and technical review committees paid only for attendance at meetings, part-time professional persons who are not engaged in the performance of administrative duties, and custodial employees.

(10) Division of Emergency Management. All employees of the division of emergency management and local emergency management agencies are subject to competitive service except state or local emergency management directors, members of state and local boards or commissions, members of advisory councils or committees or similar boards paid only for attendance at meetings, state and local officials serving ex officio and performing incidental administrative duties, part-time professional personnel who are paid for any form of medical or other professional services and who are not engaged in the performance of administrative duties, attorneys serving as legal counsel, all employees of those county, city or other local emergency management agencies and offices who do not desire to receive federal matching funds for personnel and administrative costs and custodial employees.

(11) North Carolina Federal Surplus Property Division. Employees of the North Carolina federal surplus property division are subject to competitive service.

(12) Department of Labor. All employees who are primarily employed in the administration of the Occupational Safety and Health Act of 1970, as amended, are subject to competitive service except the commissioner, any deputy or assistant commissioner, their personal secretaries or any special or administrative assistants assigned to the office of the commissioner.

(13) North Carolina Office of Alcohol and Drug Abuse. All employees of the North Carolina office of alcohol and drug abuse are subject to competitive service except the assistant secretary.

(14) North Carolina Office for Children. All employees of the North Carolina office for children are subject to competitive service except the Assistant Secretary for Children and members of the Governor's Advocacy Council for Children and Youth.

(15) Division of Community Employment. All employees of the division of community employment, Department of Natural Resources and Community Development, are subject to competitive service except the division director, assistant deputy directors, balance of state planning coordinator and section chiefs.

(16) All employees in the various departments who are designated by the Governor or the administrative head of that agency as being policy-making shall be exempted from competitive service.

(17) In addition to the exceptions stated in this Rule, there may, upon request from the Governor or an agency or department head, be exempted from the competitive service the following:

(A) executive heads of departments, agencies, offices or divisions and employees reporting directly to these who determine and publicly advocate substantive program policy, provide legal counsel, or are required to maintain a direct confidential working relationship with one of these exempt officials.

(B) temporary positions established for the purpose of conducting a special project, study, or investigation, and positions in experimental or research projects designed to improve the operation of the Competitive Service System. Department or agency heads may submit to the State Personnel Director a request for such exemption from one or more of the competitive service policies established by the State Personnel Commission. A waiver period of up to two years may be requested, with the possibility of extension. The request must contain a detailed description of the project and its objectives. Satisfactory plans for Competitive Service System

~~improvement projects will be submitted to the U.S. Office of Personnel Management (regional office) for approval; such approval must be received before these projects can be implemented.~~

History Note: Authority G.S. 126-12; 42 USC 246(a)(2)(f); 42 USC 246(d)(2)(f); 42 USC 291d(a)(8); 42 USC 302(a)(5)(A); 42 USC 602(a)(5)(A); 42 USC 705(a)(3)(A); 42 USC 1202(a)(5)(A); 42 USC 1352(a)(5)(A); 42 USC 1382(a)(5)(A); 42 USC 1396a(a)(4)(A); 42 USC 2674(b)(7); 42 USC 2684(a)(6); 87 Stat. 41; 86 Stat. 92; 42 USC 4573(a)(5); 42 USC 503(a)(1) and 29 USC 49d(b); 50 USC app. 2286(a)(4); 7 CFR 271.1(g); 45 CFR 14.5(b)(3)(i); 45 CFR 220.49(c); 29 CFR 1902.3(h); BLS Grant Application Kit, May 1, 1973, Supplemental Assurance No. 15A; 29 USC 35(a)(6) and 45 CFR 401.12; 29 USC 42-1(c)(5) and 45 CFR 402.7.

SECTION .0700 - SECONDARY EMPLOYMENT

25 NCAC 01C .0702 AGENCY RESPONSIBILITY

(a) Secondary employment shall not be permitted when it would:

(1) create either directly or indirectly a conflict of interest with the primary employment;

(2) impair in any way the employee's ability to perform all expected duties, to make decisions and carry out in an objective fashion the responsibilities of the employee's position.

(b) The employee shall have agency head approval before beginning any secondary employment. If approved, there shall be periodic review during the time of secondary employment for any adverse effects; approval of secondary employment may be withdrawn at any time.

~~Note: Employees engaged in secondary employment on the effective date of this policy must file a request for approval within 30 days unless approval has already been given under an existing agency requirement.~~

(c) Each agency shall establish its own specific criteria for approval of secondary employment based on work situation needs. ~~Established criteria shall be subject to review and approval of the State Personnel Commission as to justification for and fairness to employees.~~

(d) Employee request for approval of secondary employment, accompanied by required supporting information, shall be treated confidentially for all purposes other than review and action by appropriate officials; secondary employment is a private matter of the individual employee in all other respects.

Authority G.S. 126-4.

SUBCHAPTER 01E - EMPLOYEE BENEFITS

SECTION .0900 – HOLIDAYS

25 NCAC 01E .0901 APPROVED HOLIDAYS

(a) G.S. 126-4(5) specifies the number of holidays to be observed and mandates the observance of Martin Luther King, Jr.'s Birthday and Veterans' Day. The State Personnel Commission shall designate the remaining holidays to be observed.

(b) The following additional holidays~~days~~ are adopted by the State Personnel Commission and approved by the Governor: ~~Governor as holidays:~~

(1) New Year's Day;
(2) Good Friday;
(3) Memorial Day;
(4) Independence Day;
(5) Labor Day;
(6) Thanksgiving (2 days); and
(7) Christmas (2 or 3 days).

~~Holiday~~	~~Number of Days~~
~~New~~ Year's Day	~~1~~
~~Martin Luther King, Jr.'s Birthday~~	~~1~~
~~Good Friday~~	~~1~~
~~Memorial Day~~	~~1~~
~~Independence Day~~	~~1~~
~~Labor Day~~	~~1~~
~~Veteran's Day~~	~~1~~
~~Thanksgiving Day~~	~~2~~
~~Christmas, 1995~~	~~2~~
~~Christmas, 1996~~	~~3~~
~~Christmas, 1997~~	~~3~~
~~Christmas, 1998~~	~~2~~
~~Christmas, 1999~~	~~2~~
~~Christmas, 2000~~	~~2~~
~~Christmas, 2001~~	~~3~~
~~Christmas, 2002~~	~~3~~
~~Christmas, 2003~~	~~3~~
~~Christmas, 2004~~	~~2~~

Authority G.S. 126-4.

25 NCAC 01E .0905 ALTERNATIVE HOLIDAY SCHEDULES

The holiday schedule ~~listed in 25 NCAC 1E .0901~~ shall be used by all state agencies operating under the policies, rules, and regulations of the Office of State Personnel unless the following applies:

(1) Institutions of higher education and agencies requiring a seven-day, 24-hour operation may adopt alternative holiday schedules in keeping with operational needs, provided the employees are given the same number of holidays as approved by the State Personnel Commission. Such special holiday schedules must be filed with the Office of State Personnel.

(2) When the specific date of the legal holiday observance falls on Saturday or Sunday, agencies with a seven-day a week operation shall adopt an additional holiday schedule for employees scheduled to work on the specific date of the legal holiday observance rather than the State government public holiday.

(3) Either the State government public holiday(s) or the day(s) designated for observance, pursuant to Item (2) of this Rule, shall be specified as premium pay holidays.

Authority G.S. 126-4.

SECTION .1000 - MISCELLANEOUS LEAVE

25 NCAC 01E .1005 ADVERSE WEATHER AND EMERGENCY CLOSINGS

(a) The Office of State Personnel shall establish guidelines for accounting for time or releasing employees from work when:

(1) adverse weather or other conditions of a serious nature prohibit some employees from reporting to work but do not necessitate the closing of state offices or facilities; or

(2) emergency conditions necessitate the closing of state offices or curtailing of operations.

(b) Definitions:

(1) Adverse weather and other conditions of a serious nature: Adverse weather or other conditions that may prohibit some employees from reporting to work but do not necessitate the closing of facilities or curtailing of operations.

(2) Emergency closing conditions: Conditions that necessitate the closing of a state facility or the curtailing of operations. Conditions that may be hazardous to life or safety and that may warrant closing of State offices include: catastrophic life threatening weather (snow, ice, hurricane, tornado, earthquake, flood or other natural disaster), fire, equipment failure, disruption of power and/or water, contamination by hazardous agents, terrorist acts or forced evacuations from the agency or work site.

(3) Emergency employees: Employees who are required to work during an emergency because their positions have been designated by their agencies as mandatory/essential to agency operations during emergencies.

~~(a)~~(c) The geographical location and diversity of state services and programs make it impossible to apply a uniform statewide policy regarding how operations will be affected ~~in times of adverse~~ by weather or other ~~conditions.~~ conditions; therefore, decisions must be made on an individual basis.

~~(1) The administrative offices of State Government in Wake County must be open during normal business hours to serve local governments and the citizens of North Carolina and to provide support services to business and industry. These offices will remain open, even in adverse weather, and it is the responsibility of employees to make a good faith effort to come to work during these times.~~

~~(2) It is recognized that some~~ Some ~~other~~ operations ~~in and out of Wake County~~ must continue to provide services without regard to weather ~~conditions~~ or other conditions; therefore, decisions must be made on an individual basis. Some operations must continue to provide services without regard to weather or other conditions. Therefore, agency heads shall predetermine and designate the mandatory operations which will remain ~~open.~~ open and designate the emergency employees to staff these operations. ~~Agency heads, or their designated representatives, may determine to what extent any other operations may be suspended or temporarily closed.~~

~~(b) When it has been determined that services will be suspended, time lost will be charged to vacation leave or leave without pay. Employees, not working in mandatory operations, who anticipate problems in transportation should be permitted and encouraged to avail themselves of vacation leave privileges when encountering difficulty in reporting for work or when leaving early. In either of the above, employees may be allowed to make-up time in accordance with this Rule.~~

~~Employees who are on prearranged vacation leave or on sick leave will charge leave to the appropriate account with no provision for make-up time.~~

~~(c) When employees are away from work because of adverse weather conditions, where operational needs allow, management must make every reasonable effect to arrange schedules whereby employees will be given an opportunity to make up time not worked (either when services are suspended for the general public or by voluntary action of the employee, such as working extra hours in work weeks shortened by holidays, vacations, illness or other absences so that such make up time does not result in any event in the employee working more than forty hours in any work week) rather than charging it to leave. All hours not worked due to adverse weather prior to the effective date of this Rule must be made up within 12 months of the effective date of this Rule or be charged to vacation leave or leave without pay. There are very few opportunities for such time to be made up without the employee working more than forty hours during a work week. Since hours worked in excess of 40 during a workweek would constitute overtime under Federal regulations, it will be necessary for make-up time for employees subject to overtime compensation to be limited to the workweek in which the time is lost or in a week when the employee has not worked a full work schedule due to such absences as holidays, vacation, sick leave, civil leave, etc. Time must be made up within 12 months from the occurrence of the absence. If it is not made up within 12 months, vacation leave must be charged, or leave without pay taken.~~

~~(d) Special Provision When catastrophic, life-threatening weather conditions occur, as created by hurricanes, tornadoes, or floods, and it becomes necessary for authorities to evacuation from the place of employment, the following provisions will prevail:~~

~~(1) Employees who are required to evacuate will not be required to make up time that is lost from work during the period officially declared hazardous to life and safety. Employees required to remain at work may be relieved administratively for a period of time necessary to assure the safety of their family.~~

~~(2) Employees required to work in such emergency situations will be paid in accordance with the State's policy on Hours of Work and Overtime Compensation. Every effort should be made to compensate overtime~~

by additional payment rather than compensatory time.

Authority G.S. 126-4(5); (10).

SECTION .1300 - VOLUNTARY SHARED LEAVE PROGRAM

25 NCAC 01E .1305 DONOR GUIDELINES

(a) A non-family member donor may contribute only vacation leave to another employee within the same department or universityin any agency. A non-family donor may not contribute leave outside the parent agency. A family member who is a state employee may contribute vacation or sick leave to another an immediate family member state employee in any department or universityagency, public school, or community college. Immediate family is defined as spouse, parents, children, brother, sister, grandparents, grandchildren, great grandparents and great grandchildren. Also, included are the step, half, and in-law relationships. For detailed definitions of immediate family see 25 NCAC 01E .0317 DEFINITIONS.

(b) TheMinimum minimum amount to be donated is four hours. An employee family member donating sick leave to a qualified family member under the Voluntary Shared Leave program may donate up to a maximum of 1040 hours but may not reduce the sick leave account below 40 hours.

(c) The maximum amount of vacation leave allowed to be donated by one individual is to be no more than the amount of the individual's annual accrual rate. However, the amount donated shall not reduce the donor's vacation leave balance below one-half of the annual vacation leave accrual rate.

(d) An employee may not directly or indirectly intimidate, threaten, coerce, or attempt to intimidate, threaten, or coerce, any other employee for the purpose of interfering with any right which such employee may have with respect to donating, receiving, or using annual leave under this program. Such action by an employee shall be grounds for disciplinary action up to and including dismissal on the basis of personal conduct. Individual leave records are confidential and only individual employees may reveal their donation or receipt of leave. The employee donating cannot may not receive remuneration for the leave donated.

Authority G.S. 126-4.

SECTION .1700 - LEAVE: ADMINISTRATIVE

25 NCAC 01E .1701 SMALLPOX VACCINATION

When absence from work is due to an adverse medical reaction resulting from a smallpox vaccination, the absence shall be charged to administrative leave in accordance with the provisions of G. S. 126-8.4(a) and (b).

Authority G.S. 126-4; 126-8.4.

25 NCAC 01E .1702 OTHER CONTAGIOUS DISEASES

In the event of exposure to a contagious disease such that the presence of an employee at the worksite could endanger the health of fellow employees, the Office of State Personnel shall develop guidelines for the use of administrative leave by such employees when their absence from the worksite is deemed necessary by health professionals.

Authority G.S. 126-4.

SUBCHAPTER 01J - EMPLOYEE RELATIONS

SECTION .0700 - WELLNESS IMPROVEMENT FOR STATE EMPLOYEES POLICY

25 NCAC 01J .0701 PURPOSE

The purpose of the Wellness Improvement for State Employees Program is to develop and coordinate a program for active and retired state government employees which promotes optimal health and enhances overall quality of life conducive to optimal health. The program is to be known as the "WISE" program (Wellness Improvement for State Employees). Employees can increase their awareness of health and wellbeing through educational efforts directed towards self-improvement, thereby achieving a healthier lifestyle. The WISE program recognizes that healthy employees, and programs that promote their health can help reduce increasing health benefits costs, absenteeism and decreased productivity.

Authority G.S. 126-4(10)

25 NCAC 01J .0702 POLICY

The "WISE" program shall address improved health efforts including, but not limited to, self responsibility, stress management, nutritional awareness, physical fitness and environmental sensitivity. Each agency/university head has the responsibility, in cooperation with the Office of State Personnel, to implement the WISE program within their department/university. It is the agency's responsibility to assure that the program follows all guidelines and procedures established by the WISE Office.

Authority G.S. 126-4(10).

25 NCAC 01J .0703 ADMINISTRATION

(a) Each agency head shall designate at least one employee as the WISE program coordinator to be responsible for the operation of the program within the agency. Larger agencies may find it helpful to designate an assistant to the WISE Coordinator. This assistant would be known as the Alternate WISE Coordinator. The WISE Coordinator should develop a network of contacts within their agency in order to assure than every State employee has an equal opportunity to participate in the WISE program. These contacts are to be called WISE Liaisons. Agencies are encouraged to establish a wellness committee head by their WISE Coordinator and comprised of their WISE Liaisons to develop additional healthful practices necessary to meet special situations and needs that are unique to their particular agency and its employees. In addition, an advisory board made up of WISE Coordinators and appointed ex-officio members shall be established in the Office of State Personnel. This advisory board will guide and assist in the development of a statewide comprehensive Wellness Improvement Program for State Employees. Ex-officio membership should include state employees with expertise in the

~~medical, health insurance, nutrition, physical fitness and health/safety profession.~~

~~(b) The State WISE Program Director and staff shall be responsible for establishing working relationships and lines of communication with the advisory board and other resource personnel. The Director shall also be responsible for coordinating needed training and technical assistance to enhance the success of the program. It is the policy of the program to utilize available resources from within state government and from gratis services from the private sector as much as possible.~~

Authority G.S. 126-4(10).

This Section includes temporary rules reviewed and approved by the Rules Review Commission and entered in the North Carolina Administrative Code and includes, from time to time, a listing of temporary rules that have expired. Statutory Authority: G.S. 150B-21.1.

EXPIRED TEMPORARY RULES

Department of Environment and Natural Resources	Effective Date	Expired
15A NCAC 01R .0101	03/01/02	11/26/02
Department of Health and Human Services		
Facility Services, Division of		
10A NCAC 14B .0290	01/01/02	10/12/02
Justice		
Private Protective Services Board		
12 NCAC 07D .0907-.0908	10/02/02	07/29/03
State Personnel		
25 NCAC 01E .1402	11/01/02	08/29/03
25 NCAC 01E .1412	11/01/02	08/29/03

*This Section includes the Register Notice citation to Rules approved by the Rules Review Commission (RRC) at its meeting July 17, 2003, 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 2004 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
10A	NCAC	13J	.1302*	17:16 NCR
10A	NCAC	41G	.0102*	17:17 NCR
10A	NCAC	42D	.0243*	17:17 NCR
10A	NCAC	43A	.0803-.0804*	17:17 NCR
10A	NCAC	43A	.0808*	17:17 NCR
10A	NCAC	71U	.0210*	17:18 NCR
10A	NCAC	71U	.0212*	17:16 NCR
10A	NCAC	71U	.0214*	17:16 NCR
10A	NCAC	71U	.0215*	17:18 NCR
10A	NCAC	89A	.0102*	17:16 NCR
10A	NCAC	89C	.0103*	17:16 NCR
10A	NCAC	89C	.0206*	17:16 NCR
10A	NCAC	89C	.0606*	17:16 NCR
12	NCAC	09B	.0201*	17:20 NCR
12	NCAC	09B	.0228*	17:20 NCR
12	NCAC	09B	.0301*	17:20 NCR
12	NCAC	09B	.0305*	17:20 NCR
12	NCAC	09E	.0102	17:20 NCR
12	NCAC	09E	.0104-.0108*	17:20 NCR
15A	NCAC	02D	.0506*	17:03 NCR
15A	NCAC	10B	.0203*	17:12 NCR
15A	NCAC	10B	.0209*	17:12 NCR
15A	NCAC	10B	.0302*	17:12 NCR
15A	NCAC	10B	.0402	17:12 NCR
15A	NCAC	10C	.0205*	17:12 NCR
15A	NCAC	10C	.0208*	17:12 NCR
15A	NCAC	10C	.0212	17:12 NCR
15A	NCAC	10C	.0305*	17:12 NCR
15A	NCAC	10C	.0401*	17:12 NCR
15A	NCAC	10C	.0402	17:12 NCR
15A	NCAC	10C	.0404*	17:12 NCR
15A	NCAC	10C	.0407*	17:12 NCR
15A	NCAC	10C	.0503	17:12 NCR
15A	NCAC	10D	.0102-.0104*	17:12 NCR
21	NCAC	29	.0101	17:16 NCR
21	NCAC	29	.0201	17:16 NCR
21	NCAC	29	.0205*	17:16 NCR
21	NCAC	29	.0403*	17:16 NCR
21	NCAC	29	.0404	17:16 NCR
21	NCAC	29	.0405*	17:16 NCR
21	NCAC	29	.0501*	17:16 NCR

TITLE 10A - DEPARTMENT OF HEALTH & HUMAN SERVICES **10A NCAC 13J .1302 ORDERS**

(a) Orders for pharmaceuticals and medical treatments, or orders for in-home aide services when orders for in-home services are required, shall be signed by the physician or other person authorized by State law to prescribe such treatments and the original incorporated in the client's service records. Care may commence in the interim with a verbal order.

(b) Verbal orders for the administration of pharmacological agents and other medical treatment interventions shall be given to a licensed nurse, or other person authorized by state law to receive such orders. The order shall include the date and signature of the person receiving the order, shall be recorded in the client record, and shall be countersigned by the physician or other person authorized by State law to prescribe.

(c) Verbal orders for allied health services personnel, other than nursing or other than in-home aide services, shall be given to either a licensed nurse or the appropriate health professional. The order shall include the date and signature of the person receiving the order, shall be recorded in the client record and shall be countersigned by the physician or other person authorized by State law to prescribe.

(d) The home care agency shall develop and implement written policies and procedures for obtaining countersignatures on verbal orders within 60 days of the date of the verbal order.

History Note: Authority G.S. 131E-140;
Eff. July 1, 1992;
Amended Eff. July 1, 2004; February 1, 1996.

10A NCAC 41G .0102 FEES FOR RABIES TAGS, LINKS, AND RIVETS

(a) The Division of Epidemiology shall charge a fee to be paid by veterinarians or local health departments for the provision of rabies tags, links, and rivets. This fee shall be determined on the basis of actual cost plus transportation, and an additional five cents ($.05) per tag to be used to fund rabies education and prevention programs.

(b) The Division of Epidemiology shall charge a fee to be paid by veterinarians or local health departments for the provision of I Care rabies tags. This fee shall be determined on the basis of actual cost plus transportation, an additional five cents ($.05) per tag to be used to fund rabies education and prevention programs plus an additional fifty cents ($0.50) per tag. The fifty cents ($0.50) fee per tag shall be credited to the Spay/Neuter fund established in G.S. 19A-62.

History Note: Authority G.S. 130A-190;
Eff. January 1, 1982;
Amended Eff. September 1, 1990;
Temporary Amendment Eff. July 22, 1997;
Amended Eff. August 1, 1998;
Temporary Amendment Eff. May 4, 2001;
Temporary Amendment Expired February 26, 2002;
Codifier Objected to findings of need on February 11, 2003;
Temporary Amendment Eff. February 24, 2003.
Amended Eff. August 1, 2004.

10A NCAC 42D .0243 CHEMISTRY QUALITY ASSURANCE

(a) Certified laboratories must meet the following general requirements for chemistry quality assurance (QA):

(1) All quality control information shall be available for inspection by the certification officer.

(2) A manual of analytical methods and the laboratory's QA plan shall be available to the analysts.

(3) Class S weights or higher quality weights shall be available to make periodic checks on the accuracy of the balances. Checks shall be within range of the manufacturer's guidelines. A record of these checks shall be available for inspection. The specific checks and their frequency shall be as prescribed in the laboratory's QA plan or the laboratory's operations manual. These checks shall be performed at least once a month.

(4) Color standards or their equivalent, such as built-in internal standards, shall be available to verify wavelength settings on spectrophotometers. These checks shall be within the manufacturer's tolerance limits. A record of the checks shall be available for inspection. The specific checks and their frequency shall be as prescribed in the laboratory's QA plan or the laboratory's operations manual. These checks shall be performed at least every six months.

(b) The laboratory shall analyze performance samples as follows:

(1) US EPA approved performance evaluation samples shall be analyzed annually in the first calendar quarter for each analyte, and by each method, for which the laboratory is or wishes to be certified. Additionally, US EPA approved performance samples for nitrate and nitrite shall be analyzed annually in the first and third calendar quarters by each method for which the laboratory is or wishes to be certified. All results shall be within the EPA acceptable limits as established by the sample providers. For any result analyzed in the first quarter falling outside of the established limits, a make-up sample shall be analyzed for that analyte in the second quarter. For any result analyzed in the third quarter falling outside of the established limits, a make-up sample shall be analyzed for that analyte in the fourth quarter.

(2) Double blind and blind samples shall be analyzed when submitted to a certified laboratory and results shall be within established control limits; these data shall be of equal weight to the EPA performance sample data and on site quality control sample data in determining the laboratory's certification status.

(3) On-site quality control samples shall be analyzed when presented to the laboratory by the certification evaluator and results shall be within established control limits. These data shall be of equal weight to the EPA

performance evaluation sample data and the double blind sample data in determining the laboratory's certification status.

(4) A laboratory shall have correctly analyzed two out of the last three performance samples for each analyte for which it is certified. In the event that a laboratory is decertified for failing to correctly analyze two out of the last three performance samples, the laboratory shall correctly analyze two consecutive performance samples to have their certification reinstated. The performance samples shall be analyzed no less than 30 days apart. A laboratory with less than three performance samples shall have successfully analyzed a minimum of two performance samples before their certification status may be determined.

(5) Unacceptable performance on any of the samples in Paragraph (b) of this Rule shall be corrected and explained in writing within 30 days and submitted to the certification evaluator.

(c) The minimum daily quality control (QC) for chemistry shall be as follows:

(1) Inorganic Contaminants:

(A) Each laboratory analyzing samples for inorganic contaminants must prepare daily a standard curve composed of at least a reagent blank and three standards covering the sample concentration range. A standard curve is not required on each day of analysis for samples analyzed for Nitrate by manual cadmium reduction or for Cyanide. The standard curve shall be verified each day by analyzing a calibration standard and a reagent blank. The calibration standard must be within ± 10 percent of its true value in order to use the standard curve. If it is not within 10 percent of the true value, a new standard curve shall be prepared.

(B) The laboratory shall analyze a QC sample (EPA QC sample or equivalent) at the beginning of the sample run, at the end of the sample run, and every 20 samples, with recoveries not to exceed ± 10 percent of the true concentration. The source of this QC sample shall be different from the source used for the calibration standards in Part (c)(1)(A) of this Rule.

(C) The laboratory shall run an additional standard or QC check at the laboratory's lowest detectable limit for the particular analyte. The laboratory shall not report a value lower than the lowest standard or QC check analyzed.

(D) The laboratory shall add a known spike to a minimum of 10 percent of the routine samples (except when the method specifies a different percentage, i.e. furnace methods) to determine if the entire analytical system is in control. The spike concentration shall not be less than the background concentration of the sample selected for spiking. The spike recoveries shall not exceed ± 10 percent of the true value.

(E) All compliance samples analyzed by graphite furnace shall be spiked to determine absence of matrix interferences with recoveries within ± 10 percent of the true value of the spike concentration.

(F) The laboratory shall run a duplicate sample every 10 samples with duplicate values within ± 10 percent of each other.

(G) Precision and accuracy data may be computed from the analyses of check samples of known value used in each analytical procedure. This data shall be available for inspection by the laboratory evaluator.

(2) Organic Contaminants:

(A) Quality control specified in the approved methods referenced in Rule .0241 of this Section shall be followed.

(B) Analysis for regulated volatile organic chemicals under 15A NCAC 18C .1515 shall only be conducted by laboratories that have received conditional approval by EPA or the Department according to 40 C.F.R. 141.24(g)(10) and (11) which is hereby incorporated by reference including any subsequent amendments and editions. A copy is available for inspection at the Department of Health and Human Services, Division of Public Health, 306 North Wilmington Street, Raleigh, North Carolina. Copies of 40 C.F.R. 141-143 may be obtained by contacting the EPA Drinking Water Hotline at 800-426-4791 at no charge.

(C) Analysis for unregulated volatile organic chemicals under 15A NCAC 18C .1516 shall only be conducted by laboratories approved under Part (c)(2)(B) of this Rule. In addition to the requirements of Part (c)(2)(B) of this Rule, each laboratory analyzing for EDB and DBCP shall achieve a method detection limit for EDB of

0.00001 mg/l and DBCP of 0.00002 mg/l, according to the procedures in Appendix B of 40 C.F.R. Part 136 which is hereby incorporated by reference including any subsequent amendments and editions. A copy may be obtained at no charge by contacting the Department of Health and Human Services, Division of Public Health, 306 North Wilmington Street, Raleigh, North Carolina.

(D) The laboratory shall achieve the method detection limits as listed in 40 CFR 141.24(f)(18) according to the procedures in Appendix B of 40 CFR Part 136 which is hereby incorporated by reference including any subsequent amendments and editions. A copy may be obtained at no charge by contacting the Department of Health and Human Services, Division of Public Health, 306 North Wilmington Street, Raleigh, North Carolina.

History Note: Authority G.S. 130A-315;
Eff. December 1, 1991;
Amended Eff. August 1, 1996; January 1, 1996; October 1, 1994; April 1, 1993;
Temporary Amendment Eff. January 1, 2003;
Amended Eff. August 1, 2004.

10A NCAC 43A .0803 GRANT APPLICATIONS

(a) All programs receiving TPPI grants shall demonstrate through a competitive application process that their proposed strategies reflect best practice models for teen pregnancy prevention and strong collaboration of local agencies within their communities. Community agencies in counties ranking in the top quartile relative to pregnancy rates among girls aged 15 to 19 shall receive requests for application (RFAs) 30 days prior to the mailing to agencies in other counties. All community agencies that apply for this funding shall receive technical assistance. Individual consultations with those counties receiving the RFA earlier due to their teen pregnancy rankings shall have access to technical assistance from staff of the Division of Public Health for 45 additional days.

(b) Grants shall be awarded through a request for applications (RFA) process that includes notification of potential applicant agencies of the eligibility criteria and requirements for funding.

(c) Any local agency or organization or combination of agencies and organizations may apply to the DPH for an allocation of money to operate a project aimed at preventing primary or secondary adolescent pregnancy.

(d) The application shall contain an analysis of adolescent pregnancy and related problems in the locality the project would serve, and a description of how the funded project would attempt to prevent the problems.

(e) The application shall state how much money is needed to operate the project and how the money shall be spent.

(f) The Department shall conduct annually a pre-application conference that shall be attended by a representative of any agency that wishes to apply for funding; that session shall define the criteria for accountability and evaluation that the Department requires of funded projects. That session shall also provide information about additional funding sources to which agencies might turn.

(g) Application Requirements – The Department shall apply the following standards to agencies applying for first-year funding:

(1) Each agency shall have a plan of action that extends throughout their funding cycle.

(2) Each agency shall have realistic, specific, and measurable goals and objectives for the prevention of adolescent pregnancy.

(3) Each agency, before submitting its application, shall send a representative to the pre-application conference held by the Department.

History Note: Authority G.S. 130A-124; 130A-131.15A;
Eff. August 1, 1990;
Amended Eff. January 4, 1994; August 1, 1991;
Temporary Amendment Eff. December 1, 2001;
Temporary Amendment Expired September 13, 2002;
Amended Eff. August 1, 2004; April 1, 2003.

10A NCAC 43A .0804 MAXIMUM FUNDING LEVEL

The maximum level of funding for any one project shall be:

(1) Fifty thousand dollars ($50,000), provided that local participants contribute a minimum of $10,000 in-kind match annually.

(2) Sixty-five thousand dollars ($65,000), provided that local participants contribute a minimum of $18,000 in-kind match annually and that active leadership or financial support is annually demonstrated from at least three of the following groups:
(a) local public school system;
(b) public and private health care providers;
(c) local social services department;
(d) local mental health authority;
(e) local Workforce Board; or
(f) corporations and businesses.

(3) Seventy-five thousand dollars ($75,000), provided that local participants contribute a minimum of $25,000 in-kind match annually and:
(a) that active leadership or financial support is annually demonstrated from at least four of the following groups:
(i) local public school system;
(ii) public and private health care providers;
(iii) local social services department;
(iv) local mental health authority;
(v) local Workforce Board; or
(vi) corporations and businesses; and

(b) that the target population participants in the TPPI projects are linked with:
- (i) academic support programs such as Communities in Schools (CIS) or Save Our Students (SOS);
- (ii) health related programs such as physical fitness and nutrition related activities;
- (iii) child care, economic assistance, and other social services programs;
- (iv) counseling or other therapeutic services;
- (v) career counseling and job shadowing using such programs as the local JobLink Center; or
- (vi) mentoring by local businesses or organizations.

History Note: Authority G.S. 130A-124; 130A-131.15A;
Eff. August 1, 1990;
Amended Eff. January 4, 1994;
Temporary Amendment Eff. December 1, 2001;
Temporary Amendment Expired September 13, 2002;
Amended Eff. August 1, 2004; April 1, 2003.

10A NCAC 43A .0808 CRITERIA FOR PROJECT SELECTION

(a) The Department shall present funding recommendations to the Commission from among the applicants that meet the minimum standards in Rule .0803 of this Subchapter. A multi-disciplinary committee of public and private health and human services providers who are familiar with adolescent health issues shall review applications based upon the criteria set out below. Recommendations shall also be based upon the best selection of projects according to the following criteria:

- (1) Degree of need of the locality, including that the service area has a significant adolescent pregnancy problem as evidenced by its adolescent pregnancy rate, adolescent birth rate, attributable risk score, and percentage of repeat adolescent births;
- (2) Evidence of selection of a program model that has documented success in the prevention of teen pregnancy;
- (3) A statewide program evaluation plan that addresses the administration of pre-tests and post-tests that measure participants' knowledge, attitudes and behaviors as compared to a control group; and submission of data in an internet based database;
- (4) Adequacy of agency and staff to meet project objectives;
- (5) Level of community support. There shall be documentation such as letters or statements of commitment from partnering organizations to show strong support for the application;
- (6) Evidence that the proposed budget does not exceed the costs of the planned program activities; and
- (7) Existing or formerly TPPI-funded projects shall demonstrate that they have provided an effective intervention for reducing adolescent pregnancy rates among their participants.

(b) The Commission shall provide input regarding the proposed funding decisions made by the Department. The Department shall consider the input of the Commission, but shall not be bound by it. The Department shall notify the projects that are to be funded by June 1 of each year.

History Note: Authority G.S. 130A-124; 130A-131.15A;
Temporary Adoption Eff. December 1, 2001;
Temporary Adoption Expired September 13, 2002;
Eff. April 1, 2003;
Amended Eff. August 1, 2004.

10A NCAC 71U .0210 INCOME EXCLUSIONS

Income exclusions are found in 7 CFR 273.9(c) and this provision is hereby adopted by reference under G.S. 150B-21.6 and does not apply to subsequent amendments and editions. In addition, the following income shall be excluded in determining eligibility and benefit level: Earned income for census employment or educational assistance, except scholarships offered by civic groups or institutions, or athletic scholarships. A copy of the CFR may be obtained by contacting the Government Printing Office, Superintendent of Documents, P. O. Box 37194, Pittsburgh, PA 15250-7954 or accessing the CFR online at www.access.gpo.gov/nara/cfr.

History Note: Authority G.S. 108A-25; 108A-53; 143B-153;
7 C.F.R. 273.9(c); 7 U.S.C. 2026(b)(1); P.L. 107-171;
Temporary Rule Eff. March 28, 1990, for a Period of 180 Days to Expire on August 31, 1990;
Eff. September 1, 1990;
Temporary Amendment Eff. March 1, 2003;
Amended Eff. August 1, 2004.

10A NCAC 71U .0212 TRANSITIONAL FOOD STAMP BENEFITS

Households shall receive transitional food stamp benefits for a period of five months when they lose their Work First Family Assistance benefits. Food Stamp benefits shall be no less than the amount received by the household prior to the termination of Work First Family Assistance benefits. The only adjustments to income shall be the deletion of the Work First Family Assistance benefits. Other sources of income shall not be re-calculated. A household is not eligible for transitional food stamp benefits if it loses Work First Family Assistance benefits for any of the following reasons:

- (1) Work First Family Assistance case closes due to a sanction;
- (2) Household member is disqualified from the Food Stamp Program;
- (3) Household moves out of North Carolina;
- (4) Household moves to another county in North Carolina; or
- (5) Household received more than one Work First Family Assistance payment and a Work First

Family Assistance payment is still being received.

A household may reapply for food stamp benefits during the transitional period with benefits determined according to current circumstances.

History Note: Authority G.S. 108A-51: 143B-153; P.L. 107-171; Temporary Adoption Eff. February 1, 2003; Eff. August 1, 2004.

10A NCAC 71U .0214 DEDUCTIONS

For the following food stamp households, the county department shall disregard, until recertification, reported changes in deductions during the current certification period except for changes associated with a new residence or changes in earned income:

(1) Households that contain a homeless individual;
(2) Households that contain a migrant;
(3) Households that contain an Able-Bodied Adult Without a Dependent, as defined in 7 CFR 273.24;
(4) Households whose only member(s) is/are Supplemental Security Income (SSI) applicants or recipients who do not receive any other types of fluctuating income;
(5) Households whose only income is stable Social Security Income or SSI;
(6) Households with no income; or
(7) Any other household not subject to semi-annual reporting requirements as determined by the United States Department of Agriculture, Food and Nutrition Services.

A copy of the CFR may be obtained by contacting the State Division of Social Services, Economic Independence Section, 2420 Mail Service Center, Raleigh, NC 27699-2420.

History Note: Authority G.S. 108A-51; 143B-153; P.L. 107-171; Temporary Adoption Eff. February 1, 2003; Eff. August 1, 2004.

10A NCAC 71U .0215 RESOURCE EXCLUSIONS

Resource exclusions are found in 7 CFR 273.8(e) and this provision is hereby incorporated by reference under G.S. 150B-21.6 and does not apply to subsequent amendments and editions. In addition to the exclusions found in federal regulations, the following resources shall be excluded in determining eligibility and benefit level:

(1) funds from property conveyed to an individual at death of the property owner, also referred to as heir property;
(2) burial plots/space;
(3) lifetime interest in real or personal property limited to an individual's lifetime but the individual does not actually own the property;
(4) remainder interest in property when one individual owns property and another individual has the lifetime right; and
(5) land or buildings not excluded as a homesite, income producing property, or for the sale by good faith effort.

A copy of the CFR may be obtained by contacting the Government Printing Office, Superintendent of Documents, P. O. Box 37194, Pittsburgh, PA 15250-7954 or accessing the CFR online at www.access.gpo.gov/nara/cfr.

History Note: Authority G.S. 143B-153; P.L 107-171; Temporary Adoption Eff. March 1, 2003; Eff. August 1, 2004.

10A NCAC 89A .0102 DEFINITIONS

As used in this Chapter, the following terms have the meaning specified:

(1) "Acceptance for services" means that the priority category to which an eligible individual is assigned is being served by the Division.
(2) "Application date" means the date that a client completes and signs an application for services with the Division.
(3) "Appropriate mode of communication" means specialized aids and supports that enable an individual with a disability to comprehend and respond to information that is being communicated including but not limited to, the use of interpreters, open and closed captioned videos, specialized telecommunications services and audio recordings, Brailled and large print materials, materials in electronic formats, augmentative communication devices, graphic presentations, and simple language materials.
(4) "Designated State Agency" or "State Agency" means the sole state agency designated per federal regulations to administer or supervise the local administration of the State Plan for Vocational Rehabilitation Services. In North Carolina, it is the Department of Health and Human Services.
(5) "Client" means an individual who has applied for or is receiving services from the Division.
(6) "Designated State Unit" means the state vocational rehabilitation division that is primarily concerned with vocational rehabilitation or vocational and other rehabilitation of individuals with disabilities and that is responsible for the administration of the vocational rehabilitation program of the State agency.
(7) "Division" means the Division of Vocational Rehabilitation Services of the Department of Health and Human Services.
(8) "Division Director" or "Director" means the Director of the Division of Vocational Rehabilitation Services.
(9) "Division's Fixed Rate" means the rate that the Division will pay for clients to receive training services.

(a) The Division's fixed rate for post-secondary, graduate, professional and summer school is determined by calculating the median rate for tuition at the 16 campus public University system as approved by the North Carolina General Assembly in October 2001;

(b) The Division's fixed rate for the community college system is the approved rate for the 58 community college system as approved by the North Carolina General Assembly in October 2001.

(10) "Division's Modification Review Committee" means a committee of Division staff from the State Office appointed by the Division Director and chaired by the Chief of Operations to review for approval or disapproval:

(a) amounts for residence or job site modifications that exceed standard amounts specified in 10A NCAC 89C .0316; and

(b) purchase of vehicles as set forth in 10A NCAC 89C .0316.

(11) "Eligible individual" means an applicant for vocational rehabilitation services who meets the eligibility requirements under 34 C.F.R 361.42(a).

(12) "Extended period of time" means that the individual will require at least nine months to complete the services on the Individualized Plan for Employment (IPE) or will require one of the following services permanently in order to accomplish the individual's job choice and maintain employment:

(a) Personal Assistance Services;

(b) Rehabilitation Technology;

(c) Medical equipment limited to wheelchairs, prosthesis, hearing aids and orthotics prescribed due to seriously limited functional capacity areas; or

(d) Extended Services.

The required minimum of nine months does not include the standard amount of time required to complete a post-secondary training curriculum, but does include extra time required to complete the training curriculum due to disability related reasons.

(13) "Extended Services" means ongoing support services that are needed to maintain an individual with a most significant disability in supported employment. These services are provided by a State agency, a private nonprofit organization, employer, or other resource from funds other than funds received by the designated State unit to provide supported employment training. Extended Services begin after the individual has made the transition from support provided by the designated State unit. Extended Services also includes services required by individuals with a most significant disability who received work adjustment and job coaching where a supported employment vendor was not available.

(14) "Functional Capacity Areas" means the areas of ability which are impacted by an individual's disability and used to determine serious limitations to employment for an eligible individual with a disability. For the purposes of this Section:

(a) "Communication" means the ability to use, give and receive information.

(b) "Interpersonal skills" means the ability to establish and maintain interactions with others.

(c) "Mobility" means the ability to move from place to place.

(d) "Self-care" means the ability to plan and perform activities of daily living.

(e) "Self direction" means the ability to plan, initiate, organize, or carry out goal-directed activities or solve problems related to self-care, socialization, and working independently.

(f) "Work skills" means the ability to learn and perform work functions.

(g) "Work Tolerance" means the ability to sustain the required level of work function.

(15) "Individual with a "significant disability" has the meaning specified in P.L. 102-569, Section 7(15) which is incorporated by reference.

(16) "Individual with a most significant disability" means an individual with a significant disability who meets all aspects of the definition for significant disability, and whose impairment seriously limits three or more functional capacity areas in terms of an employment outcome.

(17) "Individualized Plan for Employment" (IPE) means a written document prepared on forms provided by the designated state unit for each eligible individual accepted for services which outlines what is required to achieve an employment outcome.

(18) "Intercurrent illness" means an acute medical condition that arises during the rehabilitation process and constitutes a barrier to the achievement of an employment outcome.

(19) "Multiple services" means two or more primary services.

(20) "Optional fees" are fees charged to curriculum and continuing education students for items not covered by tuition and registration fees. Optional fees include:

(a) Specific fees. Fees charged to students for items required for

individual courses that are considered to be in addition to normal supplies and materials the college provides for students such as tools, uniforms, insurance or certification fees.

(b) Student activity fee. A fee charged to students to support student activities. The student activity fee shall not exceed the maximum set by the State Board of Community Colleges effective for the fall 2001 semester.

(c) Computer use and technology fee. A fee charged to students to support the procurement, operations and repair of computers and other institutional technology including supplies and materials that accompany use of the technology. The fee shall not exceed the maximum set by the State Board of Community Colleges effective for the fall 2001 semester.

(d) Parking fee. A fee charged to a student for use of the college's parking facilities.

(21) "Order of Selection" means the priority system under which the Division provides vocational rehabilitation services to eligible individuals with disabilities when sufficient resources are not available for the Division to serve all eligible individuals with disabilities.

(22) "Order of Selection – Established" means that the order of selection priority system has been approved by the Rehabilitation Services Administration and is a part of the Division's State Plan.

(23) "Order of Selection – Implemented" means that the Division Director has determined that the Division does not have sufficient resources to provide services to all eligible individuals. During implementation all eligible individuals within a priority category may not receive services.

(24) "Permanent disability" means any physical or mental condition which is expected to be lasting regardless of medical or psychological intervention, and which is highly unlikely to go into full or permanent remission.

(25) "Permanent functional limitation" means restrictions in activity or function related to employment imposed by the disability that:

(a) is not likely to be corrected through surgical intervention or medical treatment; and

(b) will require on-going treatment because impediments related to the disability will not be removed through the provision of physical and mental restoration services.

(26) "Personal Assistance Services" means a range of services provided by one or more persons designed to assist an individual with a disability to perform daily living activities on or off the job that the individual would typically perform without assistance if the individual did not have a disability.

(27) "Primary Services" means any one of the following services:

(a) Physical and mental restoration services: Diagnosis and treatment services of impairments excluding treatment of intercurrent illnesses.

(b) Counseling and guidance: Counseling and guidance that addresses separate and specific objectives with documentation of regular appointments and progress towards objectives distinct from the general counseling relationship that exists between the rehabilitation counselor and the eligible individual throughout the rehabilitation process.

(c) Vocational and other training: Personal and vocational adjustment training, post-secondary, and on-the-job training.

(d) Job Related Services: Job search, placement assistance, job retention services, follow-up services, and follow-along services.

(e) Rehabilitation Technology: Rehabilitation engineering, assistive technology devices, and assistive technology services.

(28) "Priority category" means the order in which eligible individuals with disabilities will be served. These categories are based on refinement of the three criteria in the definition of "individual with a significant disability".

(29) "Post-employment services" means one or more services that are provided subsequent to the achievement of an employment outcome that are necessary for an individual to maintain, regain, or advance in employment, consistent with the individual's abilities, capabilities, and interests.

(30) "Rehabilitation technology" means services that systematically apply technologies, engineering methodologies, or scientific principles to meet the need of and address the barriers confronted by an eligible individual with a disability. Rehabilitation technology includes telecommunication, sensory, and other technological aids and devices.

(31) "Seriously limits" means that due to a physical or mental impairment, one or more of an eligible individual's functional capacity areas is restricted to the degree that the individual requires accommodations not routinely made for other individuals or interventions that cannot be easily achieved, and that will be required permanently in order for the

individual to obtain and maintain successful employment.

(32) "State Plan" means the Plan for vocational rehabilitation services submitted by the Division and approved by the Rehabilitation Services Administration.

(33) "Transferable work skills" means skills, educational level, talents, abilities, and knowledge that will allow employment consistent with the individual's strengths, resources, priorities, concerns, capabilities, interest and informed choice.

(34) "Waiting list" means a list of eligible individuals that establishes the order in which these individuals will be provided services once resources are available if the Division has implemented an Order of Selection. Individuals are placed on the list after eligibility for services has been determined by their priority category and date of application.

The section of the Public Law incorporated by reference in this Rule shall automatically include any later amendments thereto as allowed by G.S. 150B-21.6. Copies of the section of the Public Law so incorporated may be obtained at no cost from the Division.

History Note: Authority G.S. 143-545.1; 150B-21.6;
P.L. 102-569, s. 7(15); s. 101(a)(5)(A);
Eff. February 1, 1976;
Amended Eff. February 1, 1996; October 1, 1994; April 1, 1988;
Temporary Amended Eff. May 1, 2002; July 3, 2001;
Amendment Eff. August 1, 2002;
Temporary Amended Eff. January 26, 2003;
Amendment Eff. August 1, 2004.

10A NCAC 89C .0103 RATES OF PAYMENT

(a) Rules governing rates of payment for all purchases, vocational rehabilitation services, and current rates of payment may be reviewed 8 a.m. to 5 p.m., Monday through Friday, at the Division's State office, 805 Ruggles Drive, Dorothea Dix Campus, Raleigh, North Carolina. Vendors providing any services authorized by the Division shall agree not to make any charge to, or accept payment from, the individual receiving services from the Division or the individual's family for such services unless the amount for such service charge or payment is previously known to and approved by the Division in accordance with Sections .0200 and .0300 of this Chapter of rules.

(b) The Division's rate of payment for post secondary education, graduate, professional and summer school shall not exceed the Division's fixed rate charged for the public university and professional schools system and the rate charged for the community college system for tuition and fees as approved by the North Carolina General Assembly October 2001.

(c) The Division's rate of payment for proprietary for profit vocational and trade schools or other training programs that offer curriculums comparable to those offered through the community college system shall not exceed the rate for payment established for the community college system.

(d) The Division's rate of payment for proprietary for profit vocational and trade schools or other training programs that offer an accelerated or condensed curriculum or those training programs that offer training in areas not offered through the community college system shall not exceed the Division's fixed rate for the public university system per semester multiplied by two.

(e) The Division's rate of payment for proprietary for profit vocational and trade schools and any other vocational or trade program that does not operate on a semester system or has varying program lengths up to one year shall not exceed a prorated monthly rate based on the Division's fixed rate for the public university system per semester multiplied by two and the Division's fixed rate for a session of summer school in the public university system multiplied by two.

(f) The Division's rate of payment for proprietary for profit vocational and trade schools and any other vocational or trade programs that does not operate on a semester system or has a varying program length that is twelve months or longer shall not exceed the Division's fixed rate for the public university system per semester multiplied by two and the Division's fixed rate for a session of summer school in the public university system multiplied by two.

(g) The Division's rate of payment for proprietary for those individuals who are North Carolina residents and choose to attend training programs out-of-state, the Division's rate of payment is limited to the Division's fixed rate specified in Paragraph (b) of this Rule.

(h) The Division's rate of payment for optional fees at the community college system shall not exceed the amount approved by the local community college boards.

(i) No training or training services in an institution of higher education (universities, colleges, community or junior colleges, vocational schools, technical institutes, or hospital schools of nursing) as noted in Rule .0205, Paragraph (a)(9) of this Subchapter shall be paid for with vocational rehabilitation funds until maximum efforts have been made by the designated state unit and the individual to secure grant assistance in whole or part from other resources to pay for training and such assistance is applied to the cost of training.

History Note: Authority G.S. 143-545.1; 34 C.F.R. 361.50;
Eff. February 1, 1976;
Amended Eff. May 1, 1990;
Temporary Amendment Eff. January 26, 2003; May 1, 2002;
Amended Eff. August 1, 2004.

10A NCAC 89C .0206 FINANCIAL NEEDS TEST

(a) A client's financial need shall be determined by application of the General Assembly's financial eligibility scale for non-medicaid medical programs which sets the limit of net annual income for families of various sizes and by consideration of other available assets that could be used to pay for the cost of rehabilitation services. The General Assembly's eligibility financial scale for non-medicaid programs is contained in the annual appropriation bill. In applying the General Assembly's financial eligibility scale, the Division shall follow the provisions of this Rule to determine net monthly income and family size. Financial information is obtained to determine the client's financial eligibility to receive services listed in Paragraph (a) of Rule .0205 of this Section. Financial information obtained may include check stubs, State and Federal income tax forms and other information to document income or other financial resources. If the client does not have check stubs

or tax returns, the client shall complete a verification form signed by the client's last employer, the individual who supports the client, or the agency representative who processes the client's public support. Whenever the financial situation of the client is unclear or there is a question regarding the resources of the client, the Unit Manager or Facility Director shall be consulted for analysis or application of client financial information.

(b) The time period to be used as the basis for computing net monthly family income is the month prior to the planning of any service which is based on the individual's financial eligibility. Net monthly family income shall be recomputed at any time there is a change in the family's income but at least annually.

(c) A client's family shall include only the client if the client is not married and any of the following conditions apply:

(1) The client is 23 years of age or older;
(2) The client is a ward of the court;
(3) The client is an emancipated minor;
(4) The client is a veteran of the United States Armed Forces; or
(5) The client is under twenty-three years of age and can produce a tax return from the year prior to application for services indicating self-support, or receipts, records for basic living expenses such as rent and utilities for a minimum of three consecutive months, pay stubs, or other information such as receipts of medical payments, payment of health insurance premiums, child care payment receipts, and legally mandated payments that indicate that he or she is independently self-supporting.

(d) A client's family shall include the client and the following persons living in the same household if the client is married:

(1) the client's spouse;
(2) the client's children under 23 years of age; or
(3) other individuals related to the client by blood, marriage, or adoption if the other individuals have no income.

(e) A client's family shall include the client and the following persons living in the same household as the client if the client is less than 23 years of age and is not married or if the client is 23 years of age or older and is being claimed as a dependent by the parents for tax purposes regardless of place of residence:

(1) the client's parents, not including step-parents;
(2) siblings or half-siblings of the client, but not step-siblings, if the siblings are unmarried and less than 23 years of age;
(3) siblings or half-siblings of the client, but not step-siblings, if the siblings are 23 years of age or older and have no income; and
(4) other individuals related to the client by blood, marriage, or adoption if the other individuals have no income.

(f) Net monthly family income shall be computed by subtracting the deductions allowed in Paragraph (h) of this Rule from the gross monthly family income as computed according to Paragraph (g) of this Rule.

(g) Gross Monthly Family Income.

(1) Gross monthly family income shall mean the combined cash income received by the client's family from the following sources:
(A) wages and salaries;
(B) earnings from self-employment;
(C) earnings from stocks, bonds, savings accounts, rentals, and all other investments;
(D) Social Security benefits and Supplemental Security Income benefits received by family members;
(E) public assistance benefits;
(F) retirement and pension payments;
(G) Veterans Administration benefits; and
(H) all other sources of cash income.

(2) If the income received from any of the sources listed in Subparagraph (g)(l) of this Rule is not received on a monthly basis, the monthly pro rata share of the most recent receipt of the income shall be included in the computation.

(3) Gross family income shall not include:
(A) income that children may earn from babysitting, lawn mowing, or other
(B) miscellaneous tasks;
(C) gifts;
(D) inheritances;
(E) life insurance proceeds;
(F) Social Security benefits and Supplemental Security Income benefits of the client.

(h) Any of the following expenses, which are paid by a member of the client's family, shall be allowed as deductions in determining net monthly income:

(1) state, federal, Social Security, and Medicare taxes and any mandatory deductions for retirement contributions;
(2) medical and dental payments not covered by a third-party payer;
(3) health insurance premiums;
(4) disability related expenses, not covered by a third-party payor, paid for the client or a member of the client's family except for personal assistance expenses for those clients who require personal assistance services in order to achieve independent living;
(5) child care payments for any child in the family unit who is 14 years of age or younger and the parents or other adult members of the family unit are not able to care for the child;
(6) post-secondary training expenses for family members not to exceed the rate specified in Rule .0119(b) to (i) of this Section; and
(7) legally mandated payments such as alimony, child support or Social Security paybacks.

(i) In addition to net monthly family income, other assets that are available to the client's family shall be considered in determining a client's financial need. Available assets shall mean the combined cash or property of the client's family members as determined by Paragraphs (c) - (e) of this Rule. The available assets which could be used to pay for the cost of rehabilitation services shall include:

(1) cash in checking or savings accounts which exceeds an amount three times the net monthly income allowed for the family size; and

(2) real property considering the following provisions:

(A) Real property, other than the family homesite, shall be considered if the fair market value less encumbrances exceeds twenty-five thousand dollars ($25,000).

(B) The equity shall be determined by subtracting the amount owed on mortgages or liens from the purchase price or the fair market value, whichever is less.

(C) The family homesite for the purposes of this Rule shall be defined as the family's principle place of residence and includes real property, land, and buildings that are used for activities associated with occupancy of the dwelling as a living space for the family.

(D) Real property shall be regarded as an available asset to the extent that it can be converted to cash, either by sale or by use as collateral for a loan, in a timely manner to meet the cost of rehabilitation services.

(3) Gifts, inheritances, or life insurance proceeds which exceeds an amount three times the net monthly income allowed for the family size; and to the extent that it can be converted to cash in a timely manner to meet the cost of rehabilitation services.

(j) Contributions available to the client's family shall be considered in determining a client's financial need. Contributions shall mean non-merit based scholarships, educational grants, community funds or other resources that the client has available to contribute to the rehabilitation program.

(k) If the net monthly income of the client's family is greater than the amount allowed by the General Assembly's financial eligibility scale after allowable deductions as defined in Paragraph (g) of this Rule are applied, the client has excess income. The excess income, combined with the client family's available assets and contributions are considered to be excess resources that shall be applied to the cost of the client's rehabilitation. The Unit Manager or Facility Director shall approve the plan to apply excess resources to the cost of the client's rehabilitation.

(l) When personal assistance services is a planned service for a client of the Independent Living program and the client's family is determined to have excess resources as defined in Paragraph (j) of this Rule, the client's financial contribution toward the cost of the personal assistance services shall be one-half the excess net monthly family income. The counselor shall determine the amounts to be paid and the method of payment. The Unit Manager or Facility Director shall approve the payment plan.

(m) If there are extenuating circumstances that prohibit the client's application of the excess resources toward the cost of rehabilitation, the Division may waive the application of part or all of the excess resources toward the rehabilitation. Such circumstances may include the inability to sell property, the fact that the amount of funds would be so small that it would provide little help with the rehabilitation program, and the fact that the conversion of the excess resources may result in delay in proceeding with the rehabilitation program. Written approval of the Unit Manager or Facility Director shall be required for the waiver. Documentation of the particular circumstances shall be provided by the client and shall be maintained in the client's record.

History Note: Authority G.S. 143-545.1; 143-546.1; 34 C.F.R. 361.47;
Eff. February 1, 1976;
Amended Eff. April 1, 1999; March 1, 1990;
Temporary Amended Eff. January 26, 2003; May 1, 2002;
Amendment Eff. August 1, 2004.

10A NCAC 89C .0606 CASE FINDING AND INFORMATION AND REFERRAL PROGRAMS

(a) Case finding efforts shall not be modified because of an order of selection. The Division has a continuing responsibility to make the public and referral sources aware of the services it has to offer eligible individuals with disabilities, especially those with significant or most significant disabilities. Referral sources shall be informed of an existing order of selection or of the potential of an order of selection being implemented, but they shall be reassured that this should not discourage referrals or applications.

(b) The Division shall implement an information and referral program adequate to ensure that individuals with disabilities, including eligible individuals with disabilities who do not meet the Division's order of selection criteria for acceptance of services, are provided accurate vocational rehabilitation information and guidance which may include counseling and referral for job placement using appropriate mode of communication to assist them in preparing for, securing, retaining, or regaining employment.

History Note: Authority G.S. 143-545.1; 143-546.1; P.L. 102-569, s. 101(a)(5)(A); 34 C.F.R. 361.37;
Eff. October 1, 1994;
Amended Eff. July 1, 1998;
Temporary Amendment Eff. January 26, 2003; May 1, 2002;
Amended Eff. August 1, 2004.

TITLE 12 - DEPARTMENT OF JUSTICE

12 NCAC 09B .0201 ADMINIS TRATION OF CRIMINAL JUSTICE SCHOOLS

(a) The executive officer or officers of the institution or agency sponsoring any criminal justice training program or course of instruction shall have primary responsibility for implementation of all of the rules contained in Subchapter 09B Section .0200 and for administration of the school. The executive officer or officers of the institution or agency shall secure School Accreditation pursuant to 12 NCAC 09C .0401 prior to offering any criminal justice training course.

(b) The executive officers shall designate one compensated staff member for each commission-accredited program for which the institution or agency has been granted accreditation. Such staff member shall be certified by the Commission under Section

.0500 of this Subchapter to be the criminal justice School Director. The School Director shall have administrative responsibility for planning, scheduling, presenting, coordinating, reporting, and managing each sponsored accredited criminal justice training course. If the accredited institution or agency assigns additional responsibilities to the certified School Director during the planning, development, and implementation of an accredited basic recruit training course, a qualified assistant must be designated to assist the School Director in the administration of the course. This person must be selected by the School Director and must attend a course orientation conducted by Standards Division staff and attend the annual School Directors' Conference.

(c) The School Director shall permanently maintain records of all criminal justice training courses sponsored or delivered by the school, reflecting:

(1) course title;
(2) delivery hours of course;
(3) course delivery dates;
(4) names and addresses of instructors utilized within designated subject-matter areas;
(5) a roster of enrolled trainees, showing class attendance and designating whether each trainee's course participation was successful or unsuccessful;
(6) copies of all rules, regulations and guidelines developed by the School Director;
(7) documentation of any changes in the initial course outline, including substitution of instructors; and
(8) documentation of make-up work achieved by each individual trainee, including test scores and methods.

(d) The executive officers of the accredited institution or agency offering any criminal justice training program or course of instruction shall meet or exceed the following specifications:

(1) acquire and allocate sufficient financial resources to provide commission certified instructors and to meet other necessary program expenses; and
(2) provide one designated clerical support person to assist the School Director in maintaining required records, complete reports, and provide other clerical needs as required by the School Director.

(e) In the event an accredited institution or agency does not own all facilities required for training delivery, written agreements between entities involved shall be in place in order to ensure access to and use of such facilities. A copy of such agreement must be on file for review by Standards Division staff.

(f) Each institution or agency accredited to deliver basic recruit training shall ensure that supplies and equipment for trainees are utilized during course delivery as specified in the Basic Law Enforcement Training Course Management Guide as referenced in 12 NCAC 09B .0205(d).

History Note: Authority G.S. 17C-6;
Eff. January 1, 1981;
Amended Eff. November 1, 1981;
Readopted Eff. July 1, 1982;
Amended Eff. August 1, 2004; August 1, 2000; January 1, 1996; March 1, 1992; January 1, 1985.

12 NCAC 09B .0228 BASIC TRAINING - WILDLIFE ENFORCEMENT OFFICERS

(a) The basic training course for wildlife enforcement officers appointed by the Wildlife Resources Commission as authorized under G.S. 113-136 shall consist of at least 652 hours of instruction designed to provide the trainee with the skills and knowledge to perform those tasks essential to function as a wildlife enforcement officer.

(b) Each basic training course for wildlife enforcement officers shall include the following identified topical areas and minimum instructional hours for each area:

(1)	Course Orientation	2 Hours
(2)	Arrest Search & Seizure/Constitutional Law	28 Hours
(3)	Law Enf. Comm./Inf. System	8 Hours
(4)	Elements of Criminal Law	24 Hours
(5)	Subj Control/Arrest Techniques	48 Hours
(6)	Juvenile Law and Procedures	8 Hours
(7)	First Responder	40 Hours
(8)	Firearms	48 Hours
(9)	Hunter Safety	12 Hours
(10)	Patrol Techniques	16 Hours
(11)	Field Notetaking/Report Writing	12 Hours
(12)	Domestic Violence Response	12 Hours
(13)	Criminal Investigation	12 Hours
(14)	Field & Custodial Interviews	16 Hours
(15)	Controlled Substances	10 Hours
(16)	ABC Laws and Procedures	4 Hours
(17)	Exp. & Hazardous Materials	12 Hours
(18)	Law Enf. Drivers Training	48 Hours
(19)	Preparing/Testifying in Court	12 Hours
(20)	Game and Fish Laws	36 Hours
(21)	Motorboat Laws	16 Hours
(22)	Boating Proc& Sm Boat Handling	20 Hours
(23)	Dealing/Problem Animal Situations	4 Hours
(24)	Basic Field Identification of Fishes	6 Hours
(25)	Basic Field Id. of Game Animals, Game Birds and Non-Game Animals	2 Hours
(26)	Id. of Migratory Waterfowl	2 Hours
(27)	Endangered Species	2 Hours
(28)	Trapping	8 Hours
(29)	Water Safety and Swimming	20 Hours
(30)	Knotsmanship, A Prac. Use/Rope	2 Hours
(31)	Wildlife Law Enf. & Media	8 Hours
(32)	Motorboat Accident Investigation	12 Hours
(33)	Crowd Management	12 Hours
(34)	Radiological Monitoring	8 Hours
(35)	Covert Activities	2 Hours
(36)	Basic Photography	4 Hours
(37)	Motor Vehicle Laws	20 Hours
(38)	Physical Training	60 Hours
(39)	Standardized Field Sobriety Trnng	32 Hours
(40)	Ethics	4 Hours

(c) The "Wildlife Basic Training Manual" as published by the North Carolina Wildlife Resources Commission shall be used as the basic curriculum for delivery of wildlife enforcement officer basic training courses. Copies of this publication may be inspected at the office of the agency:

The Division of Enforcement Training Office

North Carolina Wildlife Resources Commission
512 North Salisbury Street
Raleigh, North Carolina 27604

and may be obtained from the Wildlife Resources Commission for ninety-five dollars ($95.00) per copy.

(d) Commission-accredited schools that are accredited to offer the "Basic Training: Wildlife Enforcement Officers" course are: The Division of Enforcement Training Office of the North Carolina Wildlife Resources Commission.

History Note: Authority G.S. 17C-6; 17C-10;
Eff. February 1, 1987;
Amended Eff. August 1, 2004; August 1, 2000; August 1, 1995; July 1, 1991; July 1, 1989.

12 NCAC 09B .0301 CERTIFICATION OF INSTRUCTORS

(a) Any person participating in a commission-accredited criminal justice training course or program as an instructor, teacher, professor, lecturer, or other participant making presentations to the class shall first be certified by the Commission as an instructor.

(b) The Commission shall certify instructors under the following categories: General Instructor Certification, Specialized Instructor Certification or Professional Lecturer Certification as outlined in Rules .0302, .0304 and .0306 of this Section. Such instructor certification shall be granted on the basis of documented qualifications of experience, education, and training in accord with the requirements of this Section and reflected on the applicant's Request for Instructor Certification Form.

(c) In addition to all other requirements of this Section, each instructor certified by the Commission to teach in a Commission-accredited course shall remain competent in his/her specialized areas. Such competence includes remaining current in the instructors area of expertise, which shall be demonstrated by attending and successfully completing all instructor updates issued by the Commission.

(d) The Standards Division may notify an applicant for instructor certification or a certified instructor that a deficiency appears to exist and attempt, in an advisory capacity, to assist the person in correcting the deficiency.

(e) When any person certified as an instructor by the Commission is found to have knowingly and willfully violated any provision or requirement of these Rules, the Commission may take action to correct the violation and to ensure that the violation does not recur, including:

(1) issuing an oral warning and request for compliance;
(2) issuing a written warning and request for compliance;
(3) issuing an official written reprimand;
(4) suspending the individual's certification for a specified period of time or until acceptable corrective action is taken by the individual;
(5) revoking the individual's certification.

(f) The Commission may deny, suspend, or revoke an instructor's certification when the Commission finds that the person:

(1) has failed to meet and maintain any of the requirements for qualification; or
(2) has failed to remain currently knowledgeable in the person's areas of expertise; or
(3) has failed to deliver training in a manner consistent with the instructor lesson plans outlined in the "Basic Instructor Training Manual" as found in 12 NCAC 09B .0209; or
(4) has failed to follow specific guidelines outlined in the "Basic Law Enforcement Training Course Management Guide" as found in 12 NCAC 09B .0205; or
(5) has demonstrated unprofessional personal conduct in the delivery of commission-mandated training; or
(6) has demonstrated instructional incompetence; or
(7) has knowingly and willfully obtained, or attempted to obtain instructor certification by deceit, fraud, or misrepresentation; or
(8) has failed to meet or maintain good moral character as defined in: re Willis, 299 N.C. 1, 215 S.E. 2d 771 appeal dismissed 423 U.S. 976 (9175); State v. Harris, 216 N.C. 746, 6 S.E. 2d 854 (1940); in re Legg, 325 N.C. 658, 386 S.E. 2d 174(1989); in re Applicants for License, 143 N.C. 1, 55 S.E. 635 (1906); in re Dillingham, 188 N.C. 162, 124 S.E. 130 (1924); State v. Benbow, 309 N.C. 538, 308 S.E. 2d 647 (1983); and their progeny, as required to effectively discharge the duties of a criminal justice instructor.

History Note: Authority G.S. 17C-6;
Eff. January 1, 1981;
Amended Eff August 1, 2004; April 1, 1999; July 1, 1991; January 1, 1985.

12 NCAC 09B .0305 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 for the general probationary instructor certification by teaching any specialized topic for which certification has been issued;

(2) 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;

(3) where Specialized Instructor Certification becomes concurrent with an existing 24 month period of General Instructor Certification, the instructor must teach 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 application for renewal shall contain, in addition to the requirements listed in Rule .0304 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 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) proof that the applicant has, within the two-year period preceding application for renewal, attended and successfully completed any instructor updates that have been issued by the Commission. Acceptable documentary evidence shall include official Commission records submitted by School Directors or copies of certificates of completion issued by the institution which provided the instructor updates; and

(3) either:

(A) a favorable written recommendation from a School Director accompanied by certification on a Commission Instructor Evaluation Form 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 favorable evaluation by a commission or 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. Such evaluation will be certified on a Commission Instructor Evaluation Form. In addition, instructors evaluated by a Commission or staff member must also teach at least eight hours in each of the topics for which Specialized Instructor Certification was granted.

Upon submission of the required documentation for renewal the Commission staff shall renew the certification as a Specialized Instructor. Such renewal shall occur at the time of renewal of the General Instructor certification.

(d) Certification as a specialized instructor in the First Responder, Physical Fitness, Electrical and Hazardous Materials, and Juvenile Justice Medical Emergencies topical areas as outlined in Rule .0304(d)(1), (e)(2), (f)(1), and (g) of this Section, specifically those certifications not based upon General Instructor Certification, shall remain in effect for 24 months from the date of issuance. During the 24 month term all non-Commission certificates required in Rule .0304(d)(1), (e)(2), (f)(1), and (g) for specialized instructor certification in the First Responder, Physical Fitness, Electrical and Hazardous Materials, and Juvenile Justice Medical Emergencies topical areas must be maintained

(e) All instructors shall remain active during their period of certification. 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 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 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 Rule .0304 of this Section.

(f) The use of guest participants in a delivery of the "Basic Law Enforcement Training Course" is permissible. However, such guest participants are subject to the direct on-site supervision of a Commission-certified instructor and must be authorized by the School Director. A guest participant shall only be used to complement the primary certified instructor of the block of instruction and shall in no way replace the primary instructor.

History Note: Authority G.S. 17C-6;
Eff. January 1, 1981;
Amended Eff. August 1, 2004; August 1, 2000; July 1, 1991; July 1, 1989; December 1, 1987; February 1, 1987.

12 NCAC 09E .0104 INSTRUCTORS: ANNUAL IN-SERVICE TRAINING

The following requirements and responsibilities are hereby established for instructors who conduct the law enforcement officers' annual in-service training program:

(1) The instructor shall hold "General Instructor Certification" or "Professional Lecturer Certification" issued by the Commission. For Hazardous Materials in-service training, the instructor shall hold "Specialized Instructor Certification – Electrical and Hazardous Materials Emergencies" issued by the Commission. For Firearms in-service training and qualification, the instructor shall hold "Specialized Instructor Certification – Firearms" issued by the Commission. In addition, each instructor certified by the Commission to teach in a Commission-accredited course shall remain competent in his/her specific or specialty areas. Such competence includes remaining current in the instructor's area of expertise, which may be demonstrated by attending and successfully completing all instructor updates issued by the Commission.

(2) The instructor shall deliver the training consistent with the specifications as established in Rules 09E .0105 and .0106.

(3) The instructor shall report the successful or unsuccessful completion of training for each officer to the Department head. Such reporting shall be on a Commission form.

(4) Where the officer fails to successfully qualify with a weapon, the instructor shall inform the officer that the officer did not qualify and the instructor shall deliver a Commission form to the officer which shall be signed by the officer. This form shall instruct the officer not to use the weapon and shall require the officer to notify the Department head or designated representative within 24 hours of the failure to qualify. The instructor shall personally deliver this form or send the form by certified mail to the Department head or designated representative within 72 hours of the failure to qualify.

History Note: Authority G.S. 17C-6; 17C-10;
Eff. July 1, 1989;
Amended Eff. January 1, 2005.

12 NCAC 09E .0105 MINIMUM TRAINING SPECIFICATIONS: ANNUAL IN-SERVICE TRAINING

The following specifications shall be incorporated in each law enforcement agency's annual in-service training courses:

(1) Firearms:

(a) Use of Force: review the authority to use deadly force [G.S. 15A-401(d)(2)] including the relevant case law and materials.

(b) Safety:

(i) range rules and regulations;

(ii) handling of a firearm;

(iii) malfunctions.

(c) Review of Basic Marksmanship Fundamentals:

(i) grip, stance, breath control and trigger squeeze;

(ii) sight and alignment/sight picture;

(iii) nomenclature.

(d) The "Specialized Firearms Instructor Training Manual" as published by the North Carolina Justice Academy shall be applied as a guide for conducting the annual in-service firearms training program. Copies of this publication may be inspected at the office of the agency:

Criminal Justice Standards Division
North Carolina Department of Justice
114 West Edenton Street
Old Education Building
Post Office Drawer 149
Raleigh, North Carolina 27602;

(2) Legal Update;

(3) Hazardous Materials;

(4) Bloodborne Pathogens;

(5) Juvenile Minority Sensitivity;

(6) Ethical Awareness;

(7) Department Topic of Choice: Departments may develop their own curriculum in accordance with Instructional Systems Design methodology. These lesson plans must be kept on file by each department for audit purposes. Additionally, the North Carolina Justice Academy shall develop two lesson plans annually for optional use and delivery by departments; and

(8) With the exceptions of Hazardous Materials, Bloodborne Pathogens, and the Department Topic of Choice, the In-Service Lesson Plans as published by the North Carolina Justice Academy shall be applied as a minimum curriculum for conducting the annual in-service training program. Copies of this publication may be inspected at the office of the agency:

Criminal Justice Standards Division
North Carolina Department of Justice
114 West Edenton Street
Old Education Building
Post Office Drawer 149
Raleigh, North Carolina 27602

and may be obtained at cost from the Academy at the following address:

North Carolina Justice Academy
Post Office Drawer 99
Salemburg, North Carolina 28385

History Note: Authority G.S. 17C-6; 17C-10;
Eff. July 1, 1989;
Amended Eff. January 1, 2005; November 1, 1998.

12 NCAC 09E .0106 ANNUAL IN-SERVICE FIREARMS QUALIFICATION SPECIFICATIONS

(a) All certified law enforcement officers shall qualify for both day and night use with their individual and department-approved service handgun(s) at least once each calendar year. For the purpose of this specification, service handgun shall include any semi-automatic pistol or revolver. In addition to the requirements specified in Rule 09E .0105 of this Subchapter, the course of fire shall not be less stringent than the "Basic Training - Law Enforcement Officers" course requirements for firearms qualification.

(b) All certified law enforcement officers who are issued or authorized to use a shotgun, rifle or automatic weapon shall qualify with each weapon respectively at least once each calendar year.

(c) The qualifications required by Paragraphs (a) and (b) of this Rule shall be completed with duty equipment and duty ammunition for all weapons.

(d) All certified law enforcement officers who are authorized to carry an off-duty handgun(s) shall qualify with each such handgun consistent with the specifications as outlined in Rules 09E .0105(1) and .0106(a) and (g) of this Section.

(e) To satisfy the training requirements for all in-service firearms qualifications, an officer shall attain at least 70 percent accuracy with each weapon.

(f) The qualifications required by Paragraphs (a) and (b) of this Rule must be achieved at least once in a single day in no more than three attempts in a single day for each course of fire and for each weapon for which qualification is required. Individuals not qualifying in a single day for each course of fire or for a certain weapon for which qualification is required shall be deemed as having failed and 12 NCAC 09E .0103(4) and (5) shall apply.

(g) The In-Service Firearms Qualification Manual as published by the North Carolina Justice Academy shall be applied as a guide for conducting the annual in-service firearms qualification. Copies of this publication may be inspected at the office of the agency:

Criminal Justice Standards Division
North Carolina Department of Justice
114 West Edenton Street
Old Education Building
Post Office Drawer 149
Raleigh, North Carolina 27602

and may be obtained at cost from the Academy at the following address:

North Carolina Justice Academy
Post Office Drawer 99
Salemburg, North Carolina 28385

History Note: Authority G.S. 17C-6; 17C-10;
Eff. July 1, 1989;
Amended Eff. January 1, 2005; November 1, 1998;
March 1, 1992.

12 NCAC 09E .0107 FAILURE TO QUALIFY: ANNUAL IN-SERVICE FIREARMS TRAINING

(a) Where an officer is employed with an agency that establishes a higher standard for annual in-service firearms training than those specified in this Subchapter and the officer has failed to meet the requirements of the employing agency as of December 31 of each calendar year, such officer shall meet the requirements of this Rule and the higher standard of the employing agency for continued employment. Prior to transfer to another agency, the officer shall meet the requirements of this Rule and the requirements of the subsequent agency, if the subsequent agency requires a higher standard for annual in-service firearms training than those required in 12 NCAC 09E .0105(1) and .0106.

(b) Upon notification that an officer has failed to meet the requirements for in-service firearms training and qualification as specified in 12 NCAC 09E .0106(a) of this Subchapter, the law enforcement officer's certification shall be suspended.

(c) The suspended officer shall be granted limited enrollment in a presentation of the "Basic Law Enforcement Training" course to complete the firearms training topic.

(d) Such enrollment and successful completion must occur within the 12 month period following suspension of law enforcement officer certification.

(e) Failure to enroll and successfully complete the firearms training topic in a "Basic Law Enforcement Training" course within the prescribed 12 month period shall subject the officer to training evaluation as specified in 12 NCAC 09B .0403.

(f) No officer suspended under Paragraph (b) of this Rule may work as a certified law enforcement officer until:

(1) the department head or designated representative forwards to the Commission documentary evidence verifying that the officer has successfully completed the firearms training topic during a limited enrollment in a Basic Law Enforcement Training Course within the 12 month period following suspension of law enforcement officer certification, and has successfully qualified with a duty weapon as required in 12 NCAC 09E .0106(a) and (b).

(2) the department head or designated representative and the officer receive from the Commission documentation that the Commission has terminated the suspension and reissued law enforcement certification to the suspended officer.

History Note: Authority G.S. 17C-6; 17C-10;
Eff. July 1, 1989;
Amended Eff. January 1, 2005; August 1, 2000; March 1, 1992;
March 1, 1990.

12 NCAC 09E .0108 FAILURE TO COMPLETE ANNUAL IN-SERVICE TRAINING

(a) Failure to successfully complete the annual in-service training topics within the prescribed 12 month period shall result in suspension of the law enforcement officer's certification.

(b) Upon notification that a law enforcement officer who has been continuously employed with an agency during the 12 month calendar year has failed to meet the requirements for in-service training as specified in 12 NCAC 09E .0102, the officer's certification shall be suspended.

(c) No officer suspended under Paragraph (b) of this Rule shall work as a certified law enforcement officer until:

(1) the department head or designated representative forwards to the Commission documentary evidence verifying that the officer has complied with the requirements for reinstatement of certification as specified in this subsection; and

(2) the department head or designated representative and the officer receive from the Commission documentation that the Commission has terminated the suspension and reissued law enforcement certification to the suspended officer.

(d) If an officer has separated from an agency during the 12 month calendar year and has not completed all in-service training topics, upon application for re-certification the officer shall be placed on probationary status for 12 months or until the in-service training requirements are met, whichever comes first.

History Note: Authority G.S. 17C-6; 17C-10;
Eff. January 1, 2005.

TITLE 15A - DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

15A NCAC 02D .0506 PARTICULATES FROM HOT MIX ASPHALT PLANTS

(a) The allowable emission rate for particulate matter resulting from the operation of a hot mix asphalt plant that are discharged from any stack or chimney into the atmosphere shall not exceed the level calculated with the equation $E = 4.9445(P)^{0.4376}$ calculated to three significant figures, for process rates less than 300 tons per hour, where "E" equals the maximum allowable emission rate for particulate matter in pounds per hour and "P" equals the process rate in tons per hour. The allowable emission rate shall be 60.0 pounds per hour for process rates equal to or greater than 300 tons per hour.

(b) Visible emissions from stacks or vents at a hot mix asphalt plant shall be less than 20 percent opacity when averaged over a six-minute period.

(c) All hot mix asphalt batch plants shall be equipped with a scavenger process dust control system for the drying, conveying, classifying, and mixing equipment. The scavenger process dust control system shall exhaust through a stack or vent and shall be operated and maintained in such a manner as to comply with Paragraphs (a) and (b) of this Rule.

(d) Fugitive non-process dust emissions shall be controlled by Rule .0540 of this Section.

(e) Fugitive emissions for sources at a hot mix asphalt plant not covered elsewhere under this Rule shall not exceed 20 percent opacity averaged over six minutes.

(f) Any asphalt batch plant that was subject to the 40-percent opacity standard before August 1, 2004 shall be in compliance with the 20-percent opacity standard by January 1, 2005.

History Note: Authority G.S. 143-215.3(a)(1);
143-215.107(a)(5);
Eff. February 1, 1976;
Amended Eff. August 1, 2004; July 1, 1998; January 1, 1985.

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

(a) Closed Season. All counties and parts of counties not listed under the open seasons in Paragraph (b) in this Rule shall be closed to deer hunting.

(b) Open Seasons (All Lawful Weapons)

(1) Deer With Visible Antlers. Deer with antlers or spikes protruding through the skin, as distinguished from knobs or buttons covered by skin or velvet, may be taken during the following seasons:

(A) Saturday on or nearest October 15 through January 1 in all of Beaufort, Bertie, Bladen, Brunswick, Camden, Carteret, Chowan, Columbus*, Craven, Currituck, Dare, Duplin, Edgecombe, Franklin, Gates, Greene, Halifax, Hertford, Hoke, Hyde, Johnston, Jones, Lenoir, Martin, Nash, New Hanover, Northampton, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Pitt, Richmond**, Robeson, Sampson, Scotland**, Tyrrell, Vance, Wake, Warren, Washington, Wayne, and Wilson counties, and the following parts of counties:

Cumberland: All of the county except that part east of US 401, north of NC 24, and west of I-95;

Harnett: That part west of NC 87;

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

*Unlawful to hunt or kill deer in Lake Waccamaw or within 50 yards of its shoreline.

**Refer to 15A NCAC 10D .0103(f)(53)(B) for seasons on Sandhills Game Land.

(B) Saturday before Thanksgiving through the fourth Friday after Thanksgiving Day in all Alexander, Alleghany, Ashe, Catawba, Davie, Forsyth, Gaston, Iredell, Lincoln, Stokes, Surry, Watauga, Wilkes, and Yadkin counties.

(C) Monday of Thanksgiving week through the third Saturday after Thanksgiving Day in all of Avery, Buncombe, Burke, Caldwell, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, Macon, Madison, McDowell, Mitchell, Polk, Swain, Transylvania, and Yancey counties.

(D) Two Saturdays before Thanksgiving through January 1 in all of Alamance, Anson, Cabarrus, Caswell, Chatham, Davidson, Durham, Granville, Guilford, Lee, Mecklenburg, Montgomery, Orange, Person, Randolph, Rockingham, Rowan,

Stanly, and Union counties, and in the following parts of counties:

Cumberland: That part east of US 401, north of NC 24 and west of I-95;

Harnett: That part east of NC 87;

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

(E) Saturday on or nearest September 10 through January 1 in those parts of Camden, Gates and Pasquotank counties known as the Dismal Swamp National Wildlife Refuge, in those parts of Hyde, Tyrrell and Washington counties known as the Pocosin Lakes National Wildlife Refuge, in those parts of Anson and Richmond counties known as the Pee Dee National Wildlife Refuge, and in that part of Currituck County known as the Mackay Island National Wildlife Refuge;

(F) Monday of Thanksgiving week through the fifth Saturday after Thanksgiving Day in all of Cleveland and Rutherford counties.

(2) Deer of Either Sex. Except on Game Lands, deer of either sex may be taken during the open seasons and in the counties and portions of counties listed in this Subparagraph (Refer to 15A NCAC 10D .0103 for either sex seasons on Game Lands):

(A) The open either-sex deer hunting dates established by the U.S. Fish and Wildlife Service during the period from the Saturday on or nearest September 10 through January 1 in those parts of Camden, Gates and Pasquotank counties known as the Dismal Swamp National Wildlife Refuge, in those parts of Hyde, Tyrrell and Washington counties known as the Pocosin Lakes National Wildlife Refuge, in those parts of Anson and Richmond counties known as the Pee Dee National Wildlife Refuge, and in that part of Currituck County known as the Mackay Island National Wildlife Refuge.

(B) The open either-sex deer hunting dates established by the appropriate military commands during the period from Saturday on or nearest October 15 through January 1 in that part of Brunswick County known as the Sunny Point Military Ocean Terminal, in that part of Craven County known and marked as Cherry Point Marine Base, in that part of Onslow County known and marked as the Camp Lejeune Marine Base, on Fort Bragg Military Reservation, and on Camp Mackall Military Reservation.

(C) Youth either sex deer hunts. First Saturday in October for youth either sex deer hunting by permit only on a portion of Belews Creek Steam Station in Stokes County designated by agents of the Commission and the third Saturday in October for youth either-sex deer hunting by permit only on Mountain Island State Forest in Lincoln and Gaston counties; and the second Saturday in November for youth either-sex deer hunting by permit only on a portion of Warrior Creek located on W. Kerr Scott Reservoir, Wilkes County designated by agents of the Commission.

(D) The last open day of the Deer with Visible Antlers season described in Subparagraph (b)(1) of this Rule in all of Avery, Buncombe, Haywood, Henderson, Madison, Mitchell, Transylvania, and Yancey counties and the following parts of counties:

Robeson: That part south of NC 211 and west of I-95.

Scotland: That part south of US 74.

(E) The last six open days of the Deer With Visible Antlers season described in Subparagraph (b)(1) of this Rule in all of Burke, Caldwell, Catawba, Gaston, Lincoln, McDowell, Polk and Watauga and the following parts of counties:

Camden: That part south of US 158.

Dare: Except the Outer Banks north of Whalebone.

(F) The first six open days and the last six open days of the Deer with Visible Antlers season described in Subparagraph (b)(1) of this Rule in all of Carteret, Cleveland, Hoke, Richmond, Rutherford, counties and in the following parts of counties:

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

Cumberland: That part west of I-95.

Harnett: That part west of NC 87.

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

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

Scotland: That part north of US 74.

(G) All the open days of the Deer With Visible Antlers season described in Subparagraph (b)(1) of this Rule in all of Alamance, Alexander,

Alleghany, Anson, Ashe, Beaufort, Bertie, Bladen, Brunswick, Cabarrus, Caswell, Chatham, Chowan, Craven, Davidson, Davie, Duplin, Durham, Edgecombe, Forsyth, Franklin, Gates, Granville, Greene, Guilford, Halifax, Hertford, Hyde, Iredell, Johnston, Jones, Lee, Lenoir, Martin, Mecklenburg, Montgomery, Nash, New Hanover, Northampton, Onslow, Orange, Pamlico, Pasquotank, Pender, Perquimans, Person, Pitt, Randolph, Rockingham, Rowan, Sampson, Stanly, Stokes, Surry, Tyrrell, Union, Vance, Wake, Warren, Washington, Wilkes, Wayne, Wilson, and Yadkin counties, and in the following parts of counties:

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

Camden: That part north of US 158.

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

Cumberland: That part east of I-95.

Currituck: All of the county except the Outer Banks.

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

Harnett: That part east of NC 87.

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

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

(c) Open Seasons (Bow and Arrow)

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

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

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

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

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

(2) Restrictions

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

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

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

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

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

(A) The Saturday on or nearest October 8 to the following Friday in the counties and parts of counties having the open seasons for Deer With Visible Antlers specified by Part (A) of Subparagraph (b)(1) of this Rule, except on Sandhills Game Land and the area known as the Outer Banks in Currituck County.

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

(C) Monday on or nearest October 8 to the following Saturday in Cleveland and Rutherford counties and in the counties and parts of counties having the open seasons for Deer With Visible Antlers specified by Part C of Subparagraph (b)(1) of this Rule.

(D) The third Saturday preceding Thanksgiving until the following

Friday in the counties and parts of counties having the open season for Deer With Visible Antlers specified by Part (D) of Subparagraph (b)(1) of this Rule, and on Sandhills Game Land.

(2) Restrictions

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

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

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

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

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

History Note: Authority G.S. 113-134; 113-270.3; 113-276.1; 113-291.1; 113-291.2;
Eff. February 1, 1976;
Amended Eff. July 1, 1998; July 1, 1997; July 1, 1996, July 1, 1995; December 1, 1994; July 1, 1994; July 1, 1993;
Temporary Amendment Eff. July 1, 1999;
Amended Eff. July 1, 2000;
Temporary Amendment Eff. July 1, 2002; July 1, 2001;
Amended Eff. August 1, 2002 (Approved by RRC on 06/21/01 and 04/18/02);
Temporary Amendment Eff. June 1, 2003;
Amended Eff. August 1, 2004.

15A NCAC 10B .0209 WILD TURKEY

(a) Open Seasons:

(1) Winter Either-Sex Wild Turkey Season shall be from the Monday on or nearest to January 15 through the following Saturday on bearded or beardless turkeys in Alleghany, Ashe, Caswell, Granville, Person, Rockingham, Stokes, Surry, and Watauga counties except on Game Lands.

(2) Spring Wild Turkey Season shall be from the second Saturday in April through the Saturday of the fourth week thereafter on bearded turkeys only in all counties except Wilson County.

(b) Bag Limits: The daily bag limit shall be one bird and the annual bag limit shall be two birds only one of which may be taken during the Winter Either-Sex Wild Turkey Season. Possession limit is two birds.

(c) Dogs: The use of dogs for hunting wild turkeys during the Spring Wild Turkey Season shall be prohibited.

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

History Note: Authority G.S. 113-134; 113-270.3; 113-276.1; 113-291.2; 113-291.5;
Eff. February 1, 1976;
Amended Eff. July 1, 1998; July 1, 1997; July 1, 1996; July 1, 1995; July 1, 1994; July 1, 1993; July 1, 1992;
Temporary Amendment Eff. July 1, 1999;
Amended Eff. July 1, 2000;
Temporary Amendment Eff. July 1, 2002; July 1, 2001.
Amended Eff. August 1, 2002 (approved by RRC on 06/21/01 and 04/18/02);
Temporary Amendment Eff. June 1, 2003;
Amended Eff. August 1, 2004.

15A NCAC 10B .0302 OPEN SEASONS

(a) General. Subject to the restrictions set out in Paragraph (b) of this Rule, the following seasons for taking furbearing animals as defined in G.S. 113-129(7a), coyotes, and groundhogs shall apply as indicated, all dates being inclusive:

(1) November 7 through February 12 in and west of Surry, Wilkes, Alexander, Catawba, Burke and Cleveland counties.

(2) December 15 through February 28 in and east of Hertford, Bertie, Martin, Pitt, Greene, Lenoir, Duplin, Pender and New Hanover counties, except that in the marshes adjoining Currituck Sound in Currituck County the season is December 15-March 12 and nutria may not be shot at any time (day or night) during the open season for migratory waterfowl.

(3) December 1 through February 20 in all other counties.

(4) November 1 through March 31 statewide for beaver only.

(b) Restrictions

(1) It is unlawful to trap or take otter in and west of Stokes, Forsyth, Davie, Iredell, and

Mecklenburg counties and on Roanoke Island north of US 64/264 in Dare County.

(2) It is unlawful to set steel traps for muskrat or mink in and west of Surry, Wilkes, Alexander, Catawba, Burke and Cleveland counties except in or adjacent to the waters of lakes, streams or ponds.

(3) It is unlawful to trap raccoon in Yadkin County and in and west of Surry, Wilkes, Alexander, Catawba, Lincoln and Gaston counties.

Note: See 15A NCAC 10D .0102(f) for other trapping restrictions on game lands.

History Note: Authority G.S. 113-134; 113-291.1; 113-291.2;
Eff. February 1, 1976;
Amended Eff. July 1, 1996; July 1, 1984; July 1, 1983; August 1, 1982; August 1, 1981;
Temporary Amendment Eff. July 1, 1999;
Amended Eff. July 1, 2000;
Temporary Amendment Eff. June 1, 2003;
Amended Eff. August 1, 2004.

15A NCAC 10C .0205 PUBLIC MOUNTAIN TROUT WATERS

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

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

(A) Alleghany County:

New River (not trout water)
Little River (Whitehead to McCann Dam)
Crab Creek
Brush Creek (except where posted against trespass)
Big Pine Creek
Laurel Branch
Big Glade Creek
Bledsoe Creek
Pine Swamp Creek
South Fork New River (not trout water)
Prather Creek
Cranberry Creek
Piney Fork
Meadow Fork
Yadkin River (not trout water)
Roaring River (not trout water)
East Prong Roaring River (that portion on Stone Mountain State Park) [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]

(B) Ashe County:

New River (not trout waters)
North Fork New River (Watauga Co. line to Sharp Dam)
Helton Creek (Virginia State line to New River) [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]
Big Horse Creek (Mud Creek at SR 1363 to Tuckerdale)
Buffalo Creek (headwaters to junction of NC 194-88 and SR 1131)
Big Laurel Creek
Three Top Creek (portion not on game lands)
Hoskins Fork (Watauga County line to North Fork New River)
South Fork New River (not trout waters)
Cranberry Creek (Alleghany County line to South Fork New River)
Nathans Creek
Peak Creek (headwaters to Trout Lake, except Blue Ridge Parkway waters)
Trout Lake [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]

Roan Creek
North Beaver Creek
Pine Swamp Creek (all forks)
Old Fields Creek
Mill Creek (except where posted against trespass)

(C) Avery County:
Nolichucky River (not trout waters)
North Toe River (headwaters to Mitchell County line, except where posted against trespass)
Squirrel Creek
Elk River (SR 1306 crossing to Tennessee State line, including portions of tributaries on game lands)
Catawba River (not trout water)
Johns River (not trout water)
Wilson Creek [not Hatchery Supported trout water, see Subparagraph (a)(2) of this Rule.]
Lost Cove Creek [not Hatchery Supported trout water, see Subparagraph (a)(4) of this Rule.]
Buck Timber Creek [not Hatchery Supported trout water, see Subparagraph (a)(2) of this Rule.]
Cary Flat Branch [not Hatchery Supported trout water, see Subparagraph (a)(2) of this Rule.]
Boyde Coffey Lake
Archie Coffey Lake
Linville River [Land Harbor line (below dam) to Blue Ridge Parkway boundary line, except where posted against trespass]
Milltimber Creek

(D) Buncombe County:
French Broad River (not trout water)
Big Ivy Creek (Ivy River) (Dillingham Creek to US 19-23 bridge)
Dillingham Creek (Corner Rock Creek to Big Ivy Creek)
Stony Creek
Mineral Creek (including portions of tributaries on game lands)
Corner Rock Creek (including tributaries, except Walker Branch)
Reems Creek (Sugar Camp Fork to US 19-23 bridge, except where posted against trespass)
Swannanoa River (SR 2702 bridge near Ridgecrest to Wood Avenue Bridge, intersection of NC 81W and US 74A in Asheville, except where posted against trespass)
Bent Creek (headwaters to N.C. Arboretum boundary line, including portions of tributaries on game lands)
Lake Powhatan
Cane Creek (headwaters to SR 3138 bridge)

(E) Burke County:
Catawba River (not trout water)
South Fork Catawba River (not trout water)
Henry Fork (lower South Mountains State Park line downstream to SR 1919 at Ivy Creek)
Jacob Fork (Shinny Creek to lower South Mountain State Park boundary)
[Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]
Johns River (not trout water)
Parks Creek (portion not on game lands not trout water)
Carroll Creek (game lands portion above SR 1405 including tributaries)
Linville River (game lands portion below the Blue Ridge Parkway including portions of tributaries on game lands and from first bridge on SR 1223 below Lake James powerhouse to Muddy Creek)

(F) Caldwell County:
Catawba River (not trout water)
Johns River (not trout water)

Wilson Creek (Phillips Branch to Browns Mountain Beach dam, except where posted against trespass)

Estes Mill Creek (not trout water)

Thorps Creek (falls to NC 90 bridge)

Mulberry Creek (portion not on game lands not trout water)

Boone Fork [not Hatchery Supported trout water. See Subparagraph (a)(2) of this Rule.]

Boone Fork Pond

Yadkin River (not trout water)

Buffalo Creek (mouth of Joes Creek to McCloud Branch)

Joes Creek (first falls upstream of SR 1574 to confluence with Buffalo Creek

(G) Cherokee County:

Hiwassee River (not trout water)

Shuler Creek (headwaters to Tennessee line, except where posted against trespass including portions of tributaries on game lands)

North Shoal Creek (Crane Creek) (headwaters to SR 1325, including portions of tributaries on game lands)

Persimmon Creek

Davis Creek (confluence of Bald and Dockery creeks to Hanging Dog Creek)

Beaver Dam Creek (headwaters to SR 1326 bridge, including portions of tributaries on game lands)

Valley River

Hyatt Creek (including portions of tributaries on game lands)

Webb Creek (including portions of tributaries on game lands)

Junaluska Creek (Ashturn Creek to Valley River, including portions of tributaries on game lands)

(H) Clay County:

Hiwassee River (not trout water)

Fires Creek (first bridge above the lower game land line on US Forest Service road 442 to SR 1300)

Tusquitee Creek (headwaters to lower SR 1300 bridge, including portions of Bluff Branch on game lands)

Tuni Creek (including portions of tributaries on game lands)

Chatuge Lake (not trout water)

Shooting Creek (SR 1349 bridge to US 64 bridge at SR 1338)

Hothouse Branch (including portions of tributaries on gamelands)

Vineyard Creek (including portions of tributaries on game lands)

(I) Graham County:

Little Tennessee River (not trout water)

Calderwood Reservoir (Cheoah Dam to Tennessee State line)

Cheoah River (not trout water)

Yellow Creek

Santeetlah Reservoir (not trout water)

West Buffalo Creek

Huffman Creek (Little Buffalo Creek)

Santeetlah Creek (Johns Branch to mouth including portions of tributaries within this section located on game lands, excluding Johns Branch and Little Santeetlah Creek)

(Big) Snowbird Creek (old railroad junction to mouth, including portions of tributaries on game lands)

Mountain Creek (game lands boundary to SR 1138 bridge)

Long Creek (portion not on

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

(J) Haywood County:
Pigeon River (not trout water)
Cold Springs Creek (including portions of tributaries on game lands)
Jonathans Creek - lower (concrete bridge in Dellwood to Pigeon River)
Jonathans Creek - upper [SR 1302 bridge (west) to SR 1307 bridge]
Hemphill Creek
West Fork Pigeon River (triple arch bridge on highway NC 215 to Queens Creek, including portions of tributaries within this section located on game lands, except Middle Prong)
Richland Creek (Russ Avenue bridge to US 19A-23 bridge)
West Fork Pigeon River (Queen Creek to the first game land boundary upstream of Lake Logan) [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]

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

(L) Jackson County:
Tuckasegee River (confluence with West Fork Tuckasegee River to SR 1534 bridge at Wilmot) [Delayed Harvest Regulations apply to that portion between NC 107 bridge at Love Field and the Dillsboro dam. See Subparagraph (a)(5) of this Rule.]
Scott Creek (entire stream, except where posted against trespass)
Dark Ridge Creek (Jones Creek to Scotts Creek)
Buff Creek (SR 1457 bridge below Bill Johnson's place to Scott Creek)
Savannah Creek (Headwaters to Bradley's Packing House on NC 116)
Greens Creek (Greens Creek Baptist Church on SR 1730 to Savannah Creek)
Cullowhee Creek (Tilley Creek to Tuckasegee River)
Bear Creek Lake
Wolf Creek [not Hatchery Supported trout water, see Subparagraph (a)(2) of this Rule.]
Wolf Creek Lake
Balsam Lake
Tanasee Creek [not Hatchery Supported trout water, see Subparagraph (a)(2) of this Rule.]
Tanasee Creek Lake
West Fork Tuckasegee River (Shoal Creek to existing water level of Little Glenville Lake)
Shoal Creek (Glenville Reservoir pipeline to mouth)

(M) Macon County:
Little Tennessee River (not trout water)
Nantahala River (Nantahala Dam to Swain County line) [Delayed Harvest Regulations apply to the portion from Whiteoak Creek to the Nantahala Power and Light

powerhouse discharge canal. See Subparagraph (a)(5) of this Rule.]
Queens Creek Lake
Burningtown Creek (including portions of tributaries on game lands)
Cullasaja River (Sequoah Dam to US 64 bridge near junction of SR 1672, including portions of tributaries on game lands, excluding those portions of Big Buck Creek and Turtle Pond Creek on game lands. [Wild Trout Regulations apply. See Subparagraphs (a)(2) and (a)(6) of this Rule.]
Ellijay Creek (except where posted against trespass, including portions of tributaries on game lands)
Skitty Creek
Cliffside Lake
Cartoogechaye Creek (US 64 bridge to Little Tennessee River)
Tessentee Creek (Nichols Branch to Little Tennessee River, except where posted against trespassing)
Savannah River (not trout water)
Big Creek (base of falls to Georgia State line, including portions of tributaries within this Section located on game lands)

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

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

except where posted against trespass)

(P) Mitchell County:

Nolichucky River (not trout water)

Big Rock Creek (headwaters to NC 226 bridge at SR 1307 intersection)

Little Rock Creek (Green Creek Bridge to Big Rock Creek, except where posted against trespass)

Cane Creek (SR 1219 to NC 226 bridge)

Cane Creek (NC 226 bridge to NC 80 bridge) [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]

Grassy Creek (East Fork Grassy Creek to mouth)

East Fork Grassy Creek

North Toe River (Avery County line to SR 1121 bridge)

(Q) Polk County:

Broad River (not trout water)

North Pacolet River (Pacolet Falls to NC 108 bridge)

Fork Creek (Fork Creek Church on SR 1100 to North Pacolet River)

Big Fall Creek (portion above and below water supply reservoir)

Green River (Fishtop Falls Access Area to mouth of Brights Creek) [Delayed Harvest Regulations apply to the portion from Fishtop Falls Access Area to Cove Creek. See Subparagraph (a)(5) of this Rule.]

Little Cove Creek (including portions of tributaries on game lands)

Cove Creek (including portions of tributaries on game lands)

Camp Creek [Henderson County line (top of falls) to Green River]

(R) Rutherford County:

(Rocky) Broad River (Henderson County line to US 64/74 bridge, except where posted against trespass)

(S) Stokes County:

Dan River (Virginia State line downstream to a point 200 yards below the end of SR 1421)

(T) Surry County:

Yadkin River (not trout water)

Ararat River (SR 1727 bridge downstream to the NC 103 bridge)

Stewarts Creek (not trout water)

Pauls Creek (Virginia State line to 0.3 mile below SR 1625 bridge - lower Caudle property line)

Fisher River (Cooper Creek) (Virginia State line to SR 1331 bridge)

Little Fisher River (Virginia State line to NC 89 bridge)

Mitchell River (0.6 mile upstream of the end of SR 1333 to the SR 1330 bridge below Kapps Mill Dam) [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]

(U) Swain County:

Little Tennessee River (not trout water)

Calderwood Reservoir (Cheoah Dam to Tennessee State line)

Cheoah Reservoir

Fontana Reservoir (not trout water)

Alarka Creek (game lands boundary to Fontana Reservoir)

Nantahala River (Macon County line to existing Fontana Reservoir water level)

Tuckasegee River (not trout water)

Deep Creek (Great Smoky Mountains National Park boundary line to Tuckasegee River)

Connelly Creek (including portions of tributaries on game lands)

(V) Transylvania County:

French Broad River (junction of west and north forks to US 276 bridge)

Davidson River (Avery Creek to Ecusta intake)
East Fork French Broad River (Glady Fork to French Broad River) [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]
Middle Fork French Broad River
West Fork French Broad River (SR 1312 and SR 1309 intersection to junction of west and north forks, including portions of tributaries within this section located on game lands)

(W) Watauga County:
New River (not trout waters)
North Fork New River (from confluence with Maine and Mine branches to Ashe County line)
Maine Branch (headwaters to North Fork New River)
South New Fork River (not trout water)
Meat Camp Creek
Norris Fork Creek
Howards Creek (downstream from lower falls)
Middle Fork New River (Lake Chetola Dam to South Fork New River)
Yadkin River (not trout water)
Stony Fork (headwaters to Wilkes County line)
Elk Creek (headwaters to gravel pit on SR 1508, except where posted against trespass)
Watauga River (SR 1557 bridge to NC 105 bridge and SR 1114 bridge to NC 194 bridge at Valle Crusis). [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]
Beech Creek
Buckeye Creek Reservoir
Coffee Lake
Beaverdam Creek (SR 1209 bridge at Bethel to an unnamed tributary adjacent to the intersection of SR 1201 and SR 1203)
Laurel Creek
Cove Creek (SR 1233 bridge at Zionville to SR 1233 bridge at Amantha)
Dutch Creek (second bridge on SR 1134 to mouth)

(X) Wilkes County:
Yadkin River (not trout water)
Roaring River (not trout water)
East Prong Roaring River (Bullhead Creek to Brewer's Mill on SR 1943) [Delayed Harvest Regulations apply to portion on Stone Mountain State Park. See Subparagraph (a)(5) of this Rule.]
Stone Mountain Creek [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]
Middle Prong Roaring River (headwaters to second bridge on SR 1736)
Bell Branch Pond
Boundary Line Pond
West Prong Roaring River (not trout waters)
Pike Creek
Pike Creek Pond
Reddies River (not trout water)
Middle Fork Reddies River (Clear Prong) (headwaters to bridge on SR 1580)
South Fork Reddies River (headwaters to confluence with Middle Fork Reddies River)
North Fork Reddies River (Vannoy Creek) (headwaters to Union School bridge on SR 1559)
Darnell Ceek (North Prong Reddies River) (downstream ford on SR 1569 to confluence with North Fork Reddies River)
Lewis Fork Creek (not trout water)

South Prong Lewis Fork (headwaters to Lewis Fork Baptist Church)
Fall Creek (except portions posted against trespass)

(Y) Yancey County:
Nolichucky River (not trout water)
Cane River [Bee Branch (SR 1110) to Bowlens Creek]
Bald Mountain Creek (except portions posted against trespass)
Indian Creek (not trout water)
Price Creek (junction of SR 1120 and SR 1121 to Indian Creek)
North Toe River (not trout water)
South Toe River (Clear Creek to lower boundary line of Yancey County recreation park except where posted against trespass)

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

(A) Alleghany County:
Big Sandy Creek (portion on Stone Mountain State Park)
Ramey Creek (entire stream)
Stone Mountain Creek (that portion on Stone Mountain State Park)

(B) Ashe County:
Big Horse Creek (Virginia State Line to Mud Creek at SR 1363) [Catch and Release/Artificial Lures Only Regulations apply. See Subparagraph (a)(3) of this Rule.]
Unnamed tributary of Three Top Creek (portion located on Three Top Mountain Game Land) [Catch and Release/Artificial Lures Only Regulations apply. See Subparagraph (a)(3) of this Rule.]

(C) Avery County:
Birchfield Creek (entire stream)
Cow Camp Creek (entire stream)
Cranberry Creek (entire stream)
Elk River (portion on Lees-McRae College property, excluding the millpond) [Catch and Release/Artificial Flies Only Regulations apply. See Subparagraph (a)(4) of this Rule.]
Gragg Prong (entire stream)
Horse Creek (entire stream)
Jones Creek (entire stream)
Kentucky Creek (entire stream)
North Harper Creek (entire stream)
Plumtree Creek (entire stream)
Roaring Creek (entire stream)
Rockhouse Creek (entire stream)
South Harper Creek (entire stream)
Webb Prong (entire stream)
Wilson Creek [Catch and Release/Artificial Lures Only Regulations apply. See Subparagraph (a)(3) of this Rule.]

(D) Buncombe County:
Carter Creek (game land portion) [Catch and Release/Artificial Lures only Regulations apply. See Subparagraph (a)(3) of this Rule.]

(E) Burke County:
All waters located on South Mountain State Park, except the main stream of Jacob Fork Between the mouth of Shinny Creek and the lower park boundary where Delayed Harvest Regulations apply, and Henry Fork and tributaries where Catch and Release/Artificial Lures Only Regulations apply. See Subparagraphs (a)(3) and (a)(5) of this Rule.
Nettle Branch (game land portion)

(F) Caldwell County:
Buffalo Creek (Watauga County line to Long Ridge Branch)
Joes Creek (Watauga County line to first falls upstream of the end of SR 1574)
Rockhouse Creek (entire stream)

(G) Cherokee County:
Bald Creek (game land portions, including tributaries) [Wild Trout/Natural Bait Waters Regulations apply. See Subparagraph (a)(6) of this Rule.]
Dockery Creek (game land portions, including tributaries) [Wild Trout/Natural Bait Waters Regulations apply. See Subparagraph (a)(6) of this Rule.]

(H) Graham County:
South Fork Squally Creek (entire stream)
Squally Creek (entire stream)

(I) Haywood County
Hurricane Creek (including portions of tributaries on game lands) [Wild

Trout/Natural Bait Waters Regulations apply. See Subparagraph (a)(6) of this Rule.]

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

(K) Jackson County:
Gage Creek (entire stream)
North Fork Scott Creek (entire stream)
Tanasee Creek (entire stream)
Whitewater River (downstream from Silver Run Creek to South Carolina State line)
Wolf Creek (entire stream, except Balsam Lake and Wolf Creek Lake)

(L) Madison County:
Big Creek (headwaters to the lower game land boundary, including tributaries) [Wild Trout/Natural Bait Waters Regulations apply. See Subparagraph (a)(6) of this Rule.]

(M) Mitchell County:
Green Creek (headwaters to Green Creek Bridge, except where posted against trespass)
Little Rock Creek (headwaters to Green Creek Bridge, including all tributaries, except where posted against trespass)
Wiles Creek (game land boundary to mouth)

(N) Polk County
Green River (Henderson County line to Fishtop Falls Access Area)
Pulliam (Fulloms) Creek and tributaries (game lands portions)

(O) Transylvania County:
All waters located on Gorges State Park
Whitewater River (downstream from Silver Run Creek to South Carolina State line)

(P) Watauga County:
Dutch Creek (headwaters to second bridge on SR 1134
Howards Creek (headwaters to lower falls)
Watauga River (Avery County line to steel bridge at Riverside Farm Road)

(Q) Wilkes County:
Big Sandy Creek (portion on Stone Mountain State Park)
Garden Creek (portion on Stone Mountain State Park)
Harris Creek and tributaries (portions on Stone Mountain State Park) [Catch and Release Artificial Lures Only Regulations apply. See Subparagraph (a)(4) of this Rule.]
Widow Creek (portion on Stone Mountain State Park)

(R) Yancey County:
Cattail Creek (Bridge at Mountain Farm Community Road (Pvt) to NC 197 bridge)
Lickskillet Creek (entire stream)
Middle Creek (game land boundary to mouth)
Rock Creek (game land boundary to mouth)
South Toe River (game land boundary downstream to Clear Creek)

(3) Catch and Release/Artificial Lures Only Trout Waters. Those portions of designated wild trout waters as listed in this Subparagraph, including tributaries except as noted, are further classified as Catch and Release/Artificial Lures Only waters. Only artificial lures having one single hook may be used. No fish may be harvested or be in possession while fishing these streams:

(A) Ashe County:
Big Horse Creek (Virginia State line to Mud Creek at SR 1363 excluding tributaries)
Unnamed tributary of Three Top Creek (portion located on Three Top Mountain Game Lands)

(B) Avery County:
Wilson Creek (game land portion)

(C) Buncombe County:
Carter Creek (game land portion)

(D) Burke County:
Henry Fork (portion on South Mountains State Park)

(E) Jackson County:
Flat Creek
Tuckasegee River (upstream of Clarke property)

(F) McDowell County:
Newberry Creek (game land portion)

(G) Wilkes County:
Harris Creek (portion on Stone Mountain State Park)

(H) Yancey County:
Lower Creek
Upper Creek

(4) Catch and Release/Artificial Flies Only Trout Waters. Those portions of designated wild trout waters as listed in this Subparagraph, including tributaries except as noted, are further classified as Catch and Release/Fly Fishing Only waters. Only artificial flies having one single hook may be used. No fish

may be harvested or be in possession while fishing these streams:

(A) Avery County:
Elk River (portion on Lees-McRae College property, excluding the millpond)
Lost Cove Creek (game land portion, excluding Gragg Prong and Rockhouse Creek)

(B) Transylvania County:
Davidson River (headwaters to Avery Creek, excluding Avery Creek, Looking Glass Creek and Grogan Creek)

(C) Yancey County:
South Toe River (portion from the concrete bridge above Black Mountain Campgroup downstream to game land boundary, excluding Camp Creek and Big Lost Cove Creek)

(5) Delayed Harvest Trout Waters. Those portions of designated Hatchery Supported Trout Waters as listed in this Subparagraph, excluding tributaries except as noted, are further classified as Delayed Harvest Waters. Between 1 October and one-half hour after sunset on the Friday before the first Saturday of the following June, inclusive, it is unlawful to possess natural bait and only artificial lures with one single hook may be used. No fish may be harvested or be in possession while fishing these streams during this time. These waters are closed to fishing between one-half hour after sunset on the Friday before the first Saturday in June and 6:00 a.m. on the first Saturday in June. At 6:00 a.m. on the first Saturday in June these streams open for fishing under Hatchery Supported Waters rules:

(A) Ashe County:
Trout Lake
Helton Creek (Virginia state line to New River)

(B) Burke County:
Jacob Fork (Shinny Creek to lower South Mountains State Park boundary)

(C) Haywood County:
West Fork Pigeon River (Queen Creek to the first game land boundary upstream of Lake Logan)

(D) Henderson County:
North Fork Mills River (game land portion below the Hendersonville watershed dam)

(E) Jackson County:
Tuckasegee River (NC 107 bridge at Love Field Downstream to the Dillsboro dam)

(F) Macon County:
Nantahala River (portion from Whiteoak Creek to the Nantahala Power and Light power house discharge canal)

(G) Madison County.
Big Laurel Creek (NC 208 bridge to the US 25-70 bridge)
Shelton Laurel Creek (NC 208 bridge at Belva to the confluence with Big Laurel Creek)

(H) McDowell County:
Curtis Creek (game lands portion downstream of U.S. Forest Service boundary at Deep Branch

(I) Mitchell County:
Cane Creek (NC 226 bridge to NC 80 bridge)

(J) Polk County:
Green River (Fishtop Falls Access Area to confluence with Cove Creek)

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

(L) Transylvania County:
East Fork French Broad River (Glady Fork to French Broad River)

(M) Watauga County:
Watauga River (SR 1557 bridge to NC 105 bridge and SR 1114 bridge to NC 194 bridge at Valle Crucis)

(N) Wilkes County:
East Prong Roaring River (from Bullhead Creek downstream to the Stone Mountain State Park lower boundary)
Stone Mountain Creek (from falls at Allegheny County line to confluence with East Prong Roaring River and Bullhead Creek in Stone Mountain State Park)

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

(A) Cherokee County:
Bald Creek (game land portions)
Dockery Creek (game land portions)
Tellico River (Fain Ford to Tennessee state line excluding tributaries)

(B) Clay County:
Buck Creek (game land portion downstream of US 64 bridge)

(C) Graham County:

Deep Creek
Long Creek (game land portion)

(D) Haywood County:
Hurricane Creek (including portions of tributaries on game lands)

(E) Jackson County:
Chattooga River (SR 1100 bridge to South Carolina state line)
(lower) Fowler Creek (game land portion)
Scotsman Creek (game land portion)

(F) Macon County:
Chattooga River (SR 1100 bridge to South Carolina state line)
Jarrett Creek (game land portion)
Kimsey Creek
Overflow Creek (game land portion)
Park Creek
Tellico Creek (game land portion)
Turtle Pond Creek (game land portion)

(G) Madison County:
Big Creek (headwaters to the lower game land boundary, including tributaries)

(H) Transylvania County:
North Fork French Broad River (game land portions downstream of SR 1326)
Thompson River (SR 1152 to South Carolina state line, except where posted against trespass,
including portions of tributaries within this section located on game lands)

(b) Fishing in Trout Waters

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

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

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

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

(C) Size Limit. The minimum size limit is seven inches.

(D) Manner of Taking. Only artificial lures having only one single hook may be used. No person shall possess natural bait while fishing wild trout waters except those waters listed in 15A NCAC 10C .0205(a)(6).

(E) Night Fishing. Fishing on wild trout waters is not allowed between one-half hour after sunset and one-half hour before sunrise.

History Note: Authority G.S. 113-134; 113-272; 113-292; Eff. February 1, 1976;
Amended Eff. July 1, 1998; July 1, 1997; July 1, 1996; July 1, 1995; July 1, 1994; July 1, 1993; October 1, 1992;
Temporary Amendment Eff. July 1, 1999;
Amended Eff. July 1, 2000;
Temporary Amendment Eff. July 1, 2002; July 1, 2001;
Amended Eff. August 1, 2002 (approved by RRC on 06/21/01 and 04/18/02);
Temporary Amendment Eff. June 1, 2003;
Amended Eff. August 1, 2004.

15A NCAC 10C .0208 SPAWNING AREAS

The following waters are designated as spawning areas in which fishing is prohibited or restricted as indicated:

(1) No person shall fish by any method from February 15 to April 15, both inclusive, in Linville River from the NC 126 bridge downstream to the mouth of the Linville River.

(2) No person shall fish by netting in that portion of the Dan River lying within the State downstream from the Brantly Steam Plant at Danville, or in the Roanoke River between the US 258 bridge and the dam of Roanoke Rapids Lake, or while in or on said rivers within said areas, have in possession any bow net, dip net or any landing net having a handle exceeding eight feet in length or a hoop or frame to which the net is attached exceeding 60 inches along its outside perimeter.

(3) No person shall fish by any method within the bypass channel constructed by the U.S. Army Corps of Engineers around Lock and Dam No. 1 on the Cape Fear River at any time.

History Note: Authority G.S. 113-134; 113-292; Eff. February 1, 1976;
Amended Eff. August 1, 2004; July 1, 1993; July 1, 1989; July 1, 1985; July 1, 1984.

15A NCAC 10C .0305 OPEN SEASONS: CREEL AND SIZE LIMITS

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

GAME FISHES	DAILY CREEL LIMITS	MINIMUM SIZE LIMITS	OPEN SEASON
Mountain Trout:			
Wild Trout Waters	4	7 in.	ALL YEAR (exc. 2)
Hatchery Supported Trout Waters and undesignated waters	7 (exc. 2)	None (exc. 2)	All year, except March 1 to 6:00 a.m. on first Saturday in April (exc. 2)
Muskellunge and Tiger Musky	2	30 in.	ALL YEAR
Chain Pickerel (Jack)	None	None	ALL YEAR
Walleye	8 (exc. 9)	None (exc. 9)	ALL YEAR
Sauger	8	15 in.	ALL YEAR
Black Bass:			
Largemouth	5	14 in. (excs. 3, 8 & 10)	ALL YEAR (exc. 17)
Smallmouth and Spotted	5	12 in. (excs. 3, 8 & 10)	ALL YEAR
White Bass	25	None	ALL YEAR
Sea Trout (Spotted or Speckled)	10	12 in.	ALL YEAR
Flounder	None	13 in.	ALL YEAR
Red drum (channel bass, red fish, puppy drum)	1	18 in. (exc. 19)	ALL YEAR
Striped Bass and their hybrids (Morone Hybrids)	8 aggregate (excs. 1, 5, 6, 11 & 13)	16 in. (excs. 1, 5, 6, 11 & 13)	ALL YEAR (excs. 6, 13 & 15)
Shad: (American and hickory)	10 aggregate (exc. 18)	None	ALL YEAR (exc. 18)
Kokanee Salmon	7	None	ALL YEAR
Panfishes	None (excs. 4, 12 & 16)	None (exc. 12)	ALL YEAR (exc. 4)
NONGAME FISHES	None (excs. 14 & 20)	None (exc.20)	ALL YEAR (exc.7)

(b) Exceptions

(1) In the Dan River upstream from its confluence with Bannister River to the Brantly Steam Plant Dam, and in John H. Kerr, Gaston, and Roanoke Rapids Reservoirs, and Lake Norman, the creel limit on striped bass and Morone hybrids is four in the aggregate and the minimum size limit is 20 inches.

(2) In designated public mountain trout waters the season for taking all species of fish is the same as the trout fishing season. There is no closed season on taking trout from Nantahala River and all tributaries (excluding impoundments) upstream from Nantahala Lake, and the impounded waters of power reservoirs and municipally-owned water supply reservoirs open to the public for fishing. In Lake Lure the daily creel limit for trout is five fish and minimum size limit for trout is 15 inches.

(3) Bass taken from Calderwood Reservoir may be retained without restriction as to size limit.

(4) On Mattamuskeet Lake, special federal regulations apply.

(5) In the inland fishing waters of Cape Fear, Neuse, Pee Dee, Pungo and Tar Pamlico rivers and their tributaries extending upstream to the first impoundment of the main course on the river or its tributaries, and Lake Mattamuskeet, the daily creel limit for striped bass and their hybrids is three fish in aggregate and the minimum length limit is 18 inches. In the Tar-Pamlico River and its tributaries upstream of the Grimesland bridge and in the Neuse River and its tributaries upstream of the NC 55 bridge in Lenoir County, no striped bass or striped bass hybrids between the lengths of 22 inches and 27 inches shall be retained during the period April 1 through May 31.

(6) In the inland and joint fishing waters [as identified in 15A NCAC 10C .0107(1)(e)] of

the Roanoke River Striped Bass Management Area, which includes the Roanoke, Cashie, Middle and Eastmost rivers and their tributaries, the open season for taking and possessing striped bass and their hybrids is March 1 through April 15 from the joint-coastal fishing waters boundary at Albemarle Sound upstream to the US 258 bridge and is March 15 through April 30 from the US 258 bridge upstream to Roanoke Rapids Lake dam. During the open season the daily creel limit for striped bass and their hybrids is two fish in aggregate, the minimum size limit is 18 inches. No fish between 22 inches and 27 inches in length shall be retained in the daily creel limit.

(7) See 15A NCAC 10C .0407 for open seasons for taking nongame fishes by special devices.

(8) The maximum combined number of black bass of all species that may be retained per day is five fish, no more than two of which may be smaller than the applicable minimum size limit. The minimum size limit for all species of black bass is 14 inches, with no exception in Lake Luke Marion in Moore County, Reedy Creek Park lakes in Mecklenburg County, Lake Rim in Cumberland County, in the entire Lumber River from the Camp MacKall bridge (SR 1225, at the point where Richmond, Moore, Scotland, and Hoke counties join) to the South Carolina State line and in all public fishing waters east of I-95, except Tar River Reservoir in Nash County, the Yadkin-Pee Dee River from Idols Dam to the South Carolina State line including High Rock Lake, Tuckertown Lake, Badin Lake, Falls Lake, Lake Tillery and Blewett Falls Lake, and the following waters and their tributaries: the New River in Onslow County, Roanoke Sound, Croatan Sound, Currituck Sound, Albemarle Sound, Alligator River, Scuppernong River, Chowan River, Cashie River, Roanoke River downstream of U.S. 258 bridge, Lake Mattamuskeet, Pungo Lake, Alligator Lake and New Lake. In and west of Madison, Buncombe, Henderson and Polk Counties and in designated public mountain trout waters the minimum size limit is 12 inches. In B. Everett Jordan Reservoir, Falls of the Neuse Reservoir, east of SR 1004, Lake Lure, and Buckhorn Reservoir in Wilson and Nash counties the minimum size limit for largemouth bass is 16 inches, with no exception. In Lake Lure the minimum size limit for smallmouth bass is 14 inches, with no exception. In Lake Phelps and Shearon Harris Reservoir no black bass between 16 and 20 inches shall be possessed.

(9) A minimum size limit of 15 inches applies to walleye taken from Lake James and its tributaries, and the daily creel limit for walleye is four fish in Linville River upstream from the NC 126 bridge above Lake James.

(10) The minimum size limit for all black bass, with no exception, is 18 inches in the following trophy bass lakes:
(A) Cane Creek Lake in Union County;
(B) Lake Thom-A-Lex in Davidson County; and
(C) Sutton Lake in New Hanover County.

(11) In all impounded inland waters and their tributaries, except those waters described in Exceptions (1) and (5), the daily creel limit of striped bass and their hybrids may include not more than two fish of smaller size than the minimum size limit.

(12) A daily creel limit of 20 fish and a minimum size limit of eight inches apply to crappie in the following waters: the Yadkin-Pee Dee River from Idols Dam to the South Carolina State line including High Rock Lake, Tuckertown Lake, Badin Lake, Falls Lake, Lake Tillery, and Blewett Falls Lake, Lake Norman, Lake Hyco, Lake Ramseur, Cane Creek Lake, and the following waters and all their tributaries: Roanoke Sound, Croatan Sound, Currituck Sound, Albemarle Sound, Alligator River, Scuppernong River, Chowan River, Cashie River, Roanoke River downstream of U. S. 258 bridge, lake Mattamuskeet, Lake Phelps, Pungo Lake, Alligator Lake and New Lake. In and west of Madison, Buncombe and Rutherford counties, in Lake James and in Buckhorn Reservoir in Wilson and Nash counties a daily creel limit of 20 fish applies to crappie.

(13) In designated inland fishing waters of Roanoke Sound, Croatan Sound, Albemarle Sound, Chowan River, Currituck Sound, Alligator River, Scuppernong River, and their tributaries (excluding the Roanoke River and Cashie River and their tributaries), striped bass fishing season, size limits and creel limits shall be the same as those established by duly adopted rules or proclamations of the Marine Fisheries Commission in adjacent joint or coastal fishing waters.

(14) The daily creel limits for channel, white, and blue catfish in designated urban lakes are stated in 15A NCAC 10C .0401(e).

(15) The Executive Director may, by proclamation, suspend or extend the hook-and-line season for striped bass in the inland and joint waters of coastal rivers and their tributaries. It is unlawful to violate the provisions of any proclamation issued under this authority.

(16) In the entire Lumber River from the Camp MacKall bridge (SR 1225, at the point where Richmond, Moore, Scotland, and Hoke counties join) to the South Carolina state line and in all public fishing waters east of I-95, except Tar River Reservoir in Nash County,

the daily creel limit for sunfish is 30 in aggregate, no more than 12 of which shall be redbreast sunfish.

(17) In Sutton Lake, no largemouth bass shall be retained from December 1 through March 31.

(18) The season for taking American and hickory shad with dip nets and bow nets is March 1 through April 30.

(19) No red drum greater than 27 inches in length may be retained.

(20) The daily possession limit for herring (alewife and blueback in aggregate) greater than 6 inches in length is specified in 15A NCAC 10C .0401(a) and in 15A NCAC 10C .0402(c).

History Note: Authority G.S. 113-134; 113-292; 113-304; 113-305;
Eff. February 1, 1976;
Temporary Amendment Eff. May 10, 1990, for a period of 180 days to expire on November 1, 1990;
Temporary Amendment Eff. May 22, 1990, for a period of 168 days to expire on November 1, 1990;
Temporary Amendment Eff. May 1, 1991, for a period of 180 days to expire on November 1, 1991;
Amended Eff. July 1, 1994; July 1, 1993; October 1, 1992;
Temporary Amendment Eff. December 1, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Amended Eff. July 1, 1998; July 1, 1997; July 1, 1996; July 1, 1995;
Temporary Amendment Eff. November 1, 1998;
Amended Eff. April 1, 1999;
Temporary Amendment Eff. July 1, 1999;
Amended Eff. July 1, 2000;
Temporary Amendment Eff. July 1, 2001;
Temporary Amendment Eff. March 8, 2002 [This rule replaces the rule proposed for permanent amendment effective July 1, 2002 and approved by RRC in May 2001];
Amended Eff. August 1, 2002 (approved by RRC in April 2002);
Temporary Amendment Eff. June 1, 2003;
Amended Eff. August 1, 2004.

15A NCAC 10C .0401 MANNER OF TAKING NONGAME FISHES: PURCHASE AND SALE

(a) Except as permitted by the rules in this Section, it is unlawful to take nongame fishes from the inland fishing waters of North Carolina in any manner other than with hook and line or grabbling. Nongame fishes may be taken by hook and line or grabbling at any time without restriction as to size limits or creel limits, with the following exceptions:

(1) Blue crabs must have a minimum carapace width of five inches (point to point);

(2) No person shall take or possess during one day more than 25 herring (alewife and blueback in aggregate) that are greater than six inches in length from the inland fishing waters of coastal rivers and their tributaries up to the first impoundment of the main course on the river or its tributaries;

(3) Grass carp may not be possessed on Lake James and Mountain Island, Gaston and Roanoke Rapids reservoirs;

(4) No trotlines or set-hooks shall be used in the impounded waters located on the Sandhills Game Land or in designated public mountain trout waters; and

(5) In Lake Waccamaw, trotlines or set-hooks may be used only from October 1 through April 30.

(b) The season for taking nongame fishes by other hook and line methods in designated public mountain trout waters shall be the same as the trout fishing season.

(c) Nongame fishes, except alewife and blueback herring (greater than six inches in length) and bowfin, taken by hook and line, grabbling or by licensed special devices may be sold. Alewife and blueback herring less than 6 inches in length may be sold except in those waters specified in Paragraph (d) of Rule .0402 of this Section, where their possession is prohibited. Eels less than six inches in length may not be taken from inland waters for any purpose.

(d) Freshwater mussels, including the Asiatic clam (Corbicula fluminea), may only be taken from impounded waters, except mussels shall not be taken in Lake Waccamaw and in University Lake in Orange County. It shall be unlawful to possess more than 200 freshwater mussels.

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

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

Cedarock Pond, Alamance County
Lake Tomahawk, Buncombe County
Frank Liske Park Pond, Cabarrus County
Lake Rim, Cumberland County
C.G. Hill Memorial Park Pond, Forsyth County
Kernersville Lake, Forsyth County
Winston Pond, Forsyth County
Bur-Mil Park Ponds, Guilford County
Hagan-Stone Park Ponds, Guilford County
Oka T. Hester Pond, Guilford County
San-Lee Park Ponds, Lee County
Kinston Neuseway Park Pond, Lenoir County
Freedom Park Pond, Mecklenburg County
Hornet's Nest Pond, Mecklenburg County
McAlpine Lake, Mecklenburg County
Reedy Creek Park Ponds, Mecklenburg County
Lake Luke Marion, Moore County
Anderson Community Park, Orange County
Lake Michael, Orange County
River Park North Pond, Pitt County
Hamlet City Lake, Richmond County
Big Elkin Creek, Surry County
Apex Community Lake, Wake County
Bond Park Lake, Wake County
Lake Crabtree, Wake County
Shelley Lake, Wake County
Simpkins Pond, Wake County
Lake Toisnot, Wilson County
Ellerbe Community Lake, Richmond County

Indian Lake, Edgecombe County
Harris Lake County Park Ponds, Wake County
Park Road Pond, Mecklenburg County
Etheridge Pond on the Barnhill Public Fishing Area, Edgecombe County
Newbold Pond on the Barnhill Public Fishing Area, Edgecombe County

History Note: Authority G.S. 113-134; 113-272; 113-292;
Eff. February 1, 1976;
Amended Eff. July 1, 1994; July 1, 1993; May 1, 1992;
Temporary Amendment Eff. December 1, 1994;
Amended Eff. July 1, 1998; July 1, 1996; July 1, 1995;
Temporary Amendment Eff. July 1, 1999;
Amended Eff. July 1, 2000;
Temporary Amendment Eff. July 1, 2002; July 1, 2001;
Amended Eff. August 1, 2002 (approved by RRC on 06/21/01 and 04/18/02);
Temporary Amendment Eff. June 1, 2003;
Amended Eff. August 1, 2004.

15A NCAC 10C .0404 SPECIAL DEVICE FISHING

(a) Bow and Arrow. The use of bow [as defined in 15A NCAC 10B .0116(a)] and arrow as a licensed special device is authorized for taking nongame fishes at any time from all inland fishing waters other than impounded waters located on the Sandhills Game Land and designated public mountain trout waters. Unless specifically prohibited, bow and arrow may be used in joint fishing waters. It is unlawful to take fish with crossbow and arrow in any inland fishing waters.

(b) Nets. Where authorized, manually operated nets, including seines and bow, cast, dip, gill, drift and fyke nets may be used under the special device fishing license.

(1) No fixed gill net or other stationary net which may be authorized as a special fishing device may be more than 100 yards in length, nor shall any such net be placed within 50 yards of any other fixed net. Fixed nets must be set so that they run parallel to the nearest shoreline. No anchored or fixed gill net or drift net shall be used unless such net is marked for the protection of boat operators. A net shall be deemed so marked when there is attached to it at each end two separate yellow buoys which shall be of solid foam or other solid buoyant material no less than five inches in its smallest dimensions. The owner shall always be identified on a buoy on each end either by using engraved buoys or by attaching engraved metal or plastic tags to the buoys. Such identification shall include one of the following: owner's N.C. motor boat registration number, or owner's U.S. vessel documentation name, or owner's last name and initials.

(2) It is unlawful to attach gill nets to any wire, rope, or similar device extended across any navigable watercourse.

(3) In Town Creek (Brunswick County) no more than one attended gill net, not to exceed 50 yards in length, is allowed per person. For purposes of this Rule, a gill net is "attended" if the fisherman using it is within 100 yards of his or her net at all times.

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

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

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

(f) Eel pots. It is unlawful to use pots with mesh sizes smaller than one inch by one-half inch unless such pots contain an escape panel that is at least four inches square with a mesh size of one inch by one-half inch located in the outside panel of the upper chamber of rectangular pots and in the rear portion of cylindrical pots. Each pot must be marked by attaching a floating buoy which shall be of solid foam or other solid buoyant material and no less than five inches in diameter and no less than five inches in length. Buoys may be of any color except yellow. The owner shall always be identified on the attached buoy by using engraved buoys or by engraved metal or plastic tags attached to the buoy. Such identification shall include one of the following:

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

History Note: Authority G.S. 113-134; 113-272.2; 113-276; 113-292;
Eff. February 1, 1976;
Amended Eff. July 1, 1999; July 1, 1996; December 1, 1995; July 1, 1995; July 1, 1994; July 1, 1993;
Temporary Amendment Effective July 1, 2001;
Amended Eff. August 1, 2004; July 18, 2002.

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

Except in designated public mountain trout waters, and in impounded waters located on the Sandhills Game Land, there is a year-round open season for the licensed taking of nongame fishes by bow and arrow. The use of special fishing devices, including crab pots in impoundments located entirely on game lands is prohibited. Seasons and waters in which the use of other special devices is authorized are indicated by counties below:

(1) Alamance:
(a) July 1 to August 31 with seines in Alamance Creek below NC 49 bridge and Haw River;

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

(2) Alexander: July 1 to June 30 with traps and gigs in all public waters; and with spear guns in Lake Hickory and Lookout Shoals Reservoir;

(3) Alleghany: July 1 to June 30 with gigs in New River, except designated public mountain trout waters;

(4) Anson:
(a) July 1 to June 30 with traps and gigs in all public waters;
(b) March 1 to April 30 with dip and bow nets in Pee Dee River below Blewett Falls Dam;
(c) July 1 to August 31 with seines in all running public waters, except Pee Dee River from Blewett Falls downstream to the Seaboard Coast Line Railroad trestle;

(5) Ashe: July 1 to June 30 with gigs in New River (both forks), except designated public mountain trout waters;

(6) Beaufort:
(a) July 1 to June 30 with traps in the Pungo River, and in the Tar and Pamlico Rivers above Norfolk and Southern Railroad bridge; and with gigs in all inland public waters;
(b) December 1 to June 5 with dip and bow nets in all inland public waters;

(7) Bertie:
(a) July 1 to June 30 with traps in the Broad Creek (tributary of Roanoke);
(b) December 1 to June 5 with dip and bow nets in all inland public waters, excluding public lakes, ponds, and other impounded waters;

(8) Bladen: December 1 to June 5 with dip and bow nets in Black River;

(9) Brunswick:
(a) March 15 to April 15 (Thursdays, Fridays, and Saturdays only) with attended gill nets in Town Creek;
(b) December 1 to May 1 with dip and bow nets in Alligator Creek, Hoods Creek, Indian Creek, Orton Creek below Orton Pond, Rices Creek, Sturgeon Creek and Town Creek;

(10) Buncombe: July 1 to June 30 with gigs in all public waters, except designated public mountain trout waters;

(11) Burke:
(a) July 1 to August 31 with seines in all running public waters, except Johns River and designated public mountain trout waters;
(b) July 1 to June 30 with traps, gigs, and spear guns in all public waters, except designated public mountain trout waters and Lake James;

(12) Cabarrus:
(a) July 1 to August 31 with seines in all running public waters,
(b) July 1 to June 30 with traps and gigs in all public waters;

(13) Caldwell: July 1 to June 30 with traps, gigs, and spear guns in all public waters, except designated public mountain trout waters;

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

(15) Carteret: December 1 to June 5 with dip and bow nets in all inland public waters except South River and the tributaries of the White Oak River;

(16) Caswell:
(a) July 1 to June 30 with gigs in all public waters;
(b) July 1 to August 31 with seines in all running public waters, except Moons Creek;
(c) July 1 to June 30 with traps in Hyco Reservoir;

(17) Catawba:
(a) July 1 to August 31 with seines in all running public waters, except Catawba River below Lookout Dam;
(b) July 1 to June 30 with traps, spear guns, and gigs in all public waters;

(18) Chatham:
(a) December 1 to April 15 with dip and gill nets in the Cape Fear River, Deep River, Haw River and Rocky River (local law);
(b) July 1 to August 31 with seines in the Cape Fear River, and Haw River;
(c) July 1 to June 30 with traps in Deep River; and with gigs in all public waters;

(19) Cherokee: July 1 to June 30 with gigs in all public waters, except designated public mountain trout waters;

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

(21) Clay: July 1 to June 30 with gigs in all public waters, except designated public mountain trout waters;

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

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

(23) Columbus:
(a) December 1 to March 1 with gigs in all inland public waters, except Lake Waccamaw and its tributaries;
(b) December 1 to June 5 with dip and bow nets in Livingston Creek;

(24) Craven:
(a) July 1 to June 30 with traps in the main run of the Trent and Neuse Rivers;
(b) December 1 to June 5 with dip and bow nets in all inland public waters, except Pitch Kettle, Grindle, Slocum (downstream of the US 70 bridge), Spring and Hancock Creeks and their tributaries; and with seines in the Neuse River;

(25) Currituck:
(a) July 1 to June 30 with traps in Tulls Creek and Northwest River;
(b) December 1 to June 5 with dip and bow nets in all inland public waters, excluding public lakes, ponds, and other impounded waters;

(26) Dare:
(a) July 1 to June 30 with traps in Mashoes Creek, Milltail Creek, East Lake and South Lake;
(b) December 1 to June 5 with dip and bow nets in all inland public waters, excluding public lakes, ponds, and other impounded waters;

(27) Davidson:
(a) July 1 to August 31 with seines in all running public waters;
(b) July 1 to June 30 with gigs in all public waters, and with traps in all public waters except Leonard's Creek, Abbott's Creek below Lake Thom-A-Lex dam, and the Abbott's Creek arm of High Rock Lake upstream from the NC 8 bridge;

(28) Davie:
(a) July 1 to June 30 with traps and gigs in all public waters;
(b) July 1 to August 31 for taking only carp and suckers with seines in Dutchmans Creek from US 601 to Yadkin River and in Hunting Creek from SR 1338 to South Yadkin River;

(29) Duplin: December 1 to June 5 with dip and bow nets and seines in the main run of the Northeast Cape Fear River downstream from a point one mile above Serecta Bridge;

(30) Durham:
(a) July 1 to August 31 with seines in Neuse River;
(b) July 1 to June 30 with gigs in all public waters;

(31) Edgecombe: December 1 to June 5 with dip and bow nets in all public waters;

(32) Forsyth: July 1 to June 30 with traps and gigs in all public waters, except traps may not be used in Belews Creek Reservoir;

(33) Franklin:
(a) July 1 to August 31 with seines in Tar River;
(b) July 1 to June 30 with gigs in all public waters, except Parrish, Laurel Mill, Jackson, Clifton, Moore's and Perry's Ponds, and in the Franklinton City ponds;

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

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

(36) Graham: July 1 to June 30 with gigs in all public waters, except designated public mountain trout waters;

(37) Granville:
(a) July 1 to June 30 with gigs in all public waters, except Kerr Reservoir;
(b) July 1 to August 31 with seines in the Neuse River and the Tar River below US 158 bridge;
(c) July 1 to June 30 with dip and cast nets in Kerr Reservoir;
(d) July 1 to June 30 with cast nets in all public waters;

(38) Greene: December 1 to June 5 with dip and bow nets and reels in Contentnea Creek;

(39) Guilford:
(a) July 1 to August 31 with seines in Haw River, Deep River below Jamestown Dam, and Reedy Fork Creek below US 29 bridge;
(b) July 1 to June 30 with gigs in all public waters;

(40) Halifax:
(a) December 1 to June 5 with dip and bow nets in Beech Swamp, Clarks Canal, Conoconnara Swamp, Fishing Creek below the Fishing Creek Mill Dam, Kehukee Swamp, Looking Glass Gut, Quankey Creek, and White's Mill Pond Run;
(b) July 1 to June 30 with dip and cast nets in Gaston Reservoir and Roanoke Rapids Reservoir;

(41) Harnett:
(a) January 1 to May 31 with gigs in Cape Fear River and tributaries;
(b) December 1 to June 5 with dip and bow nets in Cape Fear River;

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

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

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

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

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

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

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

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

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

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

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

(53) McDowell:
- (a) July 1 to August 31 with seines in all running public waters, except designated public mountain trout waters;
- (b) July 1 to June 30 with traps, gigs, and spear guns in all public waters, except designated public mountain trout waters and Lake James;

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

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

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

(57) Mecklenburg:
- (a) July 1 to August 31 with seines in all running public waters;
- (b) July 1 to June 30 with traps, gigs and spear guns in all public waters except Freedom Park Pond and Hornet's Nest Ponds;

(58) Montgomery:
- (a) July 1 to August 31 with seines in all running public waters, except that part of the Pee Dee River between the Lake Tillery dam at Hydro and the mouth of Rocky River;
- (b) July 1 to June 30 with traps and gigs in all public waters;

(59) Moore:
- (a) December 1 to April 15 with gill nets in Deep River and all tributaries;
- (b) July 1 to August 31 with seines in all running public waters except in Deep River;
- (c) July 1 to June 30 with gigs in all public waters, except lakes located on the Sandhills Game Land; and with traps in Deep River and its tributaries;

(60) Nash:
- (a) July 1 to June 30 with gigs in all public waters, except Tar River;
- (b) December 1 to June 5 with dip and bow nets in the Tar River below Harris' Landing and Fishing Creek below the Fishing Creek Mill Dam;

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

(62) Northampton:
- (a) July 1 to June 30 with gigs in all public waters, except Gaston and Roanoke Rapids Reservoirs and the

Roanoke River above the US 301 bridge;

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

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

(63) Onslow:

(a) July 1 to June 30 with traps in White Oak River below US 17 bridge;

(b) August 1 to March 31 with eel pots in the main run of New River between US 17 bridge and the mouth of Hawkins Creek;

(c) December 1 to June 5 with dip and bow nets in the main run of New River and in the main run of the White Oak River;

(d) March 1 to April 30 with dip and bow nets in Grant's Creek;

(64) Orange:

(a) July 1 to August 31 with seines in Haw River,

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

(65) Pamlico: December 1 to June 5 with dip and bow nets in all inland public waters, except Dawson Creek;

(66) Pasquotank:

(a) July 1 to June 30 with traps in all inland waters;

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

(67) Pender:

(a) December 1 to June 5 with dip and bow nets in the Northeast Cape Fear River, Long Creek and Black River; and with seines in the main run of Northeast Cape Fear River;

(b) December 1 to May 1 with dip and bow nets in Moore's Creek approximately one mile upstream to New Moon Fishing Camp;

(68) Perquimans:

(a) July 1 to June 30 with traps in all inland waters;

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

(69) Person:

(a) July 1 to August 31 with seines in Hyco Creek and Mayo Creek;

(b) July 1 to June 30 with gigs in all public waters.

(70) Pitt:

(a) July 1 to June 30 with traps in Neuse River and in Tar River below the mouth of Hardee Creek east of Greenville;

(b) December 1 to June 5 with dip and bow nets in all inland public waters, except Grindle Creek, and Contentnea Creek between NC 118 bridge at Grifton and the Neuse River;

(c) December 1 to June 5 with seines in Tar River;

(71) Polk: July 1 to June 30 with gigs in all public waters, except designated public mountain trout waters;

(72) Randolph:

(a) December 1 to March 1 with gill nets in Deep River and Uwharrie River;

(b) July 1 to August 31 with seines in Deep River above the Coleridge Dam and Uwharrie River;

(c) July 1 to June 30 with gigs in all public waters;

(73) Richmond:

(a) July 1 to August 31 with seines in all running public waters, except Pee Dee River from Blewett Falls downstream to the Seaboard Coast Line Railroad trestle;

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

(c) March 1 to April 30with dip and bow nets in Pee Dee River below Blewett Falls Dam;

(74) Robeson: December 1 to March 1 with gigs in all inland public waters.

(75) Rockingham:

(a) July 1 to August 31 with seines in Dan River and Haw River;

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

(76) Rowan:

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

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

(77) Rutherford:

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

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

(78) Sampson: December 1 to June 5 with dip and bow nets in Big Coharie Creek, Black River and Six Runs Creek;

(79) Stanly:

(a) July 1 to August 31 with seines in all running public waters, except that part of the Pee Dee River between the Lake Tillery dam at Hydro and the mouth of Rocky River;
(b) July 1 to June 30 with traps and gigs in all public waters;

(80) Stokes: July 1 to June 30 with traps and gigs in all public waters, except designated public mountain trout waters, and traps may not be used in Belews Creek Reservoir;

(81) Surry: July 1 to June 30 with gigs in all public waters, except designated public mountain trout waters; and with traps in the main stem of Yadkin River;

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

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

(84) Tyrrell:
(a) July 1 to June 30 with traps in Scuppernong River, Alligator Creek, and the drainage canals of Lake Phelps;
(b) December 1 to June 5 with dip and bow nets in all inland public waters, excluding Lake Phelps, public lakes, ponds and other impounded waters;

(85) Union:
(a) July 1 to August 31 with seines in all running public waters,
(b) July 1 to June 30 with traps and gigs in all public waters;

(86) Vance:
(a) July 1 to August 31 with seines in the Tar River;
(b) July 1 to June 30 with gigs in all public waters, except Rolands, Faulkners, Southerlands, and Weldon Ponds, City Lake, and Kerr Reservoir;
(c) July 1 to June 30 with dip and cast nets in Kerr Reservoir;
(d) July 1 to June 30 with cast nets in all public waters;

(87) Wake:
(a) July 1 to June 30 with gigs in all public waters, except Sunset, Benson, Wheeler, Raleigh, and Johnson Lakes;
(b) December 1 to June 5 with dip and bow nets in the Neuse River below Milburnie Dam, and Swift Creek below Lake Benson Dam;

(88) Warren:
(a) July 1 to August 31 with seines in Fishing Creek, Shocco Creek, and Walker Creek; excluding Duck and Hammes Mill Ponds;
(b) July 1 to June 30 with gigs in all public waters, except Duck and Hammes Mill Ponds, Kerr Reservoir, and Gaston Reservoir;
(c) July 1 to June 30 with dip and cast nets in Kerr Reservoir and Gaston Reservoir;
(d) July 1 to June 30 with cast nets in all public waters;

(89) Washington:
(a) July 1 to June 30 with traps in the drainage canals of Lake Phelps;
(b) December 1 to June 5 with dip and bow nets in all inland public waters, excluding Lake Phelps, public lakes, ponds and other impoundments;

(90) Wayne: December 1 to June 5 with dip and bow nets in Little River, Mill Creek and Neuse River.

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

(92) Wilson:
(a) July 1 to June 30 with gigs in Contentnea Creek (except Buckhorn Reservoir), including unnamed tributaries between Flowers Mill and SR 1163 (Deans) bridge;
(b) December 1 to June 5 with dip and bow nets in Contentnea Creek below US 301 bridge and in Toisnot Swamp downstream from the Lake Toisnot Dam;

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

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15A NCAC 10D .0102 GENERAL REGULATIONS REGARDING USE

(a) Trespass. Entry on game lands for purposes other than hunting, trapping or fishing shall be as authorized by the landowner and there shall be no removal of any plants or parts thereof, or other materials, without the written authorization of the landowner. The Wildlife Resources Commission may designate areas on game lands as either an Archery Zone, Safety Zone; Restricted Firearms Zone, or Restricted Zone.

(1) Archery Zone. On portions of game lands posted as "Archery Zones" hunting is limited to bow and arrow hunting only.

(2) Safety Zone. On portions of game lands posted as "Safety Zones" hunting is prohibited. No person shall hunt or discharge a firearm or bow and arrow within, into, or across a posted safety zone on any game land.

(3) Restricted Firearms Zone. On portions of game lands posted as "Restricted Firearms Zones" the use of centerfire rifles is prohibited.

(4) Restricted Zone. Portions of game lands posted as "Restricted Zones" are closed to all use by the general public, and entry upon such an area for any purpose is prohibited without first having obtained specific written approval of such entry or use from an authorized agent of the Wildlife Resources Commission. Entry shall be authorized only when such entry will not compromise the primary purpose for establishing the Restricted Zone and the person or persons requesting entry can demonstrate a valid need or such person is a contractor or agent of the Commission conducting official business. Examples of "valid need" include issues of access to private property, scientific investigations, surveys, or other access to conduct activities in the public interest.

(5) Establishment of Archery, Restricted Firearms, and Restricted Zones. The Commission shall conduct a public input meeting in the area where the game land is located before establishing any archery, restricted firearms or restricted zone. After the input meeting the public comments shall be presented to an official Commission meeting for final determination.

(b) Littering. No person shall deposit any litter, trash, garbage, or other refuse at any place on any game land except in receptacles provided for disposal of such refuse at designated camping and target-shooting areas. No garbage dumps or sanitary landfills shall be established on any game land by any person, firm, corporation, county or municipality, except as permitted by the landowner.

(c) Possession of Hunting Devices. It is unlawful to possess a firearm or bow and arrow on a game land at any time except during the open hunting seasons or hunting days for game birds or game animals, other than fox, thereon unless said device is cased or not immediately available for use, provided that such devices may be possessed and used by persons participating in field trials on field trial areas and on target shooting areas designated by the landowner, and possessed in designated camping areas for defense of persons and property; and provided further that .22 caliber pistols with barrels not greater than seven and one-half inches in length and shooting only short, long, or long rifle ammunition may be carried as side arms on game lands at any time other than by hunters during the special bow and arrow and muzzle-loading firearms deer hunting seasons and by individuals training dogs during closed season without field trial authorization. This Rule shall not prevent possession or use of a bow and arrow as a licensed special fishing device in those waters where such use is authorized. During the closed firearms seasons on big game (deer, bear, boar, wild turkey), no person shall possess a shotgun shell containing larger than No. 4 shot or any rifle or pistol larger than a .22 caliber rimfire while on a game land, except that shotgun shells containing any size steel or non-toxic shot may be used while waterfowl hunting. Furthermore, only shotguns with any size shot may be possessed during the big game season for turkey. No person shall hunt with or have in possession any shotgun shell containing lead or toxic shot while hunting on any posted waterfowl impoundment on any game land, or while hunting waterfowl on Butner-Falls of Neuse Game Land or New Hope Game Land, except shotgun shells containing lead buckshot may be used while deer hunting.

(d) Game Lands License: Hunting and Trapping

(1) Requirement. Except as provided in Subparagraph (2) of this Paragraph, any person entering upon any game land for the purpose of hunting, trapping, or participating in dog training or field trial activities shall have in his possession a game lands license in addition to the appropriate hunting or trapping licenses.

(2) Exceptions

(A) A person under 16 years of age may hunt on game lands on the license of his parent or legal guardian.

(B) The resident and nonresident sportsman's licenses include game lands use privileges.

(C) Judges and nonresidents participating in field trials under the circumstances set forth in Paragraph (e) of this Rule may do so without the game lands license.

(D) On the game lands described in Rule .0103(e)(2) of this Section the game lands license is required only for hunting doves; all other activities are subject to the control of the landowners.

(e) Field Trials and Training Dogs. A person serving as judge of a field trial which, pursuant to a written request from the sponsoring organization, has been officially authorized in writing and scheduled for occurrence on a game land by an authorized representative of the Wildlife Resources Commission, and any nonresident participating therein may do so without procuring a game lands license, provided such nonresident has in his possession a valid hunting license issued by the state of his residence. Any individual or organization sponsoring a field trial on the Sandhills Field Trial grounds or the Laurinburg Fox Trial facility shall file with the commission's agent an application to use the area and facility accompanied by the facility use fee computed at the rate of one hundred dollars ($100.00) for each scheduled day of the trial. The total facility use fee shall cover the period from 12:00 noon of the day preceding the first scheduled day of the trial to 10:00 a.m. of the day following the last scheduled day of the trial. The facility use fee shall be paid for all intermediate days on which for any reason trials are not run but the building or facilities are used or

occupied. A fee of twenty-five dollars ($25.00) per day shall be charged to sporting, educational, or scouting groups for scheduled events utilizing the club house only. No person or group of persons or any other entity shall enter or use in any manner any of the physical facilities located on the Laurinburg Fox Trial or the Sandhills Field Trial grounds without first having obtained specific written approval of such entry or use from an authorized agent of the Wildlife Resources Commission, and no such entry or use of any such facility shall exceed the scope of or continue beyond the specific approval so obtained. The Sandhills Field Trial facilities shall be used only for field trials scheduled with the approval of the Wildlife Resources Commission. No more than 16 days of field trials may be scheduled for occurrence on the Sandhills facilities during any calendar month, and no more than four days may be scheduled during any calendar week; provided, that a field trial requiring more than four days may be scheduled during one week upon reduction of the maximum number of days allowable during some other week so that the monthly maximum of 16 days is not exceeded. Before October 1 of each year, the North Carolina Field Trial Association or other organization desiring use of the Sandhills facilities between October 22 and November 18 and between December 3 and March 31 shall submit its proposed schedule of such use to the Wildlife Resources Commission for its consideration and approval. The use of the Sandhills Field Trial facilities at any time by individuals for training dogs is prohibited; elsewhere on the Sandhills Game Lands dogs may be trained only on Mondays, Wednesdays and Saturdays from October 1 through April 1. Dogs may not be trained or permitted to run unleashed from April 1 through August 15 on any game land located west of I-95, except when participating in field trials sanctioned by the Wildlife Resources Commission. Additionally, on game lands located west of I-95 where special hunts are scheduled for sportsmen participating in the Disabled Sportsman Program, dogs may not be trained or allowed to run unleashed during legal big game hunting hours on the dates of the special hunts. Field trials shall be authorized when such field trial does not conflict with other planned activities on the Game Land or field trial facilities and the applying organization can demonstrate their experience and expertise in conducting genuine field trial activities. Entry to physical facilities, other than by field trial organizations under permit, shall be granted when they do not conflict with other planned activities previously approved by the Commission and they do not conflict with the primary goals of the agency.

(f) Trapping. Subject to the restrictions contained in 15A NCAC 10B .0110, .0302 and .0303, trapping of furbearing animals is permitted on game lands during the applicable open seasons, except that trapping is prohibited:

(1) on the field trial course of the Sandhills Game Land;
(2) on the Harmon Den and Sherwood bear sanctuaries in Haywood County;
(3) in posted "safety zones" located on any game land;
(4) by the use of multiple sets (with anchors less than 15 feet apart) or bait on the National Forest Lands bounded by the Blue Ridge Parkway on the south, US 276 on the north and east, and NC 215 on the west;
(5) on Cowan's Ford Waterfowl Refuge in Gaston, Lincoln and Mecklenburg Counties;
(6) on the Hunting Creek Swamp Waterfowl Refuge;
(7) on the John's River Waterfowl Refuge in Burke County;
(8) on the Dupont State Forest Game Lands.

On those areas of state-owned land known collectively as the Roanoke River Wetlands controlled trapping is allowed under a permit system.

(g) Use of Weapons. In addition to zone restrictions described in Paragraph (a) no person shall discharge a weapon from a vehicle, or within 150 yards of any Game Lands building or designated Game Lands camping area, except where posted otherwise, or within 150 yards of any residence located on or adjacent to game lands.

(h) Vehicular Traffic. No person shall drive a motorized vehicle on any game land except on those roads constructed, maintained and opened for vehicular travel and those trails posted for vehicular travel, unless such person:

(1) is a participant in scheduled bird dog field trials held on the Sandhills Game Land; or
(2) holds a Disabled Access Program Permit as described in (n) below and is abiding by the rules described in that paragraph.

(i) Camping. No person shall camp on any game land except on an area designated by the landowner for camping. Camping and associated equipment in designated Hunter Camping Areas at Butner-Falls of the Neuse, Caswell, and Sandhills Game Lands is limited to Sept. 1 - Feb. 29 and Apr. 7 - May 14.

(j) Swimming. Swimming is prohibited in the lakes located on the Sandhills Game Land.

(k) Disabled Sportsman Program. In order to qualify for special hunts for disabled sportsmen listed in 15A NCAC 10D .0103 an individual shall have in their possession a Disabled Sportsman permit issued by the Commission. In order to qualify for the permit, the applicant shall provide medical certification of one or more of the following disabilities:

(1) amputation of one or more limbs;
(2) paralysis of one or more limbs;
(3) dysfunction of one or more limbs rendering the person unable to perform the task of grasping and lifting with the hands and arms or unable to walk without mechanical assistance, other than a cane;
(4) disease or injury or defect confining the person to a wheelchair, walker, or crutches; or
(5) legal deafness, meaning the inability to hear or understand oral communications with or without assistance of amplification devices.

Participants in the program, except those qualifying by deafness, may operate vehicles on ungated or open-gated roads normally closed to vehicular traffic on Game Lands owned by the Wildlife Resources Commission. Each program participant may be accompanied by one able-bodied companion provided such companion has in his possession the companion permit issued with the Disabled Sportsman permit.

(l) Release of Animals and Fish. It is unlawful to release pen-raised animals or birds, wild animals or birds, or hatchery-raised fish on game lands without prior written authorization. Also, it is unlawful to move wild fish from one stream to another on game lands without prior written authorization. Written authorization shall only be given when release of such animals is judged by the appropriate management biologist not to be harmful to native wildlife on the area and such releases can be demonstrated to be in the public interest or advancing the programs and goals of the Wildlife Resources Commission.
(m) Non-Highway Licensed Vehicles. It is unlawful to operate motorized land vehicles not licensed for highway use on Game Lands except for designated areas on National Forests. People who have obtained a Disabled Access Program permit are exempt from this rule but must comply with the terms of their permit.
(n) Disabled Access Program. Permits issued under this program shall be based upon medical evidence submitted by the person verifying that a handicap exists that limits physical mobility to the extent that normal utilization of the game lands is not possible without vehicular assistance. Persons meeting this requirement may operate electric wheel chairs, all terrain vehicles, and other passenger vehicles on ungated or open-gated roads otherwise closed to vehicular traffic on game lands owned by the Wildlife Resources Commission and on game lands whose owners have agreed to such use. Those game lands where this special rule applies shall be designated in the game land rules and map book. This special access rule for disabled sportsmen does not permit vehicular access on fields, openings, roads, paths, or trails planted to wildlife food or cover. One able-bodied companion, who is identified by a special card issued to each qualified disabled person, may accompany a disabled person to provide assistance, provided the companion is at all times in visual or verbal contact with the disabled person. The companion may participate in all lawful activities while assisting a disabled person, provided license requirements are met. Any vehicle used by a qualified disabled person for access to game lands under this provision shall prominently display the vehicular access permit issued by the Wildlife Resources Commission in the passenger area of the vehicle. It shall be unlawful for anyone other than those holding a Disabled Access Permit to hunt, during waterfowl season, within 100 yards of a waterfowl blind designated by the Wildlife Resources Commission as a Disabled Sportsman's hunting blind.
(o) Public nudity. Public nudity, including nude sunbathing, is prohibited on any Game Land, including land or water. For the purposes of this Section, "public nudity" means a person's intentional failure to cover with a fully opaque covering the person's genitals, pubic area, anal area, or female breasts below a point from the top of the areola while in a public place.
(p) Definitions: For the purpose of this Subchapter "Permanent Hunting Blind" shall be defined as any structure, that is used for hunter concealment, constructed from man made or natural materials, and that is not disassembled and removed at the end of each day's hunt.

History Note: Authority G.S. 113-134; 113-264; 113-270.3; 113-291.2; 113-291.5; 113-305; 113-306;
Eff. February 1, 1976;
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Amended Eff. July 1, 2000;
Temporary Amendment Eff. August 31, 2001;
Amended Eff. August 1, 2004; August 1, 2002.

15A NCAC 10D .0103 HUNTING ON GAME LANDS

(a) Safety Requirements. No person while hunting on any designated game land shall be under the influence of alcohol or any narcotic drug, or fail to comply with special restrictions enacted by the National Park Service regarding the use of the Blue Ridge Parkway where it adjoins game lands listed in this Rule.
(b) Traffic Requirements. No person shall park a vehicle on game lands in such a manner as to block traffic, gates or otherwise prevent vehicles from using any roadway.
(c) Tree Stands. It is unlawful to erect or to occupy, for the purpose of hunting, any tree stand or platform attached by nails, screws, bolts or wire to a tree on any game land designated herein. This prohibition shall not apply to lag-screw steps or portable stands that are removed after use with no metal left remaining in or attached to the tree.
(d) Time and Manner of Taking. Except where closed to hunting or limited to specific dates by this Chapter, hunting on game lands is permitted during the open season for the game or furbearing species being hunted. On managed waterfowl impoundments, hunters shall not enter the posted impoundment areas earlier than 4:00 a.m. on the permitted hunting dates, and hunting is prohibited after 1:00 p.m. on such hunting dates; decoys shall not be set out prior to 4:00 a.m. and must be removed by 3:00 p.m. each day. No person shall operate any vessel or vehicle powered by an internal combustion engine on a managed waterfowl impoundment. No person shall attempt to obscure the sex or age of any bird or animal taken by severing the head or any other part thereof, or possess any bird or animal which has been so mutilated. No person shall place, or cause to be placed on any game land, salt, grain, fruit, or other foods without prior written authorization of the commission or its agent. A decision to grant or deny authorization shall be made based on the best management practices for the wildlife species in question. No person shall take or attempt to take any game birds or game animals attracted to such foods. No live wild animals or wild birds shall be removed from any game land.
(e) Definitions:
(1) For purposes of this Section "Eastern" season refers to seasons set for those counties or parts of counties listed in 15A NCAC 10B .0203(b)(1)(A); "Central" season refers to seasons set for those counties or parts of counties listed in 15A NCAC 10B .0203(b)(1)(D); "Northwestern" season refers to seasons set for those counties or parts of counties listed in 15A NCAC 10B .0203(b)(1)(B); "Western" season refers to seasons set for those counties or parts of counties listed in 15A NCAC 10B .0203(b)(1)(C).
(2) For purposes of this Section, "Dove Only Area" refers to a Game Land on which doves may be taken and dove hunting is limited to

Mondays, Wednesdays, Saturdays and to Thanksgiving, Christmas and New Year's Days within the federally-announced season.

(3) For purposes of this Section, "Three Days per Week Area" refers to a Game Land on which any game may be taken during the open seasons and hunting is limited to Mondays, Wednesdays, Saturdays and Thanksgiving, Christmas and New Year's Days. These "open days" also apply to either-sex hunting seasons listed under each game land. Raccoon and opossum hunting may continue until 7:00 a.m. on Tuesdays, until 7:00 a.m. on Thursdays, and until midnight on Saturdays.

(4) For purposes of this Section, "Six Days per Week Area" refers to a Game Land on which any game may be taken during the open seasons, except that:

(A) Bears shall not be taken on lands designated and posted as bear sanctuaries;

(B) Wild boar shall not be taken with the use of dogs on such bear sanctuaries, and wild boar may be hunted only during the bow and arrow seasons, the muzzle-loading deer season and the regular gun season on deer on bear sanctuaries;

(C) On game lands open to deer hunting located in or west of the counties of Rockingham, Guilford, Randolph, Montgomery and Anson, the following rules apply to the use of dogs during the regular season for hunting deer with guns:

(i) Except for the counties of Cherokee, Clay, Graham, Jackson, Macon, Madison, Polk, and Swain, game birds may be hunted with dogs.

(ii) In the counties of Cherokee, Clay, Graham, Jackson, Macon, Madison, Polk, and Swain, small game in season may be hunted with dogs on all game lands except on bear sanctuaries.

(iii) Additionally, raccoon and opossum may be hunted when in season on Uwharrie Game Lands.

(D) On bear sanctuaries in and west of Madison, Buncombe, Henderson and Polk counties dogs shall not be trained or allowed to run unleashed between March 1 and the Monday on or nearest October 15.

(f) The listed seasons and restrictions apply in the following game lands:

(1) Alcoa Game Land in Davidson, Davie, Montgomery, Rowan and Stanly counties

(A) Six Days per Week Area

(B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season in that portion in Montgomery county and deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season in those portions in Davie, Davidson, Rowan and Stanly counties.

(2) Alligator River Game Land in Tyrrell County

(A) Six Day per Week Area

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

(C) Bear may only be taken the first three hunting days during the November Bear Season and the first three hunting days during the second week of the December Bear Season.

(3) Angola Bay Game Land in Duplin and Pender counties

(A) Six Days per Week Area

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

(4) Bachlelor Bay Game Land in Bertie and Washington counties

(A) Six Days per Week Area

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

(5) Bertie County Game Land in Bertie County

(A) Six Days per Week Area

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

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

(A) Three Days per Week Area

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

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

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

(E) Wild turkey hunting on the Singletary Lake Tract is by permit only.

(F) Camping is restricted to September 1 through February 28and April 7 through May 14in areas both designated and posted as camping areas.

(7) Brunswick County Game Land in Brunswick County: Permit Only Area

(8) Buckridge Game Land in Tyrrell County.

(A) Three Days per Week Area

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

(C) Bear may only be taken the first three hunting days during the November Bear Season and the first three hunting days of the second week of the December Bear Season.

(9) Bullard and Branch Hunting Preserve Game Lands in Robeson County

(A) Three Days per Week Area

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

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

(A) Six Days per Week Area

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

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

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

(E) Target shooting is prohibited

(F) Wild turkey hunting is by permit only.

(11) Cape Fear Game Land in Pender County

(A) Six Days per Week Area

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

(C) Turkey Hunting is by permit only on that portion known as the Roan Island Tract.

(12) Caswell Game Land in Caswell County

(A) Three Days per Week Area

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

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

(D) Bearded or beardless turkeys may be taken from the Monday on or nearest to January 15 through the following Saturday by permit only.

(E) The area encompassed by the following roads is closed to all quail and woodcock hunting and all bird dog training: From Yanceyville south on NC 62 to the intersection of SR 1746, west on SR1746 to the intersection of SR 1156, south on SR 1156 to the intersection of SR 1783, east on SR 1783 to the intersection of NC 62, north on NC 62 to the intersection of SR 1736, east on SR 1736 to the intersection of SR 1730, east on SR 1730 to NC 86, north on NC 86 to NC 62.

(13) Caswell Farm Game Land in Lenoir County-Dove-Only Area

(A) Dove hunting is by permit only from opening day through either the first Saturday or Labor Day which ever comes last of the first segment of dove season.

(14) Catawba Game Land in Catawba County

(A) Three Days per Week Area

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

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

(15) Chatham Game Land in Chatham and Harnett counties

(A) Six Days per Week Area

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

(C) Wild turkey hunting is by permit only.

(D) Horseback riding, including all equine species, is allowed only during June, July, and August and on Sundays during the remainder of the year except during open turkey and deer seasons.

(16) Cherokee Game Land in Ashe County

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

(17) Chowan Game Land in Chowan County
(A) Six Days per Week Area
(B) Deer of either sex may be taken all the days of the applicable Deer With Visible Antlers Season.

(18) Chowan Swamp Game Land in Gates County
(A) Six Days per Week Area
(B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.

(19) Cold Mountain Game Land in Haywood County
(A) Six Days per Week Area
(B) Horseback riding is prohibited except on designated trails May 16 through August 31 and all horseback riding is prohibited from September 1 through May 15. This Rule includes all equine species.

(20) Columbus County Game Land in Columbus County.
(A) Three Days per Week Area
(B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.

(21) Croatan Game Land in Carteret, Craven and Jones counties
(A) Six Days per Week Area
(B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
(C) Waterfowl may be taken only on Mondays, Wednesdays, Saturdays; on Thanksgiving, Christmas and New Year's Days; and on the opening and closing days of the applicable waterfowl seasons.

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

(23) Dare Game Land in Dare County
(A) Six Days per Week Area
(B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.
(C) No hunting on posted parts of bombing range.
(D) The use and training of dogs is prohibited from March 1 through June 30.

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

(25) Dysartsville Game Land in McDowell and Rutherford counties
(A) Six Days per Week Area
(B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.

(26) Elk Knob Game Land in Ashe and Watauga counties
(A) Six Days per Week Area
(B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.

(27) Gardner-Webb Game Land in Cleveland County
(A) Six Days per Week Area
(B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.

(28) Goose Creek Game Land in Beaufort and Pamlico counties
(A) Six Days per Week Area
(B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
(C) On posted waterfowl impoundments waterfowl may be taken only on Mondays, Wednesdays, Saturdays; on Thanksgiving, Christmas and New Year's Days; and on the opening and closing days of the duck hunting seasons. After November 1, on the Pamlico Point, Campbell Creek, Hunting Creek and Spring Creek impoundments, a special permit is required for hunting on opening and

closing days of the duck seasons, Saturdays of the duck seasons, and on Thanksgiving and New Year's day.

(D) Camping is restricted to Sep. 1-Feb 28 and April 7- May 14 in areas both designated and posted as camping areas.

(29) Green River Game Land in Henderson, and Polk counties

(A) Six Days per Week Area

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

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

(30) Green Swamp Game Land in Brunswick County

(A) Six Days per Week Area

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

(31) Gull Rock Game Land in Hyde County

(A) Six Days per Week Area

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

(C) On the posted waterfowl impoundments of Gull Rock Game Land hunting of any species of wildlife is limited to Mondays, Wednesdays, Saturdays; Thanksgiving, Christmas, and New Year's Days; and the opening and closing days of the applicable waterfowl seasons.

(D) Camping is restricted to Sep. 1-Feb 28 and April 7- May 14 in areas both designated and posted as camping areas.

(F) Bear may only be taken the first three hunting days during the November Bear Season and the first three hunting days during the second week of the December Bear Season on the Long Shoal River Tract of Gull Rock Game Land.

(32) Holly Shelter Game Land in Pender County

(A) Three Days per Week Area

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

(C) Waterfowl may be taken on the opening and closing days of the applicable waterfowl seasons regardless of the day of the week on which they occur.

(D) Camping is restricted to Sep. 1-Feb 28 and April 7- May 14 in areas both designated and posted as camping areas.

(33) Hyco Game land in Person County

(A) Six Days per Week Area

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

(34) J. Morgan Futch Game Land in Tyrrell County, Permit Only Area.

(35) Jordan Game Land in Chatham, Durham, Orange and Wake counties

(A) Six Days per Week Area

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

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

(D) Horseback riding, including all equine species, is prohibited except on those areas posted as American Tobacco Trail.

(E) Target shooting is prohibited.

(F) Wild turkey hunting is by permit only.

(36) Lantern Acres Game Land in Tyrrell and Washington counties

(A) Six Days per Week Area

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

(C) Wild turkey hunting is by permit only.

(37) Lee Game Land in Lee County

(A) Six Days per Week Area

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

(38) Linwood Game Land in Davidson County

(A) Six Days per Week Area

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

(39) Mayo Game Land in Person County

(A) Six Days per Week Area

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

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

(40) Nantahala Game Land in Cherokee, Clay, Graham, Jackson, Macon, Swain and Transylvania counties

(A) Six Days per Week Area

(B) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season in that portion located in Transylvania County.

(C) Raccoon and opossum may be hunted only from sunset Friday until sunrise on Saturday and from sunset until 12:00 midnight on Saturday on Fires Creek Bear Sanctuary in Clay County and in that part of Cherokee County north of US 64 and NC 294, east of Persimmon Creek and Hiwassee Lake, south of Hiwassee Lake and west of Nottely River; in the same part of Cherokee County dog training is prohibited from March 1 to the Monday on or nearest October 15.

(41) Neuse River Game Land in Craven County

(A) Six Days per Week Area

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

(42) New Lake Game Land in Hyde County

(A) Six Days per Week Area

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

(43) North River Game Land in Currituck and Camden counties

(A) Six Days per Week Area

(B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season except in that part in Camden County south of US 158 where the season is the last six open days of the applicable Deer With Visible Antlers Season.

(C) The boundary of the Game Land shall extend five yards from the edge of the marsh or shoreline.

(D) Wild turkey hunting is by permit only on that portion in Camden County.

(44) Northwest River Marsh Game Land in Currituck County

(A) Six Days per Week Area

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

(C) The boundary of the Game Land shall extend five yards from the edge of the marsh or shoreline.

(45) Pee Dee River Game Land in Anson, Montgomery, Richmond and Stanly counties

(A) Six Days per Week Area

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

(C) Use of centerfire rifles prohibited in that portion in Anson and Richmond counties North of US-74.

(46) Perkins Game Land in Davie County

(A) Three Days per Week Area

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

(47) Pisgah Game Land in Avery, Buncombe, Burke, Caldwell, Haywood, Henderson, Madison, McDowell, Mitchell, Transylvania, Watauga and Yancey counties

(A) Six Days per Week Area

(B) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season except on that portion in Avery and Yancey counties and that portion in Haywood County encompassed by US 276 on the north, US 74 on the west, and the Blue Ridge Parkway on the south and east.

(C) Harmon Den and Sherwood Bear Sanctuaries in Haywood County are closed to hunting raccoon, opossum and wildcat. Training raccoon and opossum dogs is prohibited from March 1 to the Monday on or nearest October 15 in that part of Madison County north of the French Broad River, south of US 25-70 and west of SR 1319.

(48) Pungo River Game Land in Hyde County

(A) Six Days per Week Area

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

(49) Roanoke River Wetlands in Bertie, Halifax and Martin counties

(A) Hunting is by Permit only.

(B) Vehicles are prohibited on roads or trails except those operated on official Commission business or by permit holders.

(C) Camping is restricted to Sep. 1-Feb 28 and April 7- May 14 in areas both

designated and posted as camping areas.

(50) Roanoke Sound Marshes Game Land in Dare County-Hunting is by permit only.

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

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

(53) Sandhills Game Land in Hoke, Moore, Richmond and Scotland counties
- (A) Three Days per Week Area
- (B) The Deer With Visible Antlers season for deer consists of the open hunting days from the second Saturday before Thanksgiving through the third Saturday after Thanksgiving except on the field trial grounds where the gun season is open days from the second Monday before Thanksgiving through the Saturday following Thanksgiving. Deer may be taken with bow and arrow on all open hunting days during the bow and arrow season, as well as during the regular gun season. Deer may be taken with muzzle-loading firearms on open days beginning the third Saturday before Thanksgiving through the following Wednesday, and during the Deer With Visible Antlers season.
- (C) Gun either-sex deer hunting is by permit only. For participants in the Disabled Sportsman Program, either-sex deer hunting with any legal weapon is permitted on all areas the Thursday and Friday prior to the muzzle-loading season described in the preceding paragraph. Except for the deer, opossum, rabbit, and raccoon seasons specifically indicated for the field trial grounds in this Rule and Disabled Sportsman Program hunts, the field trial grounds are closed to all hunting during the period October 22 to March 31.
- (D) In addition to the regular hunting days, waterfowl may be taken on the opening and closing days of the applicable waterfowl seasons
- (E) Wild turkey hunting is by permit only.
- (F) Dove hunting on the field trial grounds is prohibited from the second Sunday in September through the remainder of the hunting season.
- (G) Opossum and raccoon hunting on the field trial grounds is allowed on open days from the second Monday before Thanksgiving through the Saturday following Thanksgiving and rabbit season on the field trial grounds is from the Saturday preceding Thanksgiving through the Saturday following Thanksgiving.
- (H) The following areas are closed to all quail and woodcock hunting and dog training on birds: In Richmond County: that part east of US 1; In Scotland County: that part east of SR 1001 and west of US 15/501.

(54) Sauratown Plantation Game Land in Stokes County
- (A) Three Days per Week Area
- (B) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season.

(55) Scuppernong Game Land in Tyrrell and Washington counties
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.

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

(57) Shocco Creek Game Land in Franklin and Warren counties
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.

(58) South Mountains Game Land in Burke, Cleveland, McDowell and Rutherford counties
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.
- (C) Horseback riding is prohibited except on designated trails May 16 through

August 31 and all horseback riding is prohibited from September 1 through May 15. This Rule includes all equine species.

(D) That part of South Mountains Game Land in Cleveland, McDowell, and Rutherford counties is closed to all grouse, quail and woodcock hunting and all bird dog training.

(59) Suggs Mill Pond Game Land in Bladen County;
- (A) Hunting is by Permit only.
- (B) Camping is restricted to Sep. 1-Feb 28 and April 7- May 14 in areas both designated and posted as camping areas.

(60) Sutton Lake Game Land in New Hanover County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.

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

(62) Thurmond Chatham Game Land in Wilkes County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season. Participants of the Disabled Sportsman Program may also take either-sex deer with bow and arrow on the Saturday prior to Northwestern bow and arrow season.
- (C) Horseback riding is prohibited except on designated trails May 16 through August 31 and all horseback riding is prohibited from September 1 through May 15. This Rule includes all equine species. Participants must obtain a game lands license prior to horseback riding on this area.

(63) Toxaway Game Land in Transylvania County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season. Participants of the Disabled Sportsman Program may also take deer of either sex with any legal weapon on the Saturday prior to the first segment of the Western bow and arrow season.
- (C) Horseback riding is prohibited except on designated trails May 16 through August 31 and all horseback riding is prohibited from September 1 through May 15. This Rule includes all equine species.

(64) Uwharrie Game Land in Davidson, Montgomery and Randolph counties
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the first six open days and the last open six days of the applicable Deer With Visible Antlers Season.

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

(66) Van Swamp Game Land in Beaufort and Washington counties
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.

(67) White Oak River Impoundment Game Land in Onslow County
- (A) Three Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (C) Waterfowl may be taken only on Mondays, Wednesdays, Saturdays; on Thanksgiving, Christmas and New Year's Days; and on the opening and closing days of the statewide waterfowl hunting seasons. After October 1, a special permit is required for hunting waterfowl on opening and closing days of the duck seasons, Saturdays of the duck seasons, and on Thanksgiving and New Year's day.

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

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

Bertie, Halifax and Martin counties--Roanoke River Wetlands

Bertie County--Roanoke River National Wildlife Refuge
Bladen County—Suggs Mill Pond Game Lands
Burke County—John's River Waterfowl Refuge
Dare County--Dare Game Lands (Those parts of bombing range posted against hunting)
Dare County--Roanoke Sound Marshes Game Lands
Davie--Hunting Creek Swamp Waterfowl Refuge
Gaston, Lincoln and Mecklenburg counties--Cowan's Ford Waterfowl Refuge
Henderson and Transylvania counties--Dupont State Forest Game Lands

History Note: Authority G.S. 113-134; 113-264; 113-291.2; 113-291.5; 113-305;
Eff. February 1, 1976;
Temporary Amendment Eff. October 3, 1991;
Amended Eff. July 1, 1998; July 1, 1997; July 1, 1996; September 1, 1995; July 1, 1995; September 1, 1994; July 1, 1994;
Temporary Amendment Eff. October 1, 1999; July 1, 1999; Amended Eff. July 1, 2000;
Temporary Amendment Eff. July 1, 2002; July 1, 2001; Amended Eff. August 1, 2002 (approved by RRC on 06/21/01 and 04/18/02);
Temporary Amendment Eff: June 1, 2003; Amended Eff. August 1, 2004.

15A NCAC 10D .0104 FISHING ON GAME LANDS

(a) Generally. Except as otherwise indicated herein, fishing on game lands which are open to fishing shall be in accordance with the statewide rules. All game lands are open to public fishing except restocked ponds when posted against fishing, Hunting Creek Swamp Waterfowl Refuge, Grogan Creek in Transylvania County, and in the case of private ponds where fishing may be prohibited by the owners thereof. No trotline or set-hook or any net, trap, gig, bow and arrow or other special fishing device of a type mentioned in 15A NCAC 10C .0404(b)(c)(d) and (f) may be used in any impounded waters located entirely on game lands. Bow and arrow may be used to take nongame fishes in impounded waters located entirely on gamelands with the exception of those waters mentioned in 15A NCAC 10C .0404(a). Blue crabs taken by hook and line (other than set-hooks) in designated waterfowl impoundments located on game lands must have a minimum carapace width of five inches (point to point) and the daily possession limit is 50 per person and 100 per vessel.

(b) Designated Public Mountain Trout Waters

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

(2) Location. All waters located on the game lands listed in this Subparagraph are designated public mountain trout waters except Cherokee Lake, Grogan Creek, and Big Laurel Creek downstream from the US 25-70 bridge to the French Broad River, Pigeon River downstream of Waterville Reservoir to the Tennessee state line, Nolichucky River, Mill Ridge Pond Cheoah River downstream of Santeetlah Reservoir, Little River from Hooker Falls downstream to the Dupont State Forest boundary, Lake Imaging, Lake Dense, Lake Alfred, Lake Julia, Fawn Lake, the portion of West Fork Pigeon River below Lake Logan and North Fork Catawba River downstream of the mouth of Armstrong Creek.

Dupont State Forest Game Lands in Henderson and Transylvania counties
Three Top Mountain Game Land, Ashe County
Nantahala National Forest Game Lands in the Counties of Cherokee, Clay, Graham, Jackson,
Macon, Swain and Transylvania
Pisgah National Forest Game Lands in the Counties of Avery, Buncombe, Burke, Caldwell,
Haywood, Henderson, Madison, McDowell, Mitchell, Transylvania and Yancey
Thurmond Chatham Game Land in Wilkes County
Toxaway Game Land in Transylvania County
South Mountains Game Land in the counties of Cleveland and Rutherford
Cold Mountain Game Land in Haywood County

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

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

History Note: Authority G.S. 113-134; 113-264; 113-272; 113-292; 113-305;
Eff. February 1, 1976;
Amended Eff. July 1, 2000; July 1, 1998; July 1, 1996; July 1, 1995; July 1, 1994; July 1, 1993; July 1, 1992;
Temporary Amendment Eff. July 1, 2002; July 1, 2001;
Amended Eff. August 1, 2002 (approved by RRC on 06/21/01 and 04/18/02);
Temporary Amendment Eff. June 1, 2003;
Amended Eff. August 1, 2004.

TITLE 21 - OCCUPATIONAL LICENSING BOARDS

CHAPTER 29 - LOCKSMITH LICENSING BOARD

21 NCAC 29 .0205 FAILURE TO ATTEND SCHEDULED EXAMINATION SESSION

Applicants who fail to appear for a scheduled examination session shall forfeit their examination fee and must submit a new registration form along with the required fee for a different session. The Board shall waive the additional examination fee if it finds that the applicant's failure to attend as scheduled was the result of a hardship or emergency.

History Note: Authority G.S. 74F-6; 74F-7;
Temporary Adoption Eff. November 13, 2002;
Eff. August 1, 2004.

21 NCAC 29 .0403 COMPLETION OF EXAMINATION

An application for licensure shall not be considered by the Board until the results of the applicant's Board-administered examination are determined and available to the Board.

History Note: Authority G.S. 74F-6; 74F-7;
Temporary Adoption Eff. August 13, 2002;
Eff. August 1, 2004.

21 NCAC 29 .0405 EXEMPTION FROM EXAMINATION

Any applicant who has achieved at least a Certified Registered Locksmith (CRL) designation from the Associated Locksmiths of America (ALOA), upon submitting proof to the Board of such qualification, shall be deemed to have passed the competency portion of the qualifying examination administered by the Board. Such applicants are required to pass the portion of the examination testing understanding of the Statute and the obligations of licensed locksmiths.

History Note: Authority G.S. 74F-6;
Temporary Adoption Eff. August 13, 2002;
Eff. August 1, 2004.

21 NCAC 29 .0501 OBLIGATION OF LICENSED LOCKSMITHS

By applying for and accepting a license issued by the Board, all licensees become obligated to comply with the provisions of this section. Failure to comply shall result in disciplinary action by the Board.

History Note: Authority G.S. 74F-6;
Temporary Adoption Eff. August 13, 2002;
Eff. August 1, 2004.

This Section contains information for the meeting of the Rules Review Commission on Thursday, August 21, 2003, 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 by Friday, August 15, 2003 to the RRC staff, the agency, and the individual Commissioners. 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	**Appointed by House**
Jim R. Funderburke - 1st Vice Chair	Jennie J. Hayman - Chairman
David Twiddy - 2nd Vice Chair	Graham Bell
Thomas Hilliard, III	Dr. Walter Futch
Robert Saunders	Dr. John Tart

RULES REVIEW COMMISSION MEETING DATES

August 21, 2003 September 18, 2003
October 16, 2003

RULES REVIEW COMMISSION
Commission Review/Administrative Rules
Log of Filings (Log #200)
June 23, 2003 through July 21, 2003

CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION		
Definitions	12 NCAC 09G .0102	Amend
Citizenship	12 NCAC 09G .0202	Amend
Age	12 NCAC 09G .0203	Amend
Education	12 NCAC 09G .0204	Amend
Physical and Mental Standards	12 NCAC 09G .0205	Amend
Moral Character	12 NCAC 09G .0206	Amend
Certification of Correctional Officers Probation/	12 NCAC 09G .0301	Amend
Notification of Charges/Convictions	12 NCAC 09G .0302	Amend
Probationary Certification	12 NCAC 09G .0303	Amend
General Certification	12 NCAC 09G .0304	Amend
Retention of Records of Certifications	12 NCAC 09G .0306	Amend
Specialized Instructor Certification	12 NCAC 09G .0310	Amend
Comprehensive Written Exam-Specialized Instructor	12 NCAC 09G .0315	Amend
Basic Training for Correctional Officers	12 NCAC 09G .0411	Amend
Corrections Specialized Instructor Training-Firearm	12 NCAC 09G .0412	Amend
Basic Training for Probation/Parole Officers-Survey	12 NCAC 09G .0413	Amend
Corrections Specialized Instructor Training-Firearm	12 NCAC 09G .0415	Amend
Corrections Specialized Instructor-unarmed self	12 NCAC 09G .0416	Amend
Suspension Revocation or denial of certification	12 NCAC 09G .0504	Amend
General Provisions	12 NCAC 09G .0602	Amend
DENR/ENVIRONMENTAL MANAGEMENT COMMISSION		
Catawba River Basin Protection and Maintenance	15A NCAC 02B .0243	Adopt
Mitigation Program for Protection and Maintenance	15A NCAC 02B .0244	Adopt
DENR		
Stormwater Discharges	15A NCAC 02H .0126	Amend
State RPE Stormwater Management Program	15A NCAC 02H .1014	Amend
DENR/ENVIRONMENTAL MANAGEMENT COMMISSION		
Issuance of Declaratory Ruling	15A NCAC 02I .0601	Adopt
Procedure for Submission of Petition	15A NCAC 02I .0602	Adopt
Disposition of Request	15A NCAC 02I .0603	Adopt
TRANSPORTATION, DEPARTMENT OF/DIVISION OF MOTOR VEHICLES		
Purpose	19 NCAC 02E .1201	Adopt
Definitions	19 NCAC 02E .1202	Adopt

Participation	19 NCAC 02E .1203	Adopt
Responsibilities of Participants	19 NCAC 02E .1204	Adopt
Termination of the Agreement	19 NCAC 02E .1205	Adopt
STATE BOARDS/BOARD OF DENTAL EXAMINERS		
General Anesthesia and Sedation Definitions	21 NCAC 16Q .0101	Amend
Credentials and Permits	21 NCAC 16Q .0201	Amend
Parenteral Conscious Sedation Credentials and Perm	21 NCAC 16Q .0301	Amend
Clinical Requirements and Equipment	21 NCAC 16Q .0302	Amend
Temporary Approval Prior to Site Inspection	21 NCAC 16Q .0303	Amend
Enteral Conscious Sedation Credentials and Permit	21 NCAC 16Q .0401	Adopt
Permit Requirements, Clinical Provisions and Equip	21 NCAC 16Q .0402	Adopt
Temporary Approval Prior to Site Inspection	21 NCAC 16Q .0403	Adopt
Annual Renewal Required	21 NCAC 16Q .0501	Amend
Inspection Authorized	21 NCAC 16Q .0503	Amend
Failure to Report	21 NCAC 16Q .0602	Amend

AGENDA
RULES REVIEW COMMISSION
August 21, 2003

I. Call to Order and Opening Remarks

II. Review of minutes of last meeting

III. Follow Up Matters

A. Department of Administration – 1 NCAC 30H .0102; .0201-.0205; .0301; .0303; .0305; .0404; .0701; .0801; .1001 (DeLuca)

B. Department of Administration – 1 NCAC 35 .0101; .0103; .0201-.0205; .0301; .0302; .0304-.0306; .0308; .0309 (DeLuca)

C. Department of Agriculture – 2 NCAC 52B .0204 (Bryan)

D. DHHS/Social Services – 10A NCAC 71U .0206; .0213 (Bryan)

E. Criminal Justice Education & Training Standards Commission – 12 NCAC 9C .0401 (Bryan)

F. Criminal Justice Education & Training Standards Commission – 12 NCAC 9E .0103 (Bryan)

G. Wildlife Resources Commission – 15A NCAC 10C .0211 (Bryan)

H. Locksmith Licensing Board - 21 NCAC 29 .0102; .0202-.0204; .0401; .0402; .0502-.0504 (Bryan)

- Cultural Resources Commission – 7 NCAC 4S .0104 (DeLuca)
- Board of Elections – 8 NCAC Chapter 1-12 (DeLuca) To be considered at October Meeting
- Board of Pharmacy – 21 NCAC 46 .1812 (DeLuca)
- Board of Pharmacy – 21 NCAC 46 .2502 (DeLuca)

IV. Review of rules (Log Report #200)

V. Commission Business

VI. Next meeting: September 18, 2003

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

AGENCY	CASE NUMBER	ALJ	DATE OF DECISION	PUBLISHED DECISION REGISTER CITATION
ALCOHOLIC BEVERAGE CONTROL COMMISSION				
Ki Young Kim v. Ann H. Johnson, ABC Commission in Raleigh	03 ABC 0177	Mann	06/17/03	
AGRICULTURE				
Phoenix Ski Corp. v. Dept. of Ag. & Cons. Svcs. & Dept. of Admin. & Carolina Cable Lift, LLC.	02 DAG 0560	Lewis	06/30/03	18:03 NCR 217
CRIME CONTROL AND PUBLIC SAFETY				
Myrtle J. Price v. Crime Victims Comp. Comm, Dept. of Crime Control & Public Safety, Victims Compensation Services Division	03 CPS 0173	Wade	06/27/03	
HEALTH AND HUMAN SERVICES				
A list of Child Support Decisions may be obtained by accessing the OAH Website: www.ncoah.com/decisions.				
Robbie Cummings v. DHHS	02 DHR 0815	Conner	06/09/03	
Linda Ann Tyson v. Div. of Facility Services, Health Care Personnel Registry Section	02 DHR 1103	Lassiter	05/12/03	
Ricky Roberts for Angela Roberts v. DHHS, Div. of Med. Assistance	02 DHR 1138	Lassiter	04/25/03	18:01 NCR 52
Wanda J. Vanhook v. DHHS, Div. of Med. Assistance	02 DHR 1459	Gray	04/24/03	
Elaine B Shelton v. DHHS, Div. of Facility Services	02 DHR 1489	Conner	05/28/03	
Jones Hill Day Care, Ola M Jones v. (CACPP) Child & Adult Care Food Program	02 DHR 1601	Lassiter	05/16/03	
Michelle's Lullaby Day Care, Jerri Howell v. Div. of Child Development June Locklear	02 DHR 1672	Wade	06/10/03	
Joanne F Ranta v. DHHS, Div. of Facility Services	02 DHR 1752	Mann	05/15/03	
Gregory Tabron v. DHHS, Div. of Facility Services	02 DHR 1789	Elkins	05/16/03	
Doretha Leonard v. DHHS, Div. of Medical Assistance	02 DHR 2183	Lassiter	06/13/03	
Veronica Walker, Ph.D v. DHHS, Div. of Facility Services	02 DHR 2246	Chess	06/20/03	
Latrese Sherell Harris v. Nurse Aide Registry	02 DHR 2290	Chess	06/16/03	
James E Hill v. DHHS, Div. of Facility Services	03 DHR 0028	Wade	05/30/03	
Duffie G Hunt v. Medicaid	03 DHR 0085	Conner	06/06/03	
Sarah P Jordan v. DHHS, Div. of Facility Services	03 DHR 0155	Gray	06/18/03	
Martha Banks (ID #72000027) v. Div. of Child Dev., Child Abuse/Neglect Dept., Perquimans Co. DSS	03 DHR 0168	Wade	06/12/03	
Nakeisha Shawon Leak v. DHHS, Office of Legal Affairs	03 DHR 0308	Wade	06/25/03	
Krystal Hyatt v. Broughton Hospital	03 DHR 0316	Chess	07/07/03	
Cahterine Williams v. DHHS	03 DHR 0320	Mann	07/17/03	
Lisa Mendez v. Health Care Personnel Registry	03 DHR 0351	Gary	06/27/03	
Yolanda Covington v. RHA Health Svcs, DHS	03 DHR 0360	Lassiter	07/17/03	
Constance Basnight v. Pasquotank County DSS	03 DHR 0385	Lassiter	05/29/03	
Dorothy Ann Bell v. DHHS, Div. of Facility Services	03 DHR 0437	Morrison	06/30/03	
Edmund Bond Small v. DHHS, Walter B Jones, ADATC	03 DHR 0445	Lassiter	07/21/03	
Andrea Ford v DHHS, Div. of Facility Services	03 DHR 0609	Morrison	06/04/03	
Wake Radiology Services, LLC, Wake Radiology Consultants, P.A., Raleigh MR Imaging Center Ltd Partnership & Wake Radiology Diagnostic Imaging, Inc. v. DHHS, Div. of Facility Svcs., CON Sec., Robert J. Fitzgerald, Dir, Lee B Hoffman, Chief of CON Sec. & Mobile Imaging	03 DHR 0676	Gray	07/07/03	

of North Carolina, LLC				
Samantha Jacobs v. DHHS, Div. of Facility Services	03 DHR 0697	Lassiter	06/19/03	
Jane McMillan v. DHHS, Div. of Facility Services	03 DHR 0698	Lassiter	06/19/03	
Brian Keith Heilig v. DHHS, Div. of Medical Assistance	03 DHR 0779	Mann	07/17/03	
JUSTICE				
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6. N. C. Gen. Stat. § 135-40.6(3) further provides that skilled nursing facility care is only allowed if the services are medically required to be given on an inpatient basis because of the covered individual's need for medically necessary skilled nursing care on a continuing daily basis and only so long as the patient remains under the active care of an attending doctor and the patient requires continual hospital confinement without the care and treatment of the skilled nursing facility.

7. Advance approval by the Claims Administrator is a condition precedent for the receipt of benefits for skilled nursing facility care. See N. C. Gen. Stat. 135-40.6(3)c.

8. The State Health Plan offers, as a separate and distinct benefit, long term care benefits for a separate premium. See N.C. Gen. Stat. 135-41 through 135-41.3.

9. There are express exclusions from Plan coverage set out in the General Statutes. Under N.C. Gen. Stat. § 135-40.7 (2), charges for care in a nursing home, adult care home, convalescent home, or in any other facility or location for custodial or for rest cures are not covered expenses nor will benefits be payable for such services.

10. In addition, under N.C. Gen. Stat. § 135-40.7 (22), charges for services covered by the long-term care benefits provisions of Chapter 135 are not covered expenses nor will benefits be payable for such services.

11. Among other things, Board medical policy IN0600 makes it a condition of skilled nursing facility benefits that the patient must require continuous skilled nursing services daily. See Policy IN0600 4.a.i.

12. Board Policy IN0600, provides, among other things, that the following services are <u>not</u> considered skilled :

i. Assistance with activities of daily living, to include bathing, assistance with walking, dressing, feeding, preparation of special diets, eating, continence, toileting, transferring, skin care, enemas, and taking patient to the doctor's office.
ii. Administration of routine oral medications, eye drops, and ointments
iii. Routine care of indwelling bladder catheters
iv. Routine care of an established colostomy/ileostomy
v. Routine care of incontinent patient
vi. Established gastrostomy tube feedings
vii. Established oxygen therapy
viii. Care of decubitus ulcers that are not infected or extensive (Stage I/II)
ix. Passive range of motion exercises
x. Care of the confused or disoriented patient who is no longer receiving active treatment but is under an established medication regimen, if required
xi. Observation and monitoring of patients receiving routine care for the above listed nonskilled services
xii. Superficial oropharyngeal or nasotracheal suctioning
xiii. Tracheostomy site care for established tracheostomy
xiv. Routine measurement of vital signs

See Policy IN0600 4 (c).

13. Among other things, Board medical policy IN0600 provides in its "Limitations and Exclusions" section that custodial care is not covered.

14. Among other things, Board Medical Policy IN0250 provides that inpatient admissions which are custodial in nature are not covered by the Plan. See Policy IN0250 "Coverage" section.

15. Board Medical Policy IN0250 on custodial care provides, in part:

> Definition: Custodial care is care designed essentially to assist an individual in his activities of daily living, with or without routine nursing care and the supervisory care of a doctor. While some skilled services are provided, the patient does not require continuing skilled service 24 hours daily. The individual is not under specific medical, surgical, or psychiatric treatment to reduce a physical or mental disability to the extent necessary to enable the patient to live outside an institution providing care, nor is there reasonable likelihood that the disability will be reduced to that level even with treatment.

FINDINGS OF FACT

From the official documents in the file, the sworn testimony of the witnesses, the exhibits and other competent and admissible evidence, it is found as a fact that:

Parties

1. Petitioner was a member of the North Carolina Teachers' and State Employees' Comprehensive Major Medical Plan ("State Health Plan"). Petitioner is now deceased. Petitioner Alma Triplett has been represented in this proceeding by her guardian and personal representative, Max Triplett, but for convenience, the term "Petitioner" as used herein shall refer to Alma Triplett.

2. At the pertinent time period, Petitioner was 76 years old and was an inpatient at a care facility called Autumn Care in Marion, North Carolina.

3. Respondent North Carolina Teachers' and State Employees' Comprehensive Major Medical Plan is the state agency responsible for administering the health care benefits provided for state employees and retired state employees by the North Carolina General Assembly.

4. Blue Cross Blue Shield of North Carolina is the Claims Administrator for the State Health Plan.

Procedural History

5. By one or more letters, Petitioner's care facility requested prior approval of benefits for skilled nursing facility care for Petitioner for the period from March 1, 2000 through June 30, 2001.

6. The Plan's Claims Administrator, Blue Cross Blue Shield of North Carolina, reviewed the materials submitted on Petitioner's behalf and denied Petitioner's request for skilled nursing benefits for the period from March 1, 2000 through June 30, 2001. The denial was based on the determination that Petitioner did not require a continuous daily skilled level of care.

7. Petitioner appealed the above denial through the two levels of review available through the Claims Administrator.

8. On August 27, 2001, the Claims Administrator denied Petitioner's final appeal to the Claims Administrator for the period at issue. The August 27, 2001 appeal determination from the Claims Administrator informed Petitioner of her right to an appeal to the Board of Trustees of the North Carolina Teachers' and State Employees' Comprehensive Major Medical Plan.

9. Petitioner timely appealed the decisions of the Claims Administrator to the Board of Trustees of the North Carolina Teachers' and State Employees' Comprehensive Major Medical Plan.

10. On November 21, 2001, Harold Wright, Appeals Coordinator, wrote to Petitioner to acknowledge receipt of Petitioner's appeal to the Board of Trustees.

11. On December 19, 2001, the Board of Trustees and the Executive Administrator of the State Health Plan denied approval of Petitioner's claim for skilled nursing facility benefits for the period from March 1, 2000 through June 30, 2001. The Board of Trustees upheld the denial of approval of these services as a non-covered benefit.

12. The December 19, 2001 written decision of the Board of Trustees informed Petitioner of her right to appeal its decision by filing a petition with the Office of Administrative Hearings.

13. Petitioner timely filed this petition for a contested case hearing with the Office of Administrative Hearings.

14. This contested case hearing is an appeal of the Board of Trustees' December 19, 2001 decision, and the services at issue in this proceeding are the services rendered during the period of March 1, 2000 through June 30, 2001, the time period which was before the Board of Trustees.

Petitioner's Health and Treatment Status

15. At the pertinent time period, Petitioner had diagnoses of organic brain syndrome, seizure disorder, and diabetes. She received her nutrition through a PEG tube (also known as a gastrostomy tube). Petitioner was non weight bearing and was not able to ambulate. She was dependent on others for all her activities of daily living such as grooming, dressing, toilet care and eating. She also had a history of an unhealed wound on her elbow.

16. At the pertinent time period, Petitioner was not participating in rehabilitation services such as physical therapy, occupational therapy or speech therapy to reduce her level of disability to the extent necessary to enable Petitioner to live outside an institution providing care. Petitioner did not have a reasonable likelihood of improvement to the point of being able to live outside the facility.

17. Of all Petitioner's care needs, Petitioner argues that the following qualified as skilled nursing care during the period from March 1, 2000 through June 30, 2001: (1) monitoring her blood sugar level, (2) medicine administration (including insulin administration), (3) PEG tube feedings and (4) wound care. Each of these matters will be discussed in the following paragraphs.

18. Blood sugar monitoring. An accucheck device is used to check Petitioner's blood sugar once per week. Devices like this are sold over-the-counter and can be read by a person who is not trained as a nurse. The infrequency of blood testing and the non-skilled nature of the blood monitoring means that Petitioner's blood sugar monitoring services do not qualify as skilled services. See Policy IN0600 4 (a) iii.

19. Medication administration. With respect to oral medications or tube-administered medications, Board of Trustees medical Policy IN0600, provides that such services are not considered skilled. See Policy IN0600 4(c) ii. With respect to Petitioner's insulin injections, such injections, when needed, were given subcutaneously. Petitioner was not receiving any other injections at the pertinent period. Board medical policy IN0600, paragraph 4(h), establishes that subcutaneous injections do not require skilled care. Petitioner's medicine administration services do not qualify as skilled services.

20. PEG tube feedings. Petitioner's tube has been characterized as an established PEG tube. Under Board of Trustees medical policy number IN0600, section 4(c) vi., established gastrostomy tube feedings are not considered skilled services. Petitioner's gastrostomy tube (PEG tube) feedings do not qualify as skilled services.

21. Wound care. The treatment of the wound on Petitioner's elbow is by application of ointment and change of dressing. The non-skilled nature of these procedures do not qualify as skilled services. See Policy IN0600 4 (m) which provides that changing dressings for a chronic condition is not skilled care.

22. Eugenie Komives, M.D. testified for Respondent. She is employed as the full time Medical Director for the State Health Plan. She is a 1985 graduate of Harvard Medical School and has actively practiced medicine in the fields of Family Medicine in which she treated patients of all age groups, and Health Care Utilization Management, which involves the management of health care resources.

23. Health Care Utilization Management is part of Dr. Komives' job as Medical Director for the State Health Plan.

24. Doctor Komives was found by the Administrative Law Judge to be qualified as an expert witness in the fields of Family Medicine and Health Care Utilization Management.

25. Dr. Komives was involved in the request for approval of skilled nursing facility benefits for Petitioner as early as January 31, 2001. On that date, she recommended that the Claims Administrator deny benefits requested on behalf of Petitioner since Petitioner's care did not require continuous daily skilled care.

26. The standard practice for Utilization Review decisions is to review what is documented in the patient's medical record. In her review of Petitioner's case, Dr. Komives reviewed all the papers submitted. Dr. Komives reviewed Petitioner's entire file several times during the course of Petitioner's appeals at the Claims Administrator level and Board of Trustees' level. She also reviewed Petitioner's entire file prior to this hearing.

27. Doctor Komives gave expert opinion testimony at this hearing that Petitioner's care does not meet the statutory and Board policy tests for coverage of skilled nursing' facility benefits. In Dr. Komives' opinion, Petitioner does not require daily skilled services under the statutory and Board policy tests. Dr. Komives testified that her opinion was based, among other things, on the fact Petitioner was no longer getting active physical, occupational, or speech therapy; that Petitioner was not receiving intramuscular or intravenous medicines; that Petitioner's blood sugar level was relatively stable; that her gastrostomy tube was established; and that her wound care was for a chronic condition and consisted of dressing changes and ointment administration. In Doctor Komives' opinion, the care Petitioner received at the pertinent time was primarily to assist Petitioner with her activities of daily living, or consisted of services which are not skilled level services under Board policies.

28. By reason of Dr. Komives' job as Medical Director for the State Health Plan, she is familiar with Board Policies IN0600 and IN0250.

29. Petitioner's expert nurse witness has significantly less knowledge of Board Policies IN0600 or IN0250, compared to Dr. Komives.

30. The Administrative Law Judge finds as a fact that the care Petitioner received at the pertinent time was primarily to assist Petitioner with her activities of daily living, or consisted of services which are not skilled level services under Board policies. Petitioner does not require continuing skilled service 24 hours daily. Petitioner was not participating in rehabilitation services such as physical therapy, occupational therapy or speech therapy to reduce her level of disability to the extent necessary to enable Petitioner to live outside an institution providing care.

31. The Administrative Law Judge finds as a fact that Petitioner's care at the pertinent time falls within the definition of noncovered "custodial care" set out in Policy IN0250.

32. Petitioner did not purchase long-term benefit coverage.

33. The Administrative Law Judge finds that for at least one prior period, the State Health Plan initially objected to providing coverage for Petitioner's skilled nursing services for the same reasons upon which it now relies.

34. The Administrative Law Judge finds that while skilled nursing benefits had been covered by the Plan in the past, that the approval of such benefits was accompanied by language noting that the approval applied only to the services and period being approved and did not apply to other services or future time periods.

35. The Administrative Law Judge finds that there is no estoppel against the State Health Plan by reason of the prior approval of skilled nursing benefits for different time periods

CONCLUSIONS OF LAW

From the foregoing Findings of Fact, the undersigned Administrative Law Judge concludes as a matter of law that:

1. The Office of Administrative Hearings has jurisdiction in this matter.

2. The services that are at issue in this proceeding are services rendered to Petitioner from March 1, 2000 to June 30, 2001. The appeal to the Board of Trustees was an appeal of the earlier decisions of the Claims Administrator, and both the Claims Administrator and the Board of Trustees were only deciding on Petitioner's eligibility for benefits for the period from March 1, 2000 to June 30, 2001.

3. The Burden of proof is on Petitioner to show that the services at issue are within the health insurance coverage provided by Respondent. It is appropriate to allocate the burden of proof to Petitioner given the legal principle that the interpretation of a statute given by the administrative agency charged with carrying it out is entitled to great weight. See Frye Regional Medical Center, Inc. v. Hunt, 350 N.C. 39, 510 S.E. 2d 159 (1999).

4. The legal standards applicable to this case are found within the governing statutes and policies of the State Health Plan, specifically N. C. Gen. Stat. 135-40.6(3); N. C. Gen. Stat. 135-40.7(2); N. C. Gen. Stat. 135-40.7(22); N. C. Gen. Stat. 135-41.1 and Board of Trustees Policies IN0600 and IN0250.

5. The services for which Petitioner seeks payment in this proceeding do not qualify as covered skilled nursing facility services under the General Statutes and Board policies applicable to this proceeding. Although Petitioner is receiving care which is appropriate, her care is not covered under the Plan.

6. The language of N. C. Gen. Stat. 135-40.6(3) shows that the skilled nursing facility benefits under the State Health Plan are only provided to allow a patient to recuperate from a very recent hospitalization. The statute provides that benefits are provided only when the patient would continue to be hospitalized in the absence of the skilled nursing care. At the pertinent time, Petitioner did not require continual hospital confinement without the care and treatment of the skilled nursing facility, and did not qualify for benefits under that statute.

7. Board medical policy IN0600, section 4 (a) i., makes it a condition of skilled nursing facility benefits that the patient must require continuous skilled nursing services daily. Petitioner's care at the pertinent time does not meet this test.

8. The evidence shows that the care Petitioner receives is excluded from coverage under N.C. Gen. Stat. § 135-40.7 (2), which excludes charges for care in a nursing home.

9. The evidence shows that the care which Petitioner received would be covered by the long term care benefits found in N. C. Gen. Stat. 135-41.1, and no benefits may be paid for such care except through long term care coverage under the exclusion found at N. C. Gen. Stat. 135-40.7 (22).

10. The evidence shows that the care Petitioner is receiving is "custodial care" under Board Policy IN0250 which is not covered by the health care benefits of the State Health Plan.

11. The Administrative Law Judge finds that under the language of the approvals previously granted and under the general rule of law that there is no estoppel against the State, see State v. Rich Food Services, et. al., 139 N.C. App. 691, 535 S.E.2d 84 (2000) and Henderson v. Gill, 229 N.C. 313, 49 S.E. 2d 754 (1948), there is no estoppel against the State Health Plan in this case by reason of its prior approval of Petitioner's skilled nursing benefits for different time periods.

DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, it is hereby recommended that the decision of Respondent Board of Trustees of the North Carolina Teachers' and State Employees' Comprehensive Major Medical Plan to deny Petitioner's reimbursement claim for skilled nursing care for the period of March 1, 2000 through June 30, 2001 is AFFIRMED.

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, N.C. 27699-6714, in accordance with North Carolina General Statute 150B-36(b).

NOTICE

The decision of the Administrative Law Judge in this contested case will be reviewed by the agency making the final decision according to the standards found in G.S. 150B036(b)(b1) and (b2). The agency making the final decision is required to give each party an opportunity to file exceptions to the decision of the Administrative Law Judge and to present written argument to those in the agency who will make the final decision. G.S. 150B-36(a).

The agency that will make the final decision in this contested case is the North Carolina Teachers' and State Employees' Comprehensive Major Medical Plan.

This 15th day of July, 2003.

_____

Beecher R. Gray
Administrative Law Judge