

NORTH CAROLINA

IN THIS ISSUE



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NORTH CAROLINA ADMINISTRATIVE CODE CLASSIFICATION SYSTEM

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

TITLE/MAJOR DIVISIONS OF THE NORTH CAROLINA ADMINISTRATIVE CODE

TITLE	DEPARTMENT	LICENSING BOARDS	CHAPTER
1	Administration	Acupuncture	1
2	Agriculture	Architecture	2
3	Auditor	Athletic Trainer Examiners	3
4	Commerce	Auctioneers	4
5	Correction	Barber Examiners	6
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7	Cultural Resources	Chiropractic Examiners	10
8	Elections	Employee Assistance Professionals	11
9	Governor	General Contractors	12
10A	Health and Human Services	Cosmetic Art Examiners	14
11	Insurance	Dental Examiners	16
12	Justice	Dietetics/Nutrition	17
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NORTH CAROLINA REGISTER
 Publication Schedule for July 2003 – December 2003

FILING DEADLINES			NOTICE OF TEXT		PERMANENT RULE			TEMPORARY RULES
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)	270 th 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
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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
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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
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EXPLANATION OF THE PUBLICATION SCHEDULE

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

GENERAL

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

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

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.

EXECUTIVE ORDER NO. 52

Food Safety and Security Task Force

SECTION 1. Establishment. The North Carolina Food Safety and Security Task Force is hereby established.

SECTION 2. Purpose. The purpose of the Task Force is to coordinate interagency and public-private efforts to enhance protection of the State's food supply system and its agricultural industry.

SECTION 3. Membership. The Task Force shall consist of the following members, or their designees:

- (1) The Commissioner of Agriculture.
- (2) The Secretary of Environment and Natural Resources.
- (3) The Secretary of Health and Human Services.
- (4) The Secretary of Game Control and Public Safety.
- (5) The Attorney General.
- (6) The Chancellor of North Carolina State University.
- (7) The Chancellor of North Carolina Agricultural and Technical State University.
- (8) Representatives of other government agencies, private industry and other public members invited to participate by the Task Force. The Commissioner of Agriculture and the Secretary of Health and Human Services shall serve as co-chairs of the Task Force.

SECTION 4. Duties. The North Carolina Food Safety and Security Task Force shall:

- (1) Assess the vulnerability of the State's food system to criminal and terrorist acts and make recommendations for:
 - a. Improved safety and security of the food supply system.
 - b. Terrorism threat reduction measures.
 - c. Improvement of food safety and security mitigation and response plans.
 - d. Training for key stakeholders in the State's food supply system.
- (2) Recommend legislation needed to improve the ability of State departments and agencies to protect the safety and security of the State's food supply and the agricultural industry base, including legislation to protect sensitive and proprietary information of the State's food supply system, safety and security vulnerability information, and security plans, that, if compromised, would heighten the exposure of the State's food supply system to criminal or terrorist acts.
- (3) Recommend budget, staffing and resource adjustments necessary to improve the capability of State departments and agencies to protect the safety and security of the State's food supply system and agricultural industrial base.

SECTION 5. The Food Safety and Security Task Force shall prepare a preliminary report no later than June 1, 2004 and shall prepare a final report no later than 15 December 2004. These reports shall include any recommendations, including proposed legislation, for changes in laws, rules, and programs that the Task Force determines to be appropriate to enhance food safety and security in the State.

SECTION 6. The Office of State Budget and Management shall assist the Task Force in its efforts to obtain State and Federal funding necessary to carry out its duties.

This order shall be effective immediately.

Done in the Capital City of Raleigh this the 12th day of September, 2003.

Michael F. Easley
Governor

ATTEST:

Elaine F. Marshall
Secretary of State

EXECUTIVE ORDER NO. 53

EMERGENCY RELIEF FOR DAMAGE CAUSED BY HURRICANE ISABEL

WHEREAS, I have proclaimed that a state of emergency and threatened disaster exists in North Carolina due to Hurricane Isabel thereby justifying an exemption from 49 C.F.R. 390-397 (Federal Motor Carrier Safety Regulations); and

WHEREAS, under the provisions of N.C.G.S. 166A-4 and 166A-6(c)(3), the Governor, with the concurrence of the Council of State, may regulate and control the flow of vehicular traffic and the operation of transportation services; and

WHEREAS, with the concurrence of the Council of State, I have found that if vehicles bearing food, equipment, and supplies to relieve our hurricane-stricken counties must adhere to the registration requirements of N.C.G.S. 20-86.1 and 20-382, fuel tax requirements of N.C.G.S. 105-449.47, and the size and weight requirements of N.C.G.S. 20-116 and N.C.G.S. 20-118 citizens in those counties will likely suffer losses and, therefore, invoke an imminent threat of widespread damage within the meaning of N.C.G.S. 166A-4.

NOW THEREFORE, pursuant to the authority vested in me as Governor by the Constitution and the laws of the State of North Carolina, and with the concurrence of the Council of State IT IS ORDERED:

EXECUTIVE ORDERS

Section 1. The North Carolina State Highway Patrol shall waive certain size and weight restrictions and penalties therefore arising under N.C.G.S. 20-116 and N.C.G.S. 20-118, and certain registration requirements and penalties therefore arising under N.C.G.S. 20-86.1, 20-382, 105-449.47, 105-449.49 for vehicles transporting food, equipment, and supplies along our highways to North Carolina's hurricane-stricken counties.

Section 2. Notwithstanding the waivers set forth above, size and weight restrictions and penalties have not been waived under the following conditions:

- (A) When the vehicle weight exceeds the maximum gross weight criteria established by the manufacturer (GVWR) or 90,000 pounds gross weight, whichever is less.
- (B) When the tandem axle weight exceeds 42,000 pounds and the single axle weight exceeds 22,000 pounds.
- (C) When a vehicle/vehicle combination exceeds 12 feet in width and a total overall vehicle combination length of 75 feet from bumper to bumper.

Section 3. Vehicles referenced under section 1 shall be exempt from the following registration requirements:

- (A) The \$50.00 fee listed in N.C.G.S. 105-449.49 for a temporary trip permit is waived for the vehicles described above. No quarterly fuel tax is required because the exception in N.C.G.S. 105-449.45(a)(1) applies.
- (B) The registration requirement under N.C.G.S. 20-382 concerning intrastate and interstate for-hire authority is waived; however, vehicles shall maintain the required limits of insurance.
- (C) Non-Participants in North Carolina's International Registration Plan will be permitted into North Carolina in accordance with the spirit of the exemptions identified by this Executive Order.

Section 4. The size and weight exemption for vehicles will be allowed on all routes designated by the North Carolina Department of Transportation, except those routes

designated as light traffic roads under N.C.G.S. 20-118. This order shall not be in effect on bridges posted pursuant to N.C.G.S. 136-72.

Section 5. The rules and regulations limiting the hours operators of commercial motor vehicles may drive are suspended for a duration of the motor carrier's or driver's direct assistance in providing emergency relief or 30 days from the date of the initial declaration of the emergency, whichever is less.

Section 6. The waiver of regulations under 49 C.F.R. 390-397 (Federal Motor Carrier Safety Regulations) does not apply to the CDL and Insurance Requirements. This waiver shall be in effect for 30 days or for the duration of the emergency, whichever is less.

Section 7. The North Carolina State Highway Patrol shall enforce the conditions set forth in Sections 1, 2 and 3 in a manner, which would best accomplish the implementation of this rule without endangering motorists in North Carolina.

Section 8. Upon request, exempted vehicles will be required to produce identification sufficient to establish that its load will be used for emergency relief efforts associated with Hurricane Isabel.

This Executive Order is effective immediately and shall remain in effect for thirty (30) days.

Done in the Capitol City of Raleigh, North Carolina this 16th day of September, 2003.

Michael F. Easley
Governor

ATTEST:

Elaine F. Marshall
Secretary of State

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

U.S. Department of Justice

Civil Rights Division

JDR:JR:TGL:nj:jdh
DJ 166-012-3
2003-2388

*Voting Section – NWB.
950 Pennsylvania Ave., N.W., Room 7254
Washington, D.C. 20530*

September 12, 2003

Mr. Gary O. Bartlett
Executive Director, State Board of Elections
P.O. Box 27255
Raleigh, NC 27611-7256

Dear Mr. Bartlett:

This refers to the revision to the List Maintenance Procedures of the Administration of Voter Registration Manual, including, among other things, the list maintenance schedule, the procedures concerning active/inactive voters, and removal procedures; the implementation of absentee ballot requests using the Statewide Election Information Management System (SEIMS); and the temporary rule prohibiting municipal financing of election campaigns for the State of North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submission on July 16, 2003.

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

Sincerely,

Joseph D. Rich
Chief, Voting Section

STATE OF NORTH CAROLINA

BEFORE THE
TAX REVIEW BOARD

COUNTY OF WAKE

IN THE MATTER OF:

The Proposed Assessment of Sales and Use)
Tax for the period February 1, 1998 through)
December 31, 2001, by the Secretary of)
Revenue of North Carolina)

ADMINISTRATIVE DECISION
Number: 407

vs.)

Paul Tyler IV Enterprises, Incorporated)

This Matter was heard before the Regular Tax Review Board (hereinafter "Board") in the City of Raleigh, Wake County, North Carolina, on Thursday, January 30, 2003, upon a petition filed by Paul Tyler IV Enterprises, Inc. (hereafter "Taxpayer") for administrative review of the Final Decision of the Assistant Secretary of Revenue entered on June 24, 2002, sustaining the sales and use tax assessment imposed against the Taxpayer for the period of February 1, 1998 through December 31, 2001.

Chairman Richard H. Moore, State Treasurer, presided over the hearing with ex officio member Jo Anne Sanford, Chair, Utilities Commission and duly appointed member, Noel L. Allen, Attorney at Law participating.

Attorney Matthew E. Bates appeared at the hearing on behalf of the Taxpayer. George W. Boylan, Special Deputy Attorney General, appeared at the hearing on behalf of the Secretary of Revenue.

STATEMENT OF CASE

The Taxpayer is a corporation that operates an adult nightclub making retail sales of alcoholic beverages. On February 9, 2001, an auditor with the Department completed an examination of the Taxpayer's records. The examining auditor, in comparing the Taxpayer's purchase records to taxable sales reported, determined that the Taxpayer was substantially understating and underpaying its sales tax liability on monthly sales and use tax returns. Since the Taxpayer did not keep accurate records of sales of beer and alcoholic beverages, the Department of Revenue prepared an assessment of additional tax, penalty and interest due based upon the best information available.

Pursuant to G.S. 105-241.1, the Department mailed a Notice of Sales and Use Tax Assessment to the Taxpayer on February 21, 2001, assessing tax, penalty and interest in the total amount of \$20,276.45. The Taxpayer, through counsel, objected to the assessment in a letter dated March 7, 2001, and timely requested a hearing before the Secretary of Revenue. On June 24, 2002, the Assistant Secretary issued his final decision that sustained the assessment of tax, penalty and interest against the Taxpayer for the period at issue.

Pursuant to N.C. Gen. Stat. § 105-241.2, Taxpayer's attorney timely filed a notice of intent and petition for administrative review of the Assistant Secretary's Final Decision with the Tax Review Board. As stated in the Petition, the Taxpayer's objection to the assessment is based upon the method used by the Department of Revenue to determine Taxpayer's taxable retail sales of alcoholic beverages. The Taxpayer does not contest the deficiency attributed to beer sales.

ISSUE

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

Is the assessment correct and properly proposed against the Taxpayer and based on the best information available?

EVIDENCE

The Tax Review Board reviewed the following evidence presented by the parties at the hearing before the Assistant Secretary of Revenue:

IN ADDITION

1. Copy of memorandum dated May 16, 2001, from Secretary of Revenue to the Assistant Secretary of Administrative Hearings, designated Exhibit E-1.
2. Copy of face sheet of audit report and auditor's comments dated February 9, 2001, designated Exhibit E-2.
3. Copy of the Notice Sales and Use Tax Assessment dated February 21, 2001, designated Exhibit E-3.
4. Copy of letter dated March 7, 2001, with attachments from the Taxpayer's attorney to the Sales and Use Tax Division, designated Exhibit E-4.
5. Copy of letter dated April 2, 2001, from the Sales and Use Tax Division to the Taxpayer's attorney, designated Exhibit E-5.
6. Copy of letter dated April 6, 2001, from the Taxpayer's attorney to the Sales and Use Tax Division, designated Exhibit E-6.
7. Copy of letter dated April 25, 2001, from the Sales and Use Tax Division to the Taxpayer's attorney, designated Exhibit E-7.
8. Copy of letter dated June 4, 2001, from the Sales and Use Tax Division to the Taxpayer's attorney, designated Exhibit E-8.
9. Copy of letter dated June 7, 2001, from the Taxpayer's attorney to the Sales and Use Tax Division, designated Exhibit E-9.
10. Copy of letter dated June 20, 2001, from the Sales and Use Tax Division to the Taxpayer's attorney, designated Exhibit E-10.
11. Copy of letter dated June 29, 2001, from the Taxpayer's attorney to the Sales and Use Tax Division and attachments, designated Exhibit E-11.
12. Copy of letter dated July 13, 2001, from the Sales and Use Tax Division to the Taxpayer's attorney, designated Exhibit E-12.
13. Copy of letter dated July 17, 2001, from the Taxpayer's attorney to the Sales and Use Tax Division and attached affidavit from an employee of the Taxpayer dated July 30, 2001, designated Exhibit E-13.
14. Copy of letter dated August 21, 2001, from the Sales and Use Tax Division to the Taxpayer's attorney, designated Exhibit E-14.
15. Copy of letter dated September 12, 2001, from the Taxpayer's attorney to the Revenue Field Auditor and attached power of attorney dated September 10, 2001, designated Exhibit E-15.
16. Copy of letter dated September 25, 2001, from the Taxpayer's attorney to the Revenue Field Auditor, designated Exhibit E-16.
17. Copy of letter dated November 9, 2001, from the Sales and Use Tax Division to the Taxpayer's attorney, designated Exhibit E-17.
18. Copy of letter dated November 20, 2001, from the Taxpayer's attorney to the Sales and Use Tax Division, designated Exhibit E-18.
19. Copy of letter dated November 28, 2001, from the Sales and Use Tax Division to the Taxpayer's attorney, designated Exhibit E-19.
20. Copy of Appendix 5B from an Internal Revenue Service publication, designated Exhibit E-20.
21. Copy of Schedule E-2 of the Sales and Use Tax audit report titled Additional Taxable Sales Analysis, designated Exhibit E-21.
22. Copy of letter dated January 18, 2002, from the Assistant Secretary of Revenue to the Taxpayer's attorney, designated Exhibit E-22.
23. Copy of letter dated February 12, 2002, from the Assistant Secretary of Revenue to the Taxpayer's attorney, designated Exhibit E-23.
24. Copy of Brief for Tax Hearing, prepared by the Sales and Use Tax Division, designated Exhibit E-24.

IN ADDITION

25. Copy of affidavit from Jeffrey L. Brock, designated Exhibit TP-1.
26. Copy of brief for tax hearing presented by the Taxpayer's attorney, designated Exhibit TP-2.
27. Copy of affidavit from Shannon O'Melia, designated Exhibit TP-3.

FINDINGS OF FACTS

The Board reviewed and considered the following findings of fact entered by the Assistant Secretary in his decision regarding this matter:

1. The Taxpayer was engaged in business making retail sales of alcoholic beverages during the audit period.
2. Guidelines issued by the Internal Revenue Service provide that the 750 milliliter bottles purchased by the Taxpayer should yield between 16.9 and 33.9 drinks per bottle of liquor. The Department used a figure of 20 drinks per bottle to compute the sales tax liability on sales of mixed drinks.
3. To determine the Taxpayer's retail sales of liquor, the total number of bottles of liquor purchased, based on records maintained by the North Carolina Alcoholic Beverage Commission, were multiplied by the number of drinks per bottle, times the average sales price of mixed drinks. The Taxpayer testified that mixed drinks sold for between \$4.75 and \$6.50 each. The Department used a figure of \$5.00 per mixed drink to compute the sales tax liability.
4. To determine the Taxpayer's retail sales of beer, the total numbers of bottles of beer sold, based on the Taxpayer's purchase records, were multiplied by the average sales price per bottle of beer. The Taxpayer testified that beer sold for between \$2.75 and \$3.75 a bottle. A figure of \$3.00 was used as the average sales price per bottle in computing the tax liability.
5. The Department assessed sales tax on the Taxpayer's additional sales of beer and mixed drinks.
6. The Notice of Sales and Use Tax Assessment was mailed to the Taxpayer on February 21, 2001.
7. The Taxpayer protested the assessment and timely requested a hearing before the Secretary of Revenue.

CONCLUSIONS OF LAW

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

1. The Taxpayer was a retailer and at all material times engaged in the business of making retail sales of beer and mixed drinks subject to sales tax.
2. The Taxpayer did not keep suitable records of sales of tangible personal property as required in G.S. 105-164.22.
3. The assessment was based on the best information available.
4. A proposed assessment is presumed to be correct.
5. The burden is upon a taxpayer who takes exception to an assessment to overcome that presumption.
6. The evidence presented by the Taxpayer was not sufficient to overcome the presumption of correctness.
7. The Notice of Proposed Assessment for the period of February 1, 1998 through December 31, 2001 was issued pursuant to G.S. 105-241.1.

DECISION

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

IN ADDITION

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

Assessments of tax are presumed to be correct and the taxpayer has the burden to show that the assessment is not proper. Upon a review of the record, the Board concludes that the Taxpayer failed to furnish sufficient evidence to show that the assessment is not proper. Thus, the Board having conducted an administrative hearing in this matter, and having considered the petition, the briefs, the whole record and the Assistant Secretary's final decision, concludes that the findings of fact made by the Assistant Secretary were supported by competent evidence in the record; that based upon the findings of fact, the Assistant Secretary's conclusions of law were fully supported by the findings of fact; therefore the decision of the Assistant Secretary should be confirmed.

WHEREFORE, THE BOARD ORDERS that the Assistant Secretary's final decision be confirmed in every respect.

Made and entered into the 23rd day of April 2003.

TAX REVIEW BOARD

Signature _____

Richard H. Moore, Chairman
State Treasurer

Signature _____

Jo Anne Sanford, Member
Chair, Utilities Commission

Signature _____

Noel L. Allen, Appointed Member

STATE OF NORTH CAROLINA

BEFORE THE
TAX REVIEW BOARD

COUNTY OF WAKE

IN THE MATTER OF:

The Refund Claim for Corporate Income)
and Franchise Taxes for the years ending)
December 31, 1996 through December 31,)
1998 filed by)
)
The Betaseron Foundation, Inc.)
vs.)
N.C. Department of Revenue)

ADMINISTRATIVE DECISION

Number: 408

This Matter was heard before the Regular Tax Review Board (hereinafter "Board") in the City of Raleigh, Wake County, North Carolina, on Thursday, January 30, 2003, upon a petition filed by The Betaseron Foundation, Inc. (hereafter "Taxpayer") for administrative review of the Final Decision of the Assistant Secretary of Revenue entered on December 21, 2001, sustaining the North Carolina Department of Revenue's denial of Taxpayer's refund claims for corporate income and franchise taxes for taxable years ending December 31, 1996 through December 31, 1998.

Jo Anne Sanford, *ex officio* member and Chair of the Utilities Commission presided over the hearing with duly appointed member, Noel L. Allen, Attorney at Law participating. Since Chairman Richard H. Moore, State Treasurer, was not present at the hearing on January 30, 2003, the Board reviewed this matter on April 22, 2003 and rendered the following decision.

Attorney Joseph D. Joyner, Jr., appeared at the hearing on behalf of the Taxpayer. Kay Linn Miller Hobart, Assistant Attorney General, appeared at the hearing on behalf of the Secretary of Revenue.

STATEMENT OF CASE AND FACTS

The Taxpayer was formed in Delaware as a non-stock, nonprofit corporation for the purpose of providing Betaseron medication to individuals afflicted by multiple sclerosis who otherwise could not afford the cost of the medication since they were uninsured or underinsured. Taxpayer has a funding agreement with the manufacturer of the Betaseron drug, Berlex Laboratories, whereby Berlex provides financial assistance to the Taxpayer. Under the terms of this agreement, the Taxpayer agreed to take on the administrative responsibilities of the two programs run by Berlex in exchange for Berlex's agreement to make the Betaseron drug available to the patients in the two programs.

Taxpayer has no tangible personal property, no real property and no employees. All operations and administrative functions, including the obligations under the agreement, are carried out by Lash Group, a third party healthcare consulting firm, that is located in Charlotte, NC. Because of a dispensing agreement entered into by Taxpayer with Healthcare Delivery Systems, Inc., Taxpayer never takes possession of the drugs sold to the patients and does not incur an expense for cost of goods sold. Rather, Taxpayer incurs an expense relating to the dispensing agreement with Lash Group.

On July 7, 2000, the Taxpayer filed amended North Carolina Franchise and Corporate Income Tax Returns for the taxable years 1996 through 1998 and claimed refunds of franchise and corporate income taxes paid and interest thereon on the basis that Taxpayer was a charitable organization exempt from tax under G.S. 105-125(a)(1) and 105-130.11(a)(3). The Department of Revenue denied Taxpayer's request for refunds and the Taxpayer requested a hearing before the Assistant Secretary. On December 21, 2001, the Assistant Secretary issued his decision, which sustained the Department of Revenue's denial of Taxpayer's refund claims.

ISSUES

The issues considered by the Board on review of this matter are stated as follows:

1. Whether Taxpayer qualifies for exemption from North Carolina franchise and corporate income tax under the provisions of G.S. 105-125(a)(1) and 105-130.11(a)(3)?
2. Whether the taxpayer is "doing business" in North Carolina so as to be subject to the North Carolina corporate franchise and income tax imposed under G.S. 105-122 and G.S. 105-130.3?
3. Whether Taxpayer is entitled to apportion its income to North Carolina and other states as a multistate corporation pursuant to G.S. 105-130.4(b)?

EVIDENCE

The Tax Review Board reviewed the following evidence presented by the parties at the hearing before the Assistant Secretary of Revenue:

1. Taxpayer's North Carolina Franchise and Corporate Income Tax Return for the 1996 Tax Year, designated as D-1.
2. Taxpayer's North Carolina Franchise and Corporate Income Tax Return for the 1997 Tax Year, designated as D-2.
3. Taxpayer's North Carolina Franchise and Corporate Income Tax Return for the 1998 Tax Year, designated as D-3.
4. Taxpayer's Amended North Carolina Franchise and Corporate Income Tax Return for the 1996 Tax Year, designated as D-4.
5. Taxpayer's Amended North Carolina Franchise and Corporate Income Tax Return for the 1997 Tax Year, designated as D-5.
6. Taxpayer's Amended North Carolina Franchise and Corporate Income Tax Return for the 1998 Tax Year, designated as D-6.
7. Informational Brochures on Taxpayer, designated as D-7.
8. Copy of a Letter dated July 10, 2000 from Eugene H. Schlaman to William H. Daniel, (former) Director, Corporate, Excise & Insurance Tax Division, designated as D-8.
9. Copy of a Letter dated July 25, 2000 from Eugene H. Schlaman to Bobby L. Weaver, Jr., designated as D-9.
10. Copy of a Memorandum dated July 25, 2000 from John W. Sadoff, Jr., John A. Norman and Lisa Krawczyk, designated as D-10.
11. Copy of a Letter dated August 21, 2000 from Bobby L. Weaver, Jr. to Eugene H. Schlaman, designated as D-11.
12. Copy of a Letter dated December 7, 2000 from Eugene H. Schlaman to Bobby L. Weaver, Jr. and William H. Daniel, designated as D-12.
13. Copy of a Letter dated January 5, 2001 from Bobby L. Weaver, Jr. to Eugene H. Schlaman, designated as D-13.
14. Copy of a Letter dated April 13, 2001 from Eugene H. Schlaman to William H. Daniel, designated as D-14.
15. Copy of a Letter dated April 24, 2001 from Bobby L. Weaver, Jr. to Eugene H. Schlaman, designated as D-15.
16. Hearing Information Sheet from Taxpayer dated May 22, 2001, designated as D-16.
17. Copy of a Letter dated May 25, 2001 from Bobby L. Weaver, Jr. to Eugene H. Schlaman, designated as D-17.
18. Copy of a Letter dated June 7, 2001 from Eugene J. Cella to Eugene H. Schlaman, designated as D-18.
19. Copy of a Letter dated June 18, 2001 from Bobby L. Weaver, Jr. to Eugene H. Schlaman, designated as D-19.
20. Copy of a Letter dated August 16, 2001 with Attachments #1 through #15 from Eugene H. Schlaman to Bobby L. Weaver, Jr., designated as D-20.
21. The Betaseron Foundation, Inc.'s Unsigned Board Meeting Minutes dated June 17, 1996. (Attachment # 1 in Eugene H. Schlaman's Letter dated August 16, 2001), designated as D-21.
22. Taxpayer's Unsigned Board Meeting Minutes dated July 17, 1996. (Attachment # 2 in Eugene H. Schlaman's Letter dated August 16, 2001), designated as D-22.
23. Taxpayer's Unsigned Board Meeting Minutes dated September 13, 1996. (Attachment # 3 in Eugene H. Schlaman's Letter dated August 16, 2001), designated as D-23.
24. 1999 Report of Independent Public Accountants. (Attachment # 4 in Eugene H. Schlaman's Letter dated August 16, 2001), designated as D-24.
25. 1998 Report of Independent Public Accountants. (Attachment # 5 in Eugene H. Schlaman's Letter dated August 16, 2001), designated as D-25.
26. 1997 Report of Independent Public Accountants. (Attachment # 6 in Eugene H. Schlaman's Letter dated August 16, 2001), designated as D-26.

27. Taxpayer's Program Overview. (Attachment # 7 in Eugene H. Schlaman's Letter dated August 16, 2001), designated as D-27.
28. Taxpayer's Agreement for "Underinsured" Patients. (Attachment # 8 in Eugene H. Schlaman's Letter dated August 16, 2001), designated as D-28.
29. Taxpayer Funding Agreement. (Attachment # 9 in Eugene H. Schlaman's Letter dated August 16, 2001), designated as D-29.
30. Administrative and Technical Services Agreement between the Lash Group, Inc. and Taxpayer. (Attachment # 10 in Eugene H. Schlaman's Letter dated August 16, 2001), designated as D-30.
31. Distribution System Agreement between Healthcare Delivery Systems, Inc. and Taxpayer. (Attachment # 11 in Eugene H. Schlaman's Letter dated August 16, 2001), designated as D-31.
32. Certificate of Incorporation of The Howard Apple Foundation, Inc. (Attachment # 12 in Eugene H. Schlaman's Letter dated August 16, 2001), designated as D-32.
33. Bylaws of The Howard Apple Foundation, Inc. (Attachment # 13 in Eugene H. Schlaman's Letter dated August 16, 2001), designated as D-33.
34. Certificate of Amendment for Taxpayer. (Attachment # 14 in Eugene H. Schlaman's Letter dated August 16, 2001), designated as D-34.
35. Bylaws of Taxpayer. (Attachment # 15 in Eugene H. Schlaman's Letter dated August 16, 2001), designated as D-35.
36. North Carolina Department of Revenue Hearing Brief Submitted by the Corporate, Excise and Insurance Tax Division to Eugene J. Cella, Assistant Secretary of Revenue, on August 27, 2001, designated as D-36.

Submitted by Taxpayer:

1. Taxpayer's Brief for Tax Administrative Hearing dated August 27, 2001 with Exhibits A through P, designated as T-1.
2. Exhibit A - Original Articles of Incorporation, designated as T-2.
3. Exhibit B - Original Bylaws, designated as T-3.
4. Exhibit C - Amended Articles of Incorporation, designated as T-4.
5. Exhibit D - Amended Bylaws, designated as T-5.
6. Exhibit E - Board of Directors Meeting Minutes - Taxpayer (June 17, 1996; July 17, 1996; September 13, 1996), designated as T-6.
7. Exhibit F - Program Overview - Taxpayer, designated as T-7.
8. Exhibit G - Diagram of Payment Procedures, designated as T-8.
9. Exhibit H - Program Adoption Agreement between Taxpayer and Berlex Laboratories, Inc, designated as T-9.
10. Exhibit I - Funding Agreement between Taxpayer and Berlex Laboratories, Inc, designated as T-10.
11. Exhibit J - Administrative and Technical Services Agreement between Taxpayer and The Lash Group, Inc, designated as T-11.
12. Exhibit K - Distribution System Agreement between Taxpayer and Healthcare Delivery Systems, Inc, designated as T-12.
13. Exhibit L - Process Design Document for Taxpayer, designated as T-13.
14. Exhibit M - Report of Independent Public Accountants - April 2, 1999, designated as T-14.

15. Exhibit N - Report of Independent Public Accountants - April 1, 1998, designated as T-15.
16. Exhibit O - Report of Independent Public Accountants - March 27, 1997, designated as T-16.
17. Exhibit P - Department of Revenue letter dated August 21, 2000 denying the refund claims, designated as T-17.
18. Copy of a Letter dated September 24, 2001 from Eugene H. Schlaman to Eugene J. Cella, designated as T-18.

FINDINGS OF FACTS

The Board reviewed and considered the following findings of fact entered by the Assistant Secretary in his decision regarding this matter:

1. Taxpayer, formerly known as The Howard Apple Foundation, Inc., was organized in the State of Delaware on September 28, 1994 as a non-stock, not-for-profit, sub-chapter C corporation.
2. Taxpayer amended its articles of incorporation and officially changed its name to its current name on October 7, 1994.
3. Article III of the original Certificate of Incorporation states that "The [Foundation] is a nonprofit organization organized and operated exclusively for charitable and educational purposes within the meaning of Sec. 501(c)(3) of the Internal Revenue Code of 1986, as amended...."
4. Taxpayer's Bylaws specifically state that Taxpayer "...(a) shall not carry on any other activities not permitted to be carried on by a Corporation exempt from Federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1986 and (b) shall not (i) engage in any act of self-dealing (as defined in Section 4941 (d) of the Internal Revenue Code of 1986), (ii) retain any excess business holdings, (iii) make any investments in such manner as to subject the Corporation to tax under Section 4944 of the Internal Revenue Code of 1986, and from making any taxable expenditures...." The Bylaw also provide that Taxpayer was established to provide assistance to individuals who could not otherwise afford the cost of Betaseron medication for the treatment of multiple sclerosis.
5. Taxpayer provides the medication based on the patient's ability to pay. In most cases, the cost of the drug is covered by the patient's insurance company. However, in certain cases, the drug may be provided free to the patient. Taxpayer is authorized to solicit, receive and administer funds for this purpose.
6. Funding of Taxpayer comes from the following sources: (i) interest income (2%); (ii) patient participation payments which operate similar to medical co-payments (5%); and (iii) private insurance carriers such as Blue Cross Blue Shield (93%).
7. Taxpayer has an exclusive funding agreement with the Betaseron manufacturer, Berlex Laboratories, Inc. ("Berlex"), whereby Berlex provides financial assistance to Taxpayer.
8. Under the terms of this agreement, Taxpayer agreed to take on administrative responsibilities for two charitable programs formerly run by Berlex in exchange for Berlex's commitment to make the Betaseron drug available to patients of these two programs. Berlex also agreed to make funds available to Taxpayer to assist with operations.
9. Taxpayer has no tangible personal or real property and no employees.
10. All operations and administrative functions of Taxpayer are carried out by an unrelated third-party healthcare consulting firm, The Lash Group.
11. The Lash Group is located in Charlotte, North Carolina.
12. The Lash Group specializes in providing technical and administrative services to charitable medical foundations.
13. Taxpayer's documents, including the organization's bylaws and all agreements with the Lash Group, Berlex and HDS, list a North Carolina address (4828 Parkway Plaza Boulevard, Charlotte, North Carolina 28217) as either the principal office or the contact address of the Foundation.
14. Taxpayer has a "Dispensing Agreement" with Healthcare Delivery Systems, Inc. ("HDS"), an unrelated third-party service provider.
15. HDS is responsible for various aspects of product handling.

IN ADDITION

16. HDS purchases the Betaseron drug from Berlex at a price that is discounted from wholesale (\$5.00 per dose).
17. The local pharmacies order the drug from HDS, and HDS places the order with Berlex. The Betaseron drug is shipped directly to the pharmacy from Berlex.
18. Taxpayer does not take possession of the drug as inventory for resale and it does not incur cost of goods sold. Instead, it incurs an annual expense related to the dispensing service provided by HDS.
19. This expense is reflected on Taxpayer's federal return as "Other Deductions-Distributions" (line 26, page 1, statement 2). This expense, according to Taxpayer, is its payment to HDS for the drugs HDS purchases from Berlex.
20. HDS's charge for all other services related to the "Dispensing Agreement" (e.g., patient qualification, screening procedures, maintenance of program files) is captured as "Other Deductions-Product Handling" (line 26, page 1, statement 2).
21. For federal and state income tax purposes, Taxpayer elected to be treated as a "C" corporation.
22. During the June 17, 1996 meeting of Taxpayer's Board of Directors, the accounting firm of Arthur Andersen made a presentation concerning the potential tax exempt status of Taxpayer.
23. At the board meeting, an attorney with the law firm of Reed and Smith noted the following consequences of requesting tax exempt status for Taxpayer: (i) Berlex would not be allowed to loan money to Taxpayer; (ii) Taxpayer could solicit funding from sources other than Berlex; (iii) Berlex could not sell the Betaseron drug to Taxpayer; and (iv) Berlex could contribute the drug to Taxpayer and take a charitable contribution deduction since Taxpayer would have tax-exempt status.
24. In a meeting of Taxpayer's Board of Directors on September 13, 1996, the Board unanimously agreed not to seek the exempt status based on "the concerns raised by representatives from Berlex."
25. Taxpayer has never applied for nor qualified as a tax exempt entity for federal income tax purposes.
26. In tax years 1996, 1997 and 1998, Taxpayer had federal taxable income in the amounts of \$1,976,734, \$2,270,589 and \$778,199, respectively, and paid federal income tax in the amounts of \$672,090, \$772,000 and \$264,588, respectively.
27. On July 7, 2000, Taxpayer filed amended North Carolina Franchise and Corporate Income Tax returns for the tax years ending December 31, 1996 through December 31, 1998, claiming exemptions from the franchise and corporate income tax under G.S. §§ 105-125(a)(1) and 105-130.11(a)(3), respectively, and seeking a total refund of \$418,430.
28. Taxpayer submitted a letter on July 10, 2000 presenting facts pertaining to Taxpayer to the Division and requested a ruling as to whether Taxpayer qualified for exemption from North Carolina corporate franchise and income tax under the provisions of G.S. 105-125(a)(1) and 105-130.11(a)(3).
29. The Division ruled in a letter dated August 21, 2000 that Taxpayer was not entitled to exemption from North Carolina franchise and corporate income tax because it was not organized and operated for "charitable" purposes since it did not operate for a public purpose, but rather served a private interest.
30. The Division denied the request for a refund by letter dated January 5, 2001.
31. Taxpayer timely protested the Division's denial of the refund and requested a hearing before the Secretary of Revenue pursuant to G.S. 105-266.1 by letter dated April 13, 2001.

CONCLUSIONS OF LAW

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

1. G.S. 105-125(a)(1) provides an exemption from the franchise tax for corporations that are organized and operated as a charitable, religious, fraternal, benevolent, scientific, or educational corporation not operated for profit.
2. G.S. 105-130.11(a)(3) provides an exemption from the corporate income tax imposed under G.S. 105-130.3 for corporations that are organized as a charitable corporation not operated for profit, no part of the organization's net earnings of which inure to the benefit of a shareholder or person.

3. G.S. 105-228.90(1b) defines "Code" as the Internal Revenue Code as enacted as of a specified date, including any provisions enacted as of that date which become effective either before or after that date.
4. IRC 501(c)(3) provides for the exemption from taxation of: "corporations...organized and operated exclusively for...charitable... purposes... no part of the net earnings of which inures to the benefit of any private shareholder or individual."
5. Pursuant to Federal Tax Regulation Section 1.501(a)-1, the words 'private shareholder or individual' as used in Section 501 of the Code refer to persons having a personal and private interest in the activities of the organization.
6. Section 1.501(c)(3)-1(d)(1)(ii) of the Federal Tax Regulations provides that an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest.
7. G.S. 105-130.11 and 105-125 prohibit against private inurement.
8. A Section 501(c)(3) organization is classified as either a public charity or a private foundation.
9. In order to receive public charity status, an organization must be either: (i) a public charity, according to IRC 509(a)(1); (ii) a publicly supported organization, according to IRC 509(a)(2); or (iii) a supporting organization, according to IRC 509(a)(3).
10. Under IRC § 509(a)(1), a public charity must receive at least one-third (33 1/3%) of its support, excluding income received in the exercise or performance by such organization of its charitable purpose, from the general public or a governmental unit.
11. All of Taxpayer's funding during the relevant period, with the exception of fees received from the sale of Betaseron, came from Berlex. Taxpayer would not have qualified as a public charity under IRC 509(a)(1).
12. Under IRC 509(a)(2), a publicly supported organization must receive more than one-third (33 1/3%) of its support from the general public and must not receive more than one-third of its support from investment income.
13. Taxpayer received a minimal amount of investment income in the form of interest income and, for the past three years, has received more than one-third of its support from the general public. However, as stated above, Berlex provided significant contributions to Taxpayer. These contributions would not be included as public support and would most likely have disqualified Taxpayer as an IRC 509(a)(2) entity for the relevant period.
14. Supporting organizations as defined in IRC 509(a)(3) are those that are not publicly supported, but which are organized and operated solely for the benefit of an organization described in IRC 509(a)(1) or (a)(2).
15. Taxpayer is not related to or operated to support any organization described in IRC 509(a)(1) or (a)(2). Therefore, it would not have qualified for tax-exempt status under IRC 509(a)(3).
16. Taxpayer may have qualified for tax exemption as a private foundation under IRC 509(c)(3) had it applied.
17. Under the private foundation rules, various transactions, described in IRC 4941(d), between a foundation and a disqualified person trigger the self-dealing excise tax.
18. Under IRC 4946(a)(1), a disqualified person includes a substantial contributor as defined in IRC 507(d).
19. IRC 507(d)(2)(A) defines a substantial contributor as "any person who contributed or bequeathed an aggregate amount of more than \$5,000 to the private foundation, if such amount is more than 2 percent of the total contributions and bequests received by Taxpayer before the close of the taxable year of Taxpayer in which the contribution or bequest is received by Taxpayer from such person."
20. Berlex has contributed millions to Taxpayer and would be considered a substantial contributor under IRC 507(d) and a disqualified person for purposes of the self-dealing rules.
21. If Taxpayer had been granted exemption as a private foundation under IRC 509(c)(3) by the Internal Revenue Service, Taxpayer, its managers, and Berlex (a "disqualified person") would have been subject to excise taxes.
22. According to IRC 4941(d)(1)(A), the "sale or exchange, or leasing, of property between a private foundation and a disqualified person" is an act of self-dealing.

23. Berlex sells Betaseron regularly to Taxpayer for a nominal price. These sales of Betaseron to Taxpayer constitute an act of self-dealing, subject to the taxes imposed under IRC 4941.
24. The "lending of money or other extension of credit between a private foundation and a disqualified person" is an act of self-dealing pursuant to IRC 4941(d)(1)(B).
25. Any loans between Berlex and Taxpayer would, therefore, also be considered acts of self-dealing, subject to the taxes under IRC 4941.
26. The self-dealing excise tax has two potential levels of taxation.
27. The first level of the self-dealing excise tax is the initial tax in IRC 4941(a). The Internal Revenue Service can impose an initial tax of 5 or 10 percent of the amount involved on the self-dealer or private foundation. A first-tier tax of 2 1/2 percent of the amount involved, up to \$10,000, can also be assessed against an organization's managers. The initial tax is always assessed on a self-dealing transaction.
28. The second-tier tax of 200 percent on the self-dealer and 50 percent on the foundation manager can also be imposed. In the case of a prohibited taxable expenditure, the second-tier tax equals 200 percent of the amount involved. The second level occurs only if the self-dealing transaction is not corrected within a prescribed time.
29. In order for a self-dealing transaction to be corrected, IRC 4941(e)(3) requires the undoing of the transaction to the extent possible, but in any case placing the private foundation in a financial position not worse than that in which it would be if the disqualified person were dealing under the highest fiduciary standards.
30. There is no evidence that Taxpayer attempted to correct any self-dealing transactions that occurred during the refund period.
31. Under Reg. 1.507-1(c)(4), repeated and willful self-dealing by a private foundation will result in the revocation of the organization's tax exempt status.
32. The purchase and distribution of the Betaseron drug under the circumstances present in the instant case is incident to a commercial operation and does not constitute "charitable" within the meaning of G.S. 105-125 and 105-130.11.
33. The taxpayer is subject to the general business franchise tax in accordance with G.S. 105-122.
34. The taxpayer is subject to income taxation in this State in accordance with G.S. 105-130 *et. seq.*
35. Under G.S. 105-130.3 for the 1996, 1997 and 1998 tax years, the income tax is imposed on the State net income of every C corporation doing business in this State at 7.75%, 7.5% and 7.25%, respectively, of the corporation's State net income.
36. T17 NCAC 5C.0102 defines "doing business" in pertinent part as "[t]he maintenance of an office or other place of business in North Carolina."
37. "State net income" means the taxpayer's federal taxable income as determined under the Code, adjusted as provided in G.S. § 105-130.5 and, in the case of a corporation that has income from business activity that is taxable both within and without this State, allocated and apportioned to this State as provided in G.S. § 105-130.4.
38. G.S. 105-130.4(a)(2) defines "commercial domicile" as the principal place from which the trade or business of the taxpayer is directed or managed.
39. Taxpayer's "commercial domicile" is in North Carolina because it is directed and managed by the Lash Group in Charlotte, North Carolina.
40. For purposes of allocation and apportionment, a corporation is taxable in another State if (i) the corporation's business activity in that state subjects it to a net income tax or a tax measured by net income or (ii) that state has jurisdiction based on the corporation's business activity in that state to subject the corporation to a tax measured by net income regardless whether that state exercises its jurisdiction.
41. Pursuant to G.S. 105-130.4(b), "business activity" is defined to include any activity by a corporation that would establish a taxable nexus pursuant to 15 United States Code Section 381.

IN ADDITION

42. 15 United States Code Section 381, more commonly known as Public Law 86-272, restricts a state from imposing a net income tax on income derived within its borders from interstate commerce when the only activity within a state is the solicitation of orders of tangible property, the order is sent out of the state for approval or rejection, and the goods are shipped from a point outside the state.
43. Solicitation of orders for purposes of Public Law 86-272 includes the entire process associated with inviting an order, not just those activities absolutely essential to solicitation.
44. Taxpayer does not have any taxable business activities outside of North Carolina pursuant to Public Law 86-272 and is therefore not entitled to the apportionment provisions of G.S. 05-130.4(b).
45. The denial of the refunds requested on the amended returns and the proposed assessment of corporate franchise tax were proper under the laws and the facts.

DECISION

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

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

Taxpayer filed amended North Carolina Franchise and Corporate Income Tax returns for the taxable years 1996 through 1998, claiming exemptions from the franchise and corporate income tax under G.S. 105-125(a)(1) and 105-130.11(a)(3). The Taxpayer is seeking a total refund of \$418,430 for the years at issue. Since this is a refund claim, the Taxpayer has the burden to show that it is entitled to the refund and that it falls within the statutory provisions granting the exemptions. From a review of the record, the Board concludes that the Taxpayer failed to show that it is entitled to the refund and that it falls within the statutory provisions granting the exemptions. Therefore, the Board after conducting an administrative hearing in this matter, and after considering the petition, the briefs, the whole record and the Assistant Secretary's final decision, concludes that the findings of fact made by the Assistant Secretary in the final decision are supported by competent evidence in the record; that based upon the findings of fact, the Assistant Secretary's conclusions of law were fully supported by the findings of fact; therefore the final decision of the Assistant Secretary should be confirmed.

WHEREFORE, THE TAX REVIEW BOARD ORDERS that the Assistant Secretary's final decision be confirmed in every respect.

Made and entered into the 2nd day of July 2003.

TAX REVIEW BOARD

Signature _____
Richard H. Moore, Chairman
State Treasurer

Signature _____
Jo Anne Sanford, Member
Chair, Utilities Commission

Signature _____
Noel L. Allen, Appointed Member

STATE OF NORTH CAROLINA

BEFORE THE
TAX REVIEW BOARD

COUNTY OF WAKE

IN THE MATTER OF:

The Proposed Assessment of Sales and Use)
Tax for the period of January 1, 1998 through)
September 30, 2000, by the Secretary of)
Revenue of North Carolina)
)
)
vs.)
)
HiTech Performance Engine and Machine, Inc.)

ADMINISTRATIVE DECISION

Number: 409

This Matter was heard before the Regular Tax Review Board (hereinafter "Board") in the City of Raleigh, Wake County, North Carolina, on Thursday, January 30, 2003, upon a petition filed by HiTech Performance Engine and Machine, Inc. (hereafter "Taxpayer") for administrative review of the Final Decision of the Assistant Secretary of Revenue entered on January 22, 2002, sustaining the sales and use tax assessment imposed against the Taxpayer for the period of January 1, 1998 through September 30, 2000.

Jo Anne Sanford, ex officio member and Chair of the Utilities Commission presided over the hearing with duly appointed member, Noel L. Allen, Attorney at Law participating. Since Chairman Richard H. Moore, State Treasurer, was not present at the hearing on January 30, 2003, the Board reviewed this matter on April 22, 2003 and rendered the following decision.

Attorney John F. Hanzel appeared at the hearing on behalf of the Taxpayer. Kay Linn Miller Hobart, Assistant Attorney General, appeared at the hearing on behalf of the Secretary of Revenue.

STATEMENT OF CASE

The Taxpayer is in the principal business of rebuilding racecar engines pursuant to performance service agreements for racing teams during the audit period. The Taxpayer would charge its customers a fee for its labor in rebuilding the engines. In some instances, the Taxpayer made retail sales of engine parts and separately stated the sales price for the parts installed in the engines on the customers' invoices. In other instances, the Taxpayer did not sell parts, but instead furnished and installed new parts on customer-owned engine blocks for a rebuilding fee under the service agreement.

The Taxpayer purchased engine repair parts exempt from sales or use tax pursuant to Certificates of Resale issued to its vendors. The Taxpayer either sold these parts to customers, separately stating the sales price on the invoices, or used the engine parts to rebuild its customers engines as agreed upon in the service contract.

Pursuant to G.S. 105-241.1, the Department mailed a Notice of Proposed Assessment to the Taxpayer assessing tax, penalty and interest in the total amount of \$30,539.01. The proposed assessment resulted from the Taxpayer's failure to collect and remit sales tax on its taxable retail sales of engine parts and its failure to accrue and remit the 4% State and 2% local use tax due on purchases of equipment for use from out-of-state vendors. The Taxpayer objected to the assessment in a letter dated July 28, 2001, and timely requested a hearing before the Secretary of Revenue. On January 22, 2002, the Assistant Secretary issued his final decision that sustained the assessment of tax and interest, but waived the penalty imposed against the Taxpayer. Pursuant to G.S. 105-241.2, Taxpayer's attorney timely filed a notice of intent and petition for administrative review of the Assistant Secretary's Final Decision with the Tax Review Board.

ISSUES

The issues considered by the Board on review of this matter are stated as follows:

1. Was the Taxpayer a manufacturer?
2. Was the Taxpayer liable for use tax at the 1% State tax rate on its equipment purchases?
3. Was the Taxpayer liable for sales tax on its separately itemized sales of parts on invoices to customers?

EVIDENCE

The Tax Review Board reviewed the following evidence presented by the parties at the hearing before the Assistant Secretary of Revenue:

1. Copy of memorandum dated May 16, 2001, from the Secretary of Revenue to the Assistant Secretary of Administrative Hearings, designated as Exhibit E-1.
2. Copy of face sheet of auditor's report and comments dated June 25, 1999, designated as Exhibit E-2.
3. Copy of Notice of Sales and Use-Audit Tax Assessment dated July 5, 1999, designated as Exhibit E-3.
4. Copy of letter dated July 19, 1999 from the Taxpayer to the Department, designated as Exhibit E-4.
5. Copy of letter dated August 5, 1999 from the Sales and Use Tax Division to the Taxpayer, designated as Exhibit E-5.
6. Copy of letter dated March 27, 2000 from the Sales and Use Tax Division to the Field Operations Division, designated as Exhibit E-6.
7. Copy of letter dated April 20, 2000 from the Sales and Use Tax Division to the Taxpayer, designated as Exhibit E-7.
8. Copy of letter dated May 10, 2000 from the Taxpayer to the Sales and Use Tax Division, designated as Exhibit E-8.
9. Copy of letter dated May 24, 2000 from the Sales and Use Tax Division to the Taxpayer, designated as Exhibit E-9.
10. Copy of letter dated October 19, 2000 from the Taxpayer to the Sales and Use Tax Division, designated as Exhibit E-10.
11. Copy of letter dated November 22, 2000 from the Sales and Use Tax Division to the Taxpayer, designated as Exhibit E-11.
12. Copy of letter dated June 7, 2001 from the Assistant Secretary of Revenue to the Taxpayer, designated as Exhibit E-12.
13. Copy of NCAC T17 :07B .0202(a) , designated as Exhibit E-13.
14. Copy of NCAC T17 :07B .0406, designated as Exhibit E-14.
15. Copy of Master Hatcheries, Inc., V. Coble, 286 N.C. 518, 212 S.E. 2d 150 (1975), designated as Exhibit E-15.

FINDINGS OF FACTS

The Board reviewed and considered the following findings of fact entered by the Assistant Secretary in his decision regarding this matter:

1. The Taxpayer operated as a retailer engaged in the business of rebuilding racing engines during the audit period.
2. The Taxpayer primarily received engines from customers that required rebuilding in order to be used by such customers in NASCAR races.
3. The Taxpayer built some new engines for lease, which represented less than 25% of its business.
4. The Taxpayer purchased parts used in rebuilding customers' engines, exempt from sales or use tax based on Certificates of Resale issued to vendors.
5. When the Taxpayer rebuilt customers' engines, it operated under a performance type service agreement 75% of the time. In some cases the firm separately stated the sales of new parts it installed in the customers' engines.
6. The Taxpayer did not charge sales tax on invoices issued to customers when the sales price of parts installed on the customer-owned engines was separately stated. The Department assessed sales tax on these repair parts.
7. In cases where the Taxpayer did not separately charge customers for parts used to rebuild customers' engines, the Taxpayer failed to accrue and remit use tax on the cost price of such parts. Although the auditor failed to assess use tax on these parts, the Department advised the Taxpayer of its liability for use tax on the cost of the parts by letter dated April 20, 2000.
8. The Taxpayer purchased equipment used in its operations without payment of sales or use tax to the vendors and failed to accrue and remit any use tax due on these purchases. The Department assessed use tax on the cost price of the equipment purchased from out-of-state vendors who did not charge sales tax.

9. The Notice of Proposed assessment was mailed to the Taxpayer on July 5, 1999.
10. The Taxpayer filed a written request for a hearing and notified the Department that it objected to the assessment on July 19, 1999.

CONCLUSIONS OF LAW

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

1. The Taxpayer was, at all material times during the audit period, a retailer engaged in the business of making retail sales of tangible personal property subject to sales tax. The Taxpayer was also engaged in the business of rebuilding engines pursuant to service agreements during the audit period.
2. The Taxpayer was not classified as a manufacturer since it did not manufacture new and different products for sale during the audit period.
3. Because the Taxpayer's operation did not constitute "manufacturing," its purchases of equipment were not subject to the 1% State tax within G.S. 105-164.4(a)(1d) or 105-164.4A(2).
4. The general rate of state tax and applicable local tax is due on the cost of equipment purchased for use in the Taxpayer's operations.
5. The Taxpayer was liable for sales tax on its retail sales of repair parts sold to customers and installed in their engines. The Taxpayer should have accrued and paid use tax on the cost of parts furnished and installed upon customers' engines pursuant to its service agreements, notwithstanding that the auditor failed to assess such tax.

DECISION

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

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

Assessments of tax are presumed to be correct and the taxpayer has the burden to show that the assessment is not proper. Upon a review of the record, the Board concludes that the Taxpayer failed to furnish sufficient evidence to show that the assessment is not proper. Thus, the Board having conducted an administrative hearing in this matter, and having considered the petition, the briefs, the whole record and the Assistant Secretary's final decision, concludes that the findings of fact made by the Assistant Secretary were supported by competent evidence in the record; that based upon the findings of fact, the Assistant Secretary's conclusions of law were fully supported by the findings of fact; therefore the decision of the Assistant Secretary should be confirmed.

WHEREFORE, THE TAX REVIEW BOARD ORDERS that the Assistant Secretary's final decision be confirmed in every respect.

Made and entered into the 2nd day of July 2003.

TAX REVIEW BOARD

Signature _____
Richard H. Moore, Chairman
State Treasurer

Signature _____
Jo Anne Sanford, Member
Chair, Utilities Commission

Signature _____
Noel L. Allen, Appointed Member

STATE OF NORTH CAROLINA

BEFORE THE
TAX REVIEW BOARD

COUNTY OF WAKE

IN THE MATTER OF:

The Proposed Assessment of Franchise)
Tax for the period of August 1, 1997)
through July 31, 1998 by the Secretary)
of Revenue of North Carolina)
)
)
)
vs.)
)
Cisco Systems Sales and Services, Inc.)

ADMINISTRATIVE DECISION
Number: 410

This Matter was heard before the Regular Tax Review Board (hereinafter "Board") in the City of Raleigh, Wake County, North Carolina, on Thursday, January 30, 2003, upon a petition filed by Cisco Systems Sales and Services, Inc. (hereinafter "Taxpayer") for administrative review of the Final Decision of the Assistant Secretary of Revenue entered on August 22, 2002, sustaining the franchise tax assessment, plus penalties and interest for the period of August 1, 1997 through July 31, 1998.

Chairman Richard H. Moore, State Treasurer, presided over the hearing with ex officio member Jo Anne Sanford, Chair, Utilities Commission and duly appointed member, Noel L. Allen, Attorney at Law participating.

Michael A. Hannah, Senior Manager with Deloitte & Touche, LLP and John P. Murphy, Manager with Cisco Systems Inc. were present at the hearing on behalf of the Taxpayer. George W. Boylan, Special Deputy Attorney General, appeared at the hearing on behalf of the Secretary of Revenue.

Following the hearing, the Tax Review Board took this matter under review and agreed to render a decision at its next meeting. During the April 22, 2003 Tax Review Board meeting, the members, after considering the Taxpayer's petition, the briefs and record of the proceeding before the Assistant Secretary, rendered the following decision:

STATEMENT OF CASE

Cisco Systems, Inc. (hereinafter "Cisco") is the parent corporation of Cisco Systems Sales and Services, Inc. (hereinafter "Taxpayer"). The two corporations seek review of the Final Decision of the Assistant Secretary of Revenue entered on August 22, 2002 that denied Cisco a tax credit for investment in machinery and equipment made during its 1996 taxable year.

Cisco is an international company that develops, manufactures, sells and supports networking products that connect various devices with computer networks. Cisco is engaged in research and development activities at its Research Triangle Park facility. In 1996, Cisco placed in service machinery and equipment at its Research Triangle Park facility for fiscal year ended July 26, 1997. Thereafter, Cisco submitted requests to the North Carolina Employment Security Commission (NCESC) and North Carolina Department of Commerce (NCDC) for qualification for the William S. Lee Credit Program ("Bill Lee Credits"). Upon receipt of the Certificate of Eligibility from NCDC, Cisco computed the amount of Bill Lee Credits that it was entitled for the purchase of the machinery and equipment at its Research Triangle Park facility for the fiscal year ended 1997.

On May 11, 1999, the Taxpayer filed its North Carolina franchise tax return and claimed an installment of the tax credit for investment in the machinery and equipment that was placed in service at its Research Triangle Park facility. If the credit is available to Cisco, unused installments may also be claimed by the Taxpayer for subsequent tax years.

On March 14, 2001, the Department of Revenue issued a proposed assessment against the Taxpayer for additional franchise tax in the amount of \$49,704, plus penalties in the amount of \$12,426 and accrued interest for Taxpayer's fiscal year ended July 25, 1998. The proposed assessment was based upon the Department of Revenue's disallowance of the tax credit installment claimed by the Taxpayer on its franchise tax return for fiscal year ended July 1998. Taxpayer objected to proposed assessment and requested a hearing before the Secretary of Revenue. On August 22, 2002, the Assistant Secretary issued the Final Decision that sustained the assessment of tax, penalties and interest imposed in this matter. Thereafter, the Taxpayer filed a petition for administrative review of the Final Decision with the Board pursuant to N.C. Gen. Stat. § 105-241.2.

ISSUE

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

Is Cisco entitled to a tax credit for investing in machinery and equipment during its 1996 taxable year, thereby enabling Taxpayer to utilize any remaining installments of a credit that remained after Cisco transferred the property in question to it during the 1997 tax year?

EVIDENCE

The Tax Review Board reviewed the following evidence presented by the parties at the hearing before the Assistant Secretary of Revenue:

Submitted by the Division

1. Taxpayer's 1997 North Carolina Franchise and Income Tax Return, designated as CD-1.
2. Taxpayer's 1998 North Carolina Franchise and Income Tax Return, designated as CD-2.
3. Notice Of Corporate Franchise Tax Assessment dated March 14, 2001, designated as CD-3.
4. Field Auditor's Report dated December 5, 2000, designated as CD-4.
5. Letter from M. W. Massey, Administrative Officer, to Taxpayer dated June 20, 2000, designated as CD-5.
6. Letter from Taxpayer to the Department of Revenue dated April 11, 2001, designated as CD-6.
7. Letter from Jonathan K. Tart, Administrative Officer, to Taxpayer dated May 15, 2001, designated as CD-7.
8. Letter from Taxpayer to William M. Daniel, former Director of the Corporate, Excise and Insurance Tax Division, dated June 7, 2001, designated as CD-8.
9. Letter from Taxpayer to Jonathan K. Tart dated June 18, 2001, designated as CD-9.
10. Letter from Eugene J. Cella, Assistant Secretary of Revenue, to Taxpayer dated December 14, 2001, designated as CD-10.
11. Letter from Taxpayer to Eugene J. Cella dated January 3, 2002, designated as CD-11.
12. Section 1(a) and Section 1(c) of Senate Bill 748; 2001 General Assembly, designated as CD-12.
13. Section 3.3 of Chapter 13, House Bill 18; 1996 General Assembly, designated as CD-13.
14. Company Overview of Cisco, designated as CD-14.
15. Pages 584 and 585 of North American Industry Classification Manual, 1997 edition, designated as CD-15.
16. Certificates of Eligibility issued by the North Carolina Department of Commerce to Parent, designated as CD-16.
17. Schedule K from Taxpayer's 1997 Federal Income Tax Return, designated as CD-17.
18. Page 370 of Standard Industrial Classification Manual, designated as CD-18.
19. Pages 993 and 994 of North American Industry Classification Manual, 1997 edition, designated as CD-19.

Submitted by the Taxpayer

1. Fax Cover Sheet from Employment Security Commission of North Carolina to Taxpayer and Pages 298 and 299 from Standard Industrial Classification Manual, designated as TP-1.
2. Page 961 of North American Industry Classification Manual, 1997 edition, designated as TP-2.

3. Page 316 of North American Industry Classification Manual, 1997 edition, designated as TP-3.
4. Page 975 of North American Industry Classification Manual, 1997 edition, designated as TP-4.
5. Letter dated March 11, 1998 from Parent to the Department of Commerce with Attachments, designated as TP-5.
6. Taxable Year 1996 Certification Issued by Department of Commerce to Parent, designated as TP-6.
7. Taxable Years 1997 and 1998 Certifications Issued by Department of Commerce to Parent, designated as TP-7.
8. Letter from Julie R. Stiles, Interstate Examination Division, to Taxpayer dated December 5, 2000, with related attachments, designated as TP-8.
9. Document titled *Information on Tax Incentives Under the William S. Lee Quality Jobs and Business Expansion Act* published by the North Carolina Department of Revenue, designated as TP-9.
10. Document titled *Credit for Investing in Machinery and Equipment* from Department of Revenue Web Page, designated as TP-10.

Submitted by the Assistant Secretary of Revenue:

1. *Brief for Tax Hearing* submitted by the Corporate, Excise and Insurance Tax Division, designated as S-1.
2. *Objection to Proposed Assessment of Corporate Franchise Tax* submitted by Taxpayer, designated as S-2.
3. *Supplemental Brief in Support of Objection to Proposed Assessment of Corporate Franchise Tax* dated March 21, 2002 submitted by Taxpayer, designated as S-3.
4. Letter from Michael A. Hannah to Eugene J. Cella dated March 29, 2002, designated as S-4.
5. Letter from Eugene J. Cella to Michael A. Hannah dated April 11, 2002, designated as S-5.
6. Post-Hearing Brief submitted by the Corporate, Excise and Insurance Tax Division, designated as S-6.
7. Cross-Brief in Reply in Support of Objection to Proposed Assessment of Corporate Franchise Tax dated May 24, 2002 submitted by Taxpayer, designated as S-7.

FINDINGS OF FACTS

Based upon the record, the Tax Review Board makes the following findings of fact:

1. Cisco is the Parent Corporation of Taxpayer.
2. During its 1996 taxable year, Cisco placed certain business property in service at a facility located in North Carolina's Research Triangle Park. This facility was part of Cisco's research and development operations.
3. Subsequent to its 1996 investment in business property placed in service at Research Triangle Park, Cisco submitted a form entitled "Request for Department of Commerce Certification for Participation in the William S. Lee Tax Credit Incentives," hereinafter referred to as the "Participation Request," to the Secretary of Commerce for its 1996 taxable year. Cisco indicated on the form that it had placed \$13,065,707 of machinery and equipment into service during the 1996 taxable year.
4. Cisco formed Taxpayer as a subsidiary and transferred ownership of the business property at the research and development facility in Research Triangle Park to Taxpayer in 1997.
5. The Taxpayer was engaged in research and development at its Research Triangle Park facility during its 1997 taxable year. The new machinery and equipment at the Research Triangle Park facility was used in Cisco's primary business of developing, manufacturing and selling computer network equipment.
6. The Taxpayer timely filed its franchise tax return for the tax period ending July 31, 1998, on May 11, 1999, under an approved extension of time to file.

IN ADDITION

7. The Taxpayer claimed an installment of a tax credit for investing in machinery and equipment on its 1997 North Carolina Franchise and Income Tax Return for business property used at its Research Triangle Park facility during that tax year.
8. The Division disallowed the installment of the machinery and equipment credit taken by Taxpayer against its franchise tax liability.
9. A proposed assessment of additional franchise tax, a twenty-five percent late-filing penalty, a twenty-five percent negligence penalty, and accrued interest was mailed to Taxpayer on March 14, 2001.
10. The Taxpayer timely filed an objection to the proposed assessment and timely requested an administrative tax hearing pursuant to G.S. 105-241.1.
11. On February 19, 2002, Eugene Cella, the Assistant Secretary of Revenue conducted an administrative tax hearing regarding the proposed assessment. On August 22, 2002, Assistant Secretary Cella issued a Final Decision sustaining the assessment of tax, penalties and interest against the Taxpayer for the period at issue.
12. Pursuant G.S. 105-241.2, the Taxpayer filed a petition with the Tax Review Board requesting administrative review of the Final Decision entered by Assistant Secretary Cella on August 22, 2002.

CONCLUSIONS OF LAW

Based upon the record in this matter, the Tax Review Board concludes as a matter of law:

1. The Tax Review Board has jurisdiction to review this matter on Taxpayer's petition and to determine if Cisco is entitled to a tax credit for investing in machinery and equipment during its 1996 tax year, thereby enabling Taxpayer to utilize any remaining installments of credit that remained after Cisco transferred the property at issue to the Taxpayer during the 1997 tax year.
2. Article 3A of Chapter 105 of the General Statutes, as effective for the 1996 tax year and hereinafter referred to as "the Act", encourages taxpayers in certain types of businesses to either move their business into the State or to expand their business activities in the State by offering tax credits for investments in the businesses. Qualifying businesses when the Act was first enacted included manufacturing and processing, warehousing and distribution, and data processing. To be eligible for the credits, the taxpayer had to be primarily engaged in a qualifying business and conducting that business activity in this State.
3. The Act allows a machinery and equipment tax credit for investing in business property in the State that is used in manufacturing and processing, warehousing and distribution, or data processing.
4. Cisco is an international company that develops, manufactures, sells and supports networking products that connect various devices with computer networks. Cisco is engaged in research and development activities at its Research Triangle Park facility. The machinery and equipment acquired by Cisco and transferred to the Taxpayer are used in an eligible business activity as defined in G.S. 105-129.4(a) and therefore qualify for the tax credit.
5. The Secretary of Revenue is responsible for enforcing the Revenue Laws of this State, inclusive of the tax credits provided under the Act, by determining the correctness of a tax return and determining the proper liability of any person for a tax imposed.
6. The Secretary of Revenue has the authority to determine the correctness of tax credits claimed under the Act by reviewing any records considered necessary. In addition to being given this authority as part of his responsibility to enforce the Revenue Laws in general, this authority is specifically declared with respect to the Act in G.S. 105-129.7.
7. The Act requires a taxpayer to meet two general eligibility requirements pertaining to the primary business industry that it belongs to and the average wage it pays to its employees before it is eligible to participate in the Act.
8. Before claiming a tax credit under the Act on its tax return, a taxpayer submits the Participation Request to the Secretary of Commerce. The Participation Request is used to provide statistical reports to the General Assembly and to the Department of Revenue based on the number of Participation Request(s) received.
9. The Participation Request asks a taxpayer to provide information about the business industry that it belongs to and the average wage paid.

IN ADDITION

10. The Department of Commerce endorses a taxpayer's participation in the Act by certifying that a taxpayer's representations on the Participation Request are consistent with a type of business industry recognized under the Act, and that the average wage as reported meets or exceeds the applicable county wage standard.
11. The Department of Commerce does not have the authority to conduct an audit to verify that all representations made by the taxpayer on the Participation Request are true and accurate.
12. The Cisco was entitled to the tax credit for investing in machinery and equipment at the North Carolina facility during its 1996 year.
13. The Act contains a provision for a change in ownership that allows a successor business to take any installment of a credit that its predecessor could have taken if it had a tax liability.
14. The Taxpayer, as a successor corporation, was entitled to the installment of credit that was claimed against its 1997 franchise tax liability.
15. The Secretary of Revenue may, upon making a record of the reasons thereof, reduce or waive any penalties.
16. The Department of Revenue was created under the provisions of the Executive Organization Act of 1973. The Secretary of Revenue's duties include administering the laws enacted by the General Assembly relating to the assessment and collection of corporate income taxes. As an official of the Executive branch of the government, the Secretary lacks the authority to determine the constitutionality of legislative acts. The question of constitutionality of a statute is for the judicial branch. (*Insurance Co. v. Gold*, 254 NC 168). The constitutionality of the income tax statutes is not within the Secretary's jurisdiction.

DECISION

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

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

In sustaining the proposed assessment of franchise tax, penalties and interest assessment against the Taxpayer, the Assistant Secretary concluded that the Taxpayer was not entitled to claim the Bill Lee Credits on the machinery and equipment that Cisco had placed into service at the Research Triangle Park facility. The Assistant Secretary held that the Taxpayer was not engaged in a qualified activity at the Research Triangle Park facility and that the certification of eligibility issued by Secretary of Commerce does not entitle the Taxpayer to utilize Bill Lee Tax Credits.

The record shows that Cisco, the Parent Corporation of the Taxpayer, is an international company that develops, manufactures, sells and supports networking products that connect various devices with computer networks. Cisco's primary business is the development, manufacture and sale of computer networking equipment. Cisco placed in service certain business property at that the Research Triangle Park facility. In 1997, Cisco transferred ownership of the business property at the North Carolina facility to the Taxpayer.

The Board, upon review the record, concludes that there is sufficient evidence to show that the property used at Research Triangle Park facility qualified for the Bill Lee Tax Credits because the research and development that occurs at the Research Triangle Park facility is a necessary, inseparable and integral part of the primary business of manufacturing. Thus, the property is used for an eligible business activity as defined in the applicable statute and qualifies for the tax credit.

The Board having conducted an administrative hearing in this matter, and having considered the petition, the briefs, the whole record and the Assistant Secretary's final decision, concludes that the Assistant Secretary erred in sustaining the proposed assessment of additional franchise tax, penalty and interest in this matter.

WHEREFORE, THE TAX REVIEW BOARD ORDERS AND DECREES that the Final Decision entered by the Assistant Secretary on August 22, 2002 be **Reversed**.

Made and entered into the 21st day of July 2003.

TAX REVIEW BOARD

Signature _____

IN ADDITION

Richard H. Moore, Chairman
State Treasurer

Signature _____
Jo Anne Sanford, Member
Chair, Utilities Commission

Signature _____
Noel L. Allen, Attorney at Law
Appointed Member

STATE OF NORTH CAROLINA

COUNTY OF WAKE

IN THE MATTER OF:

The Proposed Assessment of Sales and Use)
 Tax for the period January 1, 1998 through)
 September 30, 2000, by the Secretary of)
 Revenue of North Carolina)
)
)
 vs.)
)
Ibialapuye S. Boyle d/b/a S & B Associates)

BEFORE THE
TAX REVIEW BOARD

ADMINISTRATIVE DECISION
Number: 411

This Matter was heard before the Regular Tax Review Board (hereinafter "Board") in the City of Raleigh, Wake County, North Carolina, on Tuesday, April 22, 2003, upon a petition filed by Ibialapuye S. Boyle d/b/a S & B Associates, Inc. (hereafter "Taxpayer") for administrative review of the Final Decision of the Assistant Secretary of Revenue entered on November 7, 2001, sustaining the sales and use tax assessment imposed against the Taxpayer for the period of January 1, 1998 through September 30, 2000.

Chairman Richard H. Moore, State Treasurer, presided over the hearing with ex officio member Jo Anne Sanford, Chair, Utilities Commission and duly appointed member, Noel L. Allen, Attorney at Law participating.

Robert H. Merritt, Jr., Attorney appeared at the hearing on behalf of the Taxpayer. Alexandra M. Hightower, Assistant Attorney General, appeared at the hearing on behalf of the Secretary of Revenue.

STATEMENT OF CASE AND FACTS

The Taxpayer is a proprietorship engaged in the business of making retail sales of vacuum cleaners. On December 28, 2001, the Department of Revenue completed a sales tax audit on the Taxpayer's business. The additional tax resulted primarily from the Taxpayer under reporting sales tax for the audit period. The Department of Revenue mailed the Taxpayer a Notice of Sales and Use Tax Assessment dated December 19, 2000 in the total amount of \$40,852.29. By letter dated January 17, 2001, the Taxpayer, through counsel, objected to the assessment and requested a hearing before the Secretary of Revenue. After conducting a hearing on September 18, 2001, the Assistant Secretary rendered his decision sustaining the proposed assessment plus penalty and interest. Pursuant to G.S. 105-241.2, Taxpayer's attorney timely filed a notice of intent and petition for administrative review of the Assistant Secretary's Final Decision with the Tax Review Board and requested an administrative hearing regarding this matter.

ISSUE

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

Is the assessment correct and properly proposed against the Taxpayer and based on the best information available?

EVIDENCE

The Tax Review Board reviewed the following evidence presented by the parties at the hearing before the Assistant Secretary of Revenue:

- 28. Copy of memorandum dated May 16, 2001, from Secretary of Revenue to the Assistant Secretary of Administrative Hearings, designated Exhibit E-1.
- 29. Copy of face sheet of audit report dated December 8, 2000, and Explanation of Changes, designated Exhibit E-2.
- 30. Copy of the Notice Sales and Use Tax Assessment dated December 19, 2000, designated Exhibit E-3.
- 31. Copy of letter dated January 17, 2001, from the Taxpayer's attorney to the Department of Revenue, designated Exhibit E-4.

32. Copy of letter dated February 12, 2001, from the Sales and Use Tax Division to the Taxpayer's attorney, designated Exhibit E-5.
33. Copy of letter dated February 26, 2001, from the Taxpayer's attorney to the Department of Revenue, designated Exhibit E-6.
34. Copy of letter dated April 11, 2001, from the Sales and Use Tax Division to the Taxpayer's attorney, designated Exhibit E-7.
35. Copy of letter dated April 26, 2001, from the Taxpayer's attorney to the Department of Revenue, designated Exhibit E-8.
36. Copy of letter dated May 7, 2001, from the Sales and Use Tax Division to the Taxpayer's attorney, designated Exhibit E-9.
37. Copy of letter dated June 6, 2001, from the Sales and Use Tax Division to the Taxpayer's attorney, designated Exhibit E-10.
38. Copy of letter dated August 28, 2001, from the Assistant Secretary of Revenue to the Taxpayer's attorney, designated Exhibit E-11.
39. Copy of Power of Attorney dated September 18, 2001, designated Exhibit TP-1.
40. Copy of Taxpayer's bank statements, deposit slips, loan statement and home equity credit line letter, designated Exhibit TP-2.
41. Copy of letter dated September 18, 2001, from the Taxpayer's attorney to the Assistant Secretary of Revenue, designated Exhibit TP-3.
42. Copy of letter and attachments dated October 10, 2001, from the Taxpayer's attorney to the Assistant Secretary of Revenue, designated Exhibit TP-4.
43. Copy of Memorandum dated October 24, 2001, from the Sales and Use Tax Division to Assistant Secretary of Revenue, designated Exhibit S-1.

FINDINGS OF FACTS

The Board reviewed and considered the following findings of fact entered by the Assistant Secretary in his decision regarding this matter:

8. The Taxpayer operated as a retailer of vacuum cleaners during the audit period.
9. The gross receipts or sales on Schedule C of the Taxpayer's Federal individual income tax returns for 1998 and 1999 exceeded the gross sales reported on his sales and use tax returns for corresponding periods.
10. The Taxpayer provided no information, which conclusively proved that non-sales amounts were included in gross sales of the Taxpayer's 1998 and 1999 Federal income tax returns.
11. The notice of assessment was mailed to the Taxpayer on December 19, 2001.
12. The Taxpayer protested the assessment and timely requested a hearing before the Secretary of Revenue.

CONCLUSIONS OF LAW

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

8. The Taxpayer was at all material times a retailer engaged in the business of making retail sales of tangible personal property subject to sales tax.
9. All gross receipts of retailers are presumed to be subject to the retail sales tax until otherwise established.
10. In the absence of adequate records disclosing gross sales it shall be the duty of the Secretary to assess a tax upon an estimation of sales based on the best information available.

11. A proposed assessment of the Secretary of Revenue is presumed to be correct.

DECISION

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

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

Assessments of tax are presumed to be correct and the taxpayer has the burden to show that the assessment is not proper. Upon a review of the record, the Board concludes that the Taxpayer failed to furnish sufficient evidence to show that the assessment in this matter is not proper. Thus, the Board having conducted an administrative hearing in this matter, and having considered the petition, the briefs, the whole record and the Assistant Secretary's final decision, concludes that the findings of fact made by the Assistant Secretary were supported by competent evidence in the record; that based upon the findings of fact, the Assistant Secretary's conclusions of law were fully supported by the findings of fact; therefore the decision of the Assistant Secretary should be confirmed.

WHEREFORE, THE BOARD ORDERS that the Assistant Secretary's final decision be confirmed in every respect.

Made and entered into the 21st day of August 2003.

TAX REVIEW BOARD

Signature _____
Richard H. Moore, Chairman
State Treasurer

Signature _____
Jo Anne Sanford, Member
Chair, Utilities Commission

Signature _____
Noel L. Allen, Appointed Member

STATE OF NORTH CAROLINA

BEFORE THE
TAX REVIEW BOARD

COUNTY OF WAKE
IN THE MATTER OF:

The Proposed Assessment of)
Unauthorized Substance Tax)
dated May 9, 2001 by the)
Secretary of Revenue of)
of North Carolina)
)
)
vs.)
)
)
Gary Lewis Dixon)
Taxpayer)

ADMINISTRATIVE DECISION
Number: 412

This matter was heard before the Tax Review Board (hereinafter "Board") in the City of Raleigh, North Carolina on Tuesday, April 22, 2003, upon Gary Lewis Dixon's (hereinafter "Taxpayer") petition for administrative review of the Final Decision of the Assistant Secretary of Revenue entered on September 23, 2002, reducing the proposed assessment of unauthorized controlled substance tax for the period of May 9, 2001.

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

The Taxpayer did not appear at the hearing. Michael D. Youth, Assistant Attorney General, represented the Secretary of Revenue at the hearing.

Pursuant to G.S. 105-113.111(a) and G.S. 105-241.1, a Notice of Unauthorized Substance Tax Assessment was issued to the Taxpayer by Enforcement Agent Brian Zieverink, of the Unauthorized Substance Tax Division, assessing \$70,000.00 tax, \$28,080.00 penalty and \$4,206.04 interest, for a total liability of \$102,486.04. The assessment alleged that the Taxpayer had unauthorized possession of 180 dosages of hydrocodone and 3,320 dosages of oxycodone between November 2, 1999 and March 26, 2001, without proper tax stamps affixed to the substances. The Taxpayer protested the assessment and requested a hearing before the Secretary of Revenue. On May 1, 2002, Eugene J. Cella, Assistant Secretary of Revenue conducted a hearing upon Taxpayer's timely application and objection to the proposed assessment. Based upon the evidence presented, the Assistant Secretary issued a final decision reducing the proposed assessment against the Taxpayer to a total liability of \$71,260.00. Thereafter, the Taxpayer timely filed a petition for administrative review of the final decision with the Board.

ISSUES

The issues considered by the Board on administrative review are this matter are stated as follows:

1. Did the Taxpayer have actual and/ or constructive possession of hydrocodone and oxycodone without the proper tax stamps affixed?
2. Is the Taxpayer subject to the assessment of unauthorized substance excise tax?

FINDINGS OF FACT

The Board reviewed the following findings of fact made by the Assistant Secretary in the final decision:

1. Assessment of Unauthorized Substance Tax was made against the Taxpayer on May 9, 2001, in the sum of \$70,200.00 tax, \$28,080.00 penalty and \$4,206.04 interest, for a total proposed liability of \$102,486.04, based upon unlawful possession of 180 dosages hydrocodone and 3,320 dosages of oxycodone between November 2, 1999, and March 26, 2001.
2. The Taxpayer made a timely objection and application for a hearing.
3. The Taxpayer admitted that he became addicted to his grandfather's prescription narcotics and that he began forging prescriptions.
4. The Taxpayer stated that he picked up his grandfather's prescription; however, no evidence was introduced to show that the Taxpayer actually delivered the narcotics to his grandfather.
5. The Taxpayer's grandfather is a cancer patient whose treatment and prescription history records were submitted by the Taxpayer. There are 14 prescription references in the hospital records that coincide with possession dates in the assessment that are alleged to be unauthorized. The Taxpayer will be given the benefit of the doubt for these fourteen prescriptions since they may have been legitimate prescriptions for his grandfather and his grandfather may have actually received all of the pills. On the "Attachment to Assessment," lines 1, 5, 6, 7, 8, 10, 13, 14, 16, 18, 19, 21, 22 and 38 are stricken from the assessment.

IN ADDITION

6. The hydrocodone taxed on lines 37 and 43 of the "Attachment to Assessment" should have been taxed at a rate of \$50 per ten dosage units.
7. Between November 15, 1999, and March 26, 2001, the Taxpayer was in unauthorized possession of at least 180 dosages of hydrocodone and 2,495 dosages of oxycodone without the proper tax stamps affixed.

CONCLUSIONS OF LAW

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

1. An assessment of tax is presumed to be correct.
2. The burden is upon the Taxpayer who objects to an assessment to overcome that presumption, and this burden was partially met.
3. The Taxpayer unlawfully possessed at least 180 dosages of hydrocodone and 2,495 dosages of oxycodone between November 15, 1999, and March 26, 2001, and was therefore a dealer as that term is defined in G.S. 105-113.106.
4. The Taxpayer is liable for tax in the sum of \$50,900.00 penalty in the sum of \$20,360.00, plus accrued interest until date of full payment.

DECISION

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

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

Pursuant to N. C. Gen. Stat. § 105-241.1(a), a proposed tax assessment is presumed to be correct and the burden is on to the Taxpayer to rebut that presumption.

From a review of the record, the Taxpayer failed to provide sufficient evidence to overcome the presumption. Thus, the Board having conducted a hearing in this matter, and having considered the petition, the briefs, the record and the Assistant Secretary's final decision, concludes that the findings of fact made by the Assistant Secretary were supported by competent evidence in the record; that based upon the findings of fact, the Assistant Secretary's conclusions of law were fully supported by the findings of fact; therefore the decision of the Assistant Secretary should be confirmed.

WHEREFORE, THE BOARD ORDERS that the Assistant Secretary's final decision be confirmed in every respect.

Made and entered into the 21st day of August 2003.

TAX REVIEW BOARD

Signature _____

Richard H. Moore, Chairman
State Treasurer

Signature _____

Jo Anne Sanford, Member
Chair, Utilities Commission

Signature _____

Noel L. Allen, Appointed Member

STATE OF NORTH CAROLINA

BEFORE THE
TAX REVIEW BOARD

COUNTY OF WAKE

IN THE MATTER OF:

The Proposed Assessment of Unauthorized)
Substance Tax dated September 17, 2001 by)
the Secretary of Revenue of North Carolina)
)
)
vs.)
)
Tommy and Leah Whitsett)
Taxpayers)

ADMINISTRATIVE DECISION
Number: 413

This Matter was heard before the Regular Tax Review Board (hereinafter "Board") in the City of Raleigh, Wake County, North Carolina, on Thursday, January 30, 2003, upon a petition filed by **Tommy and Leah Whitsett** (hereafter "Taxpayers") for administrative review of the Final Decision of the Assistant Secretary of Revenue entered on April 29, 2002, sustaining the proposed assessment of unauthorized substance tax for the period at issue.

Jo Anne Sanford, ex officio member and Chair of the Utilities Commission presided over the hearing with duly appointed member, Noel L. Allen, Attorney at Law participating. After the meeting, the Board took this matter under advisement until the April 22, 2003 meeting. On April 22, 2003, the Board considered this matter and rendered its decision.

Pursuant to G.S. 105-113.111(a) and G.S. 105-241.1, a Notice of Unauthorized Substance Tax Assessment was issued to the Taxpayers on September 17, 2001 by Enforcement Agent T. L. Staley, of the Unauthorized Substance Tax Division, assessing \$1,000.00 tax, \$400.00 penalty and \$6.67 interest, for a total liability of \$1,406.67. The assessment alleged that on September 2, 2001, Mrs. Whitsett in was in unauthorized possession of 43 dosages of OxyContin (oxycodone) and Mr. Whitsett was in unauthorized possession of marijuana. The Taxpayers protested the assessment and requested a hearing before the Secretary of Revenue. On February 28, 2002, Eugene J. Cella, Assistant Secretary conducted a hearing upon Taxpayers' timely applications and objections to the proposed assessment. The Assistant Secretary issued final decisions sustaining the proposed assessment against the Taxpayers. Thereafter, the Taxpayers timely filed a petition for administrative review of the final decisions with the Board.

At the hearing before the Assistant Secretary, Mrs. Whitsett testified that she was keeping the OxyContin for your nephew's wife who was undergoing cancer treatment for the past 3 ½ years. Mrs. Whitsett also presented at statement from her nephew that the pills belonged to his wife. Mr. Whitsett presented evidence that only his wife was charged criminally with possession of an unauthorized substance.

ISSUES:

1. Did the Taxpayers have actual/or constructive possession of OxyContin without proper tax stamps affixed?
2. Are the Taxpayers subject to the assessment of unauthorized substance excise tax?

FINDINGS OF FACT

After considering the petition, brief, record and considering the arguments presented by the parties, the Board makes the following finding of fact:

IN ADDITION

1. An Assessment of Unauthorized Substance Tax was made against the Taxpayers on September 17, 2001, in the sum of \$1,000.00 tax, \$400.00 penalty and \$6.67 interest, for a total proposed liability of \$1,406.67, based upon the unlawful possession of 43 dosages of OxyContin on September 2, 2001.
2. The Taxpayers made a timely objection and application for hearing.
3. The Assistant Secretary, after conducting the hearing, sustained the proposed tax assessment together with penalty and interest as allowed by law.
4. The Taxpayers filed a timely notice of intent and petition for administrative review with the Board.
5. Based upon the record, the Taxpayers were not in constructive possession of 43 dosages of OxyContin on September 2, 2001.

CONCLUSIONS OF LAW

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

1. An assessment of tax is presumed to be correct.
2. The burden is upon the Taxpayer who objects to an assessment to overcome that presumption.
3. Pursuant to G.S. 105-113.109, a dealer who actually or constructively possesses an unauthorized substance in this State, upon which the tax has not been paid, is required to purchase and affix the appropriate stamp. Tax is due from the dealer at the time the dealer comes into possession of the unauthorized substance.
4. The Taxpayers, as a matter of law, are not dealers as that term is defined in G.S. 105-113.109 and are therefore not liable for the proposed assessment issued against them on September 2, 2001, in the amount of \$1,000 tax, together with penalty and interest.

DECISION

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

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

The Board having conducted an administrative hearing in this matter, and having considered the petition, the brief, the record and the final decisions, concludes that the findings of fact contained in the Assistant Secretary's final decisions are not supported by competent evidence in the record; that based upon the findings of fact, the Assistant Secretary's conclusions of law were not fully supported by the findings of fact; therefore the Assistant Secretary's final decisions should be reversed.

WHEREFORE, THE TAX REVIEW BOARD ORDERS that the Assistant Secretary final decisions sustaining the proposed tax assessment together with interest against the Taxpayers be and are hereby **REVERSED**.

Made and entered into the 21st day of August 2003.

TAX REVIEW BOARD

Signature _____
Richard H. Moore, Chairman
State Treasurer

Signature _____
Jo Anne Sanford, Member
Chair, Utilities Commission

Signature _____
Noel L. Allen, Attorney at Law
Appointed Member

STATE OF NORTH CAROLINA

BEFORE THE
TAX REVIEW BOARD

COUNTY OF WAKE
IN THE MATTER OF:

The Proposed Assessment of Unauthorized)
Substance Tax dated August 6, 2001 by the)
Secretary of Revenue of North Carolina)
)
)
)
vs.)
)
)
Robert Gordon Skwerer)
Taxpayer)

ADMINISTRATIVE DECISION

Number: 414

This Matter was heard before the Tax Review Board (hereinafter "Board") in the City of Raleigh, North Carolina, in the office of the State Treasurer, on Tuesday, April 2003, upon **Robert Gordon Skwerer** (hereinafter "Taxpayer") petition for administrative review of the Final Decision of Eugene J. Cella, Assistant Secretary for Administrative Hearings, of the North Carolina Department of Revenue entered on May 23, 2002, sustaining the assessment of unauthorized substance tax for the period of August 6, 2001.

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

Attorney David B. Freedman appeared at the hearing on behalf of the Taxpayer. Michael D. Youth, Associate Attorney General, appeared at the hearing on behalf of the Secretary of Revenue.

Pursuant to G.S. 105-113.111(a) and G.S. 105-241.1, a Notice of Unauthorized Substance Tax Assessment was issued to the Taxpayer by Enforcement Agent D.C. O'Dell, of the Unauthorized Substance Tax Division, assessing \$23,300.00 tax, \$9,320.00 penalty and \$2,248.78 interest, for a total liability of \$34,868.78. The assessment alleged that between May 11, 1999 and April 22, 2001, the Taxpayer, who was a licensed physician at all times relevant to the assessment, fraudulently obtained a total of 4,551 dosages of controlled substances, including alprazolam, lorazepam, clonazepam, dextroamphetamine, amphetamine, temazepam and diazepam. The Taxpayer protested the assessment and requested a hearing before the Secretary of Revenue. On January 31, 2002, Eugene J. Cella, Assistant Secretary, conducted a hearing upon Taxpayer's timely application and objection to the proposed assessment. On May 23, 2002, the Assistant Secretary issued his final decision sustaining the proposed assessment, but reducing the penalty against the Taxpayer by 50%. Thereafter, the Taxpayer timely filed a petition for administrative review of the final decision with the Board.

ISSUES

The issues considered by the Board upon administrative review of this matter are stated as follows:

1. Did the Taxpayer have actual and/or constructive possession of alprazolam, lorazepam, clonazepam, dextroamphetamine, amphetamine, temazepam and diazepam without the proper tax stamps affixed?
2. Is the Taxpayer subject to the assessment of unauthorized substance excise tax?

EVIDENCE

The evidence submitted to the Assistant Secretary and included in the record for the Board's review is stated as follows:

1. Form BD-10, "Notice of Unauthorized Substance Tax Assessment," dated August 6, 2001, designated as US-1.
2. Letter from the Taxpayer's attorney, dated August 29, 2001, requesting a hearing, designated as US-2.
3. Correspondence regarding the scheduling of the hearing, including the following:
 - Letter to the Taxpayer's attorney, dated September 17, 2001, advising him that his client's Administrative Tax Hearing was scheduled for November 26, 2001.
 - Letter from the Taxpayer's attorney, dated October 26, 2001, requesting that the hearing be continued.
 - Letter to the Taxpayer's attorney dated October 31, 2001, advising him that the hearing had been rescheduled for January 31, 2002.
4. Form BD-4, "Report of Arrest and/or Seizure Involving Nontaxpaid (Unstamped) Controlled Substances," which names the Taxpayer as the possessor of the controlled substances, designated as US-4.

IN ADDITION

5. The Charlotte-Mecklenburg Police Department's incident report, designated as US-5.
6. Memorandum from E. Norris Tolson, Secretary of Revenue, dated May 16, 2001, delegating to Eugene J. Cella, Assistant Secretary of Administrative Hearings, the authority to hold any hearing required or allowed under Chapter 105 of the North Carolina General Statutes, designated as US-6.

FINDINGS OF FACT

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

1. Assessment of Unauthorized Substance Tax was made against the Taxpayer on August 6, 2001, in the sum of \$23,300.00 tax, \$9,320.00 penalty and \$2,248.78 interest, for a total proposed liability of \$34,868.78 based upon possession of a total of 4,551 dosages of prescription medicines containing the following controlled substances alprazolam, lorazepam, clonazepam, dextroamphetamine, amphetamine, temazepam and/or diazepam.
2. The Taxpayer made a timely objection and application for hearing.
3. The Taxpayer admitted to having fraudulent prescriptions filled and using the pills for personal consumption.
4. Evidence that the Taxpayer was self-medicating his clinical depression and not selling the pills is sufficiently compelling to justify a 50% reduction in the total amount of penalty assessed.
5. During the period of May 11, 1999, to April 22, 2001, the Taxpayer came into unauthorized possession of 4,551 dosages of prescription medicines containing alprazolam, lorazepam, clonazepam, dextroamphetamine, amphetamine, temazepam and diazepam, without proper tax stamps affixed thereto.
6. Each of the 90 fraudulent prescriptions was for ten or more dosage units.

CONCLUSIONS OF LAW

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

1. An assessment of tax is presumed to be correct.
2. The burden is upon Taxpayer who objects to an assessment to overcome that presumption, and this burden was partially met with respect to the penalty.
3. Per G.S. 105-113.106 (3), defines "dealer" strictly in terms of the quantity of controlled substances possessed. There is no requirement that the controlled substances be sold, delivered or in any way distributed to another person in order to be designated a "dealer" under this statute.
4. During the period of May 11, 1999 to April 22, 2001, the Taxpayer came into unauthorized possession of 4,551 dosages of prescription medicines containing alprazolam, lorazepam, clonazepam, dextroamphetamine, amphetamine, temazepam and/or diazepam, without proper tax stamps affixed thereto. Each of the 90 discrete instances of possession was a taxable event involving ten or more dosage units.
5. The Taxpayer is liable for tax in the sum of \$23,300.00 and penalty in the sum of \$4,660.00, plus accrued interest.

DECISION

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

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

Pursuant to G.S. 105-241.1(a), a proposed tax assessment is presumed to be correct and the burden is on the Taxpayer to rebut that presumption. Since the Taxpayer failed to provide any evidence to overcome the presumption, the Assistant Secretary properly determined that the Taxpayer possessed an unauthorized substance for the period of August 6, 2001. Thus, the Board having conducted an administrative hearing in this matter, and having considered the petition, the briefs, the whole record and the Assistant Secretary's final decision, concludes that the findings of fact made by the Assistant Secretary were supported by competent evidence in the record; that based upon the findings of fact, the Assistant Secretary's

IN ADDITION

conclusions of law were fully supported by the findings of fact; therefore the decision of the Assistant Secretary should be confirmed.

WHEREFORE, THE BOARD ORDERS that the Assistant Secretary's final decision be confirmed in every respect.

Made and entered into the 21st day of August 2003.

TAX REVIEW BOARD

Signature _____
Richard H. Moore, Chairman
State Treasurer

Signature _____
Jo Anne Sanford, Member
Chair, Utilities Commission

Signature _____
Noel L. Allen, Attorney at Law
Appointed Member

NOTICE OF RULEMAKING AND PUBLIC HEARING

NORTH CAROLINA BUILDING CODE COUNCIL

Notice is hereby given by the N.C. Building Code Council in accordance with G.S. 150B-21.5(d).

Citation to Existing Rule Affected by this Rule-Making: *North Carolina Building Code and North Carolina Fire Prevention Code.*

Authority for the Rule-making: *G.S. 143-136; 143-138.*

Reason for Proposed Action: *To incorporate changes in the NC Building Code as a result of rulemaking petitions filed with the N.C. Building Code Council and incorporate changes proposed by the Council.*

Public Hearing: *December 9, 2003, 1:00 p.m., Wake County Commons, 4011 Cary Drive, Raleigh, N.C.*

Comment Procedures: *Written comments may be sent to Wanda Edwards, Secretary, N.C. Building Code Council, c/o N.C. Department of Insurance, 322 Chapanoke Road, Suite 200, Raleigh, NC 27603. Comment period expires on December 9, 2003.*

Statement of Subject Matter:

1. Revise Section 903.3.1.1 of the North Carolina Fire Prevention Code and the North Carolina Building Code as follows:

903.3.1.1 NFPA 13 sprinkler systems. Where the provisions of this code require that a building or portion thereof be equipped throughout with an automatic sprinkler system, sprinklers shall be installed throughout in accordance with NFPA 13 except as provided in Section 903.3.1.1.1. ~~903.3.1.2, 903.3.1.3.~~

This change is proposed for clarification.

2. Revise Section 907.2.3, Exception 1, of the North Carolina Fire Code and the North Carolina Building Code as follows:

907.2.3 Group E. A manual fire alarm system shall be installed in Group E occupancies. When automatic sprinkler systems or smoke detectors are installed, such systems or detectors shall be connected to the building fire alarm system.

Exceptions:

1. Group E occupancies with an occupant load of less than 50.
2. Manual fire alarm boxes are not required in Group E occupancies where all the following apply:
 - 2.1 Interior corridors are protected by smoke detectors with alarm verification.
 - 2.2 Auditoriums, cafeterias, gymnasiums and the like are protected by heat detectors or other approved detection devices.
 - 2.3 Shops and laboratories involving dusts or vapors are protected by heat detectors or other approved detection devices.
 - 2.4 Off-premises monitoring is provided.
 - 2.5 The capability to activate the evacuation signal from a central point is provided.
 - 2.6 In buildings where normally occupied spaces are provided with a two-way communication system between such spaces and a constantly attended receiving station from where a general evacuation alarm can be sounded, except in locations specifically designated by the building official.

This change makes the code consistent with 1999 code.

3. Revise Section 2206.2.3, #2 of the North Carolina Fire Prevention Code as follows:

2206.2.3 Above-ground tanks located outside, above grade. Above-ground tanks shall not be used for the storage of Class I, II, or IIIA liquid motor fuels except as provided by this section.

1. Above-ground tanks used for outside, above-grade storage of Class I liquids shall be listed and labeled as protected above-ground tanks and be in accordance with Chapter 34. Such tanks shall be located in accordance with Table 2206.2.3.
2. ~~Above-ground tanks used for above-ground storage of Class II or IIIA liquids are allowed to be protected above-ground tanks or, when approved by the code official, other above-ground tanks that comply with Chapter 34. Tank locations shall be in accordance with Table 2206.2.3.~~
Fleet Vehicle Service Stations:

When approved by the code official, above-ground storage tanks, 1,100 gallons or less in capacity, may be used to store Class I liquids at fleet vehicle service stations in accordance with NFPA 30A.

- ~~3. Tanks containing motor fuels shall not exceed 12,000 gallons (45,420 L) in individual capacity or 48,000 gallons (181,680 L) in aggregate capacity. Installations with the maximum allowable aggregate capacity shall be separated from other such installations by not less than 100 feet (30,480 mm).~~
3. Above-ground tanks used for above-ground storage of Class II or IIIA liquids are allowed to be protected above-ground tanks or, when approved by the code official, other above-ground tanks that comply with Chapter 34. Tank locations shall be in accordance with Table 2206.2.3.
- ~~4. Tanks located at farms, construction projects, or rural areas shall comply with Section 3406.2.~~
4. Tanks containing motor fuels shall not exceed 12,000 gallons (45,420 L) in individual capacity or 48,000 gallons (181,680 L) in aggregate capacity. Installations with the maximum allowable aggregate capacity shall be separated from other such installations by not less than 100 feet (30,480 mm).
5. Tanks located at farms, construction projects, or rural areas shall comply with 3406.2.

This code change is proposed for clarification.

4. Revise Section 106 of the North Carolina Fire Prevention Code as follows:

Section 106: Modify the Inspection Schedule only. All other portions remain unchanged.

Once every year	Hazardous, Institutional, HighRise, Assembly <u>except those noted below</u> and Residential except one and two family dwellings and only interior common areas of dwelling units of multi-family occupancies
Once every two years	Industrial and Educational (Except public schools)
Once every three years	<u>Assembly occupancies with an occupant load less than 100</u> , Business, Mercantile, Storage, Churches and Synagogues

The 2002 code requires many establishments to be inspected yearly that were inspected every three years under the 1999 code. This change would make the current code consistent with the 1999 code.

5. Revise Section 1616.3 of the North Carolina Building Code as follows:

Section 1616.3 Determination of seismic design category. All structures shall be assigned to a seismic design category based on their seismic use group and the design spectral response acceleration coefficients, S_{DS} and S_{D1} , determined in accordance with Section 1615.1.3 or 1615.2.5. Each building and structure shall be assigned to the most severe seismic design category in accordance with Table 1616.3(1) or 1616.3(2) irrespective of the fundamental period of vibration of the structure, T.

Exception: The seismic design category is permitted to be determined from Table 1616.3(1) alone when all of the following apply:

1. the approximate fundamental period of the structure T_a in each of the two orthogonal directions determined in accordance with Section 1617.4.2.1 is less than $0.8T_s$ determined in accordance with Section 1615.1.4, and
2. equation 16-35 is used to determine the seismic response coefficient, C_s and
3. the diaphragms are rigid as defined in Section 1602.

This change has been approved as a temporary rule.

6. Delete Section 2207 of the NC Fire Prevention Code and replace as follows:

2207.1 General. Service stations for LP-gas fuel shall comply with Chapter 119, Article 5 of the General Statutes of North Carolina, and the North Carolina Administrative Code, Title 2, Chapter 38, Section 0.700, as enforced by the NC Department of Agriculture and Consumer Services through the provisions of NFPA 58.

2207.2 Attendants. Motor vehicle fueling operations shall be conducted by qualified attendants or in accordance with Section 2207.3 by persons trained in the proper handling of LP-gas.

7. Add a new Section 911.5 as follows:

Section 911.5 Liquefied petroleum gas distribution facilities. Liquefied petroleum gas distribution facilities shall comply with Chapter 119, Article 5 of the General Statutes of North Carolina, and the North Carolina Administrative Code, Title 2,

Chapter 38, Section 0.700, as enforced by the N. C. Department of Agriculture and Consumer Services through the provisions of NFPA 58.

This change is for clarification.

8. Delete references to Liquefied petroleum gas in Table 911.1 as follows:

TABLE 911.1
EXPLOSION CONTROL REQUIREMENTS

MATERIAL	CLASS	Barricade construction	Explosion (deflagration) venting or explosion (deflagration) prevention systems
Liquefied petroleum gas distribution facilities	_____	Not required	Required

This is for clarification.

9. Revise Table 911.1 as follows:

TABLE 911.1
EXPLOSION CONTROL REQUIREMENTS

MATERIAL	CLASS	Barricade construction	Explosion (deflagration) venting or explosion (deflagration) prevention systems
Flammable gas, <u>not including Liquefied petroleum gas</u>	Gaseous Liquefied	Not required Not required	Required Required

This is for clarification.

10. Delete Section 2207 of the North Carolina Fire Prevention Code and as follows:

2207.1 General. Service stations for LP-gas fuel shall comply with Chapter 119, Article 5 of the General Statutes of North Carolina, and the North Carolina Administrative Code, Title 2, Chapter 38, Section 0.700, as enforced by the NC Department of Agriculture and Consumer Services through the provisions of NFPA 58.

2207.3 Attendants. Motor vehicle fueling operations shall be conducted by qualified attendants or in accordance with Section 2207.3 by persons trained in the proper handling of LP-gas.

This change is for clarification.

Note from the Codifier: The notices published in this Section of the NC Register include the text of proposed rules. The agency must accept comments on the proposed rule(s) 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. If the agency adopts a rule that differs substantially from a prior published notice, the agency must publish the text of the proposed different rule and accept comment on the proposed different rule for 60 days.

Statutory reference: G.S. 150B-21.2.

TITLE 01 – DEPARTMENT OF ADMINISTRATION

Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Administration, Domestic Violence Commission intends to adopt the rules cited as 01 NCAC 17 .0701-.0718.

Proposed Effective Date: February 1, 2004

Public Hearing:

Date: November 12, 2003

Time: 10:00 a.m. – 2:00 p.m.

Location: Pack Memorial Library, Lord Auditorium, 67 Haywood St., Asheville, NC

Date: December 4, 2003

Time: 1:00 p.m. – 4:00 p.m.

Location: Cooperative Extension Bldg, 403 Government Circle, Greenville, NC

Date: December 10, 2003

Time: 10:00 a.m. – 2:00 p.m.

Location: Hall Marshall Center, Woods Conference Room, 700 N. Tryon St., Charlotte, NC

Reason for Proposed Action: S.L. 2002-105 amended G.S. 143B-394.16 to add subdivision (a)(8), which directs the Domestic Violence Commission to adopt rules for the approval of abuser treatment programs. The purpose of these Rules as determined by the General Assembly is to establish a consistent level of performance from providers of abuser treatment programs and to ensure that approved programs enhance the safety of victims and hold those who perpetuate acts of domestic violence responsible.

Procedure by which a person can object to the agency on a proposed rule: Written objections may be submitted to the Executive Director of the Domestic Violence Commission. Objections will be received by mail, delivery service, hand delivery or facsimile transmission. Objections may be directed to Leslie Starsonck, Executive Director, NC Domestic Violence Commission, 526 N. Wilmington, St., 1320 Mail Service Center, Raleigh, NC 27699-1320 and fax (919) 733-2464.

Written comments may be submitted to: Leslie Starsonck, Domestic Violence Commission, 526 N. Wilmington St., 1320 Mail Service Center, Raleigh, NC 27699-1320, phone (919) 733-2455, fax (919) 733-2464, and email leslie.starsonck@ncmail.net.

Comment period ends: December 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

CHAPTER 17 - COUNCIL ON THE STATUS OF WOMEN

SECTION .0700 – ABUSER TREATMENT PROGRAMS

01 NCAC 17 .0701 PURPOSE

The purpose of the rules in this Section is to set minimum standards of practice for abuser treatment programs for domestic violence offenders.

Authority G.S. 15A-1343(b1)(9a); 50B-3(a)(12); 143B-394.16.

01 NCAC 17 .0702 AUTHORITY

The North Carolina Domestic Violence Commission ("Commission") is responsible for approving abuser treatment programs.

Authority G.S. 15A-1343(b1)(9a); 50B-3(a)(12); 143B-394.16.

01 NCAC 17 .0703 PROCEDURE FOR ABUSER TREATMENT PROGRAM APPROVAL

(a) In addition to initial approval, each abuser treatment program shall be reviewed annually by the Commission.

(b) In order to be approved, an abuser treatment program shall complete and submit an original and four copies of the approval application to the Commission for review. Applications may be obtained by contacting the Commission staff at 1320 Mail Service Center, Raleigh, NC 27699-1320, or by telephone at 919-733-2455, or by downloading the application at www.doa.state.nc.us/doa/cfw/cfw.htm.

(c) The Domestic Violence Commission shall approve applications semi-annually in March and September.

(d) As part of its application, a program shall demonstrate community support by submitting three letters of support from among the following: a local domestic violence victim program; a local domestic violence task force or coalition; or a local governmental agency that is directly associated with the problem of domestic violence (e.g., a local department of social services, district attorney's office, or law enforcement agency). Letters of support shall not be from agencies organizationally affiliated with the abuser treatment program.

(e) Every abuser treatment program shall provide documentation and assurances that it will adhere to all program rules and program structure set out in this Section at the time of the submission of its application to the Commission. If a program is not in full compliance with any rule, its application will be returned to the applicant with any rule deficiencies noted. Any deficiencies shall be corrected before the application is approved. If any deficiencies are not corrected during the review period for which the application was submitted, the program shall reapply in full at the next review period in order to be approved.

(f) Before approving an abuser treatment program, the Commission may perform a site visit.

(g) Each abuser treatment program submitting an application for approval shall receive a notice from the Commission indicating its approval status.

(h) The Commission shall maintain the list of all approved abuser treatment programs and shall notify each District Court Judge and each Clerk of Superior Court of those approved programs semi-annually.

Authority G.S. 15A-1343(b1)(9a); 50B-3(a)(12); 143B-394.16.

01 NCAC 17 .0704 INTAKE AND ASSESSMENT

(a) All abuser treatment programs shall establish and comply with written policies and procedures regarding abuser intake and assessment.

(b) Intake: A comprehensive intake and assessment shall be administered to all participants. The intake shall include:

- (1) family and social history;
- (2) medical health history;
- (3) relationship history;
- (4) history of violent, abusive, and controlling behavior;
- (5) assessment of past criminal behavior;
- (6) substance abuse history and screening;
- (7) assessment of participant's cognitive or social skills;
- (8) any other factors that might interfere with the participation in a group program; and
- (9) lethality assessment.

(c) Lethality Assessment: Because of the severity of injuries and the number of deaths caused by domestic violence, lethality assessment shall be ongoing and not limited to intake. A lethality assessment shall include, but not be limited to, the following indicators of increased lethality risk:

- (1) violence that increases in severity, frequency, and specificity;
- (2) a high degree of ownership that the abuser expresses regarding the victim;

(3) violation of court orders and conditions of probation;

(4) change in access to and relationship with victim;

(5) accessibility to weapons, especially firearms;

(6) life stressors (e.g., divorce, chronic illness, death of loved one, and unemployment);

(7) frequent or severe intoxication from alcohol or other drugs;

(8) threatened or attempted homicide or suicide;

(9) stalking behavior;

(10) history of holding victim captive;

(11) pet abuse;

(12) victim making plans to leave or has already left;

(13) extreme isolation of the victim;

(14) increased level of risk-taking by the abuser;

(15) acute mental health problems, including depression and anti-social behavior; and

(16) violence in the family of origin.

(d) All abuser treatment programs shall also provide initial and ongoing referral services for participants who have concurrent substance abuse, medical, or mental health problems.

Authority G.S. 15A-1343(b1)(9a); 50B-3(a)(12); 143B-394.16.

01 NCAC 17 .0705 VICTIM SAFETY

All abuser treatment programs shall establish and comply with written policies and procedures regarding victim safety. These policies and procedures shall include the following:

(1) Programs shall not offer participation in an abuser treatment program as an alternative to prosecution in any criminal or civil proceedings pending against the abuser.

(2) The program shall assess and verify the victim's safety, including contact with the victim, unless the victim declines contact or is unable to be located, to inform the victim about the program and its limitations.

(3) The program shall offer the victim referral and assistance information directly or in cooperation with a local domestic violence program.

(4) The program shall conduct safety checks for the victim. The safety checks shall include direct contact with the victim when possible and may be completed either directly or in collaboration with the local domestic violence program.

(5) Program participants and persons who have been victimized by those participants may receive direct services from the same agency. In those instances, the same staff person or volunteer shall not provide services to both parties.

(6) All information about or from the victim shall be kept confidential from the program participant.

(7) The program shall not schedule victims' groups and abuser treatment groups to occur simultaneously at the same facility.

- (8) The abuser treatment program shall network with its local domestic violence program and have a current memorandum of understanding regarding cooperation with that program in place.

Authority G.S. 15A-1343(b1)(9a); 50B-3(a)(12); 143B-394.16.

01 NCAC 17 .0706 PROGRAM STRUCTURE

All abuser treatment programs shall establish and comply with written policies and procedures regarding program structure. These policies and procedures shall include the following:

- (1) Treatment shall be provided in group sessions. Individual counseling sessions are not permitted in place of group sessions but may be provided as supplemental to group treatment.
- (2) Group Composition:
 - (a) Each group shall have at least two facilitators per session if the size of the group exceeds six participants.
 - (b) Each group shall have no more than 15 participants.
 - (c) Female participants who are referred to the program shall not attend or be enrolled in groups with male participants.
- (3) Program Length:
 - (a) All abuser treatment programs shall provide intervention for a total of 39 hours of group treatment.
 - (b) The 39 hours of group treatment shall be completed within 30 weeks.
 - (c) Each group session shall last at least one and one-half hours.
- (4) Fees: The establishment and collection of locally-determined abuser treatment program fees.

Authority G.S. 15A-1343(b1)(9a); 50B-3(a)(12); 143B-394.16.

01 NCAC 17 .0707 ABUSER TREATMENT PROGRAM CURRICULUM

All abuser treatment programs shall establish and comply with a written program curriculum. Written curricula shall define topics and content of sessions and shall include the following:

- (1) identification of all forms of physical, emotional, economic, sexual and verbal abuse and violence;
- (2) impact of domestic violence on the victim and the abuser;
- (3) impact of domestic violence on children including children who are abused and children who witness domestic violence;
- (4) emphasis on the responsibility of the batterer for his or her violence and abuse;
- (5) identification of the personal, societal, and cultural values and

beliefs that legitimize and sustain violence and oppression;

- (6) alternatives to violence and controlling behaviors;
- (7) identification of healthy relationships;
- (8) promotion of accountability, self-examination, negotiation, and fairness;
- (9) examination of the relationships between substance abuse and domestic violence;
- (10) examination of the relationships between mental illness and domestic violence; and
- (11) identification of the behavioral, emotional, and physical cues that precede escalating violence.

Authority G.S. 15A-1343(b1)(9a); 50B-3(a)(12); 143B-394.16.

01 NCAC 17 .0708 PROHIBITED ACTIVITIES

(a) The following methods shall not be used by abuser treatment programs:

- (1) couples therapy or counseling;
- (2) family therapy or counseling which places the responsibility for adult behavior on the children or the victim;
- (3) systems theory approaches that treat the violence as a mutual process; and
- (4) addiction counseling models that identify the violence as an addiction and the children or adult victim as enabling or codependent.

(b) The following methods shall not be the primary focus of intervention:

- (1) techniques that lay primary causality on anger;
- (2) theories or techniques that identify poor impulse control as the primary cause of the violence;
- (3) methods that identify psychopathology on either parties' part as a primary cause of violence; and
- (4) gradual containment or de-escalation of violence.

Authority G.S. 15A-1343(b1)(9a); 50B-3(a)(12); 143B-394.16.

01 NCAC 17 .0709 PARTICIPANT TERMINATION

(a) Participant Termination: All abuser treatment programs shall establish and comply with written policies and procedures for terminating participants from further participation in the program. Without limiting a program's ability to make more stringent requirements, termination may occur when a participant:

- (1) has a documented recurrence of violent conduct or intimidation;
- (2) fails to abide by the program rules and regulations, including absences and any other matter set forth in these standards;
- (3) fails to participate and attend sessions according to the program criteria;

- (4) fails to comply with the program's alcohol and drug policy; or
- (5) demonstrates increased risk of lethality as demonstrated by the lethality assessment.

(b) If a participant is terminated from the abuser treatment program, the program shall:

- (1) document the reasons for the termination without jeopardizing the victim's safety;
- (2) make specific recommendations to the probation officer or referring judge, including any alternatives such as weekend incarceration, community service hours, restitution, probation violation, or return to the program;
- (3) inform the victim of the participant's termination within two days, unless the victim declines contact or is unable to be located;
- (4) inform the program from which the victim is receiving domestic violence services of the participant's termination within two days;
- (5) complete a risk assessment with the victim and make efforts to assist the victim in minimizing violence that may occur after the participant's termination, unless the victim declines contact or is unable to be located; and
- (6) inform the probation officer and referring judge (or the chief District Court judge in the absence of the referring judge) or District Attorney's Office of the participant's termination within five days.

Authority G.S. 15A-1343(b1)(9a); 50B-3(a)(12); 143B-394.16.

01 NCAC 17 .0710 PROGRAM ASSESSMENT

Programs shall submit quarterly statistical reports to the agency to include a tracking of participants referred to, accepted into and completing the program, the sources of referral, an analysis of completion rates and reasons for termination, an analysis of contracts with participants' partners, and an assessment program impact, including but not limited to recidivism rates.

Authority G.S. 15A-1343(b1)(9a); 50B-3(a)(12); 143B-394.16.

01 NCAC 17 .0711 PROVISIONS OF DIRECT SERVICES

All programs shall establish written policies and procedures for determining qualifications for all staff, consultants, or volunteers delivering direct services to participants. These policies should address situations in which individuals have committed domestic violence and the program's guidelines for determining whether the conduct undermines the integrity of the program or will interfere with the individual's performance. All programs shall have a pre-service and continuing education plan for staff, consultants and volunteers.

Authority G.S. 15A-1343(b1)(9a); 50B-3(a)(12); 143B-394.16.

01 NCAC 17 .0712 CONTINUING EDUCATION

All abuser treatment program Direct Service Staff shall participate in a minimum of 20 hours per year of continuing training regarding domestic violence related issues. This training

may be obtained through a combination of internal (i.e. presented within the agency as an inservice) and external sources (regional or state conference). Further, this training may not consist of self-teaching by individual use of books or tapes.

Authority G.S. 15A-1343(b1)(9a); 50B-3(a)(12); 143B-394.16.

01 NCAC 17 .0713 PARTICIPANT CONFIDENTIALITY

(a) All abuser treatment programs shall establish and comply with written policies and procedures regarding participant confidentiality and provide notice of the policies and procedures to all who provide direct services and those with access to participant records. Except as noted in Paragraph (b) of this Rule, program staff shall not disclose, without the participant's consent, any confidential communications made by a participant to the program staff during the course of the program.

(b) Exceptions to Confidentiality: All participant information shall be kept strictly confidential except under the following conditions:

- (1) When a participant makes an overt or covert threat to harm self or others, the program staff shall warn the potential victim and law enforcement personnel. The program staff shall promptly contact the partner, any other potential victim, and the police if the staff member believes someone is at risk. If the victim cannot be reached, the staff may contact the Commission or any local domestic violence program that may provide assistance in locating the victim. The program shall undertake ongoing assessment of the risk of danger to the victim, the children, or the participant him or herself. (See Rule 01 NCAC 17 .0704(c) regarding lethality assessment.)
- (2) If a participant is suspected of child abuse or neglect, program staff shall report such abuse or neglect to the director of social services in the county where the juvenile resides pursuant to G.S. 7B-301.
- (3) If a participant has been mandated to an abuser treatment program by a judge, program staff shall release information about acceptance to, attendance, compliance with program rules and guidelines, behavior in group, and current abuse or threats of abuse to an officer of the court, a probation officer, or a judge.
- (4) The person identified as the victim of abuse shall be notified of the participant's acceptance or rejection for enrollment in the abuser treatment program for the dual purposes of ensuring the safety of victims and providing information about the program.
- (5) The program may disclose information about a participant when the participant or his or her heirs, executors or administrators file a suit or complaint against the abuser treatment program that arises out of or is connected with the services rendered or denied to such participant by the program.

(c) Waiver of Confidentiality: Information may be shared according to the terms of Waivers of Confidentiality that may be signed by the participant in the course of the program.

(d) Group Confidentiality: All abuser treatment program counseling and educational groups are confidential and closed to those other than participants, program staff, and other professionals necessary for the functioning of program services. Those providing services to the deaf, offering language translation and interpretation, or bringing information critical to the curriculum to the group may attend at the staff's discretion. Other people who wish to visit, including newspaper reporters, grant-makers, and the participant's family and friends may attend only when the participants unanimously agree to a visit, and upon a written warning by the staff that the program shall not be responsible for any breach of confidentiality. Program staff shall advise visitors and participants of the confidentiality policy and require visitors to execute an agreement not to disclose identity of participants or participant-specific information except as they receive written permission to do so.

(e) Separate Records: The abuser treatment program shall maintain separate locked files for participants and victims. There shall be no commingling of confidential information in victim and participant records.

Authority G.S. 15A-1343(b1)(9a); 50B-3(a)(12); 143B-394.16.

01 NCAC 17 .0714 VICTIM CONFIDENTIALITY

All abuser treatment programs shall keep all information provided by the victim confidential unless the victim gives written permission for the program to release the information. All information received by the victim shall be kept in separate files from the participant's files. If the victim tells the abuser treatment program that the participant has committed a new offense, the treatment program shall encourage the victim to contact:

- (1) appropriate law enforcement; and
- (2) the local domestic violence program or other support services.

Authority G.S. 15A-1343(b1)(9a); 50B-3(a)(12); 143B-394.16.

01 NCAC 17 .0715 ABUSER TREATMENT PROGRAM INVESTIGATIONS AND REMOVAL FROM APPROVED LIST

(a) A person who believes that an approved abuser treatment program has violated any provision of this Section may file a written complaint with the Commission. The Commission may also initiate proceedings under this Rule without a third party complaint having been filed.

(b) The Commission shall dismiss any complaint it finds is unfounded, frivolous, or trivial.

(c) Unless the complaint is dismissed, pursuant to Paragraph (b) of this Rule, the Commission shall notify the program of the complaint in writing. Such notice shall be sent by certified mail with return receipt requested. The notice shall state the alleged facts as contained in the complaint, or may enclose a copy of the complaint, and shall contain a request that the program submit an answer in writing within 20 days from the date the notice of the complaint is received by the abuser treatment program.

(d) If the abuser treatment program acknowledges the violations in the complaint, the Commission shall accept the admission and

shall issue a First Notice of Violation. Upon First Notice of Violation, the abuser treatment program shall enter into a probationary period. An abuser treatment program that is not in compliance with this Section shall have 60 days to bring its program into compliance.

(e) If the abuser treatment program does not respond to or denies the violations, the Commission shall investigate the allegations contained in the complaint. The program shall be given another opportunity to respond to the Commission's concerns. If the Commission finds that the program is in violation, the Commission shall issue a First Notice of Violation as in Paragraph (d) of this Rule.

(f) The Commission shall maintain the complaint, evidence, investigative findings, and disposition of each matter. If a First Notice of Violation has been issued, the Commission shall determine if the abuser treatment program has come into compliance within 60 days. If the abuser treatment program is still not in compliance as determined by the Commission, the Commission shall issue a Second Notice of Violation to the program, setting forth an additional 60 days for correcting the violations.

(g) If the Commission determines that the abuser treatment program is still not in compliance at the end of the time set forth in the Second Notice of Violation, the Commission shall remove the program from the list of approved programs effective as of the first day of the next calendar quarter and issue a Letter of Termination to the program. District court judges and clerks of court for the prosecutorial districts served by the program shall be notified immediately by Commission staff of the termination.

(h) All participants in a terminated abuser treatment program shall be remanded back to the referring court for referral to another program or other action deemed appropriate by the court. Any program so terminated may reapply to the Commission for inclusion on the approval list no sooner than the next application period.

(i) When a program is terminated from the approved list, the Commission shall notify relevant domestic violence and sexual assault agencies and North Carolina Providers of Abuser Treatment.

(1) All abuser treatment programs shall comply with any reporting requirements and requests for information regarding statistics and other data as may be requested by the Commission.

(2) Failure to comply with reporting deadlines and requests for information shall result in a program being deemed noncompliant, which shall lead to termination and removal from the approved abuser treatment program list.

Authority G.S. 15A-1343(b1)(9a); 50B-3(a)(12); 143B-394.16.

01 NCAC 17 .0716 RIGHT TO ACCESS

The Commission or any of its authorized representatives may have access to any books, documents, papers, participant or other records of any applicant abuser treatment program needed to make a determination during the approval process or any time thereafter unless otherwise protected by law.

Authority G.S. 15A-1343(b1)(9a); 50B-3(a)(12); 143B-394.16.

01 NCAC 17 .0717 RECORDKEEPING,

PROPOSED RULES

DOCUMENTATION, AND REPORTS

In all instances where the rules in this Section require abuser treatment programs to establish and comply with written policies and procedures, the program shall maintain documents and records demonstrating compliance with the requirements imposed by these Rules.

Authority G.S. 15A-1343(b1)(9a); 50B-3(a)(12); 143B-394.16.

01 NCAC 17 .0718 EQUAL OPPORTUNITY

(a) The Commission shall not discriminate against any abuser treatment program or its providers because of age, race, sex, creed, color, national origin, or disabling condition.

(b) No approved abuser treatment program shall deny services to any participant or its providers because of age, race, sex, creed, color, national origin, or disabling condition.

Authority G.S. 15A-1343(b1)(9a); 50B-3(a)(12); 143B-394.16.

TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Health and Human Resources – Division of Medical Assistance intends to adopt the rule cited as 10A NCAC 21B .0410.

Proposed Effective Date: February 1, 2004

Public Hearing:

Date: October 30, 2003

Time: 10:00 a.m.

Location: 1985 Umstead Dr., Raleigh, NC

Reason for Proposed Action: *The changes in federal law, The Personal Responsibility Work Opportunity and Reconciliation Act of 1996, (PRWORA) now require states to count a sponsor's income and resources when determining an alien's eligibility for Medicaid. Medicaid expenditures will marginally be reduced because aliens who were eligible for Medicaid without counting the sponsor's income and/or resources will not be ineligible due to counting a sponsor's income and/or resources.*

Comment Procedures: *Comments from the public shall be directed to Portia Rochelle, Division of Medical Assistance, 1985 Umstead Dr., 2405 Mail Service Center, Raleigh, NC 27699-2405, phone (919) 857-4016, fax (919) 733-6608, and email portia.rochelle@ncmail.net. Comment period ends December 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 (\geq \$3,000,000)
 None

CHAPTER 21 – MEDICAL ASSISTANCE ADMINISTRATION

SUBCHAPTER 21B – ELIGIBILITY DETERMINATION

SECTION .0400 – BUDGETING PRINCIPLES

10A NCAC 21B .0410 ALIEN SPONSOR DEEMING

(a) A sponsored alien is an alien lawfully admitted for permanent residence sponsored by an individual who has signed an Affidavit of Support required by the Bureau of Citizenship and Immigration Services.

(b) A sponsor is a person who signed an Affidavit of Support on behalf of an alien as a condition of the alien's entry or admission to the United States.

(c) An indigent alien is exempt from sponsor deeming. An alien is indigent if:

- (1) the sum of the sponsored alien's own income;
- (2) the cash contributions of the sponsor and others; and
- (3) the value of any in-kind assistance the sponsor and others provide the alien does not exceed 130 percent of the poverty income guidelines.

(d) The sponsor is financially responsible for the alien by deeming his income to the alien.

(e) The countable income of a sponsor is determined in accordance with Rules .0312 and .0404 of this Subchapter. Apply Rule .0402 of this Subchapter for situations in which the sponsor is the spouse or a parent.

(f) The countable resources of a sponsor are determined in accordance with Rules .0311 and .0403 of this Subchapter.

(g) Third party verification of the following is required for:

- (1) sponsorship;
- (2) a sponsor's income; and
- (3) a sponsor's resources.

The application shall be denied if verification is not received by the processing deadline.

Authority G.S. 108A-25(b); 108A-54; 108A-55; *The Personal Responsibility Work Opportunity and Reconciliation Act of 1996 (PRWORA), as amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), P.L. 104-208, and the Balanced Budget Act of 1997 (BBA), P.L. 105-33.*

TITLE 12 – DEPARTMENT OF JUSTICE

PROPOSED RULES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Criminal Justice Education and Training Standards Commission intends to adopt the rules cited as 12 NCAC 09B .0116-.0117, .0235-.0236; 09G .0401, .0405-.0407, amend the rules cited as 12 NCAC 09A .0103; 09B .0102, .0116, and repeal the rules cited as 12 NCAC 09B .0108, .0207, .0234.

Proposed Effective Date: April 1, 2004

Public Hearing:

Date: November 13, 2003

Time: 1:00 p.m.

Location: Department of Correction, Office of Staff Development and Training, Apex, NC

Reason for Proposed Action:

12 NCAC 09A .0103 - Legislative amendment to G.S. 17C-6 placed the following positions within the Department of Juvenile Justice and Delinquency Prevention under the authority of the Commission: Juvenile Justice Officer, Juvenile Court Counselor, and Chief Court Counselor. The definitions for these positions have been added to the rule.

12 NCAC 09B .0102 - Legislative amendment to G.S. 17C-6 placed the following positions within the Department of Juvenile Justice and Delinquency Prevention under the authority of the Commission: Juvenile Justice Officer, Juvenile Court Counselor, and Chief Court Counselor. Authority to conduct background investigation has been given to the Department of Juvenile Justice and Delinquency Prevention in this rule.

12 NCAC 09B .0108, .0207 - Legislative amendment to G.S. 17C-6 placed the following positions within the Department of Juvenile Justice and Delinquency Prevention under the authority of the Commission: Juvenile Justice Officer, Juvenile Court Counselor, and Chief Court Counselor. The position titled "State Youth Services Officer" was eliminated.

12 NCAC 09B .0116 - Legislative amendment to G.S. 17C-6 placed the following positions within the Department of Juvenile Justice and Delinquency Prevention under the authority of the Commission: Juvenile Justice Officer, Juvenile Court Counselor, and Chief Court Counselor. This new rule outlines the minimum standards for Juvenile Court Counselors and Chief Court Counselors.

12 NCAC 09B .0117 - Legislative amendment to G.S. 17C-6 placed the following positions within the Department of Juvenile Justice and Delinquency Prevention under the authority of the Commission: Juvenile Justice Officer, Juvenile Court Counselor, and Chief Court Counselor. This new rule outlines the minimum standards for Juvenile Justice Officers.

12 NCAC 09B .0234 - Legislative amendment to G.S. 17C-6 placed the following positions within the Department of Juvenile Justice and Delinquency Prevention under the authority of the Commission: Juvenile Justice Officer, Juvenile Court Counselor, and Chief Court Counselor. The course titled "Basic Training for Juvenile Detention Homes Personnel" has been eliminated.

12 NCAC 09B .0235 - Legislative amendment to G.S. 17C-6 placed the following positions within the Department of Juvenile Justice and Delinquency Prevention under the authority of the Commission: Juvenile Justice Officer, Juvenile Court Counselor, and Chief Court Counselor. This new rule outlines basic training requirements for Juvenile Court Counselors and Chief Court Counselors.

12 NCAC 09B .0236 - Legislative amendment to G.S. 17C-6 placed the following positions within the Department of Juvenile Justice and Delinquency Prevention under the authority of the Commission: Juvenile Justice Officer, Juvenile Court Counselor, and Chief Court Counselor. This new rule outlines basic training requirements for Juvenile Justice Officers.

12 NCAC 09G .0401, .0405-.0407 - Session Law 2002-159 (Senate Bill 1217) enacted technical amendments to G.S. 17C-6(a)(6) and G.S. 17C-6(a)(7) that grants the Commission authority over Corrections School Directors.

Procedure by which a person can object to the agency on a proposed rule: *The objection, reasons for the objection, and the clearly identified portion of the rule to which the objection pertains, must be submitted in writing to Teresa Marrella, Department of Justice, 114 West Edenton St., Raleigh, NC 27602.*

Written comments may be submitted to: *Teresa Marrella, Department of Justice, 114 West Edenton St., Raleigh, NC 27602. Phone: (919) 716-6473, fax: (919) 716-6752.*

Comment period ends: *December 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

CHAPTER 09 - CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS

SUBCHAPTER 09A - CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION

SECTION .0100 - COMMISSION ORGANIZATION AND PROCEDURES

12 NCAC 09A .0103 DEFINITIONS

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

PROPOSED RULES

- (1) "Agency" or "Criminal Justice Agency" means those state and local agencies identified in G.S. 17C-2(b).
- (2) "Alcohol Law Enforcement Agent" means a law enforcement officer appointed by the Secretary of Crime Control and Public Safety as authorized by G.S. 18B-500.
- (3) "Chief Court Counselor" means the person responsible for administration and supervision of juvenile intake, probation and post-release supervision in each judicial district, operating under the supervision of the Department of Juvenile Justice and Delinquency Prevention.
- ~~(4)(3)~~ "Commission" means the North Carolina Criminal Justice Education and Training Standards Commission.
- ~~(5)(4)~~ "Commission of an offense" means a finding by the North Carolina Criminal Justice Education and Training Standards Commission or an administrative body that a person performed the acts necessary to satisfy the elements of a specified criminal offense.
- ~~(6)(5)~~ "Convicted" or "Conviction" means and includes, for purposes of this Chapter, the entry of:
 - (a) a plea of guilty;
 - (b) a verdict or finding of guilt by a jury, judge, magistrate, or other duly constituted, established, and recognized adjudicating body, tribunal, or official, either civilian or military; or
 - (c) a plea of no contest, nolo contendere, or the equivalent.
- ~~(7)(6)~~ "Criminal Justice Officer(s)" means those officers identified in G.S. 17C-2(c) and excluding Correctional officers; Probation/parole officers, and Probation/parole officers-surveillance.
- ~~(8)(7)~~ "Criminal Justice System" means the whole of the State and local criminal justice agencies described in Item (1) of this Rule.
- ~~(9)(8)~~ "Department Head" means the chief administrator of any criminal justice agency and specifically includes any chief of police or agency director. "Department Head" also includes a designee formally appointed in writing by the Department head.
- ~~(10)(9)~~ "Director" means the Director of the Criminal Justice Standards Division of the North Carolina Department of Justice.
- ~~(11)(10)~~ "Educational Points" means points earned toward the Professional Certificate Programs for studies satisfactorily completed for semester hour or quarter hour credit at an accredited institution of higher education. Each semester hour of college credit equals one educational point and each quarter hour of college credit equals two-thirds of an educational point.

- ~~(12)(11)~~ "Enrolled" means that an individual is currently actively participating in an on-going formal presentation of a Commission-accredited basic training course which has not been concluded on the day probationary certification expires. The term "currently actively participating" as used in this definition means:
 - (a) for law enforcement officers, that the officer is then attending an approved course presentation averaging a minimum of twelve hours of instruction each week; and
 - (b) for Department of Juvenile Justice and Delinquency Prevention personnel, that the officer is then attending the last or final phase of the approved training course necessary for fully satisfying the total course completion requirements.
- ~~(13)(12)~~ "High School" means graduation from a high school that meets the compulsory attendance requirements in the jurisdiction in which the school is located.
- ~~(14)(13)~~ "In-Service Training" means any and all training prescribed in 12 NCAC 09E .0102 which must be satisfactorily completed by all certified law enforcement officers during each full calendar year of certification.
- ~~(15)(14)~~ "Lateral Transfer" means the employment of a criminal justice officer, at any rank, by a criminal justice agency, based upon the officer's special qualifications or experience, without following the usual selection process established by the agency for basic officer positions.
- ~~(16)(15)~~ "Law Enforcement Code of Ethics" means that code adopted by the Commission on September 19, 1973, which reads:
As a law enforcement officer, my fundamental duty is to serve the community; to safeguard lives and property; to protect the innocent against deception, the weak against oppression or intimidation, and the peaceful against violence or disorder; and to respect the constitutional rights of all to liberty, equality, and justice.
I will keep my private life unsullied as an example to all, and will behave in a manner that does not bring discredit to me or to my agency. I will maintain courageous calm in the face of danger, scorn, or ridicule; develop self-restraint; and be constantly mindful of the welfare of others. Honest in thought and deed both in my personal and official life, I will be exemplary in obeying the law and the regulations of my department. Whatever I see or hear of a confidential nature or that is confided to me in my official capacity will be kept ever secret unless revelation is necessary in the performance of my duty.

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

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

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

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

(17) "Juvenile Court Counselor" means a person responsible for intake services and court supervision services to juveniles under the supervision of the chief court counselor.

(18) "Juvenile Justice Officer" means persons designated by the Secretary of the Department of Juvenile Justice and Delinquency Prevention to provide for the care and supervision of juveniles placed in the physical custody of the Department.

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

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

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

(22)(49) "Local Confinement Personnel" means any officer, supervisor or administrator of a local

confinement facility in North Carolina as defined in G.S. 153A-217; any officer, supervisor or administrator of a county confinement facility in North Carolina as defined in G.S. 153A-218; or, any officer, supervisor or administrator of a district confinement facility in North Carolina as defined in G.S. 153A-219.

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

(a) "Class A Misdemeanor" means a misdemeanor committed or omitted in violation of any common law, duly enacted ordinance or criminal statute of this state which is not classified as a Class B Misdemeanor pursuant to Sub-item (20)(b) of this Rule. Class A Misdemeanor also includes any act committed or omitted in violation of any common law, duly enacted ordinance, criminal statute, or criminal traffic code of any jurisdiction other than North Carolina, either civil or military, for which the maximum punishment allowable for the designated offense under the laws, statutes, or ordinances of the jurisdiction in which the offense occurred includes imprisonment for a term of not more than six months. Specifically excluded from this grouping of "Class A Misdemeanor" criminal offenses for jurisdictions other than North Carolina, are motor vehicle or traffic offenses designated as misdemeanors under the laws of other jurisdictions, or duly enacted ordinances of an authorized governmental entity with the exception of the offense of impaired driving which is expressly included herein as a Class A Misdemeanor if the offender could have been sentenced for a term of not more than six months. Also specifically included herein as a Class A Misdemeanor is the offense of impaired driving, if the offender was sentenced under punishment level three [G.S. 20-179(I)], level four [G.S. 20-179(j)], or level five [G.S. 20-179(k)]. Class A Misdemeanor shall also include acts committed or omitted in North Carolina prior to October 1, 1994 in violation of any common law, duly enacted ordinance or criminal statute, of this state for which the maximum punishment allowable for the designated offense

- included imprisonment for a term of not more than six months.
- (b) "Class B Misdemeanor" means an act committed or omitted in violation of any common law, criminal statute, or criminal traffic code of this state which is classified as a Class B Misdemeanor as set forth in the Class B Misdemeanor Manual as published by the North Carolina Department of Justice which is hereby incorporated by reference and shall automatically include any later amendments and editions of the incorporated material as provided by G.S. 150B-21.6. Copies of the publication may be obtained from the North Carolina Department of Justice, Post Office Box 629, Raleigh, North Carolina 27602. There is no cost per manual at the time of adoption of this Rule. Class B Misdemeanor also includes any act committed or omitted in violation of any common law, duly enacted ordinance, criminal statute, or criminal traffic code of any jurisdiction other than North Carolina, either civil or military, for which the maximum punishment allowable for the designated offense under the laws, statutes, or ordinances of the jurisdiction in which the offense occurred includes imprisonment for a term of more than six months but not more than two years. Specifically excluded from this grouping of "Class B Misdemeanor" criminal offenses for jurisdictions other than North Carolina, are motor vehicle or traffic offenses designated as being misdemeanors under the laws of other jurisdictions with the following exceptions: Class B Misdemeanor does expressly include, either first or subsequent offenses of driving while impaired if the maximum allowable punishment is for a term of more than six months but not more than two years, driving while license permanently revoked or permanently suspended, and those traffic offenses occurring in other jurisdictions which are comparable to the traffic offenses specifically listed in the Class B Misdemeanor Manual. "Class B Misdemeanor" shall also include acts committed or omitted in North Carolina prior to October 1, 1994 in violation of any common law, duly enacted ordinance, criminal statute, or criminal traffic code of this state for which the maximum punishment allowable for the designated offense included imprisonment for a term of more than six months but not more than two years.
- ~~(24)~~(21) "Pilot Courses" means those courses developed consistent with the curriculum development policy adopted by the Commission on May 30, 1986. This policy shall be administered by the Education and Training Committee of the Commission consistent with 12 NCAC 09C .0404.
- ~~(25)~~(22) "Qualified Assistant" means an additional staff person designated as such by the School Director to assist in the administration of a course when an accredited institution or agency assigns additional responsibilities to the certified School Director during the planning, development, and implementation of an accredited course.
- ~~(26)~~(23) "Radar" means a speed-measuring instrument that transmits microwave energy in the 10,500 to 10,550 MHZ frequency (X) band or transmits microwave energy in the 24,050 to 24,250 MHZ frequency (K) band and either of which operates in the stationary and/or moving mode. "Radar" further means a speed-measuring instrument that transmits microwave energy in the 33,400 to 36,000 MHZ (Ka) band and operates in either the stationary or moving mode.
- ~~(27)~~(24) "Resident" means any youth committed to a facility operated by the Department of Juvenile Justice and Delinquency Prevention.
- ~~(28)~~(25) "School" or "criminal justice school" means an institution, college, university, academy, or agency which offers criminal justice, law enforcement, or traffic control and enforcement training for criminal justice officers or law enforcement officers. "School" includes the criminal justice training course curriculum, instructors, and facilities.
- ~~(29)~~(26) "School Director" means the person designated by the sponsoring institution or agency to administer the criminal justice school.
- ~~(30)~~(27) "Speed-Measuring Instruments" (SMI) means those devices or systems, including radar time-distance, and LIDAR, formally approved and recognized under authority of G.S. 17C-6(a)(13) for use in North Carolina in determining the speed of a vehicle under observation and particularly includes all named devices or systems as specifically referenced in the approved list of 12 NCAC 09C .0601.
- ~~(31)~~(28) "Standards Division" means the Criminal Justice Standards Division of the North Carolina Department of Justice.
- ~~(32)~~(29) "Time-Distance" means a speed-measuring instrument that electronically computes, from

measurements of time and distance, the average speed of a vehicle under observation.

~~(30) "State Youth Services Officer" means an employee of the Department of Juvenile Justice and Delinquency Prevention whose duties include the evaluation, treatment, instruction, or supervision of juveniles committed to that agency.~~

Authority G.S. 17C-2; 17C-6; 17C-10; 153A-217.

SUBCHAPTER 09B - STANDARDS FOR CRIMINAL JUSTICE EMPLOYMENT: EDUCATION: AND TRAINING

SECTION .0100 - MINIMUM STANDARDS FOR CRIMINAL JUSTICE EMPLOYMENT

12 NCAC 09B .0102 BACKGROUND INVESTIGATION

(a) Any agency contemplating the employment of an applicant as a criminal justice officer shall, prior to employment, complete a background investigation on such applicant. The investigation shall examine the applicant's character traits and habits relevant to performance as a criminal justice officer and shall determine whether the applicant is of good moral character.

(b) Prior to the investigation, the applicant shall complete the Commission's Personal History Statement Form to provide a basis for the investigation.

(c) The agency shall utilize an investigator with prior experience or training in conducting background investigations. The investigator shall document the results of the investigation and shall include in the report of investigation:

- (1) biographical data;
- (2) family data;
- (3) scholastic data;
- (4) employment data;
- (5) criminal history data;
- (6) interviews with the applicant's references; and
- (7) a summary of the investigator's findings and conclusions regarding the applicant's moral character.

(d) For criminal justice officers employed by the North Carolina Department of Juvenile Justice and Delinquency Prevention, ~~North Carolina Department of Correction~~, the agency may use the method of documenting the results of the background investigation it deems most appropriate to its needs in accordance with the Commission form. However, the Commission's Mandated Background Investigation Form must be used as a guide of minimum information to be collected and recorded by the investigator for all other criminal justice officer applicants that are regulated by the Commission.

(e) Upon written request by the Director of the Standards Division, the employing agency shall provide the Commission with a copy of any background investigation retained by the agency.

Authority G.S. 17C-6.

12 NCAC 09B .0108 MINIMUM STANDARDS FOR STATE YOUTH SERVICES OFFICERS

~~In addition to the requirements for criminal justice officers contained in Rule .0101 of the Section, every state youth services officer employed by the Division of Youth Services, Department of Human Resources shall:~~

- ~~(1) not have committed or been convicted of:

 - ~~(a) a felony; or~~
 - ~~(b) a crime for which the punishment could have been imprisonment for more than two years; or~~
 - ~~(c) a crime or unlawful act defined as a "Class B misdemeanor" within the five year period prior to the date of application for employment; or~~
 - ~~(d) four or more crimes or unlawful acts defined as "Class B misdemeanors" regardless of the date of conviction; or~~
 - ~~(e) four or more crimes or unlawful acts defined as "Class A misdemeanors" except the applicant may be employed if the last conviction occurred more than two years prior to the date of application for employment;~~~~
- ~~(2) have attained the associate degree or have satisfactorily completed at least 60 semester hours or 90 quarter hours of educational credit at an accredited technical institute, community college, junior college, college, or university;~~
- ~~(3) in lieu of the educational requirements of Paragraph (2) of this Rule, persons employed as "Cottage Parent I," "Cottage Parent II," "Cottage Life Counselor Technician", or "Youth Services Behavioral Technician" shall have graduated from high school or have successfully completed the General Education Development Test indicating high school equivalency.~~

Authority G.S. 17C-6.

12 NCAC 09B .0116 MINIMUM STANDARDS FOR JUVENILE COURT COUNSELORS AND CHIEF COURT COUNSELORS

In addition to the requirements for criminal justice officers contained in Rule .0101 of this Section, every juvenile court counselor and chief court counselor employed by the North Carolina Department of Juvenile Justice and Delinquency Prevention shall:

- (1) not have committed or been convicted of:

 - (a) a felony;
 - (b) a crime for which the punishment could have been imprisonment for more than two years;
 - (c) a crime or unlawful act defined as a "Class B misdemeanor" within the five year period prior to the date of application for employment;
 - (d) four or more crimes or unlawful acts defined as "Class B misdemeanors"

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- regardless of the date of conviction;
- or
- (e) four or more crimes or unlawful acts defined as "Class A misdemeanors" except the applicant may be employed if the last conviction occurred more than two years prior to the date of application for employment; and
- (2) have attained a bachelor's degree from an accredited college or university.

Authority G.S. 17C-6.

12 NCAC 09B .0117 MINIMUM STANDARDS FOR JUVENILE JUSTICE OFFICERS

In addition to the requirements for criminal justice officers contained in Rule .0101 of this Section, every juvenile justice officer employed by the North Carolina Department of Juvenile Justice and Delinquency Prevention shall:

- (1) not have committed or been convicted of:
- (a) a felony;

- (b) a crime for which the punishment could have been imprisonment for more than two years;
- (c) a crime or unlawful act defined as a "Class B misdemeanor" within the five year period prior to the date of application for employment;
- (d) four or more crimes or unlawful acts defined as "Class B misdemeanors" regardless of the date of conviction; or
- (e) four or more crimes or unlawful acts defined as "Class A misdemeanors" except the applicant may be employed if the last conviction occurred more than two years prior to the date of application for employment; and
- (2) be a high school graduate or have passed the General Equivalency Development Test indicating high school equivalency.

Authority G.S. 17C-2; 17C-6; 17C-10.

SECTION .0200 - MINIMUM STANDARDS FOR CRIMINAL JUSTICE SCHOOLS AND CRIMINAL JUSTICE TRAINING PROGRAMS OR COURSES OF INSTRUCTION

12 NCAC 09B .0207 BASIC TRAINING - STATE YOUTH SERVICES OFFICERS

(a) The basic training course for state youth services officers shall consist of a minimum of 167 hours of instruction designed to provide the trainee with the skills and knowledge to perform those tasks essential to function as a state youth services officer.

(b) Each basic training course for state youth services officers shall include training in the following identified topical areas:

- (1) Basic Orientation 11 Hours
- (2) Juvenile Law & The Juvenile Justice System 9 Hours
- (3) Institutional Operations and Program Orientation 25 Hours
- (4) Medical Emergencies and Other Unusual Problems 11 Hours
- (5) Supervision and Leadership 6 Hours
- (6) Psychological Factors in Delinquency 14 Hours
- (7) Special Issues of Delinquent Adolescents 7 Hours
- (8) Sociological Factors in Delinquency 7 Hours
- (9) Issues in Institutionalization 7 Hours
- (10) Introduction to Counseling 7 Hours
- (11) Counseling Techniques 7 Hours
- (12) Theories of Counseling and Psychotherapy 7 Hours
- (13) Group Counseling & Counseling Practicum 14 Hours
- (14) Team Building 7 Hours
- (15) Interpersonal Communications Theory and Skills 14 Hours
- (16) Group Problem Solving 7 Hours
- (17) Handling Job Stress 4 Hours
- (18) Review and Examinations 3 Hours

(c) Upon successful completion of a commission-accredited training course by state youth services, the director of the school conducting such course shall notify the Commission of the satisfactory achievement of trainees by submitting a monthly Report of Training Course Completion.

Authority G.S. 17C-6.

12 NCAC 09B .0234 BASIC TRAINING -- JUVENILE DETENTION HOMES PERSONNEL

(a) The basic training course for local confinement personnel who work in juvenile detention homes, either state or local, shall consist of a minimum of 72 hours of instruction presented during a single course offering not to exceed two weeks in length.

(b) The basic training course for juvenile detention home officers shall include training in the following identified topical areas:

- (1) Course Orientation 2 Hours

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(2) Juvenile Law	4 Hours
(3) Introduction to Reality Therapy	24 Hours
(4) Suicide Prevention	4 Hours
(5) Daily Supervision in a Juvenile Detention Center	6 Hours
(6) Unarmed Self-Defense	20 Hours
(7) Standard First Aid	8 Hours
(8) Evaluation and Testing	2 Hours
(9) Prevention of Communicable Diseases	2 Hours

~~(c) The Commission accredited school that is accredited to offer the "Basic Training Juvenile Detention" course is: The North Carolina Division of Youth Services.~~

Authority G.S. 17C-2; 17C-6; 17C-10.

12 NCAC 09B .0235 BASIC TRAINING – JUVENILE COURT COUNSELORS AND CHIEF COURT COUNSELORS

(a) The basic training course for juvenile court counselors and chief court counselors shall consist of a minimum of 144 hours of instruction designed to provide the trainee with the skills and knowledge to perform those tasks essential to function as a juvenile court counselor and a chief court counselor.

(b) Each basic training course for juvenile court counselors shall include training in the following identified topical areas:

(1) Orientation to Basic Training	8 Hours
(2) Juvenile Law	8 Hours
(3) Roles and Responsibilities of Juvenile Court Counselors	6 Hours
(4) Special Program Procedures	2 Hours
(5) Report Writing, Documentation and Correspondence	8 Hours
(6) Interpersonal Communication Skills	8 Hours
(7) Interviewing	8 Hours
(8) Basic Individual Counseling Skills	16 Hours
(9) Working with Families of Delinquents	4 Hours
(10) Risk and Needs Assessment	4 Hours
(11) Intake	8 Hours
(12) Safety Issues	4 Hours
(13) First Aid/CPR and Blood Borne Pathogens	8 Hours
(14) Restraint, Control and Defense Techniques	28 Hours
(15) Defensive Driving	8 Hours
(16) Secure Transportation	8 Hours
(17) Review and Examinations	8 Hours

(c) Upon successful completion of a Commission-accredited training course for juvenile court counselors and chief court counselors, the director of the school conducting such course shall notify the Commission of the satisfactory achievement of trainees by submitting a Report of Training Course Completion for each successful trainee.

Authority G.S. 17C-2; 17C-6; 17C-10.

12 NCAC 09B .0236 BASIC TRAINING - JUVENILE JUSTICE OFFICERS

(a) The basic training course for juvenile justice officers shall consist of a minimum of 160 hours of instruction designed to provide the trainee with the skills and knowledge to perform those tasks essential to function as a juvenile justice officer.

(b) Each basic training course for juvenile justice officers shall include training in the following identified topical areas:

(1) Facility Specific Safety, Security and Supervision	24 Hours
(2) Orientation, Roles and Responsibilities of the JJO	8 Hours
(3) Interpersonal Communication Skills	12 Hours
(4) Basic Group Leadership Skills	8 Hours
(5) Adolescent Development	4 Hours
(6) Characteristics of Delinquents	4 Hours
(7) Gang Awareness	2 Hours
(8) Basic Individual Counseling Skills	16 Hours
(9) Effective Behavior Management of Juveniles	12 Hours
(10) Crisis Intervention Techniques	8 Hours
(11) Working with Families of Delinquent Juveniles	4 Hours
(12) Treatment Program Operation	6 Hours
(13) Maintaining Documentation of Activities and Behaviors	8 Hours
(14) First Aid/CPR and Blood Borne Pathogens	8 Hours
(15) Restraint, Control and Defense Techniques	28 Hours
(16) Review and Examinations	8 Hours

(c) Upon successful completion of a Commission-accredited training course for juvenile justice officers the director of the school conducting such course shall notify the Commission of the satisfactory achievement of trainees by submitting a Report of Training Course Completion for each successful trainee.

Authority G.S. 17C-2; 17C-6; 17C-10.

SUBCHAPTER 09G - STANDARDS FOR CORRECTIONS EMPLOYMENT, TRAINING, AND CERTIFICATION

SECTION .0400 - MINIMUM STANDARDS FOR TRAINING OF CORRECTIONAL OFFICERS, PROBATION/PAROLE OFFICERS, AND PROBATION/PAROLE OFFICERS-SURVEILLANCE

12 NCAC 09G .0401 ADMINISTRATION OF BASIC CORRECTIONS TRAINING SCHOOLS

(a) The Secretary of the North Carolina Department of Correction shall have primary responsibility for implementation of the rules in this Section. The executive officer or officers of the institution or agency shall secure School Accreditation pursuant to 12 NCAC 09G .0402 prior to offering any corrections training course.

(b) The Secretary shall designate not more than one compensated staff member for each Commission-accredited program for which the North Carolina Department of Correction has been granted accreditation. Such staff member shall be formally certified by the Commission under Rule .0405 of this Subchapter to be the corrections School Director. The School Director shall have administrative responsibility for planning, scheduling, presenting, coordinating, reporting, and generally managing each sponsored accredited corrections 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 training course, an additional 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.

Authority 17C-6.

12 NCAC 09G .0405 CERTIFICATION OF SCHOOL DIRECTORS

(a) Any person designated to act as, or who performs the duties of, a School Director in the delivery or presentation of a Commission-accredited corrections training course shall be and continuously remain certified by the Commission as a School Director.

(b) To qualify for certification as a corrections School Director, at a minimum, an applicant shall:

(1) present documentary evidence showing that the applicant:

(A) is a high school graduate or has passed the General Education Development Test (GED) indicating high school equivalency and has acquired five years of practical experience as a criminal justice officer, corrections officer, or as an

administrator or specialist in a field directly related to the corrections system. At least one year of the required five years experience must have been while actively participating in corrections training as a Commission-certified instructor; or

(B) has been awarded an associate degree and has acquired four years of practical experience as a criminal justice officer, corrections officer, or as an administrator or specialist in a field directly related to the corrections system. At least one year of the required four years experience must have been while directly participating in corrections training as a Commission-certified instructor; or

(C) has been awarded a baccalaureate degree acceptable to any Commission-accredited school in its criminal justice or corrections program;

(2) attend or must have attended the most current offering of the School Director's orientation as developed and presented by the Commission staff, otherwise an individual orientation with a staff member may be required; and

(3) submit a written request to the Commission for the issuance of such certification. This request shall be executed by the executive officer of the North Carolina Department of Correction.

(c) To qualify for certification as a School Director in the presentation of the "Criminal Justice Instructor Training Course" an applicant shall:

(1) document that he/she has been awarded a baccalaureate degree from a regionally accredited institution of higher learning;

(2) present evidence showing successful completion of a Commission-accredited instructor training course or an equivalent instructor training program as determined by the Commission;

(3) be currently certified as a criminal justice instructor by the Commission; and

(4) document successful participation in a special program presented by the Justice Academy for purposes of familiarization and supplementation relevant to delivery of the instructor training course and trainee evaluation.

Authority G.S. 17C-6.

12 NCAC 09G .0406 TERMS AND CONDITIONS OF

SCHOOL DIRECTOR CERTIFICATION

(a) The term of certification as a School Director is two years from the date the Commission issues the certification, unless earlier terminated by action of the Commission. Upon application the certification may subsequently be renewed by the Commission for two-year periods. The application for renewal shall contain documentation meeting the requirements of 12 NCAC 09G .0405(b)(2) and (b)(3).

(b) To retain certification as a School Director, the School Director shall perform the duties and responsibilities of a School Director as specifically required in 12 NCAC 09G .0408.

Authority G.S. 17C-6.

12 NCAC 09G .0407 SUSPENSION; REVOCATION: DENIAL/SCHOOL DIRECTOR CERTIFICATION

(a) The Commission may deny, suspend, or revoke certification of a School Director when the Commission finds that the person has failed to meet or continuously maintain any of the requirements for qualification or through performance fails to comply with program rules and procedures of the Commission or otherwise demonstrates incompetence.

(b) Prior to the Commission's action denying, suspending, or revoking a School Director's certification, the Standards Division may notify the person that a deficiency appears to exist and may attempt, in an advisory capacity, to assist the person in correcting the deficiency.

Authority G.S. 17C-6.

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the DENR – Environmental Management Commission intends to adopt the rules cited as 15A NCAC 02D .0543, .2201-.2205; .02Q .0113, .0809 and amend the rules cited as 15A NCAC 02D .0101, .0521, .0538, .0902, .0933, .1104, .1205, .1404, .1409, .1416-.1419, .1422, .1901-.1904, .1906; 02Q .0202-.0203, .304-.0305, .0505, .0507, .0702, .0706, .0714, .0806.

Proposed Effective Date: February 1, 2004

Public Hearing:

Date: October 30, 2003

Time: 7:00 p.m.

Location: Leslie Building, Room 143, Pitt Community College, 1986 Pitt Tech Rd., Winterville, NC

Date: November 5, 2003

Time: 7:00 p.m.

Location: Haynes Conference Center, Asheville-Buncombe Technical Community College, 1459 Sand Hill Rd., Enka, NC

Reason for Proposed Action:

15A NCAC 02D .0101 - is proposed to be amended to add a definition for PM2.5 to the rule.

15A NCAC 02D .0521 - is proposed to be amended to exempt concrete batch plants as the new rule 02D .0543 contains visible emission limits for concrete batch plants.

15A NCAC 02D .0538 - the ethylene oxide emissions standard rule, is proposed to be amended to provide a compliance option for the unload and backdraft valve exhaust and to allow facilities covered under this Rule to comply with the air toxic rules instead of the requirements of this Rule.

15A NCAC 02D .0543 - is proposed for adoption to control particulate emissions from concrete batch plants.

15A NCAC 02D .0902 - is proposed to be amended to add a laboratory exemption and revise a cross reference.

15A NCAC 02D .0933 - is proposed to be amended to clarify the treatment of metallic-type shoe primary seals with shoe-mounted secondary seals on external floating roof petroleum liquid storage tanks.

15A NCAC 02D .1104 - is proposed to be amended to revise the toxic air pollutant guideline acceptable ambient level for hydrogen sulfide. Three options are being proposed.

15A NCAC 02D .1205 - regulating municipal waste combustors is proposed to be amended to revise the compliance date from March 1, 2003 to December 1, 2004.

15A NCAC 02D .1404, .1409, .1416,-.1419, .1422 - are proposed to be amended to make corrections and clarifications in response to EPA comments.

15A NCAC 02D .1901 - is proposed to be amended to clarify the purpose.

15A NCAC 02D .1902 - is proposed to be amended to add several new definitions.

15A NCAC 02D .1903-.1904 - are proposed to be amended to add a prohibition of most types of open burning on days forecast to be code orange or above. 15A NCAC 02D .1904 is also proposed to be amended to add the new source performance standards for air curtain burners covered under these standards. The requirements have already been adopted under the new source performance standard rule and are being added here for clarity. The need for temporary air curtain burners to have a certified visible emissions reader onsite is proposed to be removed.

15A NCAC 02D .1906 - is proposed to be amended to clarify that municipal governments cannot issue permits for permanent sites.

15A NCAC 02D .2201-.2205 - are proposed for adoption to implement Special Orders provisions of G.S. 143-215.110.

15A NCAC 02Q .0113 - is proposed to be adopted to require permit applicants in areas without zoning to notify the public of intent to file an air quality permit application before filing such application. Notification shall be by publishing a legal notice in a local newspaper and by posting a sign on the affected property.

15A NCAC 02Q .0202 - is proposed to be amended to add definitions for significant modification and minor modification.

15A NCAC 02Q .0203 - is proposed to be amended to correct column titles in the permit application fee table.

15A NCAC 02Q .0304-.0305, .0505, .0507 - are proposed to be amended to reference the new rule.

15A NCAC 02Q .0702 - is proposed to be amended to exempt wastewater treatment systems at pulp and paper mills until February 1, 2007, at which time exemption would expire. The rule is also proposed to be amended to correct a cross-reference and to simplify the exemption for perchloroethylene drycleaning processes.

15A NCAC 02Q .0706 - is proposed to be amended to treat insignificant activities at Title V facilities the same way

exempted activities at non-Title V facilities are treated. Before insignificant activities were required to be included in the Title V permit, they were treated the same way as exempted activities at non-Title V facilities.

15A NCAC 02Q .0711 - is proposed to be amended to revise the emission rate for hydrogen sulfide corresponding to the acceptable ambient level.

15A NCAC 02Q .0714 - is proposed to be adopted to require testing of emissions from wastewater treatment systems at pulp and paper mills and evaluation of activated sludge systems for wastewater treatment. Two options are offered for comment.

15A NCAC 02Q .0806 - is proposed for amendment to eliminate the need for the Commissioner of Agriculture to certify that the ginning season has been delayed because of adverse weather.

15A NCAC 02Q .0809 - is proposed to be adopted to declare concrete batch plants that produce less than 1,210,000 cubic yards of concrete to be small for permitting purposes.

Comment Procedures: Comments from the public shall be directed to Thomas C. Allen, Division of Air Quality, 1641 Mail Service Center, Raleigh, NC 27699-1641, phone (919) 733-1489, fax (919) 715-7476, and email thom.allen@ncmail.net. Comment period ends December 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** 15A NCAC 02D .1901-.1906
- Local** 15A NCAC 02D .1901-.1906
- Substantive** (\geq \$3,000,000) 15A NCAC 02D .1104; 02Q .0711, .0714
- None** 15A NCAC 02D .0101, .0521, .0538, .0543, .0902, .0933, .1205, .1404, .1409, .1416-.1419, .1422, .2201-.2205; 02Q .0113, .0202-.0203, .0304-.0305, .0307, .0505, .0507, .0702, .0706, .0806, .0809

CHAPTER 02 - ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 02D - AIR POLLUTION CONTROL REQUIREMENTS

SECTION .0100 - DEFINITIONS AND REFERENCES

15A NCAC 02D .0101 DEFINITIONS

The definition of any word or phrase used in Rules of this Subchapter is the same as given in Article 21, G.S. 143, as

amended. The following words and phrases, which are not defined in the article, have the following meaning:

- (1) "Act" means "The North Carolina Water and Air Resources Act."
- (2) "Air pollutant" means an air pollution agent or combination of such agents, including any physical, chemical, biological, radiative substance or matter emitted into or otherwise enters the ambient air.
- (3) "Ambient air" means that portion of the atmosphere outside buildings or other enclosed structures, stacks or ducts, and that surrounds human, animal or plant life, or property.
- (4) "Approved" means approved by the Director of the Division of Air Quality.
- (5) "Capture system" means the equipment (including hoods, ducts, fans, etc.) used to contain, capture, or transport a pollutant to a control device.
- (6) "CFR" means "Code of Federal Regulations."
- (7) "Combustible material" means any substance that, when ignited, will burn in air.
- (8) "Construction" means change in method of operation or any physical change, including on-site fabrication, erection, installation, replacement, demolition, or modification of a source, that results in a change in emissions or affects the compliance status.
- (9) "Control device" means equipment (fume incinerator, adsorber, absorber, scrubber, filter media, cyclone, electrostatic precipitator, or the like) used to destroy or remove air pollutant(s) before discharge to the ambient air.
- (10) "Day" means a 24-hour period beginning at midnight.
- (11) "Director" means the Director of the Division of Air Quality unless otherwise specified.
- (12) "Division" means Division of Air Quality.
- (13) "Dustfall" means particulate matter that settles out of the air and is expressed in units of grams per square meter per 30-day period.
- (14) "Emission" means the release or discharge, whether directly or indirectly, of any air pollutant into the ambient air from any source.
- (15) "Facility" means all of the pollutant emitting activities, except transportation facilities as defined under Rule .0802 of this Subchapter, that are located on one or more adjacent properties under common control.
- (16) "FR" means Federal Register.
- (17) "Fugitive emission" means those emissions that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.
- (18) "Fuel burning equipment" means equipment whose primary purpose is the production of energy or power from the combustion of any fuel. The equipment is generally used for, but not limited to, heating water, generating or circulating steam, heating air as in warm air

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- furnace, or furnishing process heat by transferring energy by fluids or through process vessel walls.
- (19) "Garbage" means any animal and vegetable waste resulting from the handling, preparation, cooking and serving of food.
- (20) "Incinerator" means a device designed to burn solid, liquid, or gaseous waste material.
- (21) "Opacity" means that property of a substance tending to obscure vision and is measured as percent obscuration.
- (22) "Open burning" means any fire whose products of combustion are emitted directly into the outdoor atmosphere without passing through a stack or chimney, approved incinerator, or other similar device.
- (23) "Owner or operator" means any person who owns, leases, operates, controls, or supervises a facility, source, or air pollution control equipment.
- (24) "Particulate matter" means any material except uncombined water that exists in a finely divided form as a liquid or solid at standard conditions.
- (25) "Particulate matter emissions" means all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by methods specified in this Subchapter.
- (26) "Permitted" means any source subject to a permit under this Subchapter or Subchapter 15A NCAC 02Q.
- (27) "Person" means any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, political subdivision, or any other legal entity, or its legal representative, agent or assigns.
- (28) "PM10" means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by methods specified in this Subchapter.
- (29) "PM10 emissions" means finely divided solid or liquid material, with an aerodynamic diameter less than or equal to a nominal 10 micrometers emitted to the ambient air as measured by methods specified in this Subchapter.
- (30) "PM2.5" means particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers as measured by methods specified in this Subchapter.
- ~~(30)~~(31) "Refuse" means any garbage, rubbish, or trade waste.
- ~~(31)~~(32) "Rubbish" means solid or liquid wastes from residences, commercial establishments, or institutions.
- ~~(32)~~(33) "Rural area" means an area that is primarily devoted to, but not necessarily limited to, the following uses: agriculture, recreation, wildlife management, state park, or any area of natural cover.
- ~~(33)~~(34) "Salvage operation" means any business, trade, or industry engaged in whole or in part in salvaging or reclaiming any product or material, including, but not limited to, metal, chemicals, motor vehicles, shipping containers, or drums.
- ~~(34)~~(35) "Smoke" means small gas-borne particles resulting from incomplete combustion, consisting predominantly of carbon, ash, and other burned or unburned residue of combustible materials that form a visible plume.
- ~~(35)~~(36) "Source" means any stationary article, machine, process equipment, or other contrivance, or combination thereof, or any tank-truck, trailer or railroad tank car from which air pollutants emanate or are emitted, either directly or indirectly.
- ~~(36)~~(37) "Sulfur oxides" means sulfur dioxide, sulfur trioxide, their acids and the salts of their acids. The concentration of sulfur dioxide is measured by the methods specified in this Subchapter.
- ~~(37)~~(38) "Total suspended particulate" means any finely divided solid or liquid material, except water in uncombined form, that is or has been airborne as measured by methods specified in this Subchapter.
- ~~(38)~~(39) "Trade wastes" means all solid, liquid, or gaseous waste materials or rubbish resulting from combustion, salvage operations, building operations, or the operation of any business, trade, or industry including, but not limited to, plastic products, paper, wood, glass, metal, paint, grease, oil and other petroleum products, chemicals, and ashes.
- ~~(39)~~(40) "ug" means micrograms.

Authority G.S. 143-215.3(a)(1); 143-213.

SECTION .0500 - EMISSION CONTROL STANDARDS

15A NCAC 02D .0521 CONTROL OF VISIBLE EMISSIONS

(a) Purpose. The intent of this Rule is to prevent, abate and control emissions generated from fuel burning operations and industrial processes where an emission can be reasonably expected to occur, except during startup, shutdowns, and malfunctions approved as such according to procedures approved under Rule .0535 of this Section.

(b) Scope. This Rule shall apply to all fuel burning sources and to other processes that may have a visible emission. However, sources subject to a visible emission standard in Rules .0506, .0508, .0524, .0543, .0544, .1110, .1111, .1205, .1206, or .1210 of this Subchapter shall meet that standard instead of the standard contained in this Rule. This Rule does not apply to engine maintenance, rebuild, and testing activities where controls are infeasible, except it does apply to the testing of peak shaving and emergency generators. (In deciding if controls are infeasible, the Director shall consider emissions, capital cost of

compliance, annual incremental compliance cost, and environmental and health impacts.)

(c) For sources manufactured as of July 1, 1971, visible emissions shall not be more than 40 percent opacity when averaged over a six-minute period. However, except for sources required to comply with Paragraph (g) of this Rule, six-minute averaging periods may exceed 40 percent opacity if:

- (1) No six-minute period exceeds 90 percent opacity;
- (2) No more than one six-minute period exceeds 40 percent opacity in any hour; and
- (3) No more than four six-minute periods exceed 40 percent opacity in any 24-hour period.

(d) For sources manufactured after July 1, 1971, visible emissions shall not be more than 20 percent opacity when averaged over a six-minute period. However, except for sources required to comply with Paragraph (g) of this Rule, six-minute averaging periods may exceed 20 percent opacity if:

- (1) No six-minute period exceeds 87 percent opacity;
- (2) No more than one six-minute period exceeds 20 percent opacity in any hour; and
- (3) No more than four six-minute periods exceed 20 percent opacity in any 24-hour period.

(e) Where the presence of uncombined water is the only reason for failure of an emission to meet the limitations of Paragraph (c) or (d) of this Rule, those requirements shall not apply.

(f) Exception from Opacity Standard in Paragraph (d) of this Rule. Sources subject to Paragraph (d) of this Rule may be allowed to comply with Paragraph (c) of this Rule if:

- (1) The owner or operator of the source demonstrates compliance with applicable particulate mass emissions standards; and
- (2) The owner or operator of the source submits data necessary to show that emissions up to those allowed by Paragraph (c) of this Rule will not violate any national ambient air quality standard.

The burden of proving these conditions shall be on the owner or operator of the source and shall be approached in the following manner. The owner or operator of a source seeking an exception shall apply to the Director requesting this modification in its permit. The applicant shall submit the results of a source test within 90 days of application. Source testing shall be by the appropriate procedure as designated by rules in this Subchapter. During this 90-day period the applicant shall submit data necessary to show that emissions up to those allowed by Paragraph (c) of this Rule will not contravene ambient air quality standards. This evidence shall include, as a minimum, an inventory of past and projected emissions from the facility. In its review of ambient air quality, the Division may require additional information that it considers necessary to assess the resulting ambient air quality. If the applicant can thus show that it will be in compliance both with particulate mass emissions standards and ambient air quality standards, the Director shall modify the permit to allow emissions up to those allowed by Paragraph (c) of this Rule.

(g) For sources required to install, operate, and maintain continuous opacity monitoring systems (COMS), compliance with the numerical opacity limits in this Rule shall be determined as follows excluding startups, shutdowns,

maintenance periods when fuel is not being combusted, and malfunctions approved as such according to procedures approved under Rule .0535 of this Section:

- (1) No more than 10 six-minute periods shall exceed the opacity standard in any one day; and
- (2) The percent of excess emissions (defined as the percentage of monitored operating time in a calendar quarter above the opacity limit) shall not exceed 0.8 percent of the total operating hours. If a source operates less than 500 hours during a calendar quarter, the percent of excess emissions shall be calculated by including hours operated immediately previous to this quarter until 500 operational hours are obtained.

In no instance shall excess emissions exempted under this Paragraph cause or contribute to a violation of any emission standard in this Subchapter or 40 CFR Part 60, 61, or 63 or any ambient air quality standard in Section 15A NCAC 02D .0400 or 40 CFR Part 50.

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).

15A NCAC 02D .0538 CONTROL OF ETHYLENE OXIDE EMISSIONS

(a) For purposes of this Rule, "medical devices" means instruments, apparatus, implements, machines, implants, in vitro reagents, contrivances, or other similar or related articles including their components, parts, and accessories, intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; or to affect the structure or any function of the body of man or other animals.

(b) This Rule applies to emissions of ethylene oxide resulting from use as a sterilant in:

- (1) the production and subsequent storage of medical devices; or
- (2) the packaging and subsequent storage of medical devices for sale;

from the processes described in Paragraph (d) of this Rule for which construction of facilities began after August 31, 1992.

(c) This Rule does not apply to hospital or medical facilities.

(d) Facilities subject to this Rule shall comply with the following standards:

- (1) For sterilization chamber evacuation, a closed loop liquid ring vacuum pump, or equipment demonstrated to be as effective at reducing emissions of ethylene oxide shall be used;
- (2) For sterilizer exhaust, a reduction in the weight of uncontrolled emissions of ethylene oxide of at least 99.8 percent by weight shall be achieved;
- (3) For sterilizer unload and backdraft valve exhaust, a ~~reduction~~ reduction
 - (A) in uncontrolled emissions of ethylene oxide of at least 99 percent by weight shall be achieved; or
 - (B) to no more than one part per million by volume of ethylene oxide shall be achieved;

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- (4) Sterilized product ethylene oxide residual shall be reduced by:
 - (A) a heated degassing room to aerate the products after removal from the sterilization chamber; the temperature of the degassing room shall be maintained at a minimum of 95 degrees Fahrenheit during the degassing cycle, and product hold time in the aeration room shall be at least 24 hours; or
 - (B) a process demonstrated to be as effective as Part (d)(4)(A) of this Rule.

- (5) Emissions of ethylene oxide from the degassing area (or equivalent process) shall be vented to a control device capable of reducing uncontrolled ethylene oxide emissions by at least 99 percent by weight or to no more than one part per million by volume of ethylene oxide weight. The product aeration room and the product transfer area shall be maintained under a negative pressure.

(e) Before installation of the controls required by Paragraph (d) of this Rule, and annually thereafter, a written description of waste reduction, elimination, or recycling plan shall be submitted [as specified in G.S. 143-215.108(g)] to determine if ethylene oxide use can be reduced or eliminated through alternative sterilization methods or process modifications.

(f) The owner or operator of the facility shall conduct a performance test to verify initial efficiency of the control devices. The owner or operator shall maintain temperature records to demonstrate proper operation of the degassing room. Such records shall be retained for a period of at least two calendar years at all times and shall be made available for inspection by Division personnel.

(g) If the owner or operator of a facility subject to the Rule demonstrates, using the procedures in Rule .1106 of this Section, that the emissions of ethylene oxide from all sources at the facility to do not cause the acceptable ambient level of ethylene oxide in Rule .1104 of this Section to be exceeded, then the requirements of Paragraphs (d) through (e) of this Rule shall not apply. This demonstration shall be at the option of the owner or operator of the facility. If this option is chosen, the Director shall write the facility's permit to satisfy the requirements of Rule .1104(a) of this Section.

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(4),(5); 143-215.108(c).

15A NCAC 02D .0543 PARTICULATES FROM CONCRETE BATCH PLANTS

- (a) The owner or operator of a concrete batch plant shall not cause, allow, or permit any material to be produced, handled, transported, or stockpiled without taking measures to reduce to a minimum any particulate matter from becoming airborne to prevent exceeding the ambient air quality standards beyond the property line for particulate matter (PM2.5, PM10, and total suspended particulates).
- (b) Fugitive particulate emissions from stockpiles, access roads, and other non-process dust emission sources shall be controlled

so that visible emissions do not exceed 10 percent opacity when averaged over a six-minute period.

(c) Emissions from silos, weigh hoppers (batchers), and other enclosed storage and conveying equipment shall be controlled to the extent necessary to limit visible emissions to no more than five percent opacity when averaged over a six-minute period.

(d) Emissions from all other sources not covered under Paragraphs (b) or (c) of this Rule shall be controlled to the extent necessary to limit visible emissions to no more than 10 percent opacity when averaged over a six minute period.

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).

SECTION .0900 - VOLATILE ORGANIC COMPOUNDS

15A NCAC 02D .0902 APPLICABILITY

(a) The following Rules of this Section apply statewide:

- (1) .0925, Petroleum Liquid Storage in Fixed Roof Tanks, for fixed roof tanks at gasoline bulk plants and gasoline bulk terminals;
- (2) .0926, Bulk Gasoline Plants;
- (3) .0927, Bulk Gasoline Terminals;
- (4) .0928, Gasoline Service Stations Stage I;
- (5) .0932, Gasoline Truck Tanks and Vapor Collection Systems;
- (6) .0933, Petroleum Liquid Storage in External Floating Roof Tanks, for external floating roof tanks at bulk gasoline plants and bulk gasoline terminal;
- (7) .0948, VOC Emissions from Transfer Operations;
- (8) .0949, Storage of Miscellaneous Volatile Organic Compounds; and
- (9) .0958, Work Practices for Sources of Volatile Organic Compounds.

(b) Rule .0953, Vapor Return Piping for Stage II Vapor Recovery, of this Section applies in Davidson, Durham, Forsyth, Gaston, Guilford, Mecklenburg, Wake, Dutchville Township in Granville County, and that part of Davie County bounded by the Yadkin River, Dutchmans Creek, North Carolina Highway 801, Fulton Creek and back to Yadkin River in accordance with provisions set out in that Rule.

(c) All sources located in Mecklenburg County that were required to comply with any of these Rules:

- (1) .0917 through ~~.0938~~ .0937 of this Section; or
- (2) .0943 through ~~.0946~~ .0945 of this Section;

before July 5, 1995, shall continue to comply with these Rules.

(d) With the exceptions stated in Paragraphs (a), (b), (c), or (h) of this Rule, this Section applies to:

- (1) Charlotte/Gastonia, consisting of Mecklenburg and Gaston Counties in accordance with Paragraph (e) of this Rule;
- (2) Greensboro/Winston-Salem/High Point, consisting of Davidson, Forsyth, and Guilford Counties and that part of Davie County bounded by the Yadkin River, Dutchmans Creek, North Carolina Highway 801, Fulton Creek and back to Yadkin River in accordance with Paragraph (f) of this Rule; or
- (3) Raleigh/Durham, consisting of Durham and Wake Counties and Dutchville Township in

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Granville County in accordance with Paragraph (g) of this Rule.

(e) If a violation of the ambient air quality standard for ozone is measured in accordance with 40 CFR 50.9 in Cabarrus, Gaston, Iredell, Lincoln, Mecklenburg, Rowan, or Union County, North Carolina or York County, South Carolina, the Director shall initiate analysis to determine the control measures needed to attain and maintain the ambient air quality standard for ozone. By the following May 1, the Director shall implement the specific stationary source control measures contained in this Section that are required as part of the control strategy necessary to bring the area into compliance and to maintain compliance with the ambient air quality standard for ozone. The Director shall implement the rules in this Section identified as being necessary by the analysis by notice in the North Carolina Register. The notice shall identify the rules that are to be implemented and shall identify whether the rules implemented are to apply in Gaston or Mecklenburg County or in both counties. At least one week before the scheduled publication date of the North Carolina Register containing the Director's notice implementing rules in this Section, the Director shall send written notification to all permitted facilities within the county in which the rules are being implemented that are or may be subject to the requirements of this Section informing them that they are or may be subject to the requirements of this Section. (For Mecklenburg County, "Director" means for the purpose of notifying permitted facilities in Mecklenburg County, the Director of the Mecklenburg County local air pollution control program.) Compliance shall be in accordance with Rule .0909 of this Section.

(f) If a violation of the ambient air quality standard for ozone is measured in accordance with 40 CFR 50.9 in Davidson, Forsyth, or Guilford County or that part of Davie County bounded by the Yadkin River, Dutchmans Creek, North Carolina Highway 801, Fulton Creek and back to Yadkin River, the Director shall initiate analysis to determine the control measures needed to attain and maintain the ambient air quality standard for ozone. By the following May 1, the Director shall implement the specific stationary source control measures contained in this Section that are required as part of the control strategy necessary to bring the area into compliance and to maintain compliance with the ambient air quality standard for ozone. The Director shall implement the rules in this Section identified as being necessary by the analysis by notice in the North Carolina Register. The notice shall identify the rules that are to be implemented and shall identify whether the rules implemented are to apply in Davidson, Forsyth, or Guilford County or that part of Davie County bounded by the Yadkin River, Dutchmans Creek, North Carolina Highway 801, Fulton Creek and back to Yadkin River or any combination thereof. At least one week before the scheduled publication date of the North Carolina Register containing the Director's notice implementing rules in this Section, the Director shall send written notification to all permitted facilities within the county in which the rules are being implemented informing them that they are or may be subject to the requirements of this Section. (For Forsyth County, "Director" means for the purpose of notifying permitted facilities in Forsyth County, the Director of the Forsyth County local air pollution control program.) Compliance shall be in accordance with Rule .0909 of this Section.

(g) If a violation of the ambient air quality standard for ozone is measured in accordance with 40 CFR 50.9 in Durham or Wake County or Dutchville Township in Granville County, the Director shall initiate analysis to determine the control measures needed to attain and maintain the ambient air quality standard for ozone. By the following May 1, the Director shall implement the specific stationary source control measures contained in this Section that are required as part of the control strategy necessary to bring the area into compliance and to maintain compliance with the ambient air quality standard for ozone. The Director shall implement the rules in this Section identified as being necessary by the analysis by notice in the North Carolina Register. The notice shall identify the rules that are to be implemented and shall identify whether the rules implemented are to apply in Durham or Wake County or Dutchville Township in Granville County or any combination thereof. At least one week before the scheduled publication date of the North Carolina Register containing the Director's notice implementing rules in this Section, the Director shall send written notification to all permitted facilities within the county in which the rules are being implemented informing them that they are or may be subject to the requirements of this Section. Compliance shall be in accordance with Rule .0909 of this Section.

(h) This Section does not apply to:

- (1) sources whose emissions of volatile organic compounds are not more than 15 pounds per day, except that this Section does apply to the manufacture and use of cutback asphalt and to gasoline service stations or gasoline dispensing facilities regardless of levels of emissions of volatile organic compounds;
- ~~(2) sources whose emissions do not exceed 800 pounds per calendar month and that are:~~
 - ~~(A) bench-scale, on-site equipment used exclusively for chemical or physical analysis for quality control purposes; staff instruction, water or wastewater analyses, or non-production environmental compliance assessments;~~
 - ~~(B) bench-scale experimentation, chemical or physical analyses, training or instruction from not-for-profit, non-production educational laboratories;~~
 - ~~(C) bench-scale experimentation, chemical or physical analyses, training or instruction from hospitals or health laboratories pursuant to the determination or diagnoses of illness; or~~
 - ~~(D) research and development laboratory activities provided the activity produces no commercial product or feedstock material; or~~
- ~~(2) sources used exclusively for chemical or physical analysis or determination of product quality and commercial acceptance provided:~~
 - ~~(A) The operation of the source is not an integral part of the production process;~~

- ~~(B) The emissions from the source do not exceed 800 pounds per calendar month; and~~
- ~~(C) The exemption is approved in writing by the Director as meeting the requirements of this Subparagraph; or~~

(3) emissions of volatile organic compounds during startup or shutdown operations from sources which use incineration or other types of combustion to control emissions of volatile organic compounds whenever the off-gas contains an explosive mixture during the startup or shutdown operation if the exemption is approved by the Director as meeting the requirements of this Subparagraph.

(i) Sources whose emissions of volatile organic compounds are not subject to limitation under this Section may still be subject to emission limits on volatile organic compounds in Rules .0524, .1110, or .1111 of this Subchapter.

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).

15A NCAC 02D .0933 PETROLEUM LIQUID STORAGE IN EXTERNAL FLOATING ROOF TANKS

(a) For the purpose of this Rule, the following definitions apply:

- (1) "Condensate" means hydrocarbon liquid separated from natural gas which condenses due to changes in the temperature or pressure and remains liquid at standard conditions.
- (2) "Crude oil" means a naturally occurring mixture consisting of hydrocarbons or sulfur, nitrogen or oxygen derivatives of hydrocarbons or mixtures thereof which is a liquid in the reservoir at standard conditions.
- (3) "Custody transfer" means the transfer of produced crude oil or condensate, after processing or treating in the producing operations, from storage tanks or automatic transfer facilities to pipelines or any other forms of transportation.
- (4) "External floating roof" means a storage vessel cover in an open top tank consisting of a double deck or pontoon single deck which rests upon and is supported by the petroleum liquid being contained and is equipped with a closure seal or seals to close the space between the roof edge and tank shell.
- (5) "Internal floating roof" means a cover or roof in a fixed roof tank which rests upon or is floated upon the petroleum liquid being contained, and is equipped with a closure seal or seals to close the space between the roof edge and tank shell.
- (6) "Liquid-mounted seal" means a primary seal mounted so the bottom of the seal covers the liquid surface between the tank shell and the floating roof.
- (7) "Vapor-mounted seal" means a primary seal mounted so there is an annular vapor space underneath the seal. The annular vapor space is bounded by the bottom of the primary seal,

the tank shell, the liquid surface, and the floating roof.

(8) "Petroleum liquids" means crude oil, condensate, and any finished or intermediate products manufactured or extracted in a petroleum refinery.

(b) This Rule applies to all external floating roof tanks with capacities greater than 950 barrels containing petroleum liquids whose true vapor pressure exceed 1.52 pounds per square inch absolute.

(c) This Rule does not apply to petroleum liquid storage vessels:

- (1) that have external floating roofs that have capacities less than 10,000 barrels and that are used to store produced crude oil and condensate prior to custody transfer;
- (2) that have external floating roofs and that store waxy, heavy-pour crudes;
- (3) that have external floating roofs, and that contain a petroleum liquid with a true vapor pressure less than 4.0 pounds per square inch absolute and:
 - (A) The tanks are of welded construction; and
 - (B) The primary seal is a metallic-type shoe seal, a liquid-mounted foam seal, a liquid-mounted filled type seal, or any other closure device of demonstrated equivalence; or
- (4) that have fixed roofs with or without internal floating roofs.

(d) With the exceptions stated in Paragraph (c) of this Rule, an external floating roof tank subject to this Rule shall not be used unless:

- (1) The tank ~~has been retrofitted with:~~
 - (A) a continuous secondary seal extending from the floating roof to the tank wall (a rim-mounted secondary); ~~or~~
 - ~~(B) a metallic-type shoe primary seal and a secondary seal from the top of the shoe seal to the tank wall (shoe-mounted secondary seal); or~~
 - ~~(B)(C) a closure or other control device demonstrated to have an efficiency equal to or greater than that required under Part (A) or (B) of this Subparagraph;~~
- ~~This Subparagraph shall not apply to tanks that are of welded construction with external floating roofs, are equipped with a metallic-type shoe primary seal, and have a secondary seal from the top of the shoe seal to the tank wall (shoe-mounted secondary seal);~~
- (2) The seal closure devices meet the following requirements:
 - (A) There shall be no visible holes, tears, or other openings in the seal or seal fabric;
 - (B) The seal shall be intact and uniformly in place around the circumference of

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- the floating roof between the floating roof and the tank wall; and
- (C) For vapor mounted primary seals, the gap-area of gaps exceeding 0.125 inch in width between the secondary seal and the tank wall shall not exceed 1.0 square inch per foot of tank diameter;
- (3) All openings in the external floating roof, except for automatic bleeder vents, rim space vents, and leg sleeves, are:
- (A) provided with a projection below the liquid surface; and
- (B) equipped with covers, seals, or lids that remain in a closed position at all times except when in actual use;
- (4) Automatic bleeder vents are closed at all times except when the roof is floated off or landed on the roof leg supports;
- (5) Rim vents are set to open only when the roof is being floated off the roof leg supports or at the manufacturer's recommended setting;
- (6) Any emergency roof drains are provided with slotted membrane fabric covers or equivalent covers that cover at least 90 percent of the area at the opening;
- (7) Routine visual inspections are conducted once per month;
- (8) For tanks equipped with a vapor-mounted primary seal, the secondary seal gap measurements are made annually in accordance with Paragraph (e) of this Rule; and
- (9) Records are maintained in accordance with Rule .0903 of this Section and include:
- (A) reports of the results of inspections conducted under Subparagraph (7) and (8) of this Paragraph;
- (B) a record of the average monthly storage temperature and the true vapor pressures or Reid vapor pressures of the petroleum liquids stored; and
- (C) records of the throughput quantities and types of volatile petroleum liquids for each storage vessel.
- (e) The secondary seal gap area is determined by measuring the length and width of the gaps around the entire circumference of the secondary seal. Only gaps equal to or greater than 0.125 inch are used in computing the gap area. The area of the gaps are accumulated to determine compliance with Part (d)(2)(C) of this Rule.
- (f) Notwithstanding the definition of volatile organic compound found in Rule .0901(28) of this Section, the owner or operator of a petroleum liquid storage vessel with an external floating roof not equipped with a secondary seal or approved alternative, that contains a petroleum liquid with a true vapor pressure greater than 1.0 pound per square inch shall maintain records of the average monthly storage temperature, the type of liquid, throughput quantities, and the maximum true vapor pressure for all petroleum liquids with a true vapor pressure greater than 1.0 pound per square inch.

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).

SECTION .1100 - CONTROL OF TOXIC AIR POLLUTANTS

15A NCAC 02D .1104 TOXIC AIR POLLUTANT GUIDELINES

A facility shall not emit any of the following toxic air pollutants in such quantities that may cause or contribute beyond the premises (adjacent property boundary) to any significant ambient air concentration that may adversely affect human health. In determining these significant ambient air concentrations, the Division shall be guided by the following list of acceptable ambient levels in milligrams per cubic meter at 77° F (25° C) and 29.92 inches (760 mm) of mercury pressure (except for asbestos):

Pollutant (CAS Number)	Annual (Carcinogens)	24-hour (Chronic Toxicants)	1-hour (Acute Systemic Toxicants)	1-hour (Acute Irritants)
acetaldehyde (75-07-0)				27
acetic acid (64-19-7)				3.7
acrolein (107-02-8)				0.08
acrylonitrile (107-13-1)	1.5 x 10 ⁻⁴			
ammonia (7664-41-7)				2.7
aniline (62-53-3)			1	
arsenic and inorganic arsenic compounds	2.3 x 10 ⁻⁷			
asbestos (1332-21-4)	2.8 x 10 ⁻¹¹ fibers/ml			
aziridine (151-56-4)		0.006		
benzene (71-43-2)	1.2 x 10 ⁻⁴			
benzidine and salts (92-87-5)	1.5 x 10 ⁻⁸			

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Pollutant (CAS Number)	Annual (Carcinogens)	24-hour (Chronic Toxicants)	1-hour (Acute Systemic Toxicants)	1-hour (Acute Irritants)
benzo(a)pyrene (50-32-8)	3.3 x 10 ⁻⁵			
benzyl chloride (100-44-7)			0.5	
beryllium (7440-41-7)	4.1 x 10 ⁻⁶			
beryllium chloride (7787-47-5)	4.1 x 10 ⁻⁶			
beryllium fluoride (7787-49-7)	4.1 x 10 ⁻⁶			
beryllium nitrate (13597-99-4)	4.1 x 10 ⁻⁶			
bioavailable chromate pigments, as chromium (VI) equivalent	8.3 x 10 ⁻⁸			
bis -chloromethyl ether (542-88-1)	3.7 x 10 ⁻⁷			
bromine (7726-95-6)				0.2
1,3-butadiene (106-99-0)	1.7 x 10 ⁻⁴			
cadmium (7440-43-9)	5.5 x 10 ⁻⁶			
cadmium acetate (543-90-8)	5.5 x 10 ⁻⁶			
cadmium bromide (7789-42-6)	5.5 x 10 ⁻⁶			
carbon disulfide (75-15-0)		0.186		
carbon tetrachloride (56-23-5)	6.7 x 10 ⁻³			
chlorine (7782-50-5)		0.0375		0.9
chlorobenzene (108-90-7)		2.2		
chloroform (67-66-3)	4.3 x 10 ⁻³			
chloroprene (126-99-8)		0.44	3.5	
cresol (1319-77-3)			2.2	
p-dichlorobenzene (106-46-7)				66
dichlorodifluoromethane (75-71-8)		248		
dichlorofluoromethane (75-43-4)		0.5		
di(2-ethylhexyl)phthalate (117-81-7)		0.03		
dimethyl sulfate (77-78-1)		0.003		
1,4-dioxane (123-91-1)		0.56		
epichlorohydrin (106-89-8)	8.3 x 10 ⁻²			
ethyl acetate (141-78-6)			140	
ethylenediamine (107-15-3)		0.3	2.5	
ethylene dibromide (106-93-4)	4.0 x 10 ⁻⁴			
ethylene dichloride (107-06-2)	3.8 x 10 ⁻³			
ethylene glycol monoethyl ether (110-80-5)		0.12	1.9	
ethylene oxide (75-21-8)	2.7 x 10 ⁻⁵			
ethyl mercaptan (75-08-1)			0.1	
fluorides		0.016	0.25	
formaldehyde (50-00-0)				0.15
Hexachlorocyclopentadiene (77-47-4)		0.0006	0.01	
hexachlorodibenzo -p-dioxin (57653-85-7)	7.6 x 10 ⁻⁸			
n-hexane (110-54-3)		1.1		
hexane isomers except n-hexane				360
hydrazine (302-01-2)		0.0006		
hydrogen chloride (7647-01-0)				0.7
hydrogen cyanide (74-90-8)		0.14	1.1	
hydrogen fluoride (7664-39-3)		0.03		0.25
hydrogen sulfide (7783-06-4)				2.4

PROPOSED RULES

Pollutant (CAS Number)	Annual (Carcinogens)	24-hour (Chronic Toxicants)	1-hour (Acute Systemic Toxicants)	1-hour (Acute Irritants)
OPTION 1		<u>0.033</u>		
OPTION 2		0.033	0.056	
OPTION 3 New facility Old facility		0.033 0.12	0.056	
OPTION 4		0.12		
OPTION 5		<u>0.12</u>	0.056	
maleic anhydride (108-31-6)		0.012	0.1	
manganese and compounds		0.031		
manganese cyclopentadienyl tricarbonyl (12079-65-1)		0.0006		
manganese tetroxide (1317-35-7)		0.0062		
mercury, alkyl		0.00006		
mercury, aryl and inorganic compounds		0.0006		
mercury, vapor (7439-97-6)		0.0006		
methyl chloroform (71-55-6)		12		245
methylene chloride (75-09-2)	2.4×10^{-2}		1.7	
methyl ethyl ketone (78-93-3)		3.7		88.5
methyl isobutyl ketone (108-10-1)		2.56		30
methyl mercaptan (74-93-1)			0.05	
nickel carbonyl (13463-39-3)		0.0006		
nickel metal (7440-02-0)		0.006		
nickel, soluble compounds, as nickel		0.0006		
nickel subsulfide (12035-72-2)	2.1×10^{-6}			
nitric acid (7697-37-2)				1
nitrobenzene (98-95-3)		0.06	0.5	
N-nitrosodimethylamine (62-75-9)	5.0×10^{-5}			
non-specific chromium (VI) compounds, as chromium (VI) equivalent	8.3×10^{-8}			
pentachlorophenol (87-86-5)		0.003	0.025	
perchloroethylene (127-18-4)	1.9×10^{-1}			
phenol (108-95-2)			0.95	
phosgene (75-44-5)		0.0025		
phosphine (7803-51-2)				0.13
polychlorinated biphenyls (1336- 36-3)	8.3×10^{-5}			
soluble chromate compounds, as chromium (VI) equivalent		6.2×10^{-4}		
styrene (100-42-5)			10.6	
sulfuric acid (7664-93-9)		0.012	0.1	
tetrachlorodibenzo-p-dioxin (1746- 01-6)	3.0×10^{-9}			
1,1,1,2-tetrachloro-2,2,- difluoroethane (76-11-9)		52		
1,1,2,2-tetrachloro-1,2- difluoroethane (76-12-0)		52		
1,1,2,2-tetrachloroethane (79-34-5)	6.3×10^{-3}			
toluene (108-88-3)		4.7		56
toluene diisocyanate, 2,4- (584-84- 9) and 2,6- (91-08-7) isomers		0.0002		

PROPOSED RULES

Pollutant (CAS Number)	Annual (Carcinogens)	24-hour (Chronic Toxicants)	1-hour (Acute Systemic Toxicants)	1-hour (Acute Irritants)
trichloroethylene (79-01-6)	5.9 x 10 ⁻²			
trichlorofluoromethane (75-69-4)			560	
1,1,2-trichloro-1,2,2-trifluoroethane (76-13-1)				950
vinyl chloride (75-01-4)	3.8 x 10 ⁻⁴			
vinylidene chloride (75-35-4)		0.12		
xylene (1330-20-7)		2.7		65

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(3),(4),(5); 143B-282; S.L. 1989, c. 168, s. 45.

SECTION .1200 - CONTROL OF EMISSIONS FROM INCINERATORS

15A NCAC 02D .1205 MUNICIPAL WASTE COMBUSTORS

(a) Applicability. This Rule applies to:

- (1) Class I municipal waste combustors, as defined in Rule .1202 of this Section; and
- (2) Large municipal waste combustors, as defined in Rule .1202 of this Section.

(b) Definitions. For the purpose of this Rule, the definitions contained in 40 CFR 60.51b and 40 CFR 60.1940 (except administration means the Director of the Division of Air Quality) shall apply in addition to the definitions in Rule .1202 of this Section.

(c) Emission Standards.

- (1) The emission standards in this Paragraph apply to any municipal waste combustor subject to the requirements of this Rule except where Rules .0524, .1110, or .1111 of this Subchapter applies. However, when Subparagraphs (13) or (14) of this Paragraph and Rules .0524, .1110, or .1111 of this Subchapter regulate the same pollutant, the more restrictive provision for each pollutant shall apply, notwithstanding provisions of Rules .0524, .1110, or .1111 of this Subchapter to the contrary.
- (2) Particulate Matter. Emissions of particulate matter from each municipal waste combustor shall not exceed 27 milligrams per dry standard cubic meter corrected to seven percent oxygen.
- (3) Visible Emissions. The emission limit for opacity from any municipal waste combustor shall not exceed 10 percent (average of 30 6 minute averages).
- (4) Sulfur Dioxide.
 - (A) Emissions of sulfur dioxide from each class I municipal waste combustor shall be reduced by at least 75 percent by weight or volume of potential sulfur dioxide emissions or to no more than 31 parts per million by volume corrected to seven percent oxygen (dry basis), whichever is less

stringent. Compliance with this emission limit is based on a 24-hour daily block geometric average concentration percent reduction.

(B)

Emissions of sulfur dioxide from each large municipal waste combustor shall be:

- (i) reduced by at least 75 percent by weight or volume, or to no more than 31 parts per million by volume corrected to seven percent oxygen (dry basis), whichever is less stringent, by August 1, 2000. Compliance with this emission limit is based on a 24-hour daily geometric mean; and
- (ii) reduced by at least 75 percent by weight or volume, or to no more than 29 parts per million by volume corrected to seven percent oxygen (dry basis), whichever is less stringent, by August 1, 2002. Compliance with this emission limit is based on a 24-hour daily geometric mean.

(5) Nitrogen Oxide.

(A) Emissions of nitrogen oxide from each class I municipal waste combustor shall not exceed the emission limits in Table 3 40 CFR 60, Subpart BBBB.

(B) Emissions of nitrogen oxide from each large municipal waste combustor shall not exceed the emission limits in Table 1 of Paragraph (d) of 40 CFR 60.33b. Nitrogen oxide emissions averaging is allowed as specified in 40 CFR 60.33b(d)(1)(i) through (d)(1)(v).

- (C) In addition to the requirements of Part (B) of this Subparagraph, emissions of nitrogen oxide from fluidized bed combustors located at a large municipal waste combustor shall not exceed 180 parts per million by volume, corrected to seven percent oxygen, by August 1, 2002. If nitrogen oxide emissions averaging is used as specified in 40 CFR 60.33b(d)(1)(i) through (d)(1)(V), emissions of nitrogen oxide from fluidized bed combustors located at a large municipal waste combustor shall not exceed 165 parts per million by volume, corrected to seven percent oxygen, by August 1, 2002.
- (6) **Odorous Emissions.** Any incinerator subject to this Rule shall comply with Rule .1806 of this Subchapter for the control of odorous emissions.
- (7) **Hydrogen Chloride.**
- (A) Emissions of hydrogen chloride from each class I municipal waste combustor shall be reduced by at least 95 percent by weight or volume of potential hydrogen chloride emissions or to no more than 31 parts per million by volume corrected to seven percent oxygen (dry basis), whichever is less stringent. Compliance with this Part shall be determined by averaging emissions over a one-hour period.
- (B) Emissions of hydrogen chloride from each large municipal waste combustor shall be:
- (i) reduced by at least 95 percent by weight or volume, or to no more than 31 parts per million by volume, corrected to seven percent oxygen (dry basis), whichever is less stringent, by August 1, 2000. Compliance with this emission limit shall be determined by averaging emissions over a one-hour period; and
- (ii) reduced by at least 95 percent by weight or volume, or to no more than 29 parts per million by volume, corrected to seven percent oxygen (dry basis), whichever is less stringent, by August 1, 2002. Compliance with this emission limit shall be determined by averaging emissions over a one-hour period.
- (8) **Mercury Emissions.** Emissions of mercury from each municipal waste combustor shall be reduced by at least 85 percent by weight of potential mercury emissions or shall not exceed 0.08 milligrams per dry standard cubic meter, corrected to seven percent oxygen, whichever is less stringent. Compliance with this Subparagraph shall be determined by averaging emissions over a one-hour period.
- (9) **Lead Emissions.**
- (A) Emissions of lead from each class I municipal waste combustor shall not exceed 0.49 milligrams per dry standard cubic meter, corrected to seven percent oxygen.
- (B) Emissions of lead from each large municipal waste combustor shall not exceed 0.49 milligrams per dry standard cubic meter, corrected to seven percent oxygen, by August 1, 2000 and shall not exceed 0.44 milligrams per dry standard cubic meter, corrected to seven percent oxygen, by August 1, 2002.
- (10) **Cadmium Emissions.** Emissions of cadmium from each municipal waste combustor shall not exceed 0.040 milligrams per dry standard cubic meter, corrected to seven percent oxygen.
- (11) **Dioxins and Furans.** Emissions of dioxins and furans from each municipal waste combustor shall not exceed:
- (A) 60 nanograms per dry standard cubic meter (total mass) corrected to seven percent oxygen for facilities that employ an electrostatic precipitator-based emission control system, or
- (B) 30 nanograms per dry standard cubic meter (total mass) corrected to seven percent oxygen for facilities that do not employ an electrostatic precipitator-based emission control system.
- (12) **Fugitive Ash.**
- (A) On or after the date on which the initial performance test is completed, no owner or operator of a municipal waste combustor shall cause to be discharged to the atmosphere visible emissions of combustion ash from an ash conveying system (including conveyor transfer points) in excess of five percent of the observation period (i.e., nine minutes per three-hour block period), as determined by EPA Reference Method 22 observations as specified in 40 CFR 60.58b(k), except as provided in Part (B) of this Subparagraph.

- (B) The emission limit specified in Part (A) of this Subparagraph covers visible emissions discharged to the atmosphere from buildings or enclosures, not the visible emissions discharged inside of the building or enclosures, of ash conveying systems.
- (13) Toxic Emissions. The owner or operator of a municipal waste combustor shall demonstrate compliance with Section .1100 of this Subchapter according to 15A NCAC 02Q .0700.
- (14) Ambient Standards.
- (A) In addition to the ambient air quality standards in Section .0400 of this Subchapter, the following ambient air quality standards, which are an annual average, in milligrams per cubic meter at 77 degrees F (25 degrees C) and 29.92 inches (760 mm) of mercury pressure, and which are increments above background concentrations, shall apply aggregately to all incinerators at a facility subject to this Rule:
- (i) arsenic and its compounds
2.3x10⁻⁷
 - (ii) beryllium and its compounds
4.1x10⁻⁶
 - (iii) cadmium and its compounds
5.5x10⁻⁶
 - (iv) chromium (VI) and its compounds
8.3x10⁻⁸
- (B) The owner or operator of a facility with incinerators subject to this Rule shall demonstrate compliance with the ambient standards in Subparts (i) through (iv) of Part (A) of this Subparagraph by following the procedures set out in Rule .1106 of this Subchapter. Modeling demonstrations shall comply with the requirements of Rule .0533 of this Subchapter.
- (C) The emission rates computed or used under Part (B) of this Subparagraph that demonstrate compliance with the ambient standards under Part (A) of this Subparagraph shall be specified as a permit condition for the facility with incinerators as their allowable emission limits unless Rules .0524, .1110, or .1111 of this Subchapter requires more restrictive rates.
- (15) The emission standards of Subparagraphs (1) through (12) of this Paragraph shall apply at all times except during periods of municipal waste combustion unit startup, shutdown, or malfunction that last no more than three hours.
- (d) Operational Standards.
- (1) The operational standards in this Rule do not apply to any incinerator subject to this Rule when applicable operational standards in Rules .0524, .1110, or .1111 of this Subchapter apply.
- (2) Each municipal waste combustor shall meet the following operational standards:
- (A) The concentration of carbon monoxide at the municipal waste combustor outlet shall not exceed the concentration in:
- (i) table 3 of 40 CFR 60.34b(a) for large municipal waste combustors. The municipal waste combustor technology named in this table is defined in 40 CFR 60.51b; and
 - (ii) table 5 of 40 CFR 60 Subpart BBBB. The municipal waste combustor technology named in this table is defined in 40 CFR 60.1940.
- (B) The load level shall not exceed 110 percent of the maximum demonstrated municipal waste combustor unit load (four-hour block average).
- (C) The temperature at which the combustor operates measured at the particulate matter control device inlet shall not exceed 63 degrees F above the maximum demonstrated particulate matter control device temperature (four-hour block average).
- (D) The owner or operator of a municipal waste combustor with activated carbon control system to control dioxins and furans or mercury emissions shall maintain an eight-hour block average carbon feed rate at or above the highest average level established during the most recent dioxins and furans or mercury test and shall evaluate total carbon usage for each calendar quarter. The total amount of carbon purchased and delivered to the municipal waste combustor shall be at or above the required quarterly usage of carbon and shall be calculated as specified in equation four or five in 40 CFR 60.1935(f).
- (E) The owner or operator of a municipal waste combustor shall be exempted from limits on load level, temperature at the inlet of the particular matter control device, and carbon feed rate during:

- (i) the annual tests for dioxins and furans;
 - (ii) the annual mercury tests for carbon feed requirements only;
 - (iii) the two weeks preceding the annual tests for dioxins and furans;
 - (iv) the two weeks preceding the annual mercury tests for carbon feed rate requirements only; and
 - (v) any activities to improve the performance of the municipal waste combustor or its emission control including performance evaluations and diagnostic or new technology testing.
- (3) Except during start-up where the procedure has been approved according to Rule .0535(g) of this Subchapter, waste material shall not be loaded into any incinerator subject to this Rule when the temperature is below the minimum required temperature. Start-up procedures may be determined on a case-by-case basis according to Rule .0535(g) of this Subchapter and Subparagraph (4) of this Paragraph. Incinerators subject to this Rule shall have automatic auxiliary burners that are capable of maintaining the required minimum temperature in the secondary chamber excluding the heat content of the wastes.
- (4) The operational standards of this Paragraph apply at all times except during periods of municipal waste combustor startup, shutdown, or malfunction that last no more than:
- (A) three hours for Class I combustors; or
 - (B) three hours except as specified in 40 CFR 60.58b9(a)(1)(iii) for large municipal waste combustors.
- (e) Test Methods and Procedures.
- (1) The test methods and procedures described in Rule .0501 of this Subchapter and in 40 CFR Part 60 Appendix A and 40 CFR Part 61 Appendix B shall be used to determine compliance with emission rates. Method 29 of 40 CFR Part 60 shall be used to determine emission rates for metals. However, Method 29 shall be used to sample for chromium (VI), and SW 846 Method 0060 shall be used for the analysis.
 - (2) The owner or operator of a municipal waste combustor shall do compliance and performance testing according to 40 CFR 60.58b.
 - (3) For large municipal waste combustors that achieve a dioxin and furan emission level less than or equal to 15 nanograms per dry standard cubic meter total mass, corrected to seven percent oxygen, the performance testing shall be performed according to the testing schedule specified in 40 CFR 60.58b(g)(5)(iii). For class I municipal waste combustors the performance testing shall be performed according to the testing schedule specified in 40 CFR 60.1785 to demonstrate compliance with the applicable emission standards in Paragraph (c) of this Rule.
- (4) The Director may require the owner or operator of any incinerator subject to this Rule to test his incinerator to demonstrate compliance with the emission standards in Paragraph (c) of this Rule.
- (f) Monitoring, Recordkeeping, and Reporting.
- (1) The owner or operator of an incinerator subject to the requirements of this Rule shall comply with the monitoring, recordkeeping, and reporting requirements in Section .0600 of this Subchapter.
 - (2) The owner or operator of an incinerator that has installed air pollution abatement equipment to reduce emissions of hydrogen chloride shall install, operate, and maintain continuous monitoring equipment to measure pH for wet scrubber systems and rate of alkaline injection for dry scrubber systems.
 - (3) The owner or operator of a municipal waste combustor shall:
 - (A) install, calibrate, operate, and maintain, for each municipal waste combustor, continuous emission monitors to determine the following:
 - (i) opacity according to 40 CFR 60.58b(c) for large municipal waste combustors and 40 CFR 60.1720 for class I municipal waste combustors;
 - (ii) sulfur dioxide according to 40 CFR 60.58b(e) for large municipal waste combustors and 40 CFR 60.1720 for class I municipal waste combustors;
 - (iii) nitrogen oxides according to 40 CFR 60.58b(h) for large municipal waste combustors and 40 CFR 60.1720 for class I municipal waste combustors;
 - (iv) oxygen (or carbon dioxide) according to 40 CFR 60.58b(b) for large municipal waste combustors and 40 CFR 60.1720 for class I municipal waste combustors; and
 - (v) temperature level in the primary chamber and, where there is a secondary

- chamber, in the secondary chamber;
- (B) monitor load level of each class I municipal waste combustor according to 40 CFR 60.1810;
- (C) monitor temperature of the gases flue at the inlet of the particulate matter air pollution control device according to 40 CFR 60.1815;
- (D) monitor carbon feed rate if activated carbon is used to abate dioxins and furans or mercury emissions according to 40 CFR 60.1820;
- (E) maintain records of the information listed in 40 CFR 60.59b(d)(1) through (d)(15) for large municipal waste combustors and in 40 CFR 60.1840 through 1855 for class I municipal waste combustors for a period of at least five years;
- (F) following the initial compliance tests as required under Paragraph (e) of this Rule, submit the information specified in 40 CFR 60.59b(f)(1) through (f)(6) for large municipal waste combustors and in 40 CFR 60.1875 for class I municipal waste combustors, in the initial performance test report;
- (G) following the first year of municipal combustor operation, submit an annual report specified in 40 CFR 60.59b(g) for large municipal waste combustors and in 40 CFR 60.1885 for class I municipal waste combustors, as applicable, no later than February 1 of each year following the calendar year in which the data were collected. Once the unit is subject to permitting requirements under 15A NCAC 02Q .0500, Title V Procedures, the owner or operator of an affected facility shall submit these reports semiannually; and
- (H) submit a semiannual report specified in 40 CFR 60.59b(h) for large municipal waste combustors and in 40 CFR 60.1900 for class I municipal waste combustors, for any recorded pollutant or parameter that does not comply with the pollutant or parameter limit specified in this Section, according to the schedule specified in 40 CFR 60.59b(h)(6).

(g) Excess Emissions and Start-up and Shut-down. All municipal waste combustors subject to this Rule shall comply with Rule .0535, Excess Emissions Reporting and Malfunctions, of this Subchapter.

(h) Operator Training and Certification.

- (1) By January 1, 2000, or six months after the date of start-up of a class I municipal waste

combustor, whichever is later, and by July 1, 1999 or six months after the date of start-up of a large municipal waste combustor, whichever is later:

- (A) Each facility operator and shift supervisor of a municipal waste combustor shall obtain and maintain a current provisional operator certification from the American Society of Mechanical Engineers (ASME QRO-1-1994).
- (B) Each facility operator and shift supervisor of a municipal waste combustor shall have completed full certification or shall have scheduled a full certification exam with the American Society of Mechanical Engineers (ASME QRO-1-1994).
- (C) The owner or operator of a municipal waste combustor plant shall not allow the facility to be operated at any time unless one of the following persons is on duty at the affected facility:
 - (i) a fully certified chief facility operator;
 - (ii) a provisionally certified chief facility operator who is scheduled to take the full certification exam according to the schedule specified in Part (B) of this Subparagraph;
 - (iii) a fully certified shift supervisor; or
 - (iv) a provisionally certified shift supervisor who is scheduled to take the full certification exam according to the schedule specified in Part (B) of this Subparagraph.
- (D) If one of the persons listed in this Subparagraph leaves the large municipal waste combustor during his operating shift, a provisionally certified control room operator who is onsite at the affected facility may fulfill the requirements of this Part.
- (E) If one of the persons listed in this Subparagraph leaves the class I municipal waste combustor during his operating shift, a provisionally certified control room operator who is onsite at the affected facility may fulfill the requirements specified in 40 CFR 60.1685.

- (2) The owner or operator of each municipal waste combustor shall develop and update on a yearly basis a site-specific operating manual that shall at the minimum address the elements of municipal waste combustor unit operation

- specified in 40 CFR 60.54b(e)(1) through (e)(11).
- (3) By July 1, 1999, or six months after the date of start-up of a municipal waste combustor, whichever is later, the owner or operator of the municipal waste combustor plant shall comply with the following requirements:
- (A) All chief facility operators, shift supervisors, and control room operators shall complete the EPA municipal waste combustor training course.
- (i) The requirements specified in Part (A) of this Subparagraph shall not apply to chief facility operators, shift supervisors and control room operators who have obtained full certification from the American Society of Mechanical Engineers on or before July 1, 1998.
- (ii) As provided under 40 CFR 60.39b(c)(4)(iii)(B), the owner or operator may request that the Administrator waive the requirement specified in Part (A) of this Subparagraph for the chief facility operators, shift supervisors, and control room operators who have obtained provisional certification from the American Society of Mechanical Engineers on or before July 1, 1998.
- (B) The owner or operator of each municipal waste combustor shall establish a training program to review the operating manual, according to the schedule specified in Subparts (i) and (ii) of this Part, with each person who has responsibilities affecting the operation of an affected facility, including the chief facility operators, shift supervisors, control room operators, ash handlers, maintenance personnel, and crane-load handlers.
- (i) Each person specified in Part (B) of this Subparagraph shall undergo initial training no later than the date specified in Items (I) through (III) of this Subpart, whichever is later.
- (I) The date six months after the date of start-up of the affected facility;
- (II) July 1, 1999; or
- (III) A date prior to the day when the person assumes responsibilities affecting municipal waste combustor unit operation.
- (ii) Annually, following the initial training required by Subpart (i) of this Part.
- (C) The operating manual required by Subparagraph (2) of this Paragraph shall be updated continually and be kept in a readily accessible location for all persons required to undergo training under Part (B) of this Subparagraph. The operating manual and records of training shall be available for inspection by the personnel of the Division on request.
- (D) The operating manual of class I municipal waste combustors shall contain requirements specified in 40 CFR 60.1665 in addition to requirements of Part (C) of this Subparagraph.
- (4) The referenced ASME exam in this Paragraph is hereby incorporated by reference and includes subsequent amendments and editions. Copies of the referenced ASME exam may be obtained from the American Society of Mechanical Engineers (ASME), 22 Law Drive, Fairfield, NJ 07007, at a cost of forty nine dollars (\$49.00).
- (i) Compliance Schedules.
- (1) The owner or operator of a large municipal waste combustor shall choose one of the following three compliance schedule options:
- (A) comply with all the requirements or close before August 1, 2000;
- (B) comply with all the requirements before three years following the date of issuance of a revised construction and operation permit, if permit modification is required, or after August 1, 2000, but before August 1, 2002, if a permit modification is not required. If this option is chosen, then the owner or operator of the facility shall submit to the Director measurable and enforceable incremental steps of progress towards compliance which include:
- (i) a date by which contracts for the emission control system or equipment shall be awarded or orders issued for purchase of component parts;
- (ii) a date by which on site construction, installation, or

- modification of emission control equipment shall begin;
- (iii) a date by which on site construction, installation, or modification of emission control equipment shall be completed;
- (iv) a date for initial start-up of emissions control equipment;
- (v) a date for initial performance test(s) of emission control equipment; and
- (vi) a date by which the municipal waste combustor shall be in compliance with this Rule, which shall be no later than three years from the issuance of the permit; or
- (C) close between August 1, 2000, and August 1, 2002. If this option is chosen then the owner or operator of the facility shall submit to the Director a closure agreement which includes the date of the plant closure.
- (2) All large municipal waste combustors for which construction, modification, or reconstruction commenced after June 26, 1987, but before September 19, 1994, shall comply with the emission limit for mercury specified in Subparagraph (c)(8) of this Rule and the emission limit for dioxin and furan specified in Subparagraph (c)(11) of this Rule within one year following issuance of a revised construction and operation permit, if a permit modification is required, or by August 1, 2000, whichever is later.
- (3) The owner or operator of a class I municipal waste combustor shall choose one of the following four compliance schedule options:
 - (A) comply with all requirements of this Rule beginning July 1, 2002;
 - (B) comply with all requirements of this Rule by July 1, 2002 whether a permit modification is required or not. If this option is chosen, then the owner or operator shall submit to the Director along with the permit application if a permit application is needed or by September 1, 2002 if a permit application is not needed a compliance schedule that contains the following increments of progress:
 - (i) a final control plan as specified in 40 CFR 60.1610;
 - (ii) a date by which contracts for the emission control system or equipment shall be awarded or orders issued for
- (iii) purchase of component parts;
- (iii) a date by which onsite construction, installation, or modernization of emission control system or equipment shall begin;
- (iv) a date by which onsite construction, installation, or modernization of emission control system or equipment shall be completed; and
- (v) a date by which the municipal waste combustor shall be in compliance with this Rule, which shall be no later no later than December 1, 2004; March 1, 2003;
- (C) comply with all requirements of this Rule by closing the combustor by July 1, 2002 and then reopening it. If this option is chosen the owner or operator shall:
 - (i) meet increments of progress specified in 40 CFR 60.1585, if the class I combustor is closed and then reopened prior to the final compliance date; and
 - (ii) complete emissions control retrofit and meet the emission limits and good combustion practices on the date that the class I combustor reopens operation if the class I combustor is closed and then reopened after the final compliance date; or
- (D) comply by permanently closing the combustor. If this option is chosen the owner or operator shall:
 - (i) submit a closure notification, including the date of closure, to the Director by July 1, 2002 if the class I combustor is to be closed on or before September 1, 2002; or
 - (ii) enter into a legally binding closure agreement with the Director by July 1, 2002 if the class I combustor is to be closed after September 1, 2002, and the combustor shall be closed no later than December 1, 2004; March 1, 2003;
- (4) The owner or operator of a class I municipal waste combustor that began construction, reconstruction or modification after June 26, 1987 shall comply with the emission limit for

mercury specified in Subparagraph (c)(8) of this Rule and the emission limit for dioxin and furan specified in Part (c)(11)(B) of this Rule by July 1, 2002.

- (5) The owner or operator of any municipal waste combustor shall certify to the Director within five days after the deadline, for each increment of progress, whether the required increment of progress has been met.

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(3),(4),(5); 40 CFR 60.35b; 40 CFR 60.34e; 40 CFR 60.1515.

SECTION .1400 - NITROGEN OXIDES

15A NCAC 02D .1404 RECORDKEEPING: REPORTING: MONITORING:

(a) General requirements. The owner or operator of any source shall comply with the monitoring, recordkeeping and reporting requirements in Section .0600 of this Subchapter and shall maintain all records necessary for determining compliance with all applicable limitations and standards of this Section for five years.

(b) Submittal of information to show compliance status. The owner or operator of any source shall maintain and, when requested by the Director, submit any information necessary to determine the compliance status of an affected source.

(c) Excess emissions reporting. The owner or operator shall report excess emissions following the procedures under Rule .0535 of this Subchapter.

(d) Continuous emissions monitors.

- (1) The owner or operator of:
 - (A) a source covered under Rules .1416, .1417, or .1418 of this Section except internal combustion engines, and
 - (B) any source that opts into the nitrogen oxide budget trading program under Rule .1419 of this Section

shall install, operate, and maintain a continuous emission monitoring system according to 40 CFR Part 75, Subpart H, with such exceptions as may be allowed under 40 CFR Part 75, Subpart H or 40 CFR Part 96.

- (2) The owner or operator of a source that is subject to the requirements of this Section but not covered under Subparagraph (1) of this Paragraph and that uses a continuous emissions monitoring system to measure emissions of nitrogen oxides shall operate and maintain the continuous emission monitoring system according to 40 CFR Part 60, Appendix B, Specification 2, and Appendix F or Part 75, Subpart H. If diluent monitoring is required, 40 CFR Part 60, Appendix B, Specification 3, shall be used. If flow monitoring is required, 40 CFR Part 60, Appendix B, Specification 6, shall be used.

- (3) The owner or operator of the following sources shall not be required to use continuous emission monitors unless the Director determines that a continuous emission monitor is necessary under Rule .0611 of this

Subchapter to show compliance with the rules of this Section:

- (A) a boiler or indirect-fired process heater covered under Rule .1407 of this Section with a maximum heat input less than or equal to 250 million Btu per hour;
- (B) stationary internal combustion engines covered under Rule .1409 of this Section except for engines covered under Rules .1409(b) and .1418 of this Section.

(e) Missing data.

- (1) If data from continuous emission monitoring systems required to meet the requirements of 40 CFR Part 75 are not available at a time that the source is operated, the procedures in 40 CFR Part 75 shall be used to supply the missing data.
- (2) For continuous emissions monitors not covered under Subparagraph (1) of this Paragraph, data shall be available for at least 95 percent of the emission sources operating hours for the applicable averaging period, where four equally spaced readings constitute a valid hour. If data from continuous emission monitoring systems are not available for at least 95 percent of the time that the source is operated, the procedures in 40 CFR 75.33 through 75.37 shall be used to supply the missing data.

(f) Quality assurance for continuous emissions monitors.

- (1) The owner or operator of a continuous emission monitor required to meet 40 CFR Part 75, Subpart H, shall follow the quality assurance and quality control requirements of 40 CFR Part 75, Subpart H.
- (2) For a continuous emissions monitor not covered under Subparagraph (1) of this Paragraph, the owner or operator of the continuous emissions monitor shall follow the quality assurance and quality control requirements of 40 CFR Part 60, Appendix F, if the monitor is required to be operated annually under another rule. If the continuous emissions monitor is being operated only to satisfy the requirements of this Section, then the quality assurance and quality control requirements of 40 CFR Part 60, Appendix F, shall apply except that:
 - (A) A relative accuracy test audit shall be conducted after January 1 and before May 1 of each year;
 - (B) One of the following shall be conducted at least once between May 1 and September 30 of each year:
 - (i) a linearity test, according to 40 CFR Part 75, Appendix A, Section 3.2, 6.2, and 7.1;
 - (ii) a relative accuracy audit, according to 40 CFR Part

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60, Appendix F, Section 5 and 6; or

(iii) a cylinder gas audit according to 40 CFR Part 60, Appendix F, Section 5 and 6; and

(C) A daily calibration drift test shall be conducted according to 40 CFR Part 60, Appendix F, Section 4.0.

(g) Interim reporting for large sources. The owner or operator of a source covered under Rules .1416, .1417, or .1418 of this Section shall report to the Director no later than July 30 the tons of nitrogen oxides emitted during the previous May and June. No later than October 30, the owner or operator shall report to the Director the tons of nitrogen oxides emitted during the previous ozone season. The Division of Air Quality shall make this information publicly available.

(h) Recordkeeping and reporting requirements for large sources. The owner or operator of a source covered under Rules .1416, .1417, or .1418 of this Section shall comply with the recordkeeping and reporting requirements of 40 CFR Part 96, Budget Trading Program for State Implementation Plans.

(i) Averaging time for continuous emissions monitors. When compliance with a limitation established for a source subject to the requirements of this Section is determined using a continuous emissions monitoring system, a 24-hour block average as described under Rule .0606 of this Subchapter shall be recorded for each day beginning May 1 through September 30 unless a specific rule requires a different averaging time or procedure. Sources covered under Rules .1416, .1417, or .1418

of this Section shall comply with the averaging time requirements of 40 CFR Part 75. A 24-hour block average described in Rule .0606 of this Subchapter shall be used when a continuous emissions monitoring system is used to determine compliance with a short-term pounds-per-million-Btu standard in Rule .1418 of this Section.

- (j) Heat input. Heat input shall be determined:
- (1) for sources ~~using~~ required to use a monitoring system meeting the requirements of 40 CFR Part 75, using the procedures in 40 CFR Part 75; or
 - (2) for sources not ~~using~~ required to use a monitoring system meeting the requirements of 40 CFR Part 75, using:
 - (A) a method in 15A NCAC 2D .0501, or
 - (B) the best available heat input data.
- (k) Source testing. When compliance with a limitation established for a source subject to the requirements of this Section is determined using source testing, the source testing shall follow the procedures of Rule .1415 of this Section.
- (l) Alternative monitoring and reporting procedures. The owner or operator of a source covered under this ~~Rule~~ Rule, except for sources covered under Rule .1419 of this Section, may request alternative monitoring or reporting procedures under Rule .0612, Alternative Monitoring and Reporting Procedures.

Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(5), (7), (10).

15A NCAC 02D .1409 STATIONARY INTERNAL COMBUSTION ENGINES

(a) The owner or operator of a stationary internal combustion engine having a rated capacity of 650 horsepower or more that is not covered under Paragraph (b) of this Rule or Rule .1418 of this Section shall not allow emissions of NO_x from the stationary internal combustion engine to exceed the following limitations:

**MAXIMUM ALLOWABLE NO_x EMISSION RATES FOR
STATIONARY INTERNAL COMBUSTION ENGINES
(GRAMS PER HORSEPOWER HOUR)**

Engine Type	Fuel Type	Limitation
Rich-burn	Gaseous	2.5
Lean-burn	Gaseous	2.5
Compression Ignition	Liquid	8.0

(b) Engines identified in the table in this Paragraph shall not exceed the emission limit in the table during the ozone season; for the 2002 and 2003 ozone season, there shall not be any restrictions on emissions of nitrogen oxides from these engines under this Rule.

**SUM OF MAXIMUM ALLOWABLE OZONE SEASON NO_x EMISSIONS
(tons per ozone season)**

FACILITY	REGULATED SOURCES	ALLOWABL	ALLOWABL	ALLOWABL
		E EMISSIONS 2004	E EMISSIONS 2005	E EMISSIONS 2006 and later
Transcontinental Gas Pipeline Station 150	Mainline engines #12, 13, 14, and 15	311	189	76
Transcontinental Gas Pipeline Station 155	Mainline engines #2, 3, 4, 5, and 6	509	314	127
Transcontinental Gas Pipeline Station 160	Mainline engines #11, 12, 13, 14, and 15	597	367	149

Compliance shall be determined by summing the actual emissions from the engines listed in the table at each facility for the ozone season and comparing those sums to the limits in the table. Compliance may be achieved through trading under Paragraph (g) of this Rule if the trades are approved before the ozone season.

(c) If this Rule becomes applicable to a stationary internal combustion engine pursuant to Rule .1402(d), then, if after reasonable effort as defined in Rule .1401 of this Section, the emissions from that stationary internal combustion engine are greater than the applicable limitation in Paragraph (a) of this Rule, or if the requirements of this Rule are not RACT for the particular stationary internal combustion engine, the owner or operator may petition the Director for an alternative limitation or standard according to Rule .1412 of this Section.

(d) For the engines identified in Paragraph (b) of this Rule and any engine involved in emissions trading with one or more of the engines identified in Paragraph (b) of this Rule, the owner or operator shall determine compliance using:

- (1) a continuous emissions monitoring system which meets the applicable requirements of Appendices B and F of 40 CFR part 60 and Rule .1404 of this Section; or
- (2) an alternate monitoring and recordkeeping procedure based on actual emissions testing and correlation with operating parameters.

The installation, implementation, and use of this alternate procedure allowed under Subparagraph (d) of this Paragraph shall be approved by the Director before it may be used. The Director may approve the alternative procedure if he finds that it can show the compliance status of the engine.

(e) If a stationary internal combustion engine is permitted to operate more than 475 hours during the ozone season, compliance with the limitation established for a stationary internal combustion engine under Paragraph (a) of this Rule shall be determined using annual source testing according to Rule .1415 of this Section. If a source covered under this rule can burn more than one fuel, then the owner or operator of the source may choose not to burn one or more of these fuels during the ozone season. If the owner or operator chooses not to burn a particular fuel, the source testing required under this Rule shall not be required for that fuel.

(f) If a stationary internal combustion engine is permitted to operate no more than 475 hours during the ozone season, the owner or operator of the stationary internal combustion engine shall show compliance with the limitation under Paragraph (a) of this Rule with source testing during the first ozone season of operation according to Rule .1415 of this Section. Each year after that, the owner or operator of the stationary internal combustion engine shall comply with the annual tune-up requirements of Rule .1414 of this Section.

(g) The owner or operator of a source covered under Paragraph (b) of this Rule may offset part or all of the emissions of that source by reducing the emissions of another ~~source~~ stationary internal combustion engine at that facility by an amount equal to or greater than the emissions being offset. Only actual decreased emissions that have not previously been relied on to comply with Subchapter 2D or 2Q of this Title or Title 40 of the Code of Federal Regulations can be used to offset the emissions of another source. The person requesting the offset shall submit the following information to the Director:

- (1) identification of the source, including permit number, providing the offset and what the new allowable emission rate for the source will be;
- (2) identification of the source, including permit number, receiving the offset and what the new allowable emission rate for the source will be;
- (3) the amount of allowable emissions in tons per ozone season being offset;
- (4) a description of the monitoring, recordkeeping, and reporting that shall be used to show compliance; and
- (5) documentation that the offset is an actual decrease in emissions that has not previously been relied on to comply with Subchapter 02D or 02Q of this Title or Title 40 of the Code of Federal Regulations.

The Director may approve the offset if he finds that all the information required by this Paragraph has been submitted and that the offset is an actual decrease in emissions that have not previously been relied on to comply with Subchapter 02D or 02Q of this Title or Title 40 of the Code of Federal Regulations. If the Director approves the offset, he shall put the new allowable emission rates in the respective permits.

Authority G.S. 143-215.3(a)(1); 143-215.66; 143-215.107(a)(5), (7), (10).

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

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

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

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

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

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

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

FACILITY	SOURCE	EMISSION ALLOCATIONS (tons/ozone season) 2004	EMISSION ALLOCATIONS (tons/season) 2005	EMISSION ALLOCATIONS (tons/season) 2006 and later
G G Allen Gaston Co.	1	350	453	418
	2	355	460	424
	3	590	764	705
	4	528	683	630
	5	678	748	690
Belews Creek Stokes Co.	1	2591	3356	3095
	2	3020	3911	3608
Buck Rowan Co.	5	66	86	79
	6	73	95	87
	7	78	101	93
	8	319	413	381
	9	337	437	403
Cliffside Cleveland Rutherford Co.	1	76	98	91
	2	82	106	98
	3	107	138	128
	4	120	156	144
	5	1326	1717	1584

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FACILITY	SOURCE	EMISSION ALLOCATIONS (tons/ozone season) 2004	EMISSION ALLOCATIONS (tons/season) 2005	EMISSION ALLOCATIONS (tons/season) 2006 and later
Dan River Rockingham Co.	1	132	171	157
	2	144	186	172
	3	304	394	363
Marshall Catawba Co.	1	1011	1309	1207
	2	1056	1367	1261
	3	1784	2311	2131
	4	1764	2285	2107
Riverbend Gaston Co.	10	299	387	357
	7	216	280	258
	8	225	291	268
	9	285	369	340

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

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

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

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

- (2) Duke Power. The total emissions from all the coal-fired boilers and combustion turbines that are not listed in Rule .1417 of this Section at Duke Power Company's Allen, Belews Creek, Buck, Cliffside, Dan River, Marshall, and Riverbend facilities shall not exceed:
 - (A) 17,816 tons per ozone season;
 - (B) 22,270 tons per ozone season for 2005;

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

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

FACILITY	SOURCE	EMISSION ALLOCATIONS (tons/ozone season) 2004	EMISSION ALLOCATIONS (tons/ozone season) 2005	EMISSION ALLOCATIONS (tons/ozone season) 2006 and later
G G Allen Gaston Co.	1	350	437	329
	2	355	444	334
	3	590	737	556
	4	528	660	497
	5	578	722	544
Belews Creek Stokes Co.	1	2591	3239	2441
	2	3020	3775	2846
Buck Rowan Co.	5	66	83	63
	6	73	91	69
	7	78	97	73
	8	319	399	300
	9	337	422	318
Cliffside Cleveland Rutherford Co.	1	76	95	71
	2	82	102	77
	3	107	134	101
	4	120	150	113
	5	1326	1658	1249
Dan River Rockingham Co.	1	132	165	124
	2	144	180	135
	3	304	380	286
Marshall Catawba Co.	1	1011	1263	952
	2	1056	1320	994
	3	1784	2230	1680
	4	1764	2206	1662
Riverbend Gaston Co.	10	299	374	282
	7	216	270	204
	8	225	281	212
	9	285	356	268

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

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

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

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

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

- (1) To the source's allocation in this Rule, the allocations acquired before December 1 of that year under Rule .1419 of this Section are added and the allocations transferred before December 1 of that year under Rule .1419 of this Section are subtracted.
- (2) The value calculated under Subparagraph (1) of this Paragraph is compared to the actual emissions from the source for the ozone season. If the value calculated under Subparagraph (1) of this Paragraph is greater than or equal to the actual emissions from the source for the ozone season, the source is in compliance. If the value calculated under Subparagraph (1) of this Paragraph is less than the actual emissions from the source for the ozone season, the source is not in compliance.

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

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

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

Authority G.S. 143-215.3(a)(1);143-215.107(a)(5), (7), (10).

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

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

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

(b) Initial emission allocations.

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

ELECTRICAL GENERATING UNITS

FACILITY	SOURCE	NO _x EMISSION ALLOCATION S (tons/ozone season) 2004	NO _x EMISSION ALLOCATIONS (tons/ozone season) 2005	NO _x EMISSION ALLOCATION S (tons/ozone season) 2006 and later
Butler Warner Generating, Cumberland Co.	Combustion Turbine 1	27	33	49
	Combustion Turbine 2	27	33	49
	Combustion Turbine 3	27	33	49
	Combustion Turbine 6	28	35	52
	Combustion Turbine 7	27	33	49
	Combustion Turbine 8	27	33	49
	Combustion Turbine 4	34	43	63
	Combustion Turbine 5	35	43	63
Cogentrix-Rocky Mount, Edgecombe Co.	Boiler ST unt	319	398	351
Cogentrix-Elizabethtown, Bladen Co.	Coal boiler ST-own	115	143	126
Cogentrix-Kenansville, Duplin Co.	Stoker boiler ST-LLE	103	128	113

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Cogentrix-Lumberton, Robeson Co.	Coal boiler ST-TON	114	142	125
Cogentrix-Roxboro, Person Co.	ST-ORO	175	218	192
Cogentrix-Southport, Brunswick Co.	ST-ORT	356	443	391
Duke Power, Lincoln	Combustion Turbine 1	18	23	23
	Combustion Turbine 2	18	23	23
	Combustion Turbine 3	18	23	23
	Combustion Turbine 4	18	23	23
	Combustion Turbine 5	18	23	23
	Combustion Turbine 6	18	23	23
	Combustion Turbine 7	18	23	23
	Combustion Turbine 8	18	23	23
	Combustion Turbine 9	18	23	23
	Combustion Turbine 10	18	23	23
	Combustion Turbine 11	18	23	23
	Combustion Turbine 12	18	23	23
	Combustion Turbine 13	18	23	23
	Combustion Turbine 14	18	23	23
	Combustion Turbine 15	18	23	23
	Combustion Turbine 16	19	24	24
Panda-Rosemary, Halifax Co.	CT-ary	35	43	32
	CW-ary	25	31	23
Roanoke Valley, Halifax Co.	1	447	557	492
	2	142	178	167
RJ Reynolds Tobbaccoville Facility, Forsyth Co.	Boiler 1	194	243	64
	Boiler 2	218	273	64
	Boiler 3	178	223	64
	Boiler 4	190	238	64
UNC-CH, Orange Co.	Boiler no. 5, 6, and 7	116	145	128
	Boiler no. 8	120	150	113
CP&L, Lee Plant, Wayne County	Combustion Turbine 10	25	31	31
	Combustion Turbine 11	25	31	31
	Combustion Turbine 12	92	115	115
	Combustion Turbine 13	92	115	115

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Dynergy, Rockingham County	Combustion Turbine 1	34	42	42
	Combustion Turbine 2	33	42	42
	Combustion Turbine 3	33	42	42
	Combustion Turbine 4	33	41	41
	Combustion Turbine 5	33	41	41
CP&L, Woodleaf, Rowan County	Combustion Turbine 1	22	27	27
	Combustion Turbine 2	22	27	27
	Combustion Turbine 3	22	27	27
	Combustion Turbine 4	21	27	27
	Combustion Turbine 5	22	27	27
CP&L, Mark's Creek, Richmond County	Combustion Turbine 1	22	27	27
	Combustion Turbine 2	22	27	27
	Combustion Turbine 3	22	27	27
	Combustion Turbine 4	22	27	27
	Combustion Turbine 5	21	27	27
	Combustion Turbine 6	21	27	27
	Combustion Turbine 7	22	28	28
CP&L, Asheville, Buncombe County	Combustion Turbine	60	75	75
	Combustion Turbine	60	75	75

NON-ELECTRICAL GENERATING UNITS

FACILITY	SOURCE	NO _x EMISSION ALLOCATIONS (tons/ozone season) 2004	NO _x EMISSION ALLOCATIONS (tons/ozone season) 2005	NO _x EMISSION ALLOCATIONS (tons/ozone season) 2006 and later
Weyerhaeuser Paper Co., Martin Co.	Riley boiler	566	709	379
	Package boiler	20	25	25
Blue Ridge Paper Products, Haywood Co.	Pulverized coal dry bottom boiler – Big Ben Bill	212	265	141
	Pulverized coal dry bottom boiler – Peter G	187	234	125

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FACILITY	SOURCE	NO _x EMISSION ALLOCATIONS (tons/ozone season) 2004	NO _x EMISSION ALLOCATIONS (tons/ozone season) 2005	NO _x EMISSION ALLOCATIONS (tons/ozone season) 2006 and later
	Pulverized coal dry bottom boiler – Riley Coal	358	447	239
	Pulverized coal, wet bottom boiler – No. 4	365	456	244
	Boiler – Riley Bark	135	169	90
International Paper Corp., Halifax Co.	Wood/ bark, no. 6 oil, pulverized coal dry bottom boiler	518	648	346
Weyerhaeuser Co. New Bern Mill, Craven Co.	#1 power boiler	181	226	121
	#2 power boiler	58	72	72
International. Paper, Columbus Co.	No. 3 Power Boiler	126	158	84
	No. 4 Power Boiler	334	418	223
Fieldcrest-Cannon, Plant 1 Cabarrus Co.	Boiler	174	217	116

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

ELECTRIC GENERATING UNITS

FACILITY	SOURCE	NO _x EMISSION ALLOCATIONS (tons/ozone season) 2004	NO _x EMISSION ALLOCATIONS (tons/ozone season) 2005	NO _x EMISSIONS ALLOCATIONS (tons/ozone season) 2006 and later
Butler Warner Generating, Cumberland Co.	Combustion Turbine 1	27	33	49
	Combustion Turbine 2	27	33	49
	Combustion Turbine 3	27	33	49
	Combustion Turbine 6	28	35	52
	Combustion Turbine 7	27	33	49
	Combustion Turbine 8	27	33	49
	Combustion Turbine 4	34	23	63
	Combustion Turbine 5	35	43	63

PROPOSED RULES

FACILITY	SOURCE	NO _x EMISSION ALLOCATIONS (tons/ozone season) 2004	NO _x EMISSION ALLOCATIONS (tons/ozone season) 2005	NO _x EMISSIONS ALLOCATIONS(tons/ozone seas on) 2006 and later
Cogentrix-Rocky Mount, Edgecombe Co.	Boiler ST-unt	319	398	351
Cogentrix-Elizabethtown, Bladen	Coal boiler ST-OWN	115	143	126
Cogentrix-Kenansville, Duplin Co.	Stoker boiler ST-LLE	103	128	113
Cogentrix-Lumberton, Robeson Co.	Coal boiler ST-TON	114	142	125
Cogentrix-Roxboro, Person Co.	ST-ORO	175	218	192
Cogentrix-Southport, Brunswick Co.	ST-ORT	356	444	392
Duke Power, Lincoln	Combustion Turbine 1	18	23	26
	Combustion Turbine 2	18	23	26
	Combustion Turbine 3	18	23	26
	Combustion Turbine 4	18	23	26
	Combustion Turbine 5	18	23	26
	Combustion Turbine 6	18	23	26
	Combustion Turbine 7	18	23	26
	Combustion Turbine 8	18	23	26
	Combustion Turbine 9	18	23	26
	Combustion Turbine 10	18	23	26
	Combustion Turbine 11	18	23	26
	Combustion Turbine 12	18	23	26
	Combustion Turbine 13	18	23	26
	Combustion Turbine 14	18	23	26
	Combustion Turbine 15	18	23	26
	Combustion Turbine 16	19	24	27
Panda-Rosemary, Halifax Co.	CT-ary	35	43	32
	CW-ary	25	31	23
Roanoke Valley, Halifax Co.	1	447	558	493
	2	142	178	167
RJ Reynolds Tobaccoville Facility, Forsyth Co.	Boiler 1	194	243	64
	Boiler 2	218	273	64
	Boiler 3	178	223	64
	Boiler 4	190	238	64

PROPOSED RULES

FACILITY	SOURCE	NO _x EMISSION ALLOCATIONS (tons/ozone season) 2004	NO _x EMISSION ALLOCATIONS (tons/ozone season) 2005	NO _x EMISSIONS ALLOCATIONS(tons/ozone seas on) 2006 and later
UNC-CH, Orange Co.	Boiler no. 5, 6, and 7	116	145	128
	Boiler no. 8	120	150	113
CP&L, Lee Plant, Wayne County	Combustion Turbine 10	25	31	31
	Combustion Turbine 11	25	31	31
	Combustion Turbine 12	92	115	115
	Combustion Turbine 13	92	115	115
Dynegy, Rockingham County	Combustion Turbine 1	34	42	42
	Combustion Turbine 2	33	42	42
	Combustion Turbine 3	33	42	42
	Combustion Turbine 4	33	41	41
	Combustion Turbine 5	33	41	41
CP&L, Woodleaf, Rowan County	Combustion Turbine 1	22	27	27
	Combustion Turbine 2	22	27	27
	Combustion Turbine 3	22	27	27
	Combustion Turbine 4	21	27	27
	Combustion Turbine 5	22	28	28
CP&L, Mark's Creek, Richmond County	Combustion Turbine 1	22	27	27
	Combustion Turbine 2	22	27	27
	Combustion Turbine 3	22	27	27
	Combustion Turbine 4	22	27	27
	Combustion Turbine 5	21	27	27
	Combustion Turbine 6	21	27	27
	Combustion Turbine 7	22	28	28
	Combustion Turbine 8	21	27	27
	Combustion Turbine 9	22	28	28
CP&L, Asheville, Buncombe County	Combustion Turbine	60	75	75
	Combustion Turbine	60	75	75

NON-ELECTRIC GENERATING UNITS

PROPOSED RULES

FACILITY	SOURCE	NO _x EMISSION ALLOCATIONS (tons/ozone season) 2004	NO _x EMISSION ALLOCATIONS (tons/ozone season) 2005	NO _x EMISSION ALLOCATIONS (tons/ozone season) 2006 and later
Weyerhaeuser Paper Company, Martin Co.	Riley boiler	566	708	379
	Package boiler	20	25	25
Blue Ridge Paper Products, Haywood Co.	Pulverized coal dry bottom boiler – Big Ben Bill	212	265	141
	Pulverized coal dry bottom boiler – Peter G	187	234	125
	Pulverized coal dry bottom boiler – Riley Coal	358	447	239
	Pulverized coal, wet bottom boiler – No. 4	365	456	244
	boiler–Riley Bark	135	169	90
International Paper Corp., Halifax Co.	Wood/bark, no. 6 oil, pulverized coal dry bottom boiler	518	648	346
Weyerhaeuser Co. New Bern Mill, Craven Co.	#1 power boiler	181	226	121
	#2 power boiler	58	72	72
International. Paper, Columbus Co.	No. 3 Power Boiler	126	158	84
	No. 4 Power Boiler	334	418	223
Fieldcrest-Cannon, Plant 1, Cabarrus Co.	Boiler	174	217	116

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

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

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

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

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

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

(1) To the source's allocation in this Rule, the allocations acquired before December 1 of that year under Rule .1419 of this Section are added and the allocations transferred before December 1 of that year under Rule .1419 of this Section are subtracted.

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

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

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

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5), (7), (10).

15A NCAC 02D .1418 NEW ELECTRIC GENERATING UNITS, LARGE BOILERS, AND LARGE I/C ENGINES

(a) Electric generating units. Emissions of nitrogen oxides from any fossil fuel-fired stationary boiler, combustion turbine, or combined cycle system permitted after October 31, 2000, serving a generator with a nameplate capacity greater than 25 megawatts electrical and selling any amount of electricity shall not exceed:

- (1) 0.15 pounds per million Btu for gaseous and solid fuels and 0.18 pounds per million Btu for liquid fuels if it is not covered under Rule .0530 (prevention of significant deterioration) or .0531 (nonattainment area major new source review) of this Subchapter;
- (2) 0.15 pounds per million Btu for gaseous and solid fuels and 0.18 pounds per million Btu for liquid fuels or best available control technology requirements of Rule .0530 of this Subchapter, whichever requires the greater degree of reduction, if it is covered under Rule .0530 of this Subchapter; or
- (3) lowest available emission rate technology requirements of Rule .0531 of this Subchapter if it is covered under Rule .0531 of this Subchapter.

(b) Large boilers. Emissions of nitrogen oxides from any fossil fuel-fired stationary boiler, combustion turbine, or combined cycle system having a maximum design heat input greater than 250 million Btu per hour which is permitted after October 31, 2000, and not covered under Paragraph (a) of this Rule, shall not exceed:

- (1) 0.17 pounds per million Btu for gaseous and solid fuels and 0.18 pounds per million Btu for liquid fuels if it is not covered under Rule .0530 (prevention of significant deterioration) or .0531 (nonattainment area major new source review) of this Subchapter;

- (2) 0.17 pounds per million Btu for gaseous and solid fuels and 0.18 pounds per million Btu for liquid fuels or best available control technology requirements of Rule .0530 of this Subchapter, whichever requires the greater degree of reduction, if it is covered under Rule .0530 of this Subchapter; or

- (3) lowest available emission rate technology requirements of Rule .0531 of this Subchapter if it is covered under Rule .0531 of this Subchapter.

(c) Internal combustion engines. The following reciprocating internal combustion engines permitted after October 31, 2000, shall comply with the applicable requirements in Rule .1423 of this Section if the engine is not covered under Rule .0530 (prevention of significant deterioration) or .0531 (nonattainment area major source review) of this Subchapter:

- (1) rich burn stationary internal combustion engines rated at equal to or greater than 2,400 brake horsepower,
- (2) lean burn stationary internal combustion engines rated at equal to or greater than 2,400 brake horsepower,
- (3) diesel stationary internal combustion engines rated at equal to or greater than 3,000 brake horsepower, or
- (4) dual fuel stationary internal combustion engines rated at equal to or greater than 4,400 brake horsepower,

If the engine is covered under Rule .0530 of this Subchapter, it shall comply with the requirements of Rule .1423 of this Section or the best available control technology requirements of Rule .0530 of this Subchapter, whichever requires the greater degree of reduction. If the engine is covered under Rule .0531 of this Subchapter, it shall comply with lowest available emission rate technology requirements of Rule .0531 of this Subchapter.

(d) Monitoring. The owner or operator of a source subject to this Rule except internal combustion engines shall show compliance using a continuous emission monitor that meets the

requirements of Rule .1404(d) of this Section. Internal combustion engines shall comply with the monitoring requirements in Rule .1423 of this Section. Monitors shall be installed before the first ozone season in which the source will operate and shall be operated each day during the ozone season that the source operates.

(e) Offsets. If emission allocations are not granted under Rule .1421 of this Section or are ~~insufficient to offset the emissions not equal to or greater than the emissions of nitrogen oxides of the source for that ozone season, until revised under Rule .1420 of this Section.~~ source, the owner or operator of the source shall acquire emission allocations of nitrogen oxides under Rule .1419 of this Section from other sources sufficient to offset its emissions. Sources ~~may~~ shall comply with the requirements of this Rule using the nitrogen oxide budget trading program set out in Rule .1419 of this Section. The owner or operator of internal combustion engines covered under Paragraph (c) of this Rule shall not be required to obtain emission allocations or emission reductions.

Authority G.S. 143-215.3(a)(1);143-215.107(a)(5), (7), (10).

15A NCAC 02D .1419 NITROGEN OXIDE BUDGET TRADING PROGRAM

(a) Definitions. For the purposes of this Rule, the definitions in 40 CFR 96.2 shall apply except that:

- (1) "Permitting agency" means the North Carolina Division of Air Quality.
- (2) "Fossil fuel fired" means fossil fuel fired as defined under Rule .1401 of this Section instead of the definition in 40 CFR 96.2.

(b) Existing sources. Sources covered under Rule .1416 or .1417 of this Section ~~may~~ shall comply with the requirements of Rule .1416 or .1417 of this Section using the procedures of and complying with the requirements of 40 CFR Part 96, Nitrogen Oxide Budget Trading Program for State Implementation Plans, with the following exceptions:

- (1) Permit applications shall be submitted following the procedures and schedules in this Section and in Subchapter 2Q of this Title instead of the procedures and schedules in 40 CFR Part 96; and
- (2) The dates and schedules for monitoring systems in 40 CFR Part 96 shall not apply; however, if a source operates during the ozone season, it shall have installed and begun operating by May 1, 2004, a continuous emissions monitoring system that complies with 40 CFR Part 96.

(c) New sources. Except for internal combustion engines, sources covered under Rule .1418 of this Section ~~may~~ shall comply with the requirements of Rule .1418 of this Section using the procedures of and complying with the requirements of 40 CFR Part 96, Budget Trading Program for State Implementation Plans, with the following exceptions:

- (1) Permit applications shall be submitted following the procedures and schedules in this Section and in Subchapter 2Q of this Title instead of the procedures and schedules in 40 CFR Part 96; and

- (2) The dates and schedules for monitoring systems in 40 CFR Part 96 shall not apply; however, a source shall not operate during the ozone season until it has installed and is operating a continuous emissions monitoring system that complies with 40 CFR Part 96.

(d) Opt-in provisions. ~~Sources Boilers, turbines, and combined cycle systems~~ not covered under Rule .1416, .1417, or .1418 of this Section or internal combustion engines may opt into the budget trading program of 40 CFR Part 96 by following the procedures and requirements of 40 CFR Part 96, Subpart I, including using continuous emission monitors that meet the requirements of 40 CFR Part 75, Subpart H. Before an internal combustion engine opts into the budget trading program, the owner or operator of the engine shall demonstrate that the continuous emissions monitor on the engine can comply with the requirements of 40 CFR Part 75, Subpart H, by operating monitor on the engine under the conditions specified in 40 CFR Part 75 for at least one ozone season before opting into the budget trading program.

(e) Divisional requirements. The Director and the Division of Air Quality shall follow the procedures of 40 CFR Part 96 in reviewing permit applications and issuing permits for NO_x Budget sources, in approving or disapproving monitoring systems for NO_x Budget sources, and in taking enforcement action against NO_x Budget sources. The Director may issue permits after May 1, 2003, for sources covered under this Section that are participating in the nitrogen oxide budget trading program under this Section. The provisions of 40 CFR Part 96 pertaining to early reduction credits shall not apply.

(f) Submitting emission allocations to the EPA. For sources covered under Rule .1416, .1417, or .1418, the Director shall submit to the Administrator of the Environmental Protection Agency NO_x emission allocations according to 40 CFR Part 96. The Environmental Management Commission and the Director shall follow Rules .1416, .1417, and .1420 for emission allocations instead of the methodology specified in 40 CFR Part 96. The Environmental Management Commission and the Director shall follow, Rule .1421 of this Section for set-asides and new source allocations instead of the provisions of 40 CFR Part 96. The Environmental Management Commission and the Director shall follow Rule .1422 of this Section for distributing the compliance supplement pool instead of the provisions of 40 CFR Part 96.

(g) EPA to administer. The United States Environmental Protection Agency (EPA) shall administer the budget trading program of 40 CFR Part 96 on behalf of North Carolina. The Director shall provide the EPA the information necessary under 40 CFR Part 96 for the EPA to administer 40 CFR Part 96 on behalf of North Carolina. The owner or operator of each source covered under Rule .1416, .1417, or .1418, except internal combustion engines, of this Section shall establish an account, designate an authorized account representative, and comply with the other requirements of 40 CFR Part 96 as necessary for the EPA to administer the nitrogen oxide budget trading program on behalf of North Carolina.

(h) Restrictions on trading. NO_x emission allocations obtained under this Rule shall not be used to meet the emission limits for a source if compliance with that emission limit is required as part of the State Implementation Plan to attain or maintain the ambient air quality ozone standard. Sources covered under Rule

.0531 (nonattainment area major new source review) of this Subchapter shall not use the nitrogen oxide budget trading program to comply with Rule .0531 of this Subchapter.

Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(5), (7), (10).

15A NCAC 02D .1422 COMPLIANCE SUPPLEMENT POOL CREDITS

(a) Purpose. The purpose of this Rule is to regulate North Carolina's eligibility for and use of the Compliance Supplement Pool under 40 CFR 51.121(e)(3).

(b) Eligibility. ~~Facilities~~ Sources covered under Rule .1416 of this Section may earn Compliance Supplement Pool Credits for those nitrogen oxide emissions reductions required by Rule .1416 of this Section that are achieved during the ozone season after September 30, 1999 and are demonstrated using baseline and current emissions determined according to 40 CFR Part 75 before May 1, 2003, and are beyond the total emission reductions required under 40 CFR Part 76 or any other provision of the federal Clean Air Act. 76.

(c) Credits. The Compliance Supplement Pool Credits earned under this Rule shall be tabulated in tons of nitrogen oxides reduced per ozone season. The control device, modification, or change in operational practice that enables the combustion source or sources to achieve the emissions reductions shall be permitted. The facility shall provide the Division of Air Quality with written notification certifying the installation and operation of the control device or the modification or change in operational practice that enables the combustion source or sources to achieve the emissions reduction. Only emission reductions that are beyond emission reductions required under 40 CFR Part 76 or any other provision of the federal Clean Air Act are creditable Compliance Supplement Pool Credits. Credits are counted in successive seasons through May 1, 2003. Seasonal credits shall be recorded in a Division of Air Quality database and will accumulate in this database until May 1, 2003. At that point a cumulative total of all the Compliance Supplement Pool Credits earned during the entire period shall be tabulated. These credits will then be available for use by the State of North Carolina to achieve compliance with the State ozone season NOx budget.

(d) Requesting credits. In order to earn Compliance Supplement Pool Credits, the owner or operator of the facility shall provide the following written documentation to the Director before January 1, 2003.

- (1) the combustion source or sources involved in the emissions reduction;
- (2) the start date of the emissions reduction;
- (3) a description of the add-on control device, modification, or change in operational practice that enables the combustion source or sources to achieve the emissions reduction;
- (4) ~~the current, or current and~~ baseline, emissions of nitrogen oxides of the combustion source or sources involved in this reduction in terms of tons of nitrogen oxides per season;
- (5) the amount of reduction of emissions of nitrogen oxides achieved by this action in f tons of nitrogen oxides per season per combustion source involved;

(6) the total reduction of nitrogen oxides achieved by this action in tons of nitrogen oxides per season for all the combustion sources involved;

(7) a demonstration that the proposed action has reduced the emissions of nitrogen oxides from the combustion sources involved by the amount specified in Subparagraphs (d)(5) and (d)(6) of this Rule; and

(8) a description of the monitoring, recordkeeping, and reporting plan used to ensure continued compliance with the proposed emissions reduction activity; continuous emissions monitors shall be used to monitor emissions.

(e) Approving requests. Before any Compliance Supplement Pool Credits can be allocated, the Director shall have to approve them. The Director shall approve credits if he finds that:

- (1) early emissions reductions are demonstrated using baseline and current emissions determined according to 40 CFR Part 75 to be beyond the reductions required under 40 CFR Part 76, Acid Rain Nitrogen Oxides Emission Reduction Program and any other requirement of the federal Clean Air Act; Program,
- (2) the emission reductions are achieved after September 30, 1999, and before May 1, 2003, and
- (3) all the information and documentation required under Paragraph (d) of this Rule have been submitted.

The Director shall notify the owner or operator of the source and EPA of his approval or disapproval of a request and of the amount of Compliance Supplement Pool Credits approved. If the Director disapproves a request or part of a request, he shall explain in writing to the owner or operator of the source the reasons for disapproval.

(f) Compliance supplement pool. The Director shall verify that the Compliance Supplement Pool Credits do not exceed a statewide total of 10,737 tons for all the ozone seasons of the years 2003, 2004, and 2005.

(g) Interim report. The owner or operators of the facility shall submit to the Director by January 1, 2001 and January 1, 2002 an interim report that contains the information in Paragraph (d) of this Rule for the previous ozone season.

(h) Recording credits. Based on the interim reports submitted under Paragraph (g) of this Rule, the Division shall record the Compliance Supplement Pool Credits earned under this Rule in a central database. The Division of Air Quality shall maintain this database. These credits shall be recorded in tons of emissions of nitrogen oxides reduced per season with the actual start date of the reduction activity. Based on the final formal request submitted under Paragraph (d) of this Rule as approved under Paragraph (e) of this Rule, the Director shall finalize the Compliance Supplement Pool Credits earned and record the final earned credits in the Division's database. .

(i) Use of credits. Final earned Compliance Supplement Pool Credits shall be available for Carolina Power & Light Co. and Duke Power Co. to use in 2003. The allocations of Carolina Power & Light Co.'s sources and Duke Power Co.'s sources in Rule .1416 of this Section shall be reduced for 2004 or 2005 by the amount of Compliance Supplement Pool Credits used in

2003 using the procedures in Paragraph (k) of this Rule. Compliance Supplement Pool Credits not used in 2003 shall be available for use by the Director of the Division of Air Quality to offset excess emissions of nitrogen oxides in order to achieve compliance with the North Carolina ozone season NOx budget after May 30, 4, 2004, but no later than September 30, 2005. The credits shall be used on a one for one basis, that is, one ton per season of credit can be used to offset one ton, or less, per season of excess emissions to achieve compliance with the requirements of Rule .1416 or .1417 of this Section. All credits shall expire and will no longer be available for use after November 30, 2005.
~~April 30, 2006.~~

(j) Reporting. The Director shall report:

- (1) to the EPA, Carolina Power & Light Co. and Duke Power Co. by
 - (A) March 1, 2003 the Compliance Supplement Pool Credits earned by Carolina Power & Light Co. and by Duke Power Co., and
 - (B) March 1, 2004 the reductions in allocations calculated under Paragraphs (k) and (l) of this Rule; and
- (2) to the EPA by:
 - (A) December 1, 2003, the Compliance Supplement Pool Credits used beginning May 1 through September 30, 2003,
 - (B) December 1, 2004, the Compliance Supplement Pool Credits used beginning May 31 through September 30, 2004, and
 - (C) December 1, 2005, the Compliance Supplement Pool Credits used beginning May 1 through September 30, 2005.

(k) Using Compliance Supplement Pool Credits in 2003. Carolina Power & Light Co. and Duke Power Co. may use Compliance Supplement Pool Credits in 2003. If they do use Compliance Supplement Pool Credits in 2003, then the allocations for their sources in Rule .1416 of this Section shall be reduced for 2004 or 2005 by the amount of Compliance Supplement Pool Credits used in 2003. Before the Director approves the use of Compliance Supplement Pool Credits in 2003, the company shall identify the sources whose allocations are to be reduced to offset the Compliance Supplement Pool Credits requested for 2003 and the year (2004 or 2005) in which the allocation is reduced. The Director shall approve no more than 4,295 tons for Carolina Power & Light Co. and no more than 6,442 tons for Duke Power Co. The Director shall approve no more than 5,771 tons being offset by reductions in allocations in 2004 and no more than 4,966 tons being offset by reductions in allocations in 2005.

(l) Failure to receive sufficient credits. If the sum of Compliance Supplement Pool Credits received by Carolina Power & Light Co. and Duke Power Co. are less than 10,737 tons, the following procedure shall be used to reduce the allocations in Rule .1416 of this Section:

- (1) If the Compliance Supplement Pool Credits received by Carolina Power & Light Co. are less than 4,295 tons, and the Compliance

Supplement Pool Credits received by Duke Power Co. are greater than or equal to 6,442 tons, the allocation for Carolina Power & Light Co.'s sources shall be reduced by the amount obtained by subtracting from 10,737 tons the sum of Compliance Supplement Pool Credits received by Carolina Power & Light Co. and Duke Power Co. The allocations of Carolina Power & Light Co.'s sources shall be reduced using the procedure in Subparagraph (4) of this Paragraph.

- (2) If the Compliance Supplement Pool Credits received by Duke Power Co. are less than 6,442 tons, and the Compliance Supplement Pool Credits received by Carolina Power & Light Co. are greater than or equal to 4,295 tons, the allocation for Duke Power Co.'s sources shall be reduced by the amount obtained by subtracting from 10,737 tons the sum of Compliance Supplement Pool Credits received by Carolina Power & Light Co. and Duke Power Co. The allocations of Duke Power Co.'s sources shall be reduced using the procedure in Subparagraph (4) of this Paragraph.

- (3) If the Compliance Supplement Pool Credits received by Carolina Power & Light Co. are less than 4,295 tons, and the Compliance Supplement Pool Credits received by Duke Power Co. are less than 6,442 tons:

- (A) The allocation for Carolina Power & Light Co.'s sources shall be reduced by the amount obtained by subtracting from 4,295 tons the Compliance Supplement Pool Credits received by Carolina Power & Light Co. The allocations of Carolina Power & Light Co.'s sources shall be reduced using the procedure in Subparagraph (4) of this Paragraph; and

- (B) The allocation for Duke Power Co.'s sources shall be reduced by the amount obtained by subtracting from 6,442 tons the Compliance Supplement Pool Credits received by Duke Power Co. The allocations of Duke Power Co.'s sources shall be reduced using the procedure in Subparagraph (4) of this Paragraph.

- (4) When the allocations in Rule .1416 of this Section for Carolina Power & Light Co.'s sources or for Duke Power Co.'s sources are required to be reduced, the following procedure shall be used:

- (A) If the reduction required is less than or equal to 4,966 tons, then following procedure shall be used:

- (i) The allocation of all sources listed in Rule .1416 of this Section for 2005 for

- Carolina Power & Light Co. or Duke Power Co. are summed.
- (ii) The reduction required under Subparagraph (1), (2), or (3) of this Paragraph is subtracted from the sum computed under Subpart (i) of this Part.
- (iii) The allocation of each source listed in Rule .1416 of this Section for 2005 for Carolina Power & Light Co. or Duke Power Co. is multiplied by the value computed under Subpart (ii) of this Part and divided by the value computed under Subpart (i) of this Part. The result is the revised allocation for that source.

under Sub-Subpart (I) of this Subpart and divided by the value computed Sub-Subpart (II) of this Subpart. The result is the revised allocation for that source

(m) If allocations are reduced in 2004 or 2005 for Carolina Power & Light Co. or Duke Power Co. under Paragraph (k) or (l) of this Rule, the company whose allocations are reduced shall reduce its allocations by returning allowances through the use of allowance transfers to the State following the procedures in 40 CFR Part 96. These allowances shall be retired.

Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(5), (7), (10).

SECTION .1900 - OPEN BURNING

15A NCAC 02D .1901 PURPOSE, SCOPE, AND PERMISSIBLE OPEN BURNING

(a) Purpose. The purpose of this Section is to control air pollution resulting from the open burning of combustible ~~materials.~~ materials and to protect the air quality in the immediate area of the open burning.

(b) Scope. This Section applies to all operations involving open burning. This Section does not authorize any open burning which is a crime under G.S. 14-136 through G.S. 14-140.1, or affect the authority of the Division of Forest Resources to issue or deny permits for open burning in or adjacent to woodlands as provided in G.S. 113-60.21 through G.S. 113-60.31. This Section does not affect the authority of any local government to regulate open burning through its fire codes or other ordinances. The issuance of any open burning permit by the Division of Forest Resources or any local government does not relieve any person from the necessity of complying with this Section or any other air quality rule.

(c) ~~Permissible Impermissible~~ Open Burning. A person shall not cause, allow, or permit open burning of combustible material except as allowed by Rule .1903 and Rule .1904 of this Section. ~~Section or as covered by a permit is used under Rule .1904 of this Section.~~

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).

15A NCAC 02D .1902 DEFINITIONS

For the purpose of this Section, the following definitions apply:

- (1) "Air Curtain Burner" means a stationary or portable combustion device that directs a plane of high velocity forced draft air through a manifold head into a pit or container with vertical walls in such a manner as to maintain a curtain of air over the surface of the pit and a recirculating motion of air under the curtain.
- (2) "Dangerous materials" means explosives or containers used in the holding or transporting of explosives.
- (3) "?HHC" means the Health Hazards Control Branch of the Division of Epidemiology.

(B) If the reduction required is more than 4,966 tons, then the following procedure shall be used:

(i) The reduction for the allocations for 2005 is determined using the procedure under Part (A) of this Subparagraph and substituting 4,966 as the reduction required under Subpart (A)(ii) of this Subparagraph.

(ii) The reduction for the allocations for 2004 shall be determined using the following procedure:

(I) The reduction required under Subparagraph (1), (2), or (3) of this Paragraph is subtracted from 4,966.

(II) The allocations of all sources listed in Rule .1416 of this Section for 2004 for Carolina Power & Light Co. or Duke Power Co. for 2004 are summed.

(III) The allocation of each source listed in Rule .1416 of this Section for 2004 for Carolina Power & Light Co. or Duke Power Co. is multiplied by the value computed

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- (4) "Initiated" means start or ignite a fire or reignite or rekindle a fire.
- ~~(4)~~(5) "Land clearing" means the uprooting or clearing of vegetation in connection with construction for buildings; right-of-way; agricultural, residential, commercial, institutional, or industrial development; mining activities; or the initial clearing of vegetation to enhance property value; but does not include routine maintenance or property clean-up activities.
- ~~(5)~~(6) "Log" means any limb or trunk whose diameter exceeds six inches.
- (7) "Nonattainment area" means an area identified in 40 CFR 81.334 as nonattainment.
- ~~(6)~~(8) "Nuisance" means causing physical irritation exacerbating a documented medical condition, visibility impairment, or evidence of soot or ash on property or structure other than the property on which the burning is done.
- (9) "Occupied structure" means a building in which people may live or work or one intended for housing farm or other domestic animals.
- ~~(7)~~(10) "Off-site" means any area not on the premises of the land-clearing activities.
- ~~(8)~~(11) "Open burning" means the burning of any matter in such a manner that the products of combustion resulting from the burning are emitted directly into the atmosphere without passing through a stack, chimney, or a permitted air pollution control device.
- (12) "Operator" as used in .1904(b)(6) and .1904(b)(2)(D) of this Section, means the person in operational control over the open burning.
- (13) "Ozone forecast area means" for
 - (a) Asheville ozone forecast area: Buncombe, Haywood, Henderson, Jackson, Madison, Swain, Transylvania, and Yancey Counties;
 - (b) Charlotte ozone forecast area: Cabarrus, Gaston, Iredell South of Interstate 40, Lincoln, Mecklenburg, Rowan, Union, and York Counties;
 - (c) Hickory ozone forecast area: Alexander, Burke, Caldwell, and Catawba Counties;
 - (d) Fayetteville ozone forecast area: Cumberland and Harnett Counties;
 - (e) Triad ozone forecast area: Alamance, Caswell, Davidson, Davie, Forsyth, Guilford, Randolph, Rockingham, and Stokes Counties; and
 - (f) Triangle ozone forecast area: Chatham, Durham, Franklin, Johnston, Orange, and Wake Counties.
- ~~(9)~~(14) "Person" as used in 02D .1901(c), means:
 - (a) the person in operational control over the open burning; or

- (b) the landowner or person in possession or control of the land when he has directly or indirectly allowed the open burning or has benefited from it.
- ~~(40)~~(15) "Public pick-up" means the removal of refuse, yard trimmings, limbs, or other plant material from a residence by a governmental agency, private company contracted by a governmental agency or municipal service.
- ~~(44)~~(16) "Public road" means any road that is part of the State highway system; or any road, street, or right-of-way dedicated or maintained for public use.
- ~~(42)~~(17) "RACM" means regulated asbestos containing material as defined in 40 CFR 61.142.
- ~~(43)~~(18) "Refuse" means any garbage, rubbish, or trade waste.
- ~~(44)~~(19) "Regional Office Supervisor" means the supervisor of personnel of the Division of Air Quality in a regional office of the Department of Environment and Natural Resources.
- ~~(45)~~(20) "Salvageable items" means any product or material that was first discarded or damaged and then all, or part, was saved for future use, and include insulated wire, electric motors, and electric transformers.
- ~~(46)~~(21) "Synthetic material" means man-made material, including tires, asphalt materials such as shingles or asphaltic roofing materials, construction materials, packaging for construction materials, wire, electrical insulation, and treated or coated wood.

Authority G.S. 143-215.3(a)(1); 143-212; 143-213.

15A NCAC 02D .1903 PERMISSIBLE OPEN BURNING WITHOUT AN AIR QUALITY PERMIT

- (a) All open burning is prohibited except open burning allowed under Paragraph (b) of this Rule or Rule .1904 of this Section. Except as allowed under Paragraphs (b)(3) through (b)(7), or (b)(9) of this Rule, open burning shall not be initiated in an ozone forecast area that the Department, or the Forsyth County Environmental Affairs Department for the Triad ozone forecast area, has forecasted to be in an Ozone Action Day Code "Orange" status or above during the time period covered by that forecast.
- (b) The following types of open burning are permissible without an air quality permit: ~~a permit:~~
 - (1) open burning of leaves, tree branches or yard trimmings, excluding logs and stumps, if the following conditions are met:
 - (A) The material burned originates on the premises of private residences and is burned on those premises;
 - (B) There are no public pickup services available;
 - (C) Non-vegetative materials, such as household ~~garbage-garbage, lumber, or any or~~ other synthetic man-made materials are not burned;

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- (D) The burning is initiated ~~started~~—no earlier than 8:00 a.m. and no additional combustible material is added to the fire between 6:00 p.m. on one day and 8:00 a.m. on the following day;
 - (E) The burning does not create a nuisance; and
 - (F) Material is not burned when the Division of Forest Resources has banned burning for that area.
- (2) open burning for land clearing or right-of-way maintenance if the following conditions are met:
- (A) ~~Prevailing winds~~—The wind direction at the time ~~of~~ that the burning is initiated and the wind direction as forecasted by the National Weather Service during the time of the burning are away from any area, including public road within 250 feet of the burning as measured from the edge of the pavement or other roadway surface, which may be significantly affected by smoke, ash, or other air pollutants from the burning;
 - (B) The location of the burning is at least 1,000 feet from any dwelling, group of dwellings, or commercial or institutional establishment, or other occupied structure not located on the property on which the burning is conducted. The regional office supervisor may grant exceptions to the setback requirements if:
 - (i) a signed, written statement waiving objections to the open burning associated with the land clearing operation is obtained and submitted to and approved by the regional office supervisor before the burning begins from ~~all residents or owners~~ a resident or an owner of each dwelling—dwelling, commercial or institutional ~~establishments~~ establishment, or other occupied ~~structures~~—structure within 1,000 feet of the open burning site, in the case of a lease or rental agreement, the lessee or renter will be considered the person from whom permission should be gained prior to any burning, or
 - (ii) an air curtain burner that complies with Rule .1904 of this Section, is utilized at the open burning site;
 - (C) Only land cleared plant growth shall be burned. Heavy oils, asphaltic materials such as shingles and other roofing materials, items containing natural or synthetic rubber, or any materials other than plant growth are not burned. However, kerosene, distillate oil, or diesel fuel may be used to start the fire;
 - (D) Initial burning begins only between the hours of 8:00 a.m. and 6:00 p.m., and no combustible material is added to the fire between 6:00 p.m. on one day and 8:00 a.m. on the following day, except that, under favorable meteorological conditions, deviation from these hours of burning may be granted by the regional office supervisor. The landowner or operator of the open burning operation shall be responsible for obtaining written approval for burning during periods other than those specified in this Part; ~~and~~
 - (E) No fires are ~~started~~ to be initiated or vegetation added to existing fires when the Division of Forest Resources has banned burning for that ~~area~~—area; ~~and~~
 - (F) Materials shall not be carried off-site or transported over public roads for open burning unless the materials are carried off-site or transported over public roads to facilities permitted according to Rule .1904 of this Section for the operation of an air curtain burner at a permanent site; ~~Debris from land clearing or right-of-way maintenance may be carried off site for open burning to facilities permitted in accordance with Rule .1904 of this Section for the operation of an air curtain burner. However, no material may be taken off site for open burning in areas where a permitted air curtain burner is not available;~~
- (3) camp fires and fires used solely for outdoor cooking and other recreational purposes, or for ceremonial occasions, or for human warmth and comfort and which do not create a nuisance and do not use synthetic materials or refuse or salvageable materials for fuel;
- (4) fires purposely set to ~~forest lands~~—forestland for forest management practices ~~acceptable to~~ for which burning is currently recommended by the Division of Forest Resources;
- (5) fires purposely set to agricultural lands for disease and pest control and fires set for other agricultural or apicultural practices ~~acceptable to~~ for which burning is currently

- recommended by the Department of Agriculture;
- (6) fires purposely set for wildlife management practices ~~acceptable to~~ for which burning is currently recommended by the Wildlife Management Commission;
- (7) fires for the disposal of dangerous materials when it is the safest and most practical method of disposal;
- (8) fires for the disposal of material generated as a result of a natural disaster, such as tornado, hurricane, or ~~flood, flood~~ if the regional office supervisor grants permission for the burning. The person desiring to do the burning shall document and provide written notification to the regional office supervisor of the appropriate regional office that there is no other practical method of disposal of the waste. Factors that the regional office supervisor shall consider in granting permission for the burning include type, amount, location of the burning, and nature of combustible substances. The regional office supervisor shall not grant permission for the burning if the primary purpose of the fire is to dispose of synthetic materials or refuse or recovery of salvageable materials. Fires authorized under this Subparagraph shall comply with the conditions of Subparagraph (b)(2) of this Rule.
- (9) fires purposely set by manufacturers of fire extinguishing materials or equipment, testing laboratories, or other persons, for the purpose of testing or developing these materials or equipment in accordance with a valid standard qualification program;
- (10) fires purposely set for the instruction and training of fire-fighting personnel, including fires at permanent fire-fighting training facilities, or when conducted under the supervision of or with the cooperation of one or more of the following agencies:
- (A) the Division of Forest Resources;
 - (B) the North Carolina Insurance Department;
 - (C) North Carolina technical institutes; or
 - (D) North Carolina community colleges, including:
 - (i) the North Carolina Fire College; or
 - (ii) the North Carolina Rescue College; and
- (11) fires not described in Subparagraph (10) of this Paragraph, purposely set for the instruction and training of fire-fighting personnel, provided that:
- (A) The regional office supervisor of the appropriate regional office and the HHCB have been notified according to the procedures and deadlines contained in the appropriate regional

notification form. This form may be obtained by writing the appropriate regional office at the address in Rule .1905 of this Section and requesting it, and

- (B) The regional office supervisor has granted permission for the burning. Factors that the regional office supervisor shall consider in granting permission for the burning include type, amount, and nature of combustible substances. The regional office supervisor shall not grant permission for the burning of salvageable items, such as insulated wire and electric motors or if the primary purpose of the fire is to dispose of synthetic materials or refuse. The regional office supervisor of the appropriate regional office shall not consider previously demolished structures as having training value. However, the regional office supervisor of the appropriate regional office may allow an exercise involving the burning of motor vehicles burned over a period of time by a training unit or by several related training units. Any deviations from the dates and times of exercises, including additions, postponements, and deletions, submitted in the schedule in the approved plan shall be communicated verbally to the regional office supervisor of the appropriate regional office at least one hour before the burn is scheduled.

(c) The authority to conduct open burning under this Section does not exempt or excuse any person from the consequences, damages or injuries that ~~which~~ may result from this conduct. It does not excuse or exempt any person from complying with all applicable laws, ordinances, rules or orders of any other governmental entity having jurisdiction even though the open burning is conducted in compliance with this Section.

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).

15A NCAC 02D .1904 AIR CURTAIN BURNERS

(a) Air quality permits shall be required for air curtain burners subject to 40 CFR 60.2245 through 60.2265 or located at permanent sites or where materials are transported in from another site. Air quality permits shall not be required for air curtain burners located at temporary land clearing or right-of-way maintenance sites for less than nine months if they are not subject to 40 CFR 60.225 through 60.2265. ~~months. However, air quality permits shall be required for air curtain burners located at permanent sites or where materials are transported in from another site.~~ The operation of air curtain burners in particulate and ozone nonattainment areas shall cease in any area that has been forecasted by the Department, or the Forsyth

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County Environmental Affairs Department for the Triad ozone forecast area, to be in an Ozone Action Day Code "Orange" status or above during the time period covered by that forecast.

(b) Air curtain burners described in Paragraph (a) of this Rule shall comply with the following conditions and stipulations: The wind direction at the time of that the burning is initiated and the wind direction as forecasted by the National Weather Service during the time of the burning:

- (1) ~~Prevailing winds. The wind direction at the time of that the burning is initiated and the wind direction as forecasted by the National Weather Service during the time of the burning shall be away from any area, including public road within 250 feet of the burning as measured from the edge of the pavement or other roadway surface, which may be significantly affected by smoke, ash, or other air pollutants from the burning;~~
- (2) Only collected land clearing and yard waste materials may be burned. Heavy oils, asphaltic materials, items containing natural or synthetic rubber, tires, grass clippings, collected leaves, paper products, plastics, general trash, garbage, or any materials containing painted or treated wood materials shall not be burned. Leaves still on trees or brush may be burned;
- (3) No fires shall be started or material added to existing fires when the Division of Forest Resources has banned burning for that area;
- (4) Burning shall be conducted only between the hours of 8:00 a.m. and 6:00 p.m.;
- (5) The air curtain burner shall not be operated more than the maximum source operating hours-per-day and days-per-week. The maximum source operating hours-per-day and days-per-week shall be set to protect the ambient air quality standard and prevention of significant deterioration (PSD) increment for particulate. ~~If the air curtain burner will:~~
 - (A) ~~burn 35 tons of material per day or more in an area where the particulate baseline date for the PSD has been triggered, or~~
 - (B) ~~burn 210 tons of material per day or more in an area where the particulate baseline date for PSD has not been triggered,~~

the The maximum source operating hours-per-day and days-per-week shall be determined using the modeling procedures in Rule .1106(b), (c), and (f) of this Subchapter. ~~Chapter~~. This Subparagraph shall not apply to temporary air curtain burners;
- (6) ~~Operators of the~~ An air curtain burner with an air quality permit shall have a ~~be~~ certified visible emissions reader onsite at all times during operation of the burner to read visible emissions ~~emissions~~, and the facility shall test ~~be tested~~ for visible emissions within 90 ~~five~~ days after initial operation and within 90 days before permit expiration;

- (7) Air curtain burners shall meet manufacturer's ~~manufacturers'~~ specifications for operation and upkeep to ensure complete burning of material charged into the pit. Manufacturer's ~~Manufacturers'~~ specifications shall be kept on site and be available for inspection by Division staff;
- (8) Except during start-up, visible emissions shall not exceed five ~~10~~ percent opacity when averaged over a six-minute period except that one six-minute period with an average opacity of more than five ~~10~~ percent but no more than 35 percent shall be allowed for any one-hour period. During start-up, the visible emissions shall not exceed 35 percent opacity when averaged over a six-minute period. Start-up shall not last for more than 30 ~~45~~ minutes, and there shall be no more than one start-up per day; air curtain burners subject to 40 CFR 60.2245 through 60.2265 shall comply with the opacity standards in 40 CFR 60.2250 instead of the opacity standards in this Subparagraph;
- (9) The owner or operator of an air curtain burner shall not allow ash to build up in the pit to a depth higher than one-third of the depth of the pit or to the point where the ash begins to impede combustion, whichever occurs first. The owner or operator of an air curtain burner shall allow the ashes to cool and water the ash prior to its removal to prevent the ash from becoming airborne;
- (10) The owner or operator of an air curtain burner shall not load material into the air curtain burner such that it will protrude above the air curtain;
- (11) Only distillate oil, kerosene, diesel fuel, natural gas, or liquefied petroleum gas may be used to start the fire; and
- (12) The location of the burning ~~at a temporary site~~ shall be at least 500 feet from any dwelling, group of dwellings, or commercial or institutional establishment, or other occupied structure not located on the property on which the burning is conducted. The regional office supervisor may grant exceptions to the setback requirements if a signed, written statement waiving objections to the air curtain burning is obtained from a resident or an owner of each dwelling, commercial or institutional establishment, or other occupied structure within 500 feet of the burning site. In case of a lease or rental agreement, the lessee or renter, and the property owner shall sign the statement waiving objections to the burning. The statement shall be submitted to and approved by the regional office supervisor before initiation of the burn.

Compliance with this Rule does not relieve any owner or operator of an air curtain burner from the necessity of complying with other rules in this Section or any other air quality rules.

(c) Recordkeeping Requirements. The owner or operator of an air curtain burner at a permanent site shall keep a daily log of specific materials burned and amounts of material burned in pounds per hour and tons per year. The logs at a permanent air curtain burner site shall be maintained on site for a minimum of two years and shall be available at all times for inspection by the Division of Air Quality. The owner or operator of an air curtain burner at a temporary site shall keep a log of total number of tons burned per temporary site. The owner or operator of air curtain burner subject to 40 CFR 60.2245 through 60.2245 shall comply with the monitoring, recordkeeping, and reporting requirements in 40 CFR 60.2245 through 60.2260.

(d) Title V Considerations. Burners that have the potential to burn ~~15,000~~ 8,100 tons of material or more per year may be subject to Section 15A NCAC 02Q .0500, Title V Procedures.

(e) Prevention of Significant Deterioration Consideration. Burners that burn ~~38,000~~ 16,200 tons per year or more may be subject to 15A NCAC 02D .0530, Prevention of Significant Deterioration.

(f) A person may use a burner using a different technology or method of operation than an air curtain burner as defined under Rule .1902 of this Section if he demonstrates to the Director that the burner is at least as effective as an air curtain burner in reducing emissions and if the Director approves the use of the burner. The Director shall approve the burner if he finds that it is at least as effective as an air curtain burner. This burner shall comply with all the requirements of this Rule.

(g) In addition to complying with the requirements of this Rule, an air curtain burner that commenced construction after November 30, 1999, or that commenced reconstruction or modification on or after June 1, 2001, shall also comply with 40 CFR 60.2245 through 60.2245 in addition to the requirements of this Rule.

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5), (10); 143-215.66; 143-215.108.

15A NCAC 02D .1906 DELEGATION TO COUNTY GOVERNMENTS

(a) The governing body of any county or municipality or group of counties or municipalities may establish a partial air pollution control program to implement and enforce this Section provided that:

- (1) It has the administrative organization, staff, financial and other resources necessary to carry out such a program;
- (2) It has adopted appropriate ordinances, resolutions, and regulations to establish and maintain such a program; and
- (3) It has otherwise complied with G.S. 143-215.112 "Local Air Pollution Control Programs."

(b) The governing body shall submit to the Director documentation demonstrating that the requirements of Paragraph (a) of this Rule have been met. Within 90 days after receiving the submittal from the governing body, the Director shall review the documentation to determine if the requirements of Paragraph (a) of this Rule have been met and shall present his findings to the Commission. If the Commission determines that the air pollution program is adequate, it shall certify the local air

pollution program to implement and enforce this Section within its area of jurisdiction.

(c) County and municipal governments shall not have the authority to issue permits for air curtain burners at a permanent site as defined in 15A NCAC 2D .1904.

(d) The three certified local air pollution programs, the Western North Carolina Regional Air Pollution Control Agency, the Forsyth County Environmental Affairs Department, and the Mecklenburg County Department of Environmental Affairs, shall continue to enforce open burning rules as part of their local air pollution programs.

Authority G.S. 143-215.3(a)(1); 143-215.112.

SECTION .2200 – SPECIAL ORDERS

15A NCAC 02D .2201 PURPOSE

The purpose of this Section is to implement the provisions of G.S. 143-215.110 pertaining to the issuance of air quality Special Orders by the Environmental Management Commission.

Authority G.S. 143-215.3(a)(1); 143-215.110.

15A NCAC 02D .2202 DEFINITIONS

For the purposes of this Section, the following definitions apply:

- (1) "Special Order" means a directive of the Commission to any person whom it finds responsible for causing or contributing to any pollution of the air of the State. The term includes all orders or instruments issued by the Commission pursuant to G.S. 143-215.110.
- (2) "Consent Order" means a Special Order into which the Commission enters with the consent of the person who is subject to the order.
- (3) "Special Order by Consent" means "Consent Order."

Authority G.S. 143-212; 143-213; 143-215.3(a)(1); 143-215.110.

15A NCAC 02D .2203 PUBLIC NOTICE

(a) The requirements of this Rule for public notice and public meeting apply to Consent Orders. The Commission may specify other conditions for Special Orders issued without consent if it finds such conditions are necessary to achieve or demonstrate compliance with a requirement under this Subchapter or 15A NCAC 02Q.

(b) Notice of proposed Consent Order:

- (1) The Director shall give notice pursuant to G.S. 143-215.110(a1).
- (2) The notice shall include at least the following:
 - (A) name, address, and telephone number of the Division;
 - (B) name and address of the person to whom the proposed order is directed;
 - (C) a brief summary of the conditions of the proposed order including the period of time in which action shall be taken to achieve compliance and the major permit conditions or emission standards that the source

will be allowed to exceed during the pendency of the order;

(D) a brief description of the procedures to be followed by the Commission or Director in reaching a final decision on the proposed order, which shall include descriptions of the process for submitting comments and requesting a public meeting. The description shall specify that comments and requests for a public meeting are to be received by the Division within 30 days following the date of public notice; and

(E) a description of the information available for public review, where it can be found, and procedures for obtaining copies of pertinent documents.

(c) Notice of public meetings for proposed Consent Order:

(1) The Director shall consider all requests for a public meeting, and if he determines significant public interest for a public meeting exists, then he shall hold a public meeting.

(2) The Director shall give notice of the public meeting at least 30 days before the meeting.

(3) The notice shall be advertised in a local newspaper and provided to those persons specified in G.S. 143-215.110(a1)(2) for air quality special orders.

(4) The notice shall include the information specified in Subparagraph (b)(2) of this Rule. It shall also state the time and location for the meeting along with procedures for providing comment.

(5) The Chairman of the Commission or the Director shall appoint one or more hearing officers to preside over the public meeting and to receive written and oral comments. The hearing officer shall provide the Commission a written report of the meeting, which shall include:

(A) a copy of the public notice published in the newspaper;

(B) a copy of all the written comments and supporting documentation received;

(C) a summary of all the oral comments received;

(D) recommendations of the hearing officer; and

(E) a proposed Consent Order for the Commission's consideration.

(d) Any person may request to receive copies of all notices required by this Rule, and the Director shall mail copies of notices to those who have submitted a request.

(e) The Director may satisfy the requirements in Paragraphs (b) and (c) of this Rule by issuing a notice that complies with both Paragraphs.

(f) Any Consent Order may be amended by the Director to incorporate minor modifications, such as modification of

standard conditions to reflect updated versions correction of typographical errors, or interim date extensions, in a consent order without public notice provided that the modifications do not extend the final compliance date by more than four months.

Authority G.S. 143-215.2; 143-215.3(a)(1); 143-215.3(a)(3).

15A NCAC 02D .2204 FINAL ACTION ON CONSENT ORDERS

(a) The Director shall take final action for the Commission on Consent Orders for which a public meeting has not been held as provided in Rule .2203 of this Section. The final action on the proposed order shall be taken no later than 60 days following publication of the notice.

(b) The Commission shall take final action on Consent Orders for which a public meeting has been held as provided in Rule .2203 of this Section. The final action on the proposed order shall be taken no later than 90 days following the meeting.

Authority G.S. 143-215.2; 143-215.3(a)(1); 143-215.3(a)(4); 143-215.110.

15A NCAC 02D .2205 NOTIFICATION OF RIGHT TO CONTEST SPECIAL ORDERS ISSUED WITHOUT CONSENT

For any Special Orders other than Consent Orders, the Commission shall notify the person subject to the order of the procedure set out in G.S. 150B-23 to contest the Special Order.

Authority G.S. 143-215.2(b); 143-215.3(a)(1); 143-215.110(b).

SUBCHAPTER 02Q - AIR QUALITY PERMIT PROCEDURES

SECTION .0100 - GENERAL PROVISIONS

15A NCAC 02Q .0113 NOTIFICATION IN AREAS WITHOUT ZONING

(a) State and local governments are exempt from this Rule.

(b) Before a person submits a permit application for a new or expanded facility in an area without zoning, he shall provide public notification as setout in this Rule.

(c) A person covered under this Rule shall publish a legal notice as specified in Paragraph (d) of this Rule and shall post a sign as specified in Paragraph (f) of this Rule.

(d) A person covered under this Rule shall publish a legal notice in a newspaper of general circulation in the area where the source is or will be located at least two weeks before submitting the permit application for the source. The notice shall identify:

(1) the name of the affected facility;

(2) the name and address of the permit applicant; and

(3) the activity or activities involved in the permit action;

(e) The permit applicant shall submit with the permit application an affidavit and proof of publication that the legal notice required under Paragraph (d) of this Rule was published.

(f) A person covered under this Rule shall post a sign on the property where the new or expanded source is or will be located. The sign shall meet the following specifications:

(1) It shall be at least six square feet in area;

- (2) It shall be set off the road right-of-way, but no more than 10 feet from the road right-of-way.
- (3) The bottom of the sign shall be at least six feet above the ground;
- (4) It shall contain the following information:
 - (A) the name of the affected facility;
 - (B) the name and address of the permit applicant; and
 - (C) the activity or activities involved in the permit action;
- (5) Lettering shall be a size that the sign can be read by a person with 20/20 vision standing in the center of the road; and
- (6) The side with the lettering shall face the road, and sign shall be parallel to the road.

The sign shall be posted at least 10 days before the permit application is submitted and shall remain posted for at least 30 days after the application is submitted.

Authority G.S. 143-215.3(a)(1); 143-215.108.

SECTION .0200 - PERMIT FEES

15A NCAC 02Q .0202 DEFINITIONS

For the purposes of this Section, the following definitions apply:

- (1) "Actual emissions" means the actual rate of emissions in tons per year of any air pollutant emitted from the facility over the preceding calendar year. Actual emissions shall be calculated using the sources' actual operating hours, production rates, in-place control equipment, and types of materials processed, stored, or combusted during the preceding calendar year. Actual emissions include fugitive emissions as specified in the definition of major source in 40 CFR 70.2. For fee applicability and calculation purposes under Rule .0201 or .0203 of this Section and emissions reporting purposes under Rule .0207 of this Section, actual emissions do not include emissions beyond the normal emissions during violations, malfunctions, start-ups, and shut-downs, do not include a facility's secondary

15A NCAC 02Q .0203 PERMIT AND APPLICATION FEES

(a) The owner or operator of any facility holding a permit shall pay the following permit fees:

ANNUAL PERMIT FEES
(FOR CALENDAR YEAR 1994)

Facility Category	Tonnage Factor	Basic Permit Fee	Nonattainment Area Added Fee
Title V	\$14.63	\$5100	\$2600
Synthetic Minor		1500	
Small		250	
Transportation		0	

- emissions such as those from motor vehicles associated with the facility, and do not include emissions from insignificant activities because of category as defined under Rule .0503 of this Subchapter.
- (2) "Title V facility" means a facility that that is required to have a permit under Section .0500 of this Subchapter except perchloroethylene dry cleaners whose potential emissions are less than:
 - (a) 10 tons per year of each hazardous air pollutant,
 - (b) 25 tons per year of all hazardous air pollutants combined, and
 - (c) 100 tons per year of each regulated air pollutant.
- (3) "Minor modification" means a modification made pursuant to 15A NCAC 02Q .0515, Minor Permit Modifications.
- ~~(3)~~(4) "Synthetic minor facility" means a facility that would be a Title V facility except that the potential emissions are reduced below the thresholds in Paragraph (2) of this Rule by one or more physical or operational limitations on the capacity of the facility to emit an air pollutant. Such limitations must be enforceable by EPA and may include air pollution control equipment and restrictions on hours of operation, the type or amount of material combusted, stored, or processed.
- (5) "Significant modification" means a modification made pursuant to 15A NCAC 02Q .0516, Significant Permit Modification.
- ~~(4)~~(6) "General facility" means a facility obtaining a permit under Rule .0310 or .0509 of this Subchapter.
- ~~(5)~~(7) "Small facility" means a facility that is not a Title V facility, a synthetic minor facility, a general facility, nor solely a transportation facility.

Authority G.S. 143-215.3(a)(1),(1a),(1b),(1d); 150B-21.6.

PROPOSED RULES

General 50% of the otherwise applicable fee

A facility, other than a Title V facility, which has been in compliance may be eligible for a 25 percent discount from the annual permit fees as described in Paragraph (a) of Rule .0205 of this Section. Annual permit fees for Title V facilities shall be adjusted for inflation as described in Rule .0204 of this Section. Annual permit fees for Title V facilities consist of the sum of the applicable fee elements.

(b) In addition to the annual permit fee, a permit applicant shall pay a non-refundable permit application fee as follows:

**PERMIT APPLICATION FEES
(FEES FOR CALENDAR YEAR 1994)**

Facility Category	New or Significant Modification	New or <u>Significant</u> Modification	20,0300 or Minor Modification	Ownership Change
Title V		\$7200	\$700	\$50
Title V (PSD or NSR/NAA)	\$10900			50
Title V (PSD and NSR/NAA)	21200			50
Synthetic Minor	400			50
Small	50			25
Transportation	400			50
General	50% of the otherwise applicable fee			25

Permit application fees for Title V facilities shall be adjusted for inflation as described in Rule .0204 of this Section.

(c) If a facility, other than a general facility, belongs to more than one facility category, the fees shall be those of the applicable category with the highest fees. If a permit application belongs to more than one type of application, the fee shall be that of the applicable permit application type with the highest fee.

(d) The tonnage factor fee shall be applicable only to Title V facilities. It shall be computed by multiplying the tonnage factor indicated in the table in Paragraph (a) of this Rule by the facility's combined total actual emissions of all regulated air pollutants, rounded to the nearest ton, contained in the latest emissions inventory that has been completed by the Division. The calculation shall not include:

- (1) carbon monoxide;
- (2) any pollutant that is regulated solely because it is a Class I or II substance listed under Section 602 of the federal Clean Air Act (ozone depleters);
- (3) any pollutant that is regulated solely because it is subject to a regulation or standard under Section 112(r) of the federal Clean Air Act (accidental releases); and
- (4) the amount of actual emissions of each pollutant that exceeds 4,000 tons per year.

Even though a pollutant may be classified in more than one pollutant category, the amount of pollutant emitted shall be counted only once for tonnage factor fee purposes and in a pollutant category chosen by the permittee. If a facility has more

than one permit, the tonnage factor fee for the facility's combined total actual emissions as described in this Paragraph shall be paid only on the permit whose anniversary date first occurs on or after July 1.

(e) The nonattainment area added fee shall be applicable only to Title V facilities required to comply with 15A NCAC 02D .0531, 15A NCAC 02D .0900 (Volatile Organic Compounds), or 15A NCAC 02D .1400 (Nitrogen Oxides) and either:

- (1) are in a area designated in 40 CFR 81.334 as nonattainment; or
- (2) are covered by a nonattainment or maintenance State Implementation Plan submitted for approval or approved as part of 40 CFR Part 52, Subpart II.

(f) A Title V (PSD or NSR/NAA) facility is a facility whose application is subject to review under 15A NCAC 02D .0530 (Prevention of Significant Deterioration) or 15A NCAC 02D .0531 (Sources in Nonattainment Areas).

(g) A Title V (PSD and NSR/NAA) facility is a facility whose application is subject to review under 15A NCAC 02D .0530 (Prevention of Significant Deterioration) and 15A NCAC 02D .0531 (Sources in Nonattainment Areas).

(h) Minor modification permit applications ~~which-that~~ are group processed require the payment of only one permit application fee per facility included in the group.

(i) No permit application fee is required for renewal of an existing permit, for changes to an unexpired permit when the only reason for the changes is initiated by the Director or the

Commission, for a name change with no ownership change, for a change under Rule .0523 (Changes Not Requiring Permit Revisions) of this Subchapter, or for a construction date change, a test date change, a reporting procedure change, or a similar change.

(j) The permit application fee paid for modifications under 15A NCAC 02Q .0400, Acid Rain Procedures, shall be the fee for the same modification if it were under 15A NCAC 02D .0500, Title V Procedures.

(k) An applicant who files permit applications pursuant to Rule .0504 of this Subchapter shall pay an application fee as would be determined by the application fee for the permit required under Section .0500 of this Subchapter; this fee will cover both applications provided that the second application covers only what is covered under the first application. If permit terms or conditions in an existing or future permit issued under Section .0500 of this Subchapter will be established or modified by an application for a modification and if these terms or conditions are enforceable by the Division only, then the applicant shall pay the fee under the column entitled "02Q .0300 Only or Minor Modification" in the table in Paragraph (b) of this Rule.

Authority G.S. 143-215.3(a)(1),(1a),(1b),(1d); 150B-21.6.

SECTION .0300 - CONSTRUCTION AND OPERATION PERMITS

15A NCAC 02Q .0304 APPLICATIONS

(a) Obtaining and filing application. Permit, permit modification, or permit renewal applications may be obtained and shall be filed in writing according to Rule .0104 of this Subchapter.

(b) Information to accompany application. Along with filing a complete application form, the applicant shall also file the following:

- (1) for a new facility or an expansion of existing facility, a consistency determination according to G.S. 143-215.108(f) that:
 - (A) bears the date of receipt entered by the clerk of the local government, or
 - (B) consists of a letter from the local government indicating that all zoning or subdivision ordinances are met by the facility;
- (2) for a new facility or an expansion of existing facility in an area without zoning, an affidavit and proof of publication of a legal notice as required under Rule .0113 of this Subchapter.
- ~~(2)~~(3) for a new facility or modification of an existing facility, a written description of current and projected plans to reduce the emissions of air contaminants by source reduction and recycling according to G.S. 143-215.108(g); the description shall include:
 - (A) for an existing facility, a summary of activities related to source reduction and recycling and a quantification of air emissions reduced and material recycled during the previous year and a summary of plans for further source reduction and recycling; or

- (B) for a new facility, a summary of activities related to and plans for source reduction and recycling; and
- ~~(3)~~(4) if required by the Director, information showing that:
 - (A) The applicant is financially qualified to carry out the permitted activities; or
 - (B) The applicant has substantially complied with the air quality and emissions standards applicable to any activity in which the applicant has previously been engaged, and has been in substantial compliance with federal and state environmental laws and rules.

(c) When to file application. For sources subject to the requirements of 15A NCAC 02D .0530 (prevention of significant deterioration) or .0531 (new source review for sources in nonattainment areas), applicants shall file air permit applications at least 180 days before the projected construction date. For all other sources, applicants shall file air permit applications at least 90 days before the projected date of construction of a new source or modification of an existing source.

(d) Permit renewal and ownership changes with no modifications. If no modification has been made to the originally permitted source, application for permit renewal or ownership change may be made by letter to the Director at the address specified in Rule .0104 of this Subchapter. The renewal or ownership change letter must state that there have been no changes in the permitted facility since the permit was last issued. However, the Director may require the applicant for ownership change to submit additional information showing that:

- (1) The applicant is financially qualified to carry out the permitted activities, or
- (2) The applicant has substantially complied with the air quality and emissions standards applicable to any activity in which the applicant has previously been engaged, and has been in substantial compliance with federal and state environmental laws and rules.

To make a name or ownership change, the applicant shall send the Director the number of copies of letters specified in Rule .0305(3) or (4) of this Section signed by a person specified in Paragraph (j) of this Rule.

(e) Applications for date and reporting changes. Application for changes in construction or test dates or reporting procedures may be made by letter to the Director at the address specified in Rule .0104 of this Section. To make changes in construction or test dates or reporting procedures, the applicant shall send the Director the number of copies of letters specified in Rule .0305(a)(5) of this Section signed by a person specified in Paragraph (j) of this Rule.

(f) When to file applications for permit renewal. Applicants shall file applications for renewals such that they are received by the Division at least 90 days before expiration of the permit.

(g) Ownership or name change. The permittee shall file requests for permit name or ownership changes as soon as the permittee is aware of the imminent name or ownership change.

(h) Number of copies of additional information. The applicant shall submit the same number of copies of additional information as required for the application package.

(i) Requesting additional information. Whenever the information provided on the permit application forms does not adequately describe the source and its air cleaning device, the Director may request that the applicant provide any other information that the Director considers necessary to evaluate the source and its air cleaning device. Before acting on any permit application, the Director may request any information from an applicant and conduct any inquiry or investigation that he considers necessary to determine compliance with applicable standards.

(j) Signature on application. Permit applications submitted pursuant to this Rule shall be signed as follows:

- (1) for corporations, by a principal executive officer of at least the level of vice-president, or his duly authorized representative, if such representative is responsible for the overall operation of the facility from which the emissions described in the permit application form originates;
- (2) for partnership or limited partnership, by a general partner;
- (3) for a sole proprietorship, by the proprietor;
- (4) for municipal, state, federal, or other public entity, by a principal executive officer, ranking elected official, or other duly authorized employee.

(k) Application fee. With the exceptions specified in Rule .0203(i) of this Subchapter, a non-refundable permit application processing fee shall accompany each application. The permit application processing fees are defined in Section .0200 of this Subchapter. A permit application is incomplete until the permit application processing fee is received.

(l) Correcting submittals of incorrect information. An applicant has a continuing obligation to submit relevant facts pertaining to his permit application and to correct incorrect information on his permit application.

(m) Retaining copy of permit application package. The applicant shall retain for the duration of the permit term one complete copy of the application package and any information submitted in support of the application package.

Authority G.S. 143-215.3(a)(1); 143-215.108.

15A NCAC 02Q .0305 APPLICATION SUBMITTAL CONTENT

(a) If an applicant does not submit, at a minimum, the following information with his application package, the application package shall be returned:

- (1) for new facilities and modified facilities:
 - (A) an application fee as required under Section .0200 of this Subchapter;
 - (B) a consistency determination as required under Rule .0304(b)(1) of this Section;
 - (C) the documentation required under Rule .0304(b)(2) of this Section if required;
 - (~~C~~)(D) a financial qualification or substantial compliance statement if required; and

~~(D)~~(E) applications as required under Rule .0304(a) of this Section and Paragraph (b) of this Rule and signed as required by Rule .0304(j) of this Section;

- (2) for renewals: two copies of applications as required under Rule .0304(a) and (d) of this Section and signed as required by Rule .0304(j) of this Section;
- (3) for a name change: two copies of a letter signed by the appropriate individual listed in Rule .0304(j) indicating the current facility name, the date on which the name change shall occur, and the new facility name;
- (4) for an ownership change: an application fee as required under Section .0200 of this Subchapter and:
 - (A) two copies of a letter sent by each the seller and the buyer indicating the change; or
 - (B) two copies of a letter sent by either bearing the signature of both the seller and buyer, containing a written agreement with a specific date for the transfer of permit responsibility, coverage, and liability between the current and new permittee; and
- (5) for corrections of typographical errors; changes in name, address, or telephone number of any individual identified in the permit; changes in test dates or construction dates; or similar minor changes: two copies of a letter signed by the appropriate individual listed in Rule .0304(j) of this Section describing the proposed change and explaining the need for the proposed change.

(b) The applicant shall submit copies of the application package as follows:

- (1) six copies for sources subject to the requirements of 15A NCAC 02D .0530, .0531, or .1200; or
- (2) three copies for sources not subject to the requirements of 15A NCAC 02D .0530, .0531, or .1200.

The Director may at any time during the application process request additional copies of the complete application package from the applicant.

Authority G.S. 143-215.3(a)(1); 143-215.108.

SECTION .0500 - TITLE V PROCEDURES

15 NCAC 02Q .0505 APPLICATION SUBMITTAL CONTENT

If an applicant does not submit, at a minimum, the following information with is application package, the application package shall be returned:

- (1) for new facilities and modified facilities:
 - (a) an application fee as required under Section .0200 of this Subchapter;

- (b) a consistency determination as required under Rule .0507(d)(1) of this Section;
 - (c) the documentation required under Rule .0507(d)(2) of this Section;
 - ~~(e)~~(d) a financial qualification or substantial compliance statement if required; and
 - ~~(4)~~(e) applications as required under Rule .0507(a) and (e) of this Section and signed as required by Rule .0520 of this Section;
- (2) for renewals: applications as required under Rule .0507(a) and (e) of this Section and signed as required by Rule .0520 of this Section;
- (3) for a name change: three copies of a letter signed by the a responsible official in accordance with Rule .0520 indicating the current facility name, the date on which the name change shall occur, and the new facility name;
- (4) for an ownership change: an application fee as required under Section .0200 of this Subchapter, and:
- (a) three copies of a letter sent by each the seller and the buyer indicating the change; or
 - (b) three copies of a letter sent by either bearing the signature of both the seller and buyer; and
- containing a written agreement with a specific date for the transfer of permit responsibility, coverage, and liability between the current and new permittee; and
- (5) for corrections of typographical errors; changes name, address, or telephone number of any individual identified in the permit; changes in test dates or construction dates; or similar minor changes: three copies of a letter signed by a responsible official in accordance with Rule .0520 of this Section describing the proposed change and explaining the need for the proposed change.

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10); 143-215.108.

15A NCAC 02Q .0507 APPLICATION

- (a) Except for:
- (1) minor permit modifications covered under Rule .0515 of this Section,
 - (2) significant modifications covered under Rule .0516(c) of this Section, or
 - (3) permit applications submitted under Rule .0506 of this Section,

the owner or operator of a source shall have one year from the date of beginning of operation of the source to file a complete application for a permit or permit revision. However, the owner or operator of the source shall not begin construction or operation until he has obtained a construction and operation

permit pursuant to Rule .0501(c) or (d) and Rule .0504 of this Section.

(b) The application shall include all the information described in 40 CFR 70.3(d) and 70.5(c), including a list of insignificant activities because of size or production rate; but not including insignificant activities because of category. The application form shall be certified by a responsible official for truth, accuracy, and completeness. In the application submitted pursuant to this Rule, the applicant may attach copies of applications submitted pursuant to Section .0400 of this Subchapter or 15A NCAC 2D .0530 or .0531, provided the information in those applications contains information required in this Section and is current, valid, and complete.

(c) Application for a permit, permit revision, or permit renewal shall be made in accordance with Rule .0104 of this Subchapter on official forms of the Division and shall include plans and specifications giving all necessary data and information as required by the application form. Whenever the information provided on these forms does not describe the source or its air pollution abatement equipment to the extent necessary to evaluate the application, the Director may request that the applicant provide any other information that the Director considers necessary to evaluate the source and its air pollution abatement equipment.

(d) Along with filing a complete application form, the applicant shall also file the following:

- (1) for a new facility or an expansion of existing facility, a consistency determination in accordance with G.S. 143-215.108(f) that:
 - (A) bears the date of receipt entered by the clerk of the local government, or
 - (B) consists of a letter from the local government indicating that all zoning or subdivision ordinances are met by the facility;
- ~~(2)~~ for a new facility or an expansion of an existing facility in an area without zoning, an affidavit and proof of publication of a legal notice as required under Rule .0113 of this Subchapter.
- ~~(2)~~(3) for a new facility or modification of an existing facility, a written description of current and projected plans to reduce the emissions of air contaminants by source reduction and recycling in accordance with G.S. 143-215.108(g); the description shall include:
 - (A) for an existing facility, a summary of activities related to source reduction and recycling and a quantification of air emissions reduced and material recycled during the previous year and a summary of plans for further source reduction and recycling; or
 - (B) for a new facility, a summary of activities related to and plans for source reduction and recycling; and
- ~~(3)~~(4) if required by the Director, information showing that:

- (A) The applicant is financially qualified to carry out the permitted activities, or
- (B) The applicant has substantially complied with the air quality and emissions standards applicable to any activity in which the applicant has previously been engaged, and has been in substantial compliance with federal and state environmental laws and rules.

(e) The applicant shall submit copies of the application package as follows:

- (1) for sources subject to the requirements of 15A NCAC 02D .0530, .0531, or .1200, six copies plus one additional copy for each affected state that the Director has to notify;
- (2) for sources not subject to the requirements of 15A NCAC 02D .0530, .0531, or .1200, four copies plus one additional copy for each affected state that the Director has to notify.

The Director may at any time during the application process request additional copies of the complete application package from the applicant.

(f) Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, submit, as soon as possible, such supplementary facts or corrected information. In addition, an applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date he filed a complete application but prior to release of a draft permit.

(g) The applicant shall submit the same number of copies of additional information as required for the application package.

(h) The submittal of a complete permit application shall not affect the requirement that any facility have a preconstruction permit under 15A NCAC 02D .0530, .0531, or .0532 or under Section .0400 of this Subchapter.

(i) The Director shall give priority to permit applications containing early reduction demonstrations under Section 112(i)(5) of the federal Clean Air Act. The Director shall take final action on such permit applications as soon as practicable after receipt of the complete permit application.

(j) With the exceptions specified in Rule .0203 (i) of this Subchapter, a non-refundable permit application processing fee shall accompany each application. The permit application processing fees are defined in Section .0200 of this Subchapter. Each permit or renewal application is incomplete until the permit application processing fee is received.

(k) The applicant shall retain for the duration of the permit term one complete copy of the application package and any information submitted in support of the application package.

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10); 143-215.108.

SECTION .0700 - TOXIC AIR POLLUTANT PROCEDURES

15A NCAC 02Q .0702 EXEMPTIONS

(a) A permit to emit toxic air pollutants shall not be required under this Section for:

- (1) residential wood stoves, heaters, or fireplaces;
- (2) hot water heaters that are used for domestic purposes only and are not used to heat process water;
- (3) maintenance, structural changes, or repairs that do not change capacity of that process, fuel-burning, refuse-burning, or control equipment, and do not involve any change in quality or nature or increase in quantity of emission of any regulated air pollutant or toxic air pollutant;
- (4) housekeeping activities or building maintenance procedures, including painting buildings, resurfacing floors, roof repair, washing, portable vacuum cleaners, sweeping, use and associated storage of janitorial products, or non-asbestos bearing insulation removal;
- (5) use of office supplies, supplies to maintain copying equipment, or blueprint machines;
- (6) paving parking lots;
- (7) replacement of existing equipment with equipment of the same size, type, and function if the new equipment:
 - (A) does not result in an increase to the actual or potential emissions of any regulated air pollutant or toxic air pollutant;
 - (B) does not affect compliance status; and
 - (C) fits the description of the existing equipment in the permit, including the application, such that the replacement equipment can be operated under that permit without any changes to the permit;
- (8) comfort air conditioning or comfort ventilation systems that do not transport, remove, or exhaust regulated air pollutants to the atmosphere;
- (9) equipment used for the preparation of food for direct on-site human consumption;
- (10) non-self-propelled non-road engines, except generators, regulated by rules adopted under Title II of the federal Clean Air Act;
- (11) stacks or vents to prevent escape of sewer gases from domestic waste through plumbing traps;
- (12) use of fire fighting equipment;
- (13) the use for agricultural operations by a farmer of fertilizers, pesticides, or other agricultural chemicals containing one or more of the compounds listed in 15A NCAC 02D .1104 if such compounds are applied according to agronomic practices acceptable to the North Carolina Department of Agriculture;
- (14) asbestos demolition and renovation projects that comply with 15A NCAC 02D .1110 and that are being done by persons accredited by the Department of Health and Human Services

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| <p>(15) under the Asbestos Hazard Emergency Response Act;
incinerators used only to dispose of dead animals or poultry as identified in 15A NCAC 02D .1201(c)(4) or incinerators used only to dispose of dead pets as identified in 15A NCAC 02D .1208(a)(2)(A);</p> <p>(16) refrigeration equipment that is consistent with Section 601 through 618 of Title VI (Stratospheric Ozone Protection) of the federal Clean Air Act, 40 CFR Part 82, and any other regulations promulgated by EPA under Title VI for stratospheric ozone protection, except those units used as or with air pollution control equipment;</p> <p>(17) laboratory activities:</p> <p>(A) bench-scale, on-site equipment used exclusively for chemical or physical analysis for quality control purposes, staff instruction, water or wastewater analyses, or non-production environmental compliance assessments;</p> <p>(B) bench scale experimentation, chemical or physical analyses, training or instruction from nonprofit, non-production educational laboratories;</p> <p>(C) bench scale experimentation, chemical or physical analyses, training or instruction from hospital or health laboratories pursuant to the determination or diagnoses of illnesses; and</p> <p>(D) research and development laboratory activities that are not required to be permitted under Section .0500 of this Subchapter provided the activity produces no commercial product or feedstock material;</p> <p>(18) combustion sources as defined in 15 NCAC 02Q .0703 until 18 months after promulgation of the MACT or GACT standards for combustion sources. (Within 18 months following promulgation of the MACT or GACT standards for combustion sources, the Commission shall decide whether to keep or remove the combustion source exemption. If the Commission decides to remove the exemption, it shall initiate rulemaking procedures to remove this exemption.)</p> <p>(19) storage tanks used only to store:</p> <p>(A) inorganic liquids with a true vapor pressure less than 1.5 pounds per square inch absolute;</p> <p>(B) fuel oils, kerosene, diesel, crude oil, used motor oil, lubricants, cooling oils, natural gas, liquefied petroleum gas, or petroleum products with a true vapor pressure less than 1.5 pounds per square inch absolute;</p> | <p>(20) dispensing equipment used solely to dispense diesel fuel, kerosene, lubricants or cooling oils;</p> <p>(21) portable solvent distillation systems that are exempted under 15A NCAC 2Q .0102(c)(1)(I), .0102(b)(1)(I);</p> <p>(22) processes:</p> <p>(A) small electric motor burn-out ovens with secondary combustion chambers or afterburners;</p> <p>(B) electric motor bake-on ovens;</p> <p>(C) burn-off ovens for paint-line hangers with afterburners;</p> <p>(D) hosiery knitting machines and associated lint screens, hosiery dryers and associated lint screens, and hosiery dyeing processes where bleach or solvent dyes are not used;</p> <p>(E) blade wood planers planing only green wood;</p> <p>(F) saw mills that saw no more than 2,000,000 board feet per year provided only green wood is sawed;</p> <p>(G) perchloroethylene drycleaning processes with 12-month rolling average total consumption of:</p> <p>(i) less than 1366 gallons of perchloroethylene per year for facilities with dry-to-dry machines only;</p> <p>(ii) less than 1171 gallons of perchloroethylene per year for facilities with transfer machines only; or</p> <p>(iii) less than 1171 gallons of perchloroethylene per year for facilities with both transfer and dry-to-dry machines;</p> <p>(23) wood furniture manufacturing operations as defined in 40 CFR 63.801(a) that comply with the emission limitations and other requirements of 40 CFR Part 63 Subpart JJ, provided that the terms of this exclusion shall not affect the authority of the Director under 15A NCAC 02Q .0712;</p> <p>OPTION A</p> <p>(24) <u>wastewater treatment systems at pulp and paper mills until February 1, 2007, at which time this exemption shall expire (sources covered under this exemption may be covered under Rule .0714 of this Section);</u></p> <p>OPTION B</p> <p>(24) <u>wastewater treatment systems at pulp and paper mills (sources covered under this exemption may be covered under Rule .0714 of this Section);</u></p> <p>(24)(25) gasoline dispensing facilities or gasoline service station operations that comply with 15A NCAC 02D .0928 and .0932 and that receive gasoline from bulk gasoline plants or</p> |
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bulk gasoline terminals that comply with 15A NCAC 02D .0524, .0925, .0926, .0927, .0932, and .0933 via tank trucks that comply with 15A NCAC 02D .0932;

~~(25)~~(26) the use of ethylene oxide as a sterilant in the production and subsequent storage of medical devices or the packaging and subsequent storage of medical devices for sale if the emissions from all new and existing sources at the facility described in 15A NCAC 02D .0538(d) are controlled at least to the degree described in 15A NCAC 02D .0538(d) and the facility complies with 15A NCAC 02D .0538(e) and (f);

~~(26)~~(27) bulk gasoline plants, including the storage and handling of fuel oils, kerosenes, and jet fuels but excluding the storage and handling of other organic liquids, that comply with 15A NCAC 02D .0524, .0925, .0926, .0932, and .0933; unless the Director finds that a permit to emit toxic air pollutants is required under Paragraph (b) of this Rule or Rule .0712 of this Section for a particular bulk gasoline plant; or

~~(27)~~(28) bulk gasoline terminals, including the storage and handling of fuel oils, kerosenes, and jet fuels but excluding the storage and handling of other organic liquids, that comply with 15A NCAC 02D .0524, .0925, .0927, .0932, and .0933 if the bulk gasoline terminal existed before November 1, 1992; unless:

- (A) the Director finds that a permit to emit toxic air pollutants is required under Paragraph (b) of this Rule or Rule .0712 of this Section for a particular bulk gasoline terminal; or
- (B) the owner or operator of the bulk gasoline terminal meets the requirements of 15A NCAC 2D .0927(i).

(b) Emissions from the activities identified in Subparagraphs ~~(a)(24)~~ ~~(a)(25)~~ through ~~(a)(28)~~ ~~(a)(27)~~ of this Rule shall be included in determining compliance with the toxic air pollutant requirements in this Section and shall be included in the permit if necessary to assure compliance. Emissions from the activities identified in Subparagraphs (a)(1) through ~~(a)(24)~~ ~~(a)(23)~~ of this Rule shall not be included in determining compliance with the toxic air pollutant requirements in this Section.

(c) The addition or modification of an activity identified in Paragraph (a) of this Rule shall not cause the source or facility to be evaluated for emissions of toxic air pollutants.

(d) Because an activity is exempted from being required to have a permit does not mean that the activity is exempted from any applicable requirement or that the owner or operator of the source is exempted from demonstrating compliance with any applicable requirement.

Authority G.S. 143-215.3(a)(1); 143-215.108; 143B-282; S.L. 1989, c. 168, s. 45.

15A NCAC 02Q .0706 MODIFICATIONS

(a) For modification of any facility undertaken after September 30, 1993, that:

- (1) is required to have a permit because of applicability of a Section in Subchapter 02D of this Chapter other than Section .1100 of Subchapter 02D of this Chapter except for facilities whose emissions of toxic air pollutants result only from insignificant activities or sources exempted under Rule .0102 of this Subchapter;
- (2) has one or more sources subject to a MACT or GACT standard that has previously been promulgated under Section 112(d) of the federal Clean Air Act or established under Section 112(e) or 112(j) of the Clean Air Act; or
- (3) has a standard industrial classification code that has previously been called under Rule .0705 of this Section;

the owner or operator of the facility shall comply with Paragraphs (b) and (c) of this Rule.

(b) The owner or operator of the facility shall submit a permit application to comply with 15A NCAC 2D .1100 if:

- (1) The modification results in:
 - (A) a net increase in emissions of any toxic air pollutant that the facility was emitting before the modification; or
 - (B) emissions of any toxic air pollutant that the facility was not emitting before the modification if such emissions exceed the levels contained in Rule .0711 of this Section; or
- (2) The Director finds that the modification of the facility will significantly increase the risk to human health posed by the facility. The Director shall provide the findings to the owner or operator of the facility. The Director may require the owner or operator of a facility subject to this Subparagraph to provide a satisfactory evaluation showing what the resultant emissions and increase of risk to human health from the modified facility will be.

(c) The permit application filed pursuant to this Rule shall include an evaluation for all toxic air pollutants covered under 15A NCAC 02D .1104 for which there is:

- (1) a net increase in emissions of any toxic air pollutant that the facility was emitting before the modification; and
- (2) emission of any toxic air pollutant that the facility was not emitting before the modification if such emissions exceed the levels contained in Rule .0711 of this Section.

All sources at the facility, excluding sources exempt from evaluation in Rule .0702 of this Section, emitting these toxic air pollutants shall be included in the evaluation. A permit application filed pursuant to Subparagraph (b)(2) of this Rule shall include an evaluation for all toxic air pollutants identified by the Director as significantly increasing the risk to human health.

PROPOSED RULES

Authority G.S. 143-215.3(a)(1); 143-215.108; 143B-282;
S. L. 1989, C. 168, S. 45.

15A NCAC 02Q .0711 EMISSION RATES REQUIRING A PERMIT

A permit to emit toxic air pollutants shall be required for any facility whose actual (or permitted if higher) rate of emissions from all sources are greater than any one of the following toxic air pollutant permitting emissions rates:

Pollutant (CAS Number)	Carcinogens lb/yr	Chronic Toxicants lb/day	Acute Systemic Toxicants lb/hr	Acute Irritants lb/hr
acetaldehyde (75-07-0)				6.8
acetic acid (64-19-7)				0.96
acrolein (107-02-8)				0.02
acrylonitrile (107-13-1)	10			
ammonia (7664-41-7)				0.68
aniline (62-53-3)			0.25	
arsenic and inorganic arsenic compounds	0.016			
asbestos (1332-21-4)	1.9 X 10 ⁻⁶			
aziridine (151-56-4)		0.13		
benzene (71-43-2)	8.1			
benzidine and salts (92-87-5)	0.0010			
benzo(a)pyrene (50-32-8)	2.2			
benzyl chloride (100-44-7)			0.13	
beryllium (7440-41-7)	0.28			
beryllium chloride (7787-47-5)	0.28			
beryllium fluoride (7787-49-7)	0.28			
beryllium nitrate (13597-99-4)	0.28			
Bioavailable chromate pigments, as chromium (VI) equivalent	0.0056			
bis-chloromethyl ether (542-88-1)	0.025			
bromine (7726-95-6)				0.052
1,3-butadiene (106-99-0)	12			
cadmium (7440-43-9)	0.37			
cadmium acetate (543-90-8)	0.37			
cadmium bromide (7789-42-6)	0.37			
carbon disulfide (75-15-0)		3.9		
carbon tetrachloride (56-23-5)	460			
chlorine (7782-50-5)		0.79		0.23
chlorobenzene (108-90-7)		46		
chloroform (67-66-3)	290			
chloroprene (126-99-8)		9.2	0.89	
cresol (1319-77-3)			0.56	
p-dichlorobenzene (106-46-7)				16.8
dichlorodifluoromethane (75-71-8)		5200		
dichlorofluoromethane (75-43-4)		10		
di(2-ethylhexyl)phthalate (117-81- 7)		0.63		
dimethyl sulfate (77-78-1)		0.063		
1,4-dioxane (123-91-1)		12		
epichlorohydrin (106-89-8)	5600			
ethyl acetate (141-78-6)			36	
ethylenediamine (107-15-3)		6.3	0.64	
ethylene dibromide (106-93-4)	27			
ethylene dichloride (107-06-2)	260			
ethylene glycol monoethyl ether (110-80-5)		2.5	0.48	

PROPOSED RULES

Pollutant (CAS Number)	Carcinogens	Chronic Toxicants	Acute Systemic Toxicants	Acute Irritants
	lb/yr	lb/day	lb/hr	lb/hr
ethylene oxide (75-21-8)	1.8			
ethyl mercaptan (75-08-1)			0.025	
fluorides		0.34	0.064	
formaldehyde (50-00-0)				0.04
hexachlorocyclopentadiene (77-47-4)		0.013	0.0025	
hexachlorodibenzo-p-dioxin (57653-85-7)	0.0051			
n-hexane (110-54-3)		23		
hexane isomers except n-hexane				92
hydrazine (302-01-2)		0.013		
hydrogen chloride (7647-01-0)				0.18
hydrogen cyanide (74-90-8)		2.9	0.28	
hydrogen fluoride (7664-39-3)		0.63		0.064
hydrogen sulfide (7783-06-4)				0.52
OPTION 1		0.46		
OPTION 2		0.46	0.013	
OPTION 3 New facility Old facility		0.46 1.7	0.013	
OPTION 4		1.7		
OPTION 5		1.7	0.013	
maleic anhydride (108-31-6)		0.25	0.025	
manganese and compounds		0.63		
manganese cyclopentadienyl tricarbonyl (12079-65-1)		0.013		
manganese tetroxide (1317-35-7)		0.13		
mercury, alkyl		0.0013		
mercury, aryl and inorganic compounds		0.013		
mercury, vapor (7439-97-6)		0.013		
methyl chloroform (71-55-6)		250		64
methylene chloride (75-09-2)	1600		0.39	
methyl ethyl ketone (78-93-3)		78		22.4
methyl isobutyl ketone (108-10-1)		52		7.6
methyl mercaptan (74-93-1)			0.013	
nickel carbonyl (13463-39-3)		0.013		
nickel metal (7440-02-0)		0.13		
nickel, soluble compounds, as nickel		0.013		
nickel subsulfide (12035-72-2)	0.14			
nitric acid (7697-37-2)				0.256
nitrobenzene (98-95-3)		1.3	0.13	
N-nitrosodimethylamine (62-75-9)	3.4			
non-specific chromium (VI) compounds, as chromium (VI) equivalent	0.0056			
pentachlorophenol (87-86-5)		0.063	0.0064	
perchloroethylene (127-18-4)	13000			
phenol (108-95-2)			0.24	
phosgene (75-44-5)		0.052		
phosphine (7803-51-2)				0.032
polychlorinated biphenyls (1336-36-	5.6			

PROPOSED RULES

Pollutant (CAS Number)	Carcinogens	Chronic Toxicants	Acute Systemic Toxicants	Acute Irritants
	lb/yr	lb/day	lb/hr	lb/hr
3)				
soluble chromate compounds, as chromium (VI) equivalent		0.013		
styrene (100-42-5)			2.7	
sulfuric acid (7664-93-9)		0.25	0.025	
tetrachlorodibenzo-p-dioxin (1746-01-6)	0.00020			
1,1,1,2-tetrachloro-2,2-difluoroethane (76-11-9)		1100		
1,1,2,2-tetrachloro-1,2-difluoroethane (76-12-0)		1100		
1,1,2,2-tetrachloroethane (79-34-5)	430			
toluene (108-88-3)		98		14.4
toluene diisocyanate, 2,4- (584-84-9) and 2,6- (91-08-7) isomers		0.003		
trichloroethylene (79-01-6)	4000			
trichlorofluoromethane (75-69-4)			140	
1,1,2-trichloro-1,2,2-trifluoroethane (76-13-1)				240
vinyl chloride (75-01-4)	26			
vinylidene chloride (75-35-4)		2.5		
xylene (1330-20-7)		57		16.4

Authority G.S. 143-215.3(a)(1); 143-215.108; 143B-282; S.L. 1989, c. 168, s. 45.

OPTION A
15A NCAC 02Q .0714 WASTEWATER TREATMENT SYSTEMS AT PULP AND PAPER MILLS

(a) This Rule applies to wastewater treatment systems at pulp and paper mills that are exempted under Rule .0702 of this Section. This Rule does not apply to pulp and paper mills that use an activated sludge system for wastewater treatment.

(b) The owner or operator of a wastewater treatment system covered under this Rule shall:

- (1) test the wastewater treatment system for emissions of hydrogen sulfide, methyl mercaptan, and total reduced sulfur and shall report the results of these tests to the Director by August 1, 2005; and
- (2) provide an engineering evaluation of installing an activated sludge system for wastewater treatment, including the cost of such a system, and an assessment of the environmental and health benefits to water quality and air quality of using activated sludge systems for wastewater treatment and shall report these evaluations and assessments to the Director by August 1, 2006.

(c) The Director shall report to the Environmental Management Commission the information submitted under Paragraph (b) of this Rule within 60 days of receiving the reports from the owners and operators of wastewater treatment systems at pulp and paper mills.

(d) To test for hydrogen sulfide, methyl mercaptan, and total reduced sulfur under Subparagraph (b)(1) of this Rule, the owner

or operator shall use testing methods and procedures approved by the Director. The Director shall approve the testing methods and procedures if he finds that they accurately measure the emissions of these three air pollutants.

Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143B-282.

OPTION B
15A NCAC 02Q .0714 WASTEWATER TREATMENT SYSTEMS AT PULP AND PAPER MILLS

(a) This Rule applies to wastewater collection and treatment systems at pulp and paper mills that are exempted under Rule .0702 of this Section.

(b) Except for facilities that employ activated sludge type wastewater treatment systems, the owner or operator of a wastewater collection and treatment system covered under this Rule shall:

- (1) submit to the Director estimates of hydrogen sulfide, total reduced sulfur, and methyl mercaptan emissions from wastewater collection and treatment systems and components using estimation methods or factors developed through industry testing and analytical studies and approved by the Director by August 1, 2005.
- (2) using the emission estimates developed under Subparagraph (b)(1) of this Rule, perform air dispersion modeling of all hydrogen sulfide emission sources, including all emissions associated with the wastewater collection and

treatment system, as described in 15A NCAC 02D .1106 (a) through (i). If the modeling analysis demonstrates that predicted concentrations of hydrogen sulfide are below the acceptable ambient levels outlined in 15A NCAC 02D .1104, no further plan development, measurement or monitoring action is required to maintain the exemption provided by this Rule. The results of the favorable modeling demonstration must be submitted to the Director by July 1, 2006.

- (3) If the dispersion modeling performed under Subparagraph (b)(2) of this Rule shows that the acceptable ambient level for hydrogen sulfide is not exceeded, submit to the Director, on or before September 30, 2006, for approval by the Director, an ambient air quality monitoring plan designed to assess actual ambient levels of hydrogen sulfide typical of pulp and paper mill operations. The monitoring plan may be undertaken at each of the individual mill sites or, at the option of the affected mill sites, it may be undertaken at a single North Carolina mill site that the Director determines to be representative of the industry.
- (4) Within 180 days of approval by the Director, implement the ambient monitoring study plan required in Subparagraph (b)(3) to determine the actual ambient levels of hydrogen sulfide near pulp and paper mills.
- (5) Complete the ambient hydrogen sulfide monitoring plan and report the results to the Director and to the Chairperson of the Environmental Management Commission within 18 months of commencing ambient monitoring.

(c) The Director shall report to the Environmental Management Commission the information submitted under Subparagraphs (b)(1), (b)(2) and (b)(5) of this Rule within 60 days of receiving the reports from the owners and operators of wastewater treatment systems at pulp and paper mills.

(d) To perform ambient monitoring for hydrogen sulfide under Subparagraph (b)(3) of this Rule, the owner or operator shall use monitoring methods and procedures approved by the Director. The Director shall approve the monitoring methods and procedures if he determines that they are an appropriate measure of ambient air concentrations of hydrogen sulfide.

Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143B-282.

SECTION .0800 - EXCLUSIONARY RULES

15A NCAC 02Q .0806 COTTON GINS

~~(a) This Rule applies to cotton gins that only gin cotton between September and January, inclusively. The Director may extend this time period beyond the end of January if the Commissioner of Agriculture certifies to the Director that the cotton ginning season has been delayed because of adverse weather.~~

~~(b)(a) Potential emissions for cotton gins shall be determined using actual number of bales of cotton, not exceeding 500 pounds each, produced.~~

~~(c)(b) Any cotton gin that gins less than 167,000 bales of cotton per year shall be exempted from the requirements of Section .0500 of this Subchapter.~~

~~(d)(c) The owner or operator of any cotton gin exempted by this Rule from Section .0500 of this Subchapter shall submit to the regional supervisor of the appropriate Division regional office by March 1 of each year, a report containing the following information:~~

- ~~(1) the name and location of the cotton gin;~~
- ~~(2) the number of bales of cotton produced during the previous year; that season; and~~
- ~~(3) the signature of the appropriate official as identified in Rule .0304(j) of this Subchapter certifying as to the truth and accuracy of the report.~~

~~(e)(d) The owner or operator of any cotton gin exempted by this Rule from Section .0500 of this Subchapter shall provide documentation of number of bales produced to the Director upon request. The owner or operator of a cotton gin exempted by this Rule from Section .0500 of this Subchapter shall retain records to document number of bales of cotton produced for each of the previous three years.~~

~~(f)(g) If the number of bales specified in Paragraph (b) of this Rule are exceeded, For facilities covered by this Rule, the owner or operator shall report to the Director this event any exceedance of a requirement of this Rule within one week of its occurrence.~~

Authority G.S. 143-215.3(a); 143-215.107(a)(10); 143-215.108.

15A NCAC 02Q .0809 CONCRETE BATCH PLANTS

(a) This Rule applies to concrete batch plants that use fabric filters or equivalently effective control devices to control particulate emissions from the storage silos and the weigh hopper that receives materials from the cement and cement supplemental (mineral admixture) silos.

(b) For the purpose of this Rule, potential emissions shall be determined using actual cubic yards of wet concrete produced.

(c) Any concrete batch plant that produces less than 1,210,000 cubic yards of wet concrete per year shall be exempted from the requirements of Section .0500 of this Subchapter.

(d) The owner or operator of any concrete batch plant exempted by this Rule from Section .0500 of this Subchapter shall submit to the regional supervisors of the appropriate Division regional office by March 1 of each year a report containing the following information:

- (1) name and location of the concrete batch plant;
- (2) current air permit number;
- (3) number of cubic yards of concrete produced during the previous calendar year; and
- (4) signature of the appropriate official as identified in Rule .0304(j) of this Subchapter certifying as to the truth and accuracy of the report.

(e) The owner or operator of any concrete batch plant exempted by this Rule from Section .0500 of this Subchapter shall provide documentation of the cubic yards of concrete produced to the Director upon request. The owner or operator of a concrete batch plant exempted by this Rule from Section .0500 of this

PROPOSED RULES

Subchapter shall retain records to document the cubic yards of concrete produced per year for the previous three years.

(f) For concrete batch plants covered by this Rule, the owner or operator shall report to the Director any exceedance of a requirement of this Rule within one week of its occurrence.

Authority G.S. 143-215.3(a); 143-215.107(a)(10); 143-215.108.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Coastal Resources Commission intends to amend the rules cited as 15A NCAC 07H .0104, .0304.

Proposed Effective Date: March 1, 2004

Public Hearing:

Date: November 4, 2003

Time: 7:00 p.m.

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

Date: November 6, 2003

Time: 7:00 p.m.

Location: Brunswick County Courthouse, 310 Government Center Dr., Bolivia, NC

Reason for Proposed Action: Development on oceanfront lots must comply with the shoreline erosion rates as adopted by the Coastal Resources Commission. These erosion rates are updated by the Division of Coastal Management on a five year cycle. Development must comply with the current rates to the maximum extent feasible and have a minimum setback equal to the rates in effect at the time the lots were created, or those rates in effect at the time of issuance of any active CAMA permit for development on those lots, whichever is more restrictive. The Division of Coastal Management has completed an update of the erosion rates and needs to adjust the language in these Rules – State Guidelines for Areas of Environmental Concern that reference the new erosion rates.

Note: This Notice of Text submission for republication is being made only for the purpose of rescheduling the final 2 of 8 public hearings that were planned for this rule amendment. The hearings could not be held as planned because of the approach of Hurricane Isabel. As a result of the delay, the CRC anticipates adopting the amended rules in January 2004, and having the rules take effect in March 2004. The comment period has also been extended until December 15, 2003 as required by administrative procedure.

Comment Procedures: Comments from the public shall be directed to Charles Jones, 151-B Hwy 24, Hestrom Plaza II, Morehead City, NC 28557, phone (252) 808-2808, fax (252) 247-3330, and email charles.s.jones@ncmail.net. Comment period ends December 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

CHAPTER 07 - COASTAL MANAGEMENT

SUBCHAPTER 07H - STATE GUIDELINES FOR AREAS OF ENVIRONMENTAL CONCERN

SECTION .0100 - INTRODUCTION AND GENERAL COMMENTS

15A NCAC 07H .0104 DEVELOPMENT INITIATED PRIOR TO ADOPTION BY THE CRC

Development on lots created after ~~September 27, 1996~~ January 29, 2004 shall comply with the current erosion rates established pursuant to 15A NCAC 07H .0304. Development on lots created between June 1, 1979 and ~~September 27, 1996~~ January 29, 2004 must comply with the current rates to the maximum extent feasible and have a minimum setback equal to the rates in effect at the time the lots were created, or, those rates in effect at the time of issuance of any active CAMA permit for development on those lots, whichever is more restrictive. Development on lots created prior to June 1, 1979 shall comply with the provisions of 15A NCAC 07H .0309(b) and (c).

Authority G.S. 113A-107; 113A-113; 113A-124.

SECTION .0300 - OCEAN HAZARD AREAS

15A NCAC 07H .0304 AECS WITHIN OCEAN HAZARD AREAS

The ocean hazard system of AECs contains all of the following areas:

- (1) Ocean Erodible Area. This is the area in which there exists a substantial possibility of excessive erosion and significant shoreline fluctuation. The seaward boundary of this area is the mean low water line. The landward extent of this area is determined as follows:
 - (a) a distance landward from the first line of stable natural vegetation to the recession line that would be established by multiplying the long-term annual erosion rate times 60, provided that, where there has been no long-term erosion or the rate

is less than two feet per year, this distance shall be set at 120 feet landward from the first line of stable natural vegetation. For the purposes of this Rule, the erosion rates shall be the long-term average based on available historical data. The current long-term average erosion rate data for each segment of the North Carolina coast is depicted on maps entitled "Long Term Annual Shoreline Change Rates updated through ~~1992~~ 1998" and approved by the Coastal Resources Commission on ~~September 27, 1996~~ January 29, 2004 (except as such rates may be varied in individual contested cases, declaratory or interpretive rulings). The maps are available without cost from any local permit officer or the Division of Coastal Management; and

(b) a distance landward from the recession line established in Sub-Item (1)(a) of this Rule to the recession line that would be generated by a storm having a one percent chance of being equaled or exceeded in any given year.

(2) The High Hazard Flood Area. This is the area subject to high velocity waters (including, but not limited to, hurricane wave wash) in a storm having a one percent chance of being equaled or exceeded in any given year, as identified as zone V1-30 on the flood insurance rate maps of the Federal Insurance Administration, U.S. Department of Housing and Urban Development.

(3) Inlet Hazard Area. The inlet hazard areas are natural-hazard areas that are especially vulnerable to erosion, flooding and other adverse effects of sand, wind, and water because of their proximity to dynamic ocean inlets. This area shall extend landward from the mean low water line a distance sufficient to encompass that area within which the inlet will, based on statistical analysis, migrate, and shall consider such factors as previous inlet territory, structurally weak areas near the inlet (such as an unusually narrow barrier island, an unusually long channel feeding the inlet, or an overwash area), and external influences such as jetties and channelization. The areas identified as suggested Inlet Hazard Areas included in the report entitled INLET HAZARD AREAS, The Final Report and Recommendations to the Coastal Resources Commission, 1978, as amended in 1981, by Loie J. Priddy and Rick Carraway are incorporated by reference without future changes are hereby designated as Inlet Hazard Areas except that the Cape Fear Inlet Hazard

Area as shown on said map shall not extend northeast of the Baldhead Island marina entrance channel. In all cases, this area shall be an extension of the adjacent ocean erodible area and in no case shall the width of the inlet hazard area be less than the width of the adjacent ocean erodible area. This report is available for inspection at the Department of Environment and Natural Resources, Division of Coastal Management, 1638 Mail Service Center, 2728 Capital Boulevard, Raleigh, North Carolina. Small scaled photo copies are available at no charge.

(4) Unvegetated Beach Area. Beach areas within the Ocean Hazard Area where no stable natural vegetation is present may be designated as an unvegetated beach area on either a permanent or temporary basis:

(a) An area appropriate for permanent designation as an unvegetated beach area is a dynamic area that is subject to rapid unpredictable landform change from wind and wave action. The areas in this category shall be designated following detailed studies by the Coastal Resources Commission. These areas shall be designated on maps approved by the Commission and available without cost from any local permit officer or the Division of Coastal Management.

(b) An area that is suddenly unvegetated as a result of a hurricane or other major storm event may be designated as an unvegetated beach area for a specific period of time. At the expiration of the time specified by the Commission, the area shall return to its pre-storm designation. Areas appropriate for such designation are those in which vegetation has been lost over such a large land area that extrapolation of the vegetation line under the procedure set out in Rule .0305(e) of this Section is inappropriate.

The Commission designates as temporary unvegetated beach areas those oceanfront areas in New Hanover, Pender, Carteret and Onslow Counties in which the vegetation line as shown on aerial photography dated August 8, 9, and 17, 1996, was destroyed as a result of Hurricane Fran on September 5, 1996. This designation shall continue until such time as stable, natural vegetation has reestablished or until the area is permanently designated as an unvegetated beach area pursuant to Sub-Item 4(a) of this Rule.

Authority G.S. 113A-107; 113A-113; 113A-124.

PROPOSED RULES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Environment and Natural Resources – Division of Parks and Recreation intends to amend the rules cited as 15A NCAC 12B .0501, .1206.

Proposed Effective Date: February 1, 2004

Public Hearing:

Date: October 30, 2003

Time: 2:00 p.m. – 4:00 p.m.

Location: William B. Umstead State Park Visitor Center Auditorium, 8801 Glenwood Avenue, Raleigh, NC

Reason for Proposed Action:

15A NCAC 12B .0501 – Vehicles Where Prohibited is being amended to address the implementation of the Fort Fisher Recreation Area vehicle beach use permit; to further define the restriction of vehicle operation in park areas not designated for such use, to further define the prohibition of unlicensed vehicle operation within park areas, to address the use of unlicensed vehicles by park employees, their agents and emergency personnel carrying out official duties, to define a mobility impaired person using a manual or motorized wheel chair as a pedestrian and the access restriction of vehicles and other conveyances from areas with fragile natural resources or where such use would be unsafe.

15A NCAC 12B .1206 – Fees and Charges is being amended in order to maintain current levels of public service within Division managed areas due to budget reductions by the state legislature in the 2003 session. As a result of these legislative budget reductions, the state legislature gave approval to the Department of Environment and Natural Resources to raise user fees within the Division of Parks and Recreation to address reduced appropriations.

Comment Procedures: *Written comments should be submitted to Adrienne McCoig, NC Division of Parks and Recreation, 12700 Bayleaf Church Road, Raleigh, NC 27614. Comments will be accepted through December 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

CHAPTER 12 - PARKS AND RECREATION AREA RULES

SUBCHAPTER 12B - PARKS AND RECREATION AREAS

SECTION .0500 - TRAFFIC AND PARKING

15A NCAC 12B .0501 VEHICLES: WHERE PROHIBITED

(a) A person shall not drive a vehicle including bicycles, mopeds or similar conveyances in any park within or upon a safety zone, walk, bridle trail, hiking trail, fire trail, service road or any part of any park area not designated or customarily used for such purpose. Operation of unlicensed motor vehicles, motorcycles, golf carts, motorbikes or snow mobiles, utility vehicles, or mini-bikes and all terrain vehicles are prohibited within any park, including the Fort Fisher Recreation Area.

(b) Park employees, their agents, contractors and on duty emergency response personnel may use unlicensed vehicles including golf carts, utility vehicles and all terrain vehicles within park areas to carry out official duties.

(c) A mobility-impaired person using a manual or motorized wheelchair are considered a pedestrian. These regulations are not intended to restrict the activities of such a person beyond the degree that the activities of a pedestrian are restricted by the same regulations, except where use of such wheelchairs constitutes a safety hazard or would damage fragile natural resources.

(d) Areas with fragile natural resources that would be damaged by any vehicle, bicycle or other conveyance or areas where use of such vehicles, bicycles or conveyances would be unsafe may be restricted from access by such vehicles, bicycles or conveyances.

(e) Operation of licensed vehicles on the unpaved areas of the Fort Fisher Recreation Area is prohibited without the required vehicle beach use permit having been obtained.

Authority G. S. 113-35.

SECTION .1200 - MISCELLANEOUS

15A NCAC 12B .1206 FEES AND CHARGES

The following fee schedule shall apply at all state parks, parkways, state lakes, state recreation areas, and state natural areas under the stewardship of the Department, except for the N.C. Zoological Park. Payment of the appropriate fee shall be a prerequisite for the use of the public service facility or convenience provided. Unless otherwise provided in this Rule, the number of persons camping at a particular campsite may be limited by the park superintendent depending upon the size of the camping group and the size and nature of the campsite. Any senior citizen (person 62 or older) registering for a campsite will receive the discounted senior citizens rate.

PROPOSED RULES

TYPE OF FACILITY OR CONVENIENCE	FEE
(1) CAMPING	
(a) Campsites with electrical hookups, picnic table, and grill. Water, restrooms, and shower facilities also available.	\$ 20.00 17.00 (per campsite daily) \$ 14.00 (senior citizens daily, 62 or older)
(b) Campsites with picnic table and grill. Water, restrooms, and shower facilities also available.	\$ 15.00 12.00 (per campsite daily) \$ 10.00 (senior citizens daily, 62 or older)
(c) Primitive, unimproved campsites with pit privies. Fresh water also available.	\$ 9.00 8.00 (per campsite, daily)
(d) Primitive group tent camping, unimproved campsites with pit privies.	\$ 1.00 (per person, with \$ 9.00 8.00 minimum)
(e) Improved Group Camping (water, restrooms and shower facilities available.	\$ 40.00 35.00 (per day/maximum capacity 35) \$ 50.00 (per day/maximum capacity 50) \$ 105.00 90.00 (per day/maximum capacity 100)
(f) Group Lodge William B. Umstead State Park	\$ 30.00 (per day/maximum 25 people)
(g) Group Camps	
(i) William B. Umstead State Park	Daily \$ 30.00 \$ 75.00 April, May, Sept., Oct. One Unit per day Mess Hall per day
	Weekly Only \$ 375.00 \$ 375.00 \$ 425.00 June thru August Camp Crabtree Camp Whispering Pines Camp Lapihio
(ii) Singletary Lake State Park	Daily \$ 95.00 \$ 40.00 \$ 75.00 April, May, Sept., Oct. Camp Ipecac or Loblolly Cabin Unit per day Mess Hall per day
	Weekly Only \$ 390.00 June thru August Camp Ipecac or Loblolly
	Nov., Dec., Feb., March Camp Loblolly available at Weekly or daily rates.
(h) <u>Equestrian Facilities</u>	<u>Daily</u> <u>January Thru Dec.</u> <u>Per Campsite</u>
(i) <u>Campsite with picnic table and grill</u>	\$ <u>15.00</u>
(ii) <u>Horse Stalls</u>	\$ <u>7.00</u> <u>5' X 10' Per Day</u> \$ <u>10.00</u> <u>10' X 10' Per Day</u>
(2) CABINS (not available Dec. - Feb.) (reservation only at Hanging Rock State Park and Morrow Mountain State Park.)	\$ 500.00 300.00 (per week only from June to Labor Day) \$ 520.00 320.00 (per week only from June to Labor Day, with swimming privileges) \$ 100.00 60.00 (per day - rest of year)
(3) SWIMMING/BATHHOUSE	\$ 4.00 3.00 (per adult, age 13 and over) \$ 3.00 2.00 (per child, ages 3-12)
(4) BOAT RAMPS	\$ 4.00 (per boat)
(5) ROWBOAT/CANOE RENTAL	\$ 5.00 3.00 (for first hour) \$ 3.00 1.00 (for each additional hour)
(6) PADDLE BOAT RENTAL	\$ 5.00 (for first hour) \$ 3.00 (for additional hour)
(7)(6) PICNIC SHELTER RENTAL (by reservation only)	\$ 25.00 20.00 (1-2 tables) \$ 40.00 35.00 (3-4 tables) \$ 60.00 50.00 (5-8 tables) \$ 85.00 75.00 (9-12 tables)
(8)(7) ADMISSION FEE (<u>Kerr Lake</u> , Jordan and Falls only)	\$ 5.00 4.00 (per car) \$ 3.00 (per car-senior citizens 62 or older) \$ 10.00 (per bus) \$ 30.00 (for 10 daily passes)

PROPOSED RULES

		\$ 40.00 (for annual pass)
(9)(8) HAMMOCKS BEACH FERRY		\$ 5.00 2.00 (per adult, age 13 and over)
(10)(9) COMMUNITY BUILDINGS		\$ 3.00 1.00 (Sr. Citizen, per child, ages 6-12)
(11)(10) SPECIAL ACTIVITY PERMIT		\$ 175.00 125.00 (per day includes 20 car passes where appropriate)
(12)(11) CATCH AND RELEASE FISHING (Stone Mountain State Park)		\$ 30.00 25.00 (permit fee plus any additional appropriate charges)
(13)(12) SLIP RENTAL AND OTHER FEES FOR THE CAROLINA BEACH STATE PARK MARINA (All slip rental fees shall be paid in full at the time the lease is executed.)		\$ 15.00 12.00 per day per section
(a) Transient, overnight dockage (no longer than 14 consecutive days in any 30 day period.)		\$ 20.00 16.00
(b) Slip Rental (Fees charged according to term of lease and vessel size.)		
25 feet and smaller		\$ 175.00 150.00
26 feet to 35 feet		\$ 260.00 226.00
36 feet to 42 feet		\$ 305.00 263.00
43 feet to 45 feet		\$ 345.00 300.00
(c) Six month lease (runs 183 days from date executed)		
25 feet and smaller		\$ 830.00 720.00
26 feet to 35 feet		\$1250.00 1080.00
36 feet to 42 feet		\$1460.00 1260.00
43 feet to 45 feet		\$1665.00 1440.00
(d) Twelve month lease (runs 365 days from date executed)		
25 feet and smaller		\$1250.00 1080.00
26 feet to 35 feet		\$1875.00 1620.00
36 feet to 42 feet		\$2185.00 1890.00
43 feet to 45 feet		\$2500.00 2160.00
(e) Boat Launching Fee		\$ 5.00 4.00
(f) Holding Tank Pump Out		\$ 12.00 10.00
(g) Battery Charging Service		\$ 4.00 3.00
(14) Fort Fisher 4WD Beach Access Annual Permit		
(a) Daily Permit		\$ 10.00
(b) Annual Permit		\$ 40.00

Authority G.S. 113-35(b).

TITLE 21 – OCCUPATIONAL LICENSING BOARDS

CHAPTER 08 - BOARD OF CERTIFIED PUBLIC ACCOUNTANT EXAMINERS

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC State Board of CPA Examiners intends to amend the rule cited as 21 NCAC 08N .0205.

Proposed Effective Date: February 1, 2004

Public Hearing:

Date: November 24, 2003

Time: 10:00 a.m.

Location: 1101 Oberlin Rd., Suite 104, Raleigh, NC

Reason for Proposed Action: *The purpose of this Rule change is to expand the exceptions to confidentiality for licensees.*

Comment Procedures: *Comments from the public shall be directed to Robert N. Brooks, PO Box 12827, Raleigh, NC 27605-2827, phone (919) 733-1425, fax (919) 733-4209, and email rnbrooks@bellsouth.net. Comment period ends December 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

SUBCHAPTER 08N - PROFESSIONAL ETHICS AND CONDUCT

SECTION .0200 - RULES APPLICABLE TO ALL CPAS

21 NCAC 08N .0205 CONFIDENTIALITY

(a) Nondisclosure. A CPA shall not disclose any confidential information obtained in the course of employment or a professional engagement except with the consent of the employer or client.

(b) Exceptions. This Rule shall not be construed:

- (1) to relieve a CPA of any report obligations pertaining to Section .0400 of this Subchapter; or
(2) to affect in any way the CPA's compliance with a validly issued subpoena or summons enforceable by this Board or by order of a court; or
(3) to preclude the CPA from responding to any inquiry made by the AICPA Ethics Division or Trial Board, by a duly constituted investigative or disciplinary body of a state CPA society, or under state statutes; or
(4) to preclude the disclosure of confidential client information necessary for the peer review process or for any quality review program; or
(5) to preclude the CPA from assisting the Board in enforcing the accountancy statutes and rules-rules; or
(6) to affect a CPA's disclosure of confidential information to state or federal authorities when the CPA concludes in good faith based upon professional judgment that a crime is being or is likely to be committed; or
(7) to affect a CPA's disclosure of confidential information when such disclosure is required by state or federal laws or regulations.

Authority G.S. 55B-12; 57C-2-01; 93-12(9).

CHAPTER 14 - BOARD OF COSMETIC ART EXAMINERS

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC State Board of Cosmetic Art Examiners intends to adopt the rule cited as 21 NCAC 14H .0120 and amend the rules cited as 21 NCAC 14A .0101; 14H .0113; 14I .0105; 14N .0113; 14O .0103; 14P .0105, .0107, .0111, .0115.

Proposed Effective Date: February 1, 2004

Public Hearing:

Date: November 3, 2003

Time: 10:00 a.m.

Location: NC State Board of Cosmetic Art, 1201-110 Front St., Raleigh, NC

Reason for Proposed Action: To make changes in the school curriculum.

Comment Procedures: Written comments should be submitted to Dee Williams, NC State Board of Cosmetic Art Examiners, 1201-110 Front St., Raleigh, NC 27609. Phone: (919) 733-4117 ext. 222, fax: (919) 733-4127. Comments should be submitted through December 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

SUBCHAPTER 14A - DEPARTMENTAL RULES

SECTION .0100 - ORGANIZATIONAL RULES

21 NCAC 14A .0101 DEFINITIONS

The following definitions apply in this Chapter:

- (1) "Beauty Establishment" refers to both cosmetic art schools and cosmetic art shops.
(2) "Cosmetology School" is any cosmetic art school which teaches cosmetic art as defined by, G.S. 88B-2(5), but is not a manicurist or an esthetics school.
(3) "Cosmetology Student" is a student in any cosmetic art school whose study is the full curriculum.
(4) "Manicurist School" is a cosmetic art school that teaches only the cosmetic arts of manicuring.
(5) "Manicurist Student" is a student in any cosmetic art school whose study is limited to the manicurist curriculum set forth in 21 NCAC 14K .0102.

- (6) "Successful Completion" is the completion of an approved cosmetic art curriculum with a minimum grade of "C" or 70%, whichever is deemed as passing by the cosmetic art school.
- (7) "Esthetician School" is any cosmetic art school which teaches only the cosmetic arts of skin care.
- (8) "Esthetician Student" is a student in any cosmetic art school whose study is limited to the esthetician curriculum set forth in 21 NCAC 14O .0102.
- (9) "Esthetics" refers to any of the following practices: giving facials, applying makeup, performing skin care, removing superfluous hair from the body of any person by the use of depilatories, tweezers or waxing, or applying eyelashes to any person (this is to include brow and lash color), beautifying the face, neck, arms or upper part of the human body, by use of cosmetic preparations, antiseptics, tonic, lotions or creams, massaging, cleaning, or stimulating the face, neck, ears, arms, hands, bust, torso, legs or feet, by means of the hands, devices, apparatus, or appliances, with the use of cosmetic preparations, antiseptics, tonics, lotions or creams.
- (10) Natural Hair Braiding. Natural hair braiding is a service that results in tension on hair strands or roots by twisting, wrapping, weaving, extending, locking, or braiding by hand or mechanical device, provided that the service does not include hair cutting or the application of dyes, reactive chemicals, or other preparations to alter the color of the hair or to straighten, curl, or alter the structure of the hair.
- (11) Natural Hair Styling. Natural hair styling is the provision of natural hair braiding services together with any of the services or procedures defined within the regulated practice of cosmetic art, and is subject to regulation pursuant to this Chapter, and those persons practicing natural hair styling shall obtain and maintain a cosmetologist license as applicable to the services offered or performed. Establishments offering natural hair styling services shall be licensed as cosmetic art shops.

Authority G.S. 88B-2: 88B-4.

SUBCHAPTER 14H - SANITATION

21 NCAC 14H .0113 CLEANLINESS OF SCISSORS: SHEARS: RAZORS AND OTHER EQUIPMENT

- (a) All scissors, shears, razors, and other metal instruments used while shaping hair must be cleaned and disinfected after each use in the following manner:
 - (1) If the implement is not immersible, it shall be cleaned by wiping it with a clean cloth moistened with a disinfectant that states the

- (2) solution will destroy HIV, TB or HBV viruses and approved by the Federal Environmental Protection Agency in accordance with the manufacturer's instructions.
 - (2) If it is immersible, it shall be disinfected by immersion, at least once a day and whenever it comes in contact with blood, with a disinfectant that states the solution will destroy HIV, TB or HBV viruses, and approved by the Federal Environmental Protection Agency in accordance with the manufacturer's instructions.—instructions. EPA registered, hospital/pseudomonacidal (bactericidal, virucidal, and fungicidal) and/or tuberculocidal, that is mixed and used according to the manufacturer's directions; household bleach in a 10 percent solution for 10 minutes, 70% or higher isopropyl alcohol for 15 minutes or 90% ethyl alcohol for 15 minutes.
 - (3) If the implement is not used immediately after cleaning, it must be stored in a clean, closed cabinet until it is needed.
- (b) Furniture, equipment and fixtures must be of a washable material and kept clean and in good repair.

Authority G.S. 88-23.

21 NCAC 14H .0120 FOOTSPA SANITATION

Use the following disinfection procedures to ensure proper cleaning and maintenance of the equipment and to prevent bacterial infection.

- (1) Between each customer:
 - (a) drain all water and remove all debris from the footspa;
 - (b) clean the surfaces and walls of the footspas with soap or detergent and rinse with clean, clear water; and
 - (c) disinfect with an EPA registered disinfectant with demonstrated bactericidal, fungicidal, and virucidal activity used according to the manufacturer's instructions;
- (2) At the end of the day:
 - (a) remove the screen. All debris trapped behind the screen of each footspa shall be removed, and the screen and the inlet shall be washed with soap or detergent and water;
 - (b) before replacing the screen, perform one of the following two procedures:
 - (i) wash the screen with a chlorine bleach solution of one teaspoon of 5% chlorine bleach to one gallon of water; or
 - (ii) totally immerse the screen in an EPA registered disinfectant; then
 - (iii) flush the system with low sudsing soap and warm

- water for 10 minutes, finally rinse and drain; and
- (c) make a record of the date/time of this cleaning and disinfecting; and
- (3) Every other week:
 - (a) after following the outlined procedures for the end of each day, fill the footspa tub (five gallons) with water and four teaspoons of 5% bleach solution.
 - (b) circulate the solution through the footspa system for 5 to 10 minutes.
 - (c) let the solution sit overnight (at least 6-10 hours);
 - (d) the following morning drain and flush the system; and
 - (e) make a record of the date/time of this cleaning and disinfecting.

Authority G.S. 88-B-4.

SUBCHAPTER 14I - OPERATIONS OF SCHOOLS OF COSMETIC ART

section .0100 - RECORD KEEPING

21 NCAC 14I .0105 TRANSFER OF CREDIT

- (a) In order that hours may be transferred from one cosmetic art school to another, a student must pass an entrance examination given by the school to which the student is transferring
- (b) A cosmetology student must complete at least 500 hours in the cosmetic art school certifying his or her application for the state board examination.
- (c) Upon written petition by the student, the Board, in its discretion, may make an exception to the requirements set forth in Paragraph (b) of this Rule if the student shows that unusual circumstances beyond the student's control prohibited him or her from completing 500 hours at the school which certifies his or her application.
- (d) A student who wishes to transfer from a cosmetology course to a manicuring or an esthetics course may not receive credit for hours received in the cosmetology course.
- (e) A student who wishes to transfer from a manicurist or an esthetic course to a cosmetology course may not receive credit for hours received in the manicurist course.
- (f) If a student is transferring from another state, it is the student's responsibility to submit certification of hours and performances to the cosmetic art school in which they are enrolled.

Authority G.S. 88-23; 88-30.

SUBCHAPTER 14N - EXAMINATIONS

SECTION .0100 - GENERAL PROVISIONS

21 NCAC 14N .0113 RE-EXAMINATION

- (a) If, upon application for re-examination, the applicant has taken and passed one section of an examination, he or she shall apply for re-examination only on the section of the examination, which he or she did not pass.

Applicants for re-examination must apply for re-examination in writing and pay the appropriate examination fee.

(c) Notwithstanding any other provision of these Rules, pursuant to G.S. 88B-18(d) a cosmetology candidate who has failed either section of the examination five times, is required to complete an additional 200 hours of study at an approved cosmetic art school before another application for re-examination may be accepted by the Board.

~~(e)~~(d) Upon written request by any candidate, the Board shall release a summary of the results of each category of the practical section of the most recent examination to the school in which the candidate is enrolled for the additional study, pursuant to G.S. 88B-18 (d).

~~(d)~~(e) The school in which the student has enrolled pursuant to G.S 88B-18(d) shall design a course of study for that student in order to correct the student's deficiencies.

~~(e)~~(f) A candidate for licensure as an apprentice cosmetologist who

- (1) passes the examination with a score of 75 percent or more on both sections; and
- (2) subsequently completes an additional 300 hours within one year of the examination date may be licensed as a cosmetologist under G.S. 88B-7 without retaking the examination..

Authority G.S. 88B-4; 88B-18.

SUBCHAPTER 14O - ESTHETICIAN CURRICULUM

21 NCAC 14O .0103 EQUIPMENT AND INSTRUMENTS

(a) An Esthetician school shall be equipped with the following minimum equipment:

- (1) 3 facial treatment chairs, treatment tables, or hydraulic treatment chairs,
- (2) 3 esthetician's stools,
- (3) 1 facial vaporizer,
- (4) 1 galvanic current apparatus,
- (5) 1 infra-red lamp,
- (6) 1 woods lamp,
- (7) 1 footed magnifying lamp or magnifying lamp that attaches to the wall,
- (8) 1 hair removal wax system,
- (9) 1 thermal wax system,
- (10) 1 suction machine,
- (11) 1 exfoliation (brushes),
- (12) table for machines,
- (13) lavatory with hot and cold running water in the treatment area:

(b) All equipment shall be maintained in a sanitary, safe operating order at all times.

(c) The minimum requirement for a school of cosmetology desiring to include a department of esthetics in its training program shall be at least one of each item specified in Paragraph (a) of this Rule.

(d) Each esthetician student shall be supplied with:

- (1) cape;
- (2) spatulas;
- (3) astringents;
- (4) tweezers;
- (5) cotton pads;

- (6) make up supplies;
- (7) sponges;
- (8) all purpose cream; cream.
- (9) ~~fumigant~~

Authority G.S. 88B-4.

SUBCHAPTER 14P - CIVIL PENALTY

21 NCAC 14P .0105 RENEWALS; EXPIRED LICENSES; LICENSES REQUIRED:

- (a) The presumptive civil penalty for operating a cosmetic art shop/school with an expired license is:
 - (1) 1st offense warning (\$100.00)
 - (2) 2nd offense \$250.00
 - (3) 3rd offense \$500.00
- (b) The presumptive civil penalty for practicing cosmetology, manicuring, or esthetics with an expired license is:
 - (1) 1st offense warning (\$100.00)
 - (2) 2nd offense \$250.00
 - (3) 3rd offense \$500.00
- (c) The presumptive civil penalty for allowing an apprentice or someone with a temporary permit to practice cosmetic art without direct supervision:
 - (1) 1st offense \$100.00
 - (2) 2nd offense \$300.00
 - (3) 3rd offense \$500.00
- (d) The presumptive civil penalty for practicing in a cosmetic art shop with an apprentice license or a temporary permit without direct supervision is:
 - (1) 1st offense \$100.00
 - (2) 2nd offense \$300.00
 - (3) 3rd offense \$500.00
- (e) The presumptive civil penalty for an improperly licensed cosmetic art salon (incorrect number of chairs licensed) is:
 - (1) 1st offense warning (\$50.00)
 - (2) 2nd offense \$100.00
 - (3) 3rd offense \$200.00

Authority G.S. 88B-4; 88B-21; 88B- 23(a); 88B-24: 88B-29.

21 NCAC 14P .0107 LICENSES TO BE POSTED

- (a) The presumptive civil penalty for failure to display a current cosmetic art shop/school license is:
 - (1) 1st offense warning (\$50.00)
 - (2) 2nd offense \$100.00
 - (3) 3rd offense \$200.00
- (b) The presumptive civil penalty for failure to display a current individual license is:
 - (1) 1st offense warning (\$50.00)
 - (2) 2nd offense \$100.00
 - (3) 3rd offense \$200.00
- (c) The presumptive civil penalty for a school/salon for allowing an employee to practice cosmetic art without displaying a current license is:
 - (1) 1st offense warning(\$50.00)
 - (2) 2nd offense \$100.00
 - (3) 3rd offense \$200.00
- (d) The presumptive civil penalty for displaying a copied license is:
 - (1) 1st offense warning(\$50.00)
 - (2) 2nd offense \$100.00
 - (3) 3rd offense \$200.00

Authority G.S. 88B-4; 88B-29.

21 NCAC 14P .0111 ESTABLISHMENT OF COSMETIC ART SCHOOLS

- (a) The presumptive civil penalty for failure to provide minimum floor space or equipment and supplies as required by Subchapters 14G, 14I, ~~and 14J~~, 14K and 14O is:
 - (1) 1st offense \$200.00
 - (2) 2nd offense \$350.00
 - (3) 3rd offense \$500.00
- (b) The presumptive civil penalty for failure to provide instruction at a ratio of one teacher for every 20 students is:

PROPOSED RULES

- (1) 1st offense warning (\$100.00)
- (2) 2nd offense \$250.00
- (3) 3rd offense \$500.00

(c) The presumptive civil penalty for failure to report a change in the teaching staff is:

- (1) 1st offense warning (\$50.00)
- (2) 2nd offense \$100.00
- (3) 3rd offense \$200.00

(d) The presumptive civil penalty for failure to submit an application for the approval of a school in the case of a change of location or ownership is:

- (1) 1st offense \$100.00
- (2) 2nd offense \$200.00
- (3) 3rd offense \$500.00

Authority 88B-4 (2); 88B-16; 88B-29.

21 NCAC 14P .0115 SANITARY RATINGS

The presumptive civil penalty for failure to display ~~an~~ a current inspection grade card is:

- (1) 1st offense warning (\$50.00)
- (2) 2nd offense \$100.00
- (3) 3rd offense \$200.00

Authority G.S. 88B-4; 88B-29.

CHAPTER 58 - REAL ESTATE COMMISSION

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Real Estate Commission intends to amend the rules cited as 21 NCAC 58A .0101, .0104, .0110, .0302-.0303, .0401, .0403, .0502-.0503, .0505, .1702; 58C .0311, .0603, .0605, .0608; 58E .0203, .0205-.0206, .0302, .0304, .0308, .0406, .0411-.0412, .0510.*

Proposed Effective Date: April 1, 2004 Except 58A .0503, which has a proposed effective date of January 1, 2005.

Public Hearing:

Date: November 13, 2003

Time: 9:00 a.m.

Location: 1313 Navaho Drive Raleigh, NC 27609

Reason for Proposed Action: *To streamline the firm license application process, amend the continuing education requirements for broker license applicants and brokers-in-charge, amend the schedule and classroom requirements for continuing education providers, clarify the license examination process, allow DVDs in lieu of videotape recordings, and raise the license renewal fee by a five dollar increment.*

Procedure by which a person can object to the agency on a proposed rule: *Any person who objects to the adoption of a permanent rule may submit written comment to rule-making coordinator Pamela Millward at the address listed below.*

Written comments may be submitted to: *Pamela Millward, NC Real Estate Commission, 1313 Navaho Drive, Raleigh, NC 27609*

Comment period ends: December 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

SUBCHAPTER 58A - REAL ESTATE BROKERS AND SALESMEN

SECTION .0100 - GENERAL BROKERAGE

21 NCAC 58A .0101 PROOF OF LICENSURE

(a) The annual license renewal pocket card issued by the Commission to each licensee shall be retained by the licensee as evidence of licensure. Each licensee shall carry his or her pocket card on his or her person at all times while engaging in real estate brokerage and shall produce the card as proof of licensure whenever requested.

(b) The principal broker of a firm shall retain the firm's renewal pocket card at the firm and shall produce it upon request as proof of firm licensure as required by ~~Rule .0502(i)(3)~~. Rule .0502.

(c) Every licensed real estate business entity or firm shall prominently display its license certificate or facsimile thereof in each office maintained by the entity or firm. A broker-in-charge shall also prominently display his or her license certificate in the office where he or she is broker-in-charge.

Authority G.S. 93A-3(c).

21 NCAC 58A .0104 AGENCY AGREEMENTS AND DISCLOSURE

(a) Every agreement for brokerage services in a real estate transaction and every agreement for services connected with the management of a property owners association shall be in writing. Every agreement for brokerage services between a broker and an owner of the property to be the subject of a transaction must be in writing from the time of its formation. Every agreement for brokerage services between a broker and a buyer or tenant shall be express and shall be reduced to writing not later than the time one of the parties makes an offer to purchase, sell, rent, lease, or exchange real estate to another. However, every agreement between a broker and a buyer or tenant which seeks to bind the buyer or tenant for a period of time or to restrict the buyer's or tenant's right to work with other agents or without an agent shall be in writing from its formation. A broker or salesperson shall not continue to represent a buyer or tenant without a written agreement when such agreement is required by this rule. Every written agreement for brokerage services of any kind in a real estate transaction shall provide for its existence for a definite period of time and shall provide for its termination without prior notice at the expiration of that period, except that an agency agreement between a landlord and broker to procure tenants or receive rents for the landlord's property may allow for automatic renewal so long as the landlord may terminate with notice at the end of any contract period and any subsequent renewals.

(b) Every listing agreement, written buyer agency agreement or other written agreement for brokerage services in a real estate sales transaction shall contain the following provision: The broker shall conduct all his brokerage activities in regard to this agreement without respect to the race, color, religion, sex, national origin, handicap or familial status of any buyer, prospective buyer, seller or prospective seller. The provision shall be set forth in a clear and conspicuous manner which shall distinguish it from other provisions of the agreement. For the purposes of this Rule, the term, familial status, shall be defined as it is in G.S. 41A-3(1b).

(c) In every real estate sales transaction, a broker or salesperson shall, at first substantial contact directly with a prospective buyer or seller, provide the prospective buyer or seller with a copy of the publication "Working with Real Estate Agents," review it with him or her, and determine whether the agent will act as the agent of the buyer or seller in the transaction. If the first substantial contact with a prospective buyer or seller occurs by telephone or other electronic means of communication where it is not practical to provide the "Working with Real Estate Agents" publication, the broker or salesperson shall at the earliest opportunity thereafter, but in no event later than three days from the date of first substantial contact, mail or otherwise

transmit a copy of the publication to the prospective buyer or seller and review it with him or her at the earliest practicable opportunity thereafter.

(d) A real estate broker or salesperson representing one party in a transaction shall not undertake to represent another party in the transaction without the written authority of each party. Such written authority must be obtained upon the formation of the relationship except when a buyer or tenant is represented by a broker without a written agreement in conformity with the requirements of Paragraph (a) of this Rule. Under such circumstances, the written authority for dual agency must be reduced to writing not later than the time that one of the parties represented by the broker or salesperson makes an offer to purchase, sell, rent, lease, or exchange real estate to another party.

(e) In every real estate sales transaction, a broker or salesperson working directly with a prospective buyer as a seller's agent or subagent shall disclose in writing to the prospective buyer at the first substantial contact with the prospective buyer that the broker or salesperson represents the interests of the seller. If the first substantial contact occurs by telephone or by means of other electronic communication where it is not practical to provide written disclosure, the broker or salesperson shall immediately disclose by similar means whom he represents and shall immediately, but in no event later than three days from the date of first substantial contact, mail or otherwise transmit a copy of the written disclosure to the buyer.

(f) In every real estate sales transaction, a broker or salesperson representing a buyer shall, at the initial contact with the seller or seller's agent, disclose to the seller or seller's agent that the broker or salesperson represents the buyer's interests. In addition, in every real estate sales transaction other than auctions, the broker or salesperson shall, no later than the time of delivery of an offer to the seller or seller's agent, provide the seller or seller's agent with a written confirmation disclosing that he represents the interests of the buyer. The written confirmation may be made in the buyer's offer to purchase.

(g) The provisions of Paragraphs (c), (d) and (e) of this Rule shall not apply to real estate licensees representing sellers in auction sales transactions.

(h) A broker or salesperson representing a buyer in an auction sale transaction shall, no later than the time of execution of a written agreement memorializing the buyer's contract to purchase, provide the seller or seller's agent with a written confirmation disclosing that he represents the interests of the buyer. The written confirmation may be made in the written agreement.

(i) A firm which represents more than one party in the same real estate transaction is a dual agent and, through the brokers and salespersons associated with the firm, shall disclose its dual agency to the parties.

(j) When a firm represents both the buyer and seller in the same real estate transaction, the firm may, with the prior express approval of its buyer and seller clients, designate one or more individual agents associated with the firm to represent only the interests of the seller and one or more other individual brokers and salespersons associated with the firm to represent only the interests of the buyer in the transaction. The authority for designated agency must be reduced to writing not later than the time that the parties are required to reduce their dual agency agreement to writing in accordance with Paragraph (d) of this

Rule. An individual broker or salesperson shall not be so designated and shall not undertake to represent only the interests of one party if the broker or salesperson has actually received confidential information concerning the other party in connection with the transaction. A broker-in-charge shall not act as a designated agent for a party in a real estate sales transaction when a salesperson under his or her supervision will act as a designated agent for another party with a competing interest.

(k) When a firm acting as a dual agent designates an individual broker or salesperson to represent the seller, the broker or salesperson so designated shall represent only the interest of the seller and shall not, without the seller's permission, disclose to the buyer or a broker or salesperson designated to represent the buyer:

- (1) that the seller may agree to a price, terms, or any conditions of sale other than those established by the seller;
- (2) the seller's motivation for engaging in the transaction unless disclosure is otherwise required by statute or rule; and
- (3) any information about the seller which the seller has identified as confidential unless disclosure of the information is otherwise required by statute or rule.

(l) When a firm acting as a dual agent designates an individual broker or salesperson to represent the buyer, the broker or salesperson so designated shall represent only the interest of the buyer and shall not, without the buyer's permission, disclose to the seller or a broker or salesperson designated to represent the seller:

- (1) that the seller may agree to a price, terms, or any conditions of sale other than those established by the seller;
- (2) the seller's motivation for engaging in the transaction unless disclosure is otherwise required by statute or rule; and
- (3) any information about the seller which the seller has identified as confidential unless disclosure of the information is otherwise required by statute or rule.

(m) A broker or salesperson designated to represent a buyer or seller in accordance with Paragraph (j) of this Rule shall disclose the identity of all of the brokers and salespersons so designated to both the buyer and the seller. The disclosure shall take place no later than the presentation of the first offer to purchase or sell.

(n) When an individual broker or salesperson represents both the buyer and seller in the same real estate sales transaction pursuant to a written agreement authorizing dual agency, the parties may provide in the written agreement that the broker or salesperson shall not disclose the following information about one party to the other without permission from the party about whom the information pertains:

- (1) that a party may agree to a price, terms or any conditions of sale other than those offered;
- (2) the motivation of a party for engaging in the transaction, unless disclosure is otherwise required by statute or rule; and
- (3) any information about a party which that party has identified as confidential, unless disclosure is otherwise required by statute or rule.

Authority G.S. 41A-3(1b); 93A-3(c); 41A-4(a).

21 NCAC 58A .0110 BROKER-IN-CHARGE

(a) Every real estate firm shall designate a broker to serve as the broker-in-charge at its principal office and a broker to serve as broker-in-charge at any branch office. No broker shall be broker-in-charge of more than one office or branch office. If a firm shares office space with one or more other firms, one broker may serve as broker-in-charge of each firm at that location. No office or branch office of a firm shall have more than one designated broker-in-charge. A broker who is a sole proprietor shall designate himself or herself as a broker-in-charge if the broker engages in any transaction where the broker is required to deposit and maintain monies belonging to others in a trust account, engages in advertising or promoting his or her services as a broker in any manner, or has one or more brokers or salespersons affiliated with him or her in the real estate business. Each broker-in-charge shall make written notification of his or her status as broker-in-charge to the Commission on a form prescribed by the Commission within 10 days following the broker's designation as broker-in-charge. The broker-in-charge shall assume the responsibility at his or her office for:

- (1) the retention and display of current license renewal pocket cards by all brokers and salespersons employed at the office for which he or she is broker-in-charge; the proper display of licenses at such office in accordance with Rule .0101 of this Section; and assuring that each licensee employed at the office has complied with Rules .0503, .0504, and .0506 of this Subchapter;
- (2) the proper notification to the Commission of any change of business address or trade name of the firm and the registration of any assumed business name adopted by the firm for its use;
- (3) the proper conduct of advertising by or in the name of the firm at such office;
- (4) the proper maintenance at such office of the trust or escrow account of the firm and the records pertaining thereto;
- (5) the proper retention and maintenance of records relating to transactions conducted by or on behalf of the firm at such office, including those required to be retained pursuant to Rule .0108 of this Section;
- (6) the proper supervision of salespersons associated with or engaged on behalf of the firm at such office in accordance with the requirements of Rule .0506 of this Subchapter;
- (7) the verification to the Commission of the experience of any salesperson at such office who may be applying for licensure as a broker; and
- (8) the proper supervision of all brokers and salespersons employed at the office for which he or she is broker-in-charge with respect to adherence to agency agreement and disclosure requirements.

(b) When used in this Rule, the term:

- (1) "Branch Office" means any office in addition to the principal office of a broker which is

operated in connection with the broker's real estate business; and

- (2) "Office" means any place of business where acts are performed for which a real estate license is required.

(c) A broker-in-charge must continually maintain his or her license on active status.

(d) Each broker-in-charge shall notify the Commission in writing of any change in his or her status as broker-in-charge within 10 days following the change. Upon written request of a salesperson within five years after termination of his or her association with a broker-in-charge, the broker-in-charge shall provide the salesperson, in a form prescribed by the Commission, an accurate written statement regarding the number and type of properties listed, sold, bought, leased, or rented for others by the salesperson while under the supervision of the broker-in-charge.

(e) A licensed real estate firm shall not be required to designate a broker-in-charge if it, which demonstrates on a form prescribed by the Commission that it has qualified for licensure solely

- (1) has been organized for the sole purpose of receiving compensation for brokerage services furnished by its principal broker through another firm, firm or broker;
- (2) is designated a Subchapter S corporation by the United States Internal Revenue Service;
- (3) has no principal or branch office; and
- (4) has and that no person is affiliated associated with it other than its principal broker, broker, shall not be required to designate a broker-in-charge.

(f) ~~Every broker in charge shall complete the Commission's broker in charge course at least once every five years following the effective date of this Rule. Every broker designated as a broker in charge after October 1, 2000 shall complete the Commission's broker in charge course within 120 days following designation and at least once every five years thereafter for so long as he or she remains broker in charge. If a broker who is a designated broker in charge fails to complete the broker in charge course within the prescribed time period, the broker in charge status of that broker shall be immediately terminated, and the broker must complete the broker in charge course before he or she may again be designated as a broker in charge. Except as provided herein every broker in charge designated before October 1, 2000 shall complete the Commission's broker in charge course not later than October 1, 2005 in order to remain broker in charge on that date and thereafter. Except as provided herein, every broker in charge designated after October 1, 2000 shall complete the broker in charge course within 120 days following designation in order to remain broker in charge thereafter. Every broker who has completed the broker in charge course shall take the course on a recurring basis at intervals not to exceed five years between courses in order to remain eligible to be designated broker in charge of the principal or branch office of any real estate firm. If a broker who is designated broker in charge fails to complete the broker in charge course within the prescribed time period, the broker in charge status of that broker shall be immediately terminated, and the broker must complete the broker in charge course before he or she may again be designated as broker in charge. A broker in charge residing outside of North Carolina~~

who is the broker-in-charge of a principal or branch office not located in North Carolina shall not be required to complete the broker-in-charge course.

Authority G.S. 93A-2; 93A-3(c); 93A-4.

SECTION .0300 - APPLICATION FOR LICENSE

21 NCAC 58A .0302 FILING AND FEES

(a) ~~All applications~~ Applications for a real estate license shall be complete and, except as provided by Rule .0403 of this Subchapter, shall be submitted to the Commission's office accompanied by the application fee. Examination scheduling of applicants who are required to pass the real estate licensing examination shall be accomplished in accordance with Rule .0401 of this Subchapter. An applicant for a real estate salesperson license shall not make application for a broker license while the salesperson application is pending unless the applicant first withdraws the salesperson application.

(b) The license application fee shall be thirty dollars (\$30.00). ~~Applicants electing to take the licensing examination by computer must pay, in~~ In addition to the license application fee, applicants for licensure who are required to take the license examination must pay the examination fee charged by the Commission's authorized testing service. ~~service in the form and manner acceptable to the testing service.~~

(c) An applicant shall update information provided in connection with an application or submit a newly completed application form without request by the Commission to assure that the information provided in the application is current and accurate. Failure to submit updated information prior to the issuance of a license may result in disciplinary action against a licensee in accordance with G.S. 93A-6(b)(1). In the event that the Commission requests an applicant to submit updated information or to provide additional information necessary to complete the application and the applicant fails to submit such information within 90 days following the Commission's request, the Commission shall cancel the applicant's application. The license application of an individual found by the Commission to be qualified for the licensing examination shall be immediately canceled if the applicant fails to pass a scheduled licensing examination, fails to appear for and take any examination for which the applicant has been scheduled without having the applicant's examination postponed or absence excused in accordance with Rule .0401(b) and (c) of Section .0400, or fails to take and pass the examination within 180 days of filing a complete application as described in Rule .0301 of this Section and having the application entered into the Commission's examination applicant file. ~~An~~ Except as permitted otherwise in Rule .0403 of this Subchapter, an applicant whose license application has been canceled and who wishes to obtain a real estate license must start the licensing process over by submitting a written filing a complete application to the Commission upon a prescribed form and paying all required fees.

Authority G.S. 93A-4(a),(d).

21 NCAC 58A .0303 PAYMENT OF APPLICATION FEES

Payment of application fees shall be made to the Commission in the form and manner acceptable to the Commission. Once an

application has been filed and processed, the application fee may not be refunded. ~~Payment of fees for taking the license examination by computer shall be made directly to the Commission's authorized testing service in the form and manner acceptable to the testing service.~~

Authority G.S. 93A-3(c); 93A-4(a),(d).

SECTION .0400 - EXAMINATIONS

21 NCAC 58A .0401 SCHEDULING EXAMINATIONS

(a) ~~Licensing examinations for applicants found by the Commission to be qualified for the examination shall be scheduled as follows:~~

(1) ~~An applicant who elects is required and qualified to take the licensing examination by computer shall be provided a notice of examination eligibility that shall be valid for a period of 90 180 days and for a single administration of the licensing examination. Upon receipt of a the notice of examination eligibility from the Commission or from the Commission's authorized computer testing service, the applicant shall schedule the examination by contacting contact the Commission's authorized testing service to pay for and schedule the examination in accordance with procedures established by the testing service. The testing service will schedule applicants for examination by computer at their choice of one of the Commission's established testing locations and will notify applicants of the time and place of their examinations.~~

(2) ~~An applicant who elects to take the licensing examination by the paper and pencil method shall be scheduled for examination based on the date of application filing, the applicant's requested testing location and the Commission's published list of testing locations, schedule of examination dates and examination filing deadlines. For the purpose of meeting any examination filing deadline date, the completed application must be either received in the Commission's office or postmarked not later than the date in question. Applicants shall be given written notice of when and where to appear for examination.~~

(b) ~~Scheduled examinations may be postponed as follows:~~

(1) ~~An examination for an applicant who has been may postpone a scheduled for the computerized examination may be postponed provided the applicant makes the request for postponement directly to the Commission's authorized computer testing service in accordance with procedures established by the testing service. An applicant's computerized examination shall not be postponed beyond the 90 180 day period for which the applicant's notice of examination eligibility is valid-allowed for taking the examination~~

~~without first refileing another complete application with the Commission.~~

(2) ~~An examination for an applicant who has been scheduled to take the examination by the paper and pencil method may be postponed provided the applicant makes the request for postponement directly to the Commission so that the request is received prior to the scheduled examination date. A scheduled examination date for a paper and pencil examination may only be postponed until one of the next two following scheduled examination dates.~~

A request to postpone a scheduled licensing examination without starting the licensing process over by filing another application and paying all required fees complying with the procedures for re-applying for examination described in Rule .0403 of this Section shall be granted only once unless the applicant satisfies the requirements for obtaining an excused absence stated in Paragraph (c) of this Rule.

(c) An applicant may be granted an excused absence from a scheduled examination if the applicant provides evidence that the absence was the direct result of an emergency situation or condition which was beyond the applicant's control and which could not have been reasonably foreseen by the applicant. A request for an excused absence must be promptly made in writing and must be supported by appropriate documentation verifying the reason for the absence. The following restrictions shall also apply to requests for excused absences:

(1) ~~Request for excused absences from a scheduled computerized examination. The request must be submitted directly to the computer testing service in accordance with procedures established by the testing service. A request for an excused absence from a computerized an examination shall be denied if the applicant cannot be rescheduled and examined prior to expiration of the applicant's 90 day period of examination eligibility 180 day period allowed for taking the examination without first refileing another complete application with the Commission.~~

(2) ~~Requests for excused absences from a scheduled paper and pencil examination must be submitted directly to the Commission. An applicant whose absence from a scheduled paper and pencil examination is excused may be rescheduled for one of the next two following scheduled examination dates. A request for an excused absence from a scheduled paper and pencil examination received more than 15 days after the examination date shall be denied unless the applicant was unable to file a timely request due to the same circumstances that prevented the applicant from taking the examination. An applicant shall be limited to three excused absences from a paper and pencil examination without filing another application and fee.~~

Authority G.S. 93A-4(b),(d).

21 NCAC 58A .0403 RE-APPLYING FOR EXAMINATION

(a) ~~The license application of an individual found by the Commission to be qualified for the licensing examination shall be immediately canceled upon the occurrence of any of the following events:~~

- ~~(1) the applicant fails to pass a licensing examination;~~
- ~~(2) the applicant fails to appear for and take any examination for which the applicant has been scheduled without having the applicant's examination postponed or absence excused in accordance with Rule .0401(b) and (c) of this Section; or~~
- ~~(3) the applicant allows the 90 day period of eligibility for examination by computer as provided for in Rule .0401(a) of this Section to expire without the applicant taking and passing the examination.~~

~~(b)(a) An individual whose license application has been canceled and whose 180 day examination eligibility period has expired and who wishes to obtain a who wishes to be rescheduled for the real estate license examination must start the licensing process over by submitting a written application to the Commission upon a prescribed form and paying all required fees. re-apply to the Commission by filing a complete license application as described in Rule .0301 of this Subchapter and paying the prescribed application fee. Subsequent examinations shall then be scheduled in accordance with Rule .0401 of this Section. An individual whose license application has been canceled who wishes to be rescheduled for the license examination before the expiration of his or her 180 day examination eligibility period may utilize an abbreviated electronic license application and examination rescheduling procedure by directly contacting the Commission's authorized testing service, paying both the license application fee and the examination fee to the testing service, and following the testing service's established procedures.~~

~~(b) An applicant who fails the license examination shall not be allowed to retake the examination for at least 10 calendar days.~~

Authority G.S. 93A-4(b),(d).

SECTION .0500 - LICENSING

21 NCAC 58A .0502 BUSINESS ENTITIES

(a) Every business entity other than a sole proprietorship shall apply for and obtain from the Commission a firm license prior to engaging in business as a real estate broker. An entity ~~which~~ that changes its business form shall be required to submit a new application immediately upon making the change and to obtain a new license. Incomplete applications shall not be acted upon by the Commission. Application forms for partnerships, corporations, limited liability companies, associations and other business entities required to be licensed as brokers shall be available upon request to the Commission and shall require the applicant to set forth ~~forth~~:

- (1) the name of the ~~entity,~~ entity;
- (2) the name under which the entity will do ~~business,~~ business;

- ~~(3) the type of business entity;~~
- ~~(4) the address of its principal office, office; and a list of all brokers and salespersons associated with the entity.~~
- ~~(5) the entity's NC Secretary of State Identification Number if required to be registered with the Office of the NC Secretary of State;~~
- ~~(6) the name, real estate license number and signature of the proposed principal broker for the proposed firm;~~
- ~~(7) the address of and name of the proposed broker-in-charge for each office where brokerage activities will be conducted, along with a completed broker-in-charge declaration form for each proposed broker-in-charge;~~
- ~~(8) any past criminal conviction of and any pending criminal charge against any principal in the company or any proposed broker-in-charge;~~
- ~~(9) any past revocation, suspension or denial of a business or professional license of any principal in the company or any proposed broker-in-charge;~~
- ~~(10) if a general partnership, a full description of the applicant entity, including a copy of its written partnership agreement or if no written agreement exists, a written description of the rights and duties of the several partners;~~
- ~~(11) if a business entity other than a corporation, limited liability company or partnership, a full description of the organization of the applicant entity, including a copy of its organizational documents evidencing its authority to engage in real estate brokerage;~~
- ~~(12) if a foreign business entity, a certificate of authority to transact business in North Carolina and an executed consent to service of process and pleadings; and~~
- ~~(13) any other information required by this Rule.~~

The Commission also may require the applicant to declare in the license application that the applicant's organizational documents authorize the firm to engage in the real estate business and to submit organizational documents, addresses of affiliated persons and similar information. For purposes of this Paragraph, the term principal shall mean any person or entity owning 10 percent or more of the business entity, or who is an officer, director, manager, member, partner or who holds any other comparable position.

~~(b) The application of any partnership, including a general partnership, limited partnership and limited liability partnership, shall also call for a full description of the organization of the applicant and persons affiliated with the applicant, including a copy of its written partnership agreement or if no written agreement exists, a written description of the rights and duties of the several partners; a copy of any Certificate of Limited Partnership as may be required by law; past conviction of criminal offenses of any general or limited partner past revocation, suspension, or denial of a business or professional license of any general or limited partner; and the name and residence address of each general and limited partner.~~

~~(c) The application of a limited liability company shall also call for a full description of the organization of the applicant and persons affiliated with the applicant, including a copy of its Articles of Organization evidencing its authority to engage in the business of real estate brokerage; past conviction of criminal offenses of any manager or member; past revocation, suspension, or denial of a business or professional license of any manager or member; and the name and residence address of each manager or member.~~

~~(d) The application of a corporation shall also call for a full description of the organization of the applicant and persons affiliated with the applicant, including a copy of its Articles of Incorporation evidencing its authority to engage in the business of real estate brokerage; conviction of criminal offenses of any corporate director, officer, employee, and of any shareholder who owns 10 percent or more of the outstanding shares of any class; past revocation, suspension, or denial of a business or professional license to any director, officer, employee, and of any shareholder who owns 10 percent or more of the outstanding shares of any class; the name and residence address of each director and officer of the corporation; and the name and address of each person, partnership, corporation, or other entity owning ten percent or more of the outstanding shares of any class.~~

~~(e) The application of any other business entity shall also call for a full description of the organization of the applicant and persons affiliated with the applicant, including a copy of its organizational documents evidencing its authority to engage in real estate brokerage; past conviction of criminal offenses of any principal in the company; past revocation, suspension or denial of a business or professional license of any principal; and the name and residence address of each principal. For purposes of this Paragraph, the term principal shall mean any person or entity who owns the business entity to any extent or who is an officer, director, manager, member, partner or who holds any other comparable position.~~

~~(f) A foreign business entity shall further qualify by filing with its application for license a copy of any certificate of authority to transact business in this state issued by the North Carolina Secretary of State which may be required by law and a consent to service of process and pleadings which shall be accompanied by a certified copy of the resolution of the general partners, managers or board of directors authorizing the proper partner, manager or officer to execute said consent.~~

~~(g)(b) After filing a written application with the Commission and upon a showing that at least one principal of said business entity holds a broker license on active status and in good standing and will serve as principal broker of the entity, the entity shall be licensed provided it appears that the applicant entity employs and is directed by personnel possessed of the requisite truthfulness, honesty, and integrity. The principal broker of a partnership of any kind must be a general partner of the partnership, the principal broker of a limited liability company must be a manager of the company, and the principal broker of a corporation must be an officer of the corporation. A licensed business entity may serve as the principal broker of another licensed business entity if the principal broker-entity has as its principal broker a natural person who is himself licensed as a broker. The natural person who is principal broker shall assure the performance of the principal broker's duties with regard to both entities.~~

~~(h)(c) The licensing of a business entity shall not be construed to extend to the licensing of its partners, managers, members, directors, officers, employees or other persons acting for the entity in their individual capacities regardless of whether they are engaged in furthering the business of the licensed entity.~~

~~(i)(d) The principal broker of a business entity shall assume responsibility for:~~

- ~~(1) designating and assuring that there is at all times a broker-in-charge for each office and branch office of the entity at which real estate brokerage activities are conducted;~~
- ~~(2) renewing the real estate broker license of the entity;~~
- ~~(3) retaining the firm's renewal pocket card at the firm and producing it as proof of firm licensure upon request and maintaining a photocopy of the firm license certificate and pocket card at each branch office thereof;~~
- ~~(4) notifying the Commission of any change of business address or trade name of the entity and the registration of any assumed business name adopted by the entity for its use;~~
- ~~(5) notifying the Commission in writing of any change of his or her status as principal broker within ten days following the change;~~
- ~~(6) securing and preserving the transaction and trust account records of the firm whenever there is a change of broker-in-charge at the firm or any office thereof and notifying the Commission if the trust account records are out-of-balance or have not been reconciled as required by Rule .0107 of this Chapter;~~
- ~~(7) retaining and preserving the transaction and trust account records of the firm upon termination of his or her status as principal broker until a new principal broker has been designated with the Commission or, if no new principal broker is designated, for the period of time for which said records are required to be retained by Rule .0108 of this Chapter; and~~
- ~~(8) notifying the Commission if, upon the termination of his status as principal broker, the firm's transaction and trust account records cannot be retained or preserved or if the trust account records are out-of-balance or have not been reconciled as required by Rule .0107(e) of this Chapter.~~

~~(j)(e) Every licensed business entity and every entity applying for licensure shall conform to all the requirements imposed upon it by the North Carolina General Statutes for its continued existence and authority to do business in North Carolina. Failure to conform to such requirements shall be grounds for disciplinary action or denial of the entity's application for licensure. Upon receipt of notice from an entity or agency of this state that a licensed entity has ceased to exist or that its authority to engage in business in this state has been terminated by operation of law, the Commission shall cancel the license of the entity.~~

Authority G.S. 93A-3(c); 93A-4(a),(b),(d).

21 NCAC 58A .0503 LICENSE RENEWAL; PENALTY FOR OPERATING WHILE LICENSE EXPIRED

(a) All real estate licenses issued by the Commission under G.S. 93A, Article 1 shall expire on the 30th day of June following issuance. Any licensee desiring renewal of a license shall apply for renewal within 45 days prior to license expiration by submitting a renewal application on a form prescribed by the Commission and submitting with the application the required renewal fee of ~~forty dollars (\$40.00)~~ ~~forty-five dollars (\$45.00)~~.

(b) Any person desiring to renew his or her license on active status shall, upon the second renewal of such license following initial licensure, and upon each subsequent renewal, have obtained all continuing education required by G.S. 93A-4A and Rule .1702 of this Subchapter.

(c) A person renewing a license on inactive status shall not be required to have obtained any continuing education in order to renew such license; however, in order to subsequently change his or her license from inactive status to active status, the licensee must satisfy the continuing education requirement prescribed in Rule .1703 of this Subchapter.

(d) Any person or firm which engages in the business of a real estate broker or salesperson while his, her, or its license is expired is subject to the penalties prescribed in G.S. 93A.

Authority G.S. 93A-3(c); 93A-4(c),(d); 93A-4A; 93A-6.

21 NCAC 58A .0505 REINSTATEMENT OF EXPIRED LICENSE, REVOKED, SURRENDERED OR SUSPENDED LICENSE

(a) Licenses expired for not more than ~~12 six~~ months may be reinstated upon proper application and payment of ~~the thirty-five dollar (\$35.00) renewal fee plus five dollar (\$5.00) late filing fee, a fifty-five dollar (\$55.00) reinstatement fee.~~ In order to reinstate such license on active status, the applicant shall also present evidence satisfactory to the Commission of having obtained such continuing education as is required by Rule .1703 of this Subchapter to change an inactive license to active status. A person reinstating such a license on inactive status shall not be required to have obtained any continuing education in order to reinstate such license; however, in order to subsequently change his or her reinstated license from inactive status to active status, the licensee must satisfy the continuing education requirement prescribed in Rule .1703 of this Subchapter, and be supervised by a broker-in-charge in compliance with the requirements of Rule .0506 of this Section.

(b) Reinstatement of licenses expired for more than ~~12 six~~ months may be considered upon proper application and payment of ~~a thirty dollar (\$30.00) fee, a fifty-five dollar (\$55.00) reinstatement fee.~~ Applicants must satisfy the Commission that they possess the current knowledge, skills and competence, as well as the truthfulness, honesty and integrity, necessary to function in the real estate business in a manner that protects and serves the public interest. To demonstrate current knowledge, skills and competence, the Commission may require such applicants to complete real estate education or pass the license examination or both.

(c) Reinstatement of a revoked license may be considered upon proper application and payment of a thirty dollar (\$30.00) fee. Applicants must satisfy the same requirements as those prescribed in Paragraph (b) of this Rule for reinstatement of licenses expired for more than ~~12 six~~ months.

(d) Reinstatement of a license surrendered under the provisions of G.S. 93A-6(e) may be considered upon termination of the period of surrender specified in the order approving the surrender and upon proper application and payment of a thirty dollar (\$30.00) fee. Applicants must satisfy the same requirements as those prescribed in Paragraph (b) of this Rule for reinstatement of licenses expired for more than ~~12 six~~ months.

(e) When a license is suspended by the Commission, the suspended license shall be restored at the end of the period of active ~~suspension; however, suspension provided that any applicable license renewal fees that accrued during the time of the suspension are paid by the licensee.~~ ~~In~~ order for the license to be restored on active status, the licensee shall be required to ~~also~~ demonstrate that the licensee has satisfied the continuing education requirement for license activation prescribed by Rule .1703 of this Subchapter and that the licensee is supervised by a broker-in-charge in compliance with the requirements of Rule .0506 of this Section, if applicable.

Authority G.S. 93A-3(c); 93A-4(c),(d); 93A-4A.

SECTION .1700 - MANDATORY CONTINUING EDUCATION

21 NCAC 58A .1702 CONTINUING EDUCATION REQUIREMENT

(a) In order to renew a broker or salesperson license on active status, the person requesting renewal of a license shall, upon the second renewal of such license following initial licensure, and upon each subsequent annual renewal, have completed, within one year preceding license expiration, eight classroom hours of real estate continuing education in courses approved by the Commission as provided in Subchapter 58E. Four of the required eight classroom hours must be obtained each license period by completing a mandatory update course developed annually by the Commission. The remaining four hours must be obtained by completing one or more Commission-approved elective courses described in Rule .0305 of Subchapter 58E. The licensee bears the responsibility for providing, upon request of the Commission, evidence of continuing education course completion satisfactory to the Commission. A licensed salesperson who applies for a broker license after the first renewal of his or her salesperson license must have completed the current mandatory update course and one approved elective course during the license period in which the broker license application is filed.

(b) No continuing education shall be required to renew a broker or salesperson license on inactive status; however, to change a license from inactive status to active status, the licensee must satisfy the continuing education requirement described in Rule .1703 of this Section.

(c) No continuing education shall be required for a licensee who is a member of the North Carolina General Assembly to renew his or her license on active status.

(d) The terms "active status" and "inactive status" are defined in Rule .0504 of this Subchapter. For continuing education purposes, the term "initial licensure" shall include the first time that a license of a particular type is issued to a person, and reinstatement of ~~an expired or a revoked license, license or a license expired for more than six months.~~

Authority G.S. 93A-3(c); 93A-4A.

SUBCHAPTER 58C - REAL ESTATE PRELICENSING EDUCATION

SECTION .0300 - PRE-LICENSING COURSES

21 NCAC 58C .0311 INSTRUCTIONAL DELIVERY METHODS

The principal instructional delivery method utilized in real estate pre-licensing courses must provide for the instructor to interact with students either in person in a traditional classroom setting or through an interactive television system or comparable system which permits continuous mutual audio and visual communication between the instructor and all students and which provides for appropriate monitoring and technical support at each site where the instructor or students are located. The use of media-based instructional delivery systems such as videotape or digital video disc (DVD), remote non-interactive television, computer-based instructional programs or similar systems not involving continuous mutual audio and visual communication between instructor and students may be employed only in a limited manner to enhance or supplement personal teaching by the instructor. No portion of a course may consist of correspondence instruction.

Authority G.S. 93A-3(c); 93A-4(a); 93A-34.

SECTION .0600 - PRE-LICENSING INSTRUCTORS

21 NCAC 58C .0603 APPLICATION AND CRITERIA FOR ORIGINAL APPROVAL

- (a) An individual seeking original approval as a pre-licensing course instructor shall make application on a form prescribed by the Commission. An applicant who is not a resident of North Carolina shall also file with the application a consent to service of process and pleadings. No application fee shall be required. All required information regarding the applicant's qualifications shall be submitted.
- (b) An instructor applicant shall demonstrate that he or she possesses good moral character and the following qualifications or other qualifications found by the Commission to be equivalent to the following qualifications: A current North Carolina real estate broker license; a current continuing education record; three years active full-time experience in general real estate brokerage, including substantial experience in real estate sales, within the previous seven years; 120 classroom hours of real estate education excluding company or franchise in-service sales training; and 60 semester hours of college-level education at an institution accredited by a nationally recognized college accrediting body.
- (c) In addition to the qualification requirements stated in Paragraph (b) of this Rule, an applicant shall also demonstrate completion of an instructor seminar prescribed by the Commission and shall submit a one-hour ~~videotape~~ video recording which depicts the applicant teaching a real estate pre-licensing course topic and which demonstrates that the applicant possesses the basic teaching skills described in Rule .0604 of this Section. The ~~videotape~~ video recording shall comply with the requirements specified in Rule .0605(c) of this Section. An

applicant who is a Commission-approved continuing education update course instructor under Subchapter E, Section .0200 of this Chapter or who holds the Distinguished Real Estate Instructor (DREI) designation granted by the Real Estate Educators Association or an equivalent real estate instructor certification shall be exempt from the requirement to demonstrate satisfactory teaching skills by submission of a ~~videotape~~ digital video disc (DVD) or videotape. An applicant who is qualified under Paragraph (b) of this Rule but who has not satisfied these additional requirements at the time of application shall be approved and granted a six-month grace period to complete these requirements. The approval of any instructor who is granted such six-month period to complete the requirements shall automatically expire on the last day of the period if the instructor has failed to fully satisfy his or her qualification deficiencies and the period has not been extended by the Commission. The Commission may in its discretion extend the six-month period for up to three additional months when the Commission requires more than 30 days to review and act on a submitted ~~videotape~~ video recording, when the expiration date of the period occurs during a course being taught by the instructor, or when the Commission determines that such extension is otherwise warranted by exceptional circumstances which are outside the instructor's control or when failure to extend the grace period could result in harm or substantial inconvenience to students, licensees, or other innocent persons. An individual applying for instructor approval shall be allowed the authorized six-month period to satisfy the requirements stated in this Paragraph only once.

Authority G.S. 93A-4(a),(d); 93A-33; 93A-34.

21 NCAC 58C .0605 REQUEST FOR EXAMINATIONS AND VIDEO RECORDINGS

- (a) Upon request of the Commission, an instructor shall submit to the Commission copies of final course examinations, with answer keys, used in pre-licensing courses taught by the instructor.
- (b) Upon request of the Commission, an instructor must submit to the Commission a ~~videotape~~ video recording which depicts the instructor teaching portions of a pre-licensing course specified by the Commission and which demonstrates that the instructor possesses the basic teaching skills described in Rule .0604 of this Section.
- (c) Any ~~videotape~~ video recording submitted to the Commission in connection with an instructor application must be approximately one hour in length and must depict the instructor teaching one continuous block of instruction on a single topic. Any ~~videotape~~ video recording submitted in connection with an instructor application or in response to a request from the Commission must have been made within 12 months of the date of submission, must be ~~in VHS format~~ recorded either on a digital video disc (DVD) or on a VHS formatted videocassette, must be unedited, must include a label identifying the instructor and dates of the ~~videotaped~~ video-recorded instruction, and must have visual and sound quality sufficient to allow viewers to clearly see and hear the instructor.

Authority G.S. 93A-4(a),(d); 93A-33; 93A-34.

21 NCAC 58C .0608 DENIAL OR WITHDRAWAL OF

APPROVAL

(a) The Commission may deny or withdraw approval of any pre-licensing course instructor upon finding that:

- (1) the instructor or instructor applicant has failed to meet the criteria for approval described in Rule .0603 of this Section or the criteria for renewal of approval described in Rule .0607 of this ~~Section~~ Section at the time of application or at any time during an approval period or has refused or failed to comply with any other provisions of this Subchapter;
- (2) the instructor has made any false statements or presented any ~~false~~ false, incomplete, or incorrect information in connection with an application for approval or renewal of approval;
- (3) the instructor has failed to submit any report, course examination or ~~videotape~~ video recording the instructor is required to submit to the Commission;
- (4) the instructor has provided ~~false~~ false, incomplete, or incorrect information in connection with any report the instructor or a pre-licensing school is required to submit to the Commission;
- (5) the instructor has failed to demonstrate, during the teaching of pre-licensing courses, those effective teaching skills described in Rule .0604 of this Section;
- (6) the instructor has compiled a licensing examination performance record for first-time examination candidates which is below 70 percent passing for the previous annual reporting period; or
- (7) the instructor has been disciplined by the Commission or any other occupational licensing agency in North Carolina or another jurisdiction.

(b) If a licensee who is an approved pre-licensing course instructor engages in any dishonest, fraudulent or improper conduct in connection with the licensee's activities as an instructor, the licensee shall be subject to disciplinary action pursuant to G.S. 93A-6.

Authority G.S. 93A-4(a),(d); 93A-33; 93A-34.

SUBCHAPTER 58E - REAL ESTATE CONTINUING EDUCATION

SECTION .0100 - UPDATE COURSE

21 NCAC 58E .0102 UPDATE COURSE COMPONENT

- (a) To renew a license on active status, a real estate broker or salesperson must complete, within one year preceding license expiration and in addition to satisfying the continuing education elective requirement described in Section .0302 of this Subchapter, a Commission-developed update course consisting of four classroom hours of instruction.
- (b) The Commission shall develop annually an update course which shall be conducted by sponsors approved by the

Commission under this Subchapter. The subject matter of this course shall be determined by the Commission, which shall produce instructor and student materials for use by course sponsors. The Commission shall prepare a completely new course for each one-year period beginning July 1 and ending the next June 30. Sponsors must acquire the Commission-developed course materials and utilize such materials to conduct the update course. The course must be conducted exactly as prescribed by the rules in this Subchapter and the course materials developed by the Commission. All course materials that are developed by the Commission for use in an update course and that are subject to the protection of federal copyright laws are the property of the Commission. Violation of the Commission's copyright with regard to these materials shall be grounds for disciplinary action. Sponsors must provide licensees participating in their classes a copy of the student materials developed by the Commission. With advance approval from the Commission, course sponsors and instructors may make modifications to the update course when the update course is being promoted to and conducted for a group of licensees that specialize in a particular area of real estate brokerage, provided that the modifications relate to the same general subject matter as is addressed in the prescribed update course and the course as modified achieves the same educational objectives as the unmodified course.

(c) Approval of a sponsor to conduct an update course authorizes the sponsor to conduct the update course using an instructor who has been approved by the Commission as an update course instructor under Section .0200 of this Subchapter. The sponsor may conduct the update course at any location as frequently as is desired during the approval period, provided that no courses may be conducted between ~~June 11~~ May 21 and June 30 of any approval period.

Authority G.S. 93A-3(c); 93A-4A.

SECTION .0200 - UPDATE COURSE INSTRUCTORS

21 NCAC 58E .0203 APPLICATION AND CRITERIA FOR ORIGINAL APPROVAL

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

- (b) The applicant must be truthful, honest and of high integrity.
- (c) The applicant must be qualified under one of the following standards:

- (1) Possession of a current North Carolina real estate broker license, a current continuing education record, three years active full-time experience in general real estate brokerage, including substantial experience in real estate sales, within the previous seven years, and 30 classroom hours of real estate education, excluding prelicensing education, within the past three years, such education covering topics which are acceptable under Commission rules for continuing education credit.

(2) Possession of qualifications found by the Commission to be equivalent to the standard stated in Subparagraph (c)(1) of this Rule.

(d) The applicant must possess good teaching skills as demonstrated on a ~~videotape~~ video recording portraying the instructor teaching a live audience. The applicant must submit ~~the videotape~~ the video recording for Commission review ~~a videotape in VHS format~~ on either a digital video disc (DVD) or a VHS formatted videocassette. The ~~videotape~~ video recording must be 45-60 minutes in length and must depict a continuous block of instruction on a single real estate or directly related topic. The ~~videotape~~ video recording must be unedited, must show at least a portion of the audience, and must have visual and sound quality sufficient to enable reviewers to clearly see and hear the instructor. The ~~videotape~~ video recording must have been ~~made~~ recorded within the previous one year. The ~~videotape~~ video recording must demonstrate that the instructor possesses the teaching skills described in Rule .0509 of this Subchapter.

(e) An applicant shall be exempt from qualifying under Paragraphs (c) and (d) of this Rule if he or she is a Commission-approved real estate prelicensing instructor who has satisfied all requirements for an unconditional approval or possesses a current North Carolina real estate broker license, a current continuing education record, and a current designation as a Distinguished Real Estate Instructor (DREI) granted by the Real Estate Educators Association.

Authority G.S. 93A-3(c); 93A-4A.

21 NCAC 58E .0205 DENIAL OR WITHDRAWAL OF APPROVAL

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

- (1) The instructor has made any false statements or presented any ~~false~~ false, incomplete, or incorrect information in connection with an application for approval or renewal of approval;
- (2) The instructor has failed to meet the criteria for approval described in Rule .0203 of this Section at the time of application or at any time during an approval period or has refused or failed to comply with any other provisions of this Subchapter;
- (3) The instructor has failed to demonstrate, during the teaching of update courses, those effective teaching skills described in Rule .0509 of this Subchapter;
- (4) The instructor has provided ~~false~~ false, incomplete, or incorrect information in connection with any reports a course sponsor is required to submit to the Commission; or
- (5) The instructor has been disciplined by the Commission or any other occupational licensing agency in North Carolina or another jurisdiction.

(b) If a licensee who is an approved update course instructor engages in any dishonest, fraudulent or improper conduct in connection with the licensee's activities as an instructor, the licensee shall be subject to disciplinary action pursuant to G.S. 93A-6.

Authority G.S. 93A-3(c); 93A-4A.

21 NCAC 58E .0206 REQUEST FOR A VIDEO RECORDING

Upon the written request of the Commission, an approved update course instructor must submit to the Commission, a ~~videotape~~ video recording depicting the instructor teaching the update course. The ~~videotape~~ video recording must have been ~~made~~ recorded within 12 months of the date of submission, must be ~~in VHS format~~ recorded either on a digital video disc (DVD) or on a VHS formatted videocassette, must include a label which clearly identifies the instructor and the date of the ~~videotaped~~ video-recorded presentation, and must conform to technical specifications set forth in Rule .0203(d) of this Section.

Authority G.S. 93A-3(c); 93A-4A.

SECTION .0300 - ELECTIVE COURSES

21 NCAC 58E .0302 ELECTIVE COURSE COMPONENT

(a) To renew a license on active status, a real estate broker or salesperson must complete, within one year preceding license expiration and in addition to satisfying the continuing education mandatory update course requirement described in Rule .0102 of this Subchapter, four classroom hours of instruction in one or more Commission-approved elective courses.

(b) Approval of an elective course includes approval of the sponsor and instructor(s) as well as the course itself. Such approval authorizes the sponsor to conduct the approved course using the instructor(s) who have been found by the Commission to satisfy the instructor requirements set forth in Rule .0306 of this Section. The sponsor may conduct the course at any location as frequently as is desired during the approval period, provided, however, the sponsor may not conduct any session of an approved course for real estate continuing education purposes between ~~June 11~~ May 21 and June 30, inclusive, of any approval period.

(c) The sponsor of an approved "distance education" elective course, as defined in Rule .0310 of this Subchapter, shall not permit students to register for any such course between ~~June 11~~ May 21 and June 30, inclusive, of any approval period. The sponsor of any such distance education course shall require students registering for any such course to complete the course within 30 days of the date of registration for the course or the date the student is provided the course materials and permitted to begin work, whichever is the later date, provided that the deadline for course completion in any approval period shall not be later than ~~June 15~~ May 20 of that approval period. The sponsor shall advise all students registering for a distance education course, prior to accepting payment of any course fees, of the deadlines for course completion.

Authority G.S. 93A-3(c); 93A-4A.

21 NCAC 58E .0304 CRITERIA FOR ELECTIVE COURSE APPROVAL

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

- (1) The applicant must submit all information required by the Commission and pay the application fee, if applicable.
- (2) The applicant must satisfy the requirements of Section .0400 of this Subchapter relating to the qualifications or eligibility of course sponsors.
- (3) The subject matter of the course must satisfy the elective course subject matter requirements set forth in Rule .0305 of this Section and all information to be presented in the course must be current and accurate.
- (4) The course must involve a minimum of four classroom hours of instruction on acceptable subject matter. A classroom hour consists of 50 minutes of instruction and 10 minutes of break time.
- (5) The applicant and the continuing education coordinator required by Rule .0405 of this Subchapter must be truthful, honest and of high integrity. In this regard, the Commission may consider the reputation and character of any owner, officer and director of any corporation, association or organization applying for sponsor approval.
- (6) The proposed instructor(s) for the course must possess the qualifications described in Rule .0306 of this Section.
- (7) The instructional delivery methods to be utilized in the course must either involve live instruction in a traditional classroom setting or comply with the requirements described in Rule .0310 of this Section.
- (8) The applicant must submit an instructor guide that includes:
 - (a) a detailed course outline,
 - (b) the amount of time to be devoted to each major topic and to breaks,
 - (c) the learning objective(s) for each major topic, and
 - (d) the instructional methods and instructional aids that will be utilized in the course. The proposed time allotments must be appropriate for the proposed subject matter to be taught. Unless the applicant can demonstrate that straight lecture is the most effective instructional method for the course, the instructor guide must provide for the use of an appropriate variety of instructional methods and instructional aids intended to enhance student attentiveness and learning. Examples of instructional methods and instructional aids that may be appropriate include, but are not limited to, class discussion, role-playing, in-class work assignments, overhead transparencies and ~~videotape~~ video recordings.
- (9) The course must include handout materials for students unless the applicant can demonstrate

that such materials are either inappropriate or unnecessary for the course. Such materials must be current, accurate, grammatically correct, logically organized and produced in a manner that reflects reasonable quality.

- (10) Either the instructor guide or the student materials must describe, in narrative form, the details of the substantive information to be presented in the course. The substantive information to be presented must be provided in sufficient detail to demonstrate that the information is current, accurate, complete, and otherwise appropriate.

- (11) If an applicant proposes to use copyrighted materials in the course, such materials must be used in a form approved by the copyright holder. If any copyrighted material is to be duplicated by the applicant for use in the course, the sponsor must have the specific permission of the copyright holder.

(b) Applicants requesting approval of distance education courses must also comply with the requirements described in Rule .0310 of this Section.

Authority G.S. 93A-3(c); 93A-4A.

21 NCAC 58E .0308 REQUEST FOR A VIDEO RECORDING

Upon the written request of the Commission, the sponsor of an approved elective course must submit to the Commission a ~~videotape~~ video recording depicting the course being taught by a particular instructor designated by the Commission. The ~~videotape~~ video must have been ~~made~~ recorded within 12 months of the date of submission, must be ~~in VHS format~~, recorded either on a digital video disc (DVD) or on a VHS formatted videocassette, must include a label which clearly identifies the instructor and the date of the ~~videotaped~~ video-recorded presentation, and must conform to technical specifications set forth in Rule .0203(d) of this Subchapter.

Authority G.S. 93A-3(c); 93A-4A.

SECTION .0400 - GENERAL SPONSOR REQUIREMENTS

21 NCAC 58E .0406 COURSE COMPLETION REPORTING

(a) Course sponsors must prepare and submit to the Commission reports verifying completion of a continuing education course for each licensee who satisfactorily completes the course according to the criteria in 21 NCAC 58A .1705 and who desires continuing education credit for the course. Such reports shall include students' names, students' license numbers, course date, sponsor and course codes and course information presented in the format prescribed by the Commission, and sponsors will be held accountable for the completeness and accuracy of all information in such reports. Such reports shall be transmitted electronically via the Internet, provided on a computer disk, or provided in some other manner acceptable to the Commission that permits the Commission to electronically post the information on course completion to the Commission's

computer records. Sponsors must submit these reports to the Commission in a manner that will assure receipt by the Commission within ~~fifteen~~10 calendar days following the ~~course, course, but in no case later than June 15 of any approval period for courses conducted during that approval period, provided that the last reporting date shall be June 20 of any approval period for distance education courses where students registered for the courses between June 1 and June 10, inclusive of that approval period.~~

(b) At the request of the Commission, course sponsors must provide licensees enrolled in each continuing education course an opportunity to complete an evaluation of each approved continuing education course on a form provided by the Commission. Sponsors must submit the completed evaluation forms to the Commission with the reports verifying completion of a continuing education course.

(c) Course sponsors shall provide each licensee who satisfactorily completes an approved continuing education course according to the criteria in 21 NCAC 58A .1705 a course completion certificate on a form provided by the Commission. Sponsors must provide the certificates to licensees within ~~fifteen~~10 calendar days following the ~~course, course, but in no case later than June 15 for any course completed prior to that date.~~ The certificate is to be retained by the licensee as his or her proof of having completed the course.

(d) When a licensee in attendance at a continuing education course does not comply with the student participation standards, the course sponsor shall advise the Commission of this matter in writing at the time reports verifying completion of continuing education for the course are submitted. A sponsor who determines that a licensee failed to comply with either the Commission's attendance or student participation standards shall not provide the licensee with a course completion certificate nor shall the sponsor include the licensee's name on the reports verifying completion of continuing education.

(e) Notwithstanding the provisions of Paragraphs (a) and (c) of this Rule, approved course sponsors who are national professional trade organizations and who conduct Commission-approved continuing education elective courses out of state shall not be obligated to submit reports verifying completion of continuing education courses on computer disk or by electronic means, provided that such sponsors submit to the Commission a roster which includes the names and license numbers of North Carolina licensees who completed the course in compliance with the criteria in 21 NCAC 58A .1705 and who desire continuing education credit for the course. A separate roster must be submitted for each class session and must be accompanied by a five dollar (\$5.00) per student fee, payable to the North Carolina Real Estate Commission. Rosters must be submitted in a manner which assures receipt by the Commission within 15 calendar days following the course, but not later than the last course reporting dates for an approval period specified in Paragraph (a) of this Rule. Such sponsors may also provide each licensee who completes an approved course in compliance with the criteria in 21 NCAC 58A .1705 a sponsor-developed course completion certificate in place of a certificate on a form provided by the Commission. Sponsors must provide the certificates to licensees within fifteen calendar days following the course.

Authority G.S. 93A-3(c); 93A-4A.

21 NCAC 58E .0411 RENEWAL OF COURSE AND SPONSOR APPROVAL

(a) Commission approval of all continuing education elective courses and update course sponsors expires on the next June 30 following the date of issuance. In order to assure continuous approval, applications for renewal of Commission approval, accompanied by the prescribed renewal fee, must be filed on a form prescribed by the Commission annually on or before April 30. Any incomplete application for renewal of continuing education course and sponsor approval received on or before April 30 which is not completed within 10 days of notice of the deficiency, as well as any renewal application received after April 30, shall not be accepted and the sponsor will have to file an application for original approval on or after July 1 in order to be reapproved. Applicants for renewal of approval must satisfy the criteria for original approval in order to renew their approval. When the Commission issues original course or sponsor approval with an effective date of approval between April 1 and ~~June 10~~May 20, the deadline for submission of applications for renewal of such newly approved sponsor or course shall be ~~June 10~~May 20 of the year in which the original approval is issued.

(b) The fee for renewal of Commission approval shall be fifty dollars (\$50.00) for each update course sponsor and for each elective course, provided that no fee is required for course sponsors that are exempted from original application fees. The fee shall be paid by check payable to the North Carolina Real Estate Commission and is nonrefundable.

Authority G.S. 93A-3(c); 93A-4A.

21 NCAC 58E .0412 DENIAL OR WITHDRAWAL OF APPROVAL

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

- (1) the course sponsor has made any false statements or presented any ~~false~~false, incomplete, or incorrect information in connection with an application for course or sponsor approval or renewal of such approval;
- (2) the course sponsor or any official or instructor in the employ of the course sponsor has refused or failed to comply with any of the provisions of this Subchapter;
- (3) the course sponsor or any official or instructor in the employ of the course sponsor has provided ~~false~~false, incomplete, or incorrect information in connection with any reports the course sponsor is required to submit to the Commission;
- (4) the course sponsor has engaged in a pattern of consistently canceling scheduled courses;
- (5) the course sponsor has provided to the Commission in payment for required fees a check which was dishonored by a bank;
- (6) an instructor in the employ of the course sponsor fails to conduct approved courses in a manner that demonstrates possession of the teaching skills described in Rule .0509 of this Subchapter;
- (7) any court of competent jurisdiction has found the course sponsor or any official or instructor

in the employ of the course sponsor to have violated, in connection with the offering of continuing education courses, any applicable federal or state law or regulation prohibiting discrimination on the basis of disability, requiring places of public accommodation to be in compliance with prescribed accessibility standards, or requiring that courses related to licensing or certification for professional or trade purposes be offered in a place and manner accessible to persons with disabilities;

(8)

the course sponsor or any official or instructor in the employ of the course sponsor has been disciplined by the Commission or any other occupational licensing agency in North Carolina or another jurisdiction; or

(9)

the course sponsor or any official or instructor in the employ of the course sponsor has collected money from licensees for a continuing education course, but refuses or fails to provide the promised instruction.

(b) If a licensee who is an approved course sponsor or an instructor in the employ of an approved course sponsor engages in any dishonest, fraudulent or improper conduct in connection with the licensee's activities as a course sponsor or instructor, the licensee shall be subject to disciplinary action pursuant to G.S. 93A-6.

History Note: Authority G.S. 93A-3(c); 93A-4A;

SECTION .0500 - COURSE OPERATIONAL REQUIREMENTS

21 NCAC 58E .0510 MONITORING ATTENDANCE

(a) Sponsors and instructors must strictly monitor attendance for the duration of each class session to assure that all students reported as satisfactorily completing a course according to the criteria in 21 NCAC 58A .1705 have attended at least 90 percent of the scheduled classroom hours. Students shall not be admitted to a class session after 10 percent of the scheduled classroom hours have been conducted. Students shall not be allowed to sign a course completion card, shall not be issued a course completion certificate, and shall not be reported to the Commission as having completed a course unless the student fully satisfies the attendance requirement. Sponsors and instructors may not make any exceptions to the attendance requirement for any reason.

(b) Sponsors must assure that adequate personnel, in addition to the instructor, are present during all class sessions to assist the instructor in monitoring attendance and performing the necessary administrative tasks associated with conducting a course. A minimum of one person, including the instructor, for every 50 students registered for a class session shall be utilized for this purpose.

Authority G.S. 93A-3(c); 93A-4A.

TITLE 25 – OFFICE OF STATE PERSONNEL

Notice is hereby given in accordance with G.S. 150B-21.2 that the State Personnel Commission intends to amend the rules cited as 25 NCAC 01D .0518, .1401-.1402, .1501-.1502, .1504; 01I .2005 and repeal the rules cited as 25 NCAC 01D .1503, .2401-.2404.

Proposed Effective Date: February 1, 2004

Public Hearing:

Date: November 5, 2003

Time: 10:00 a.m.

Location: Third Floor Conference Room, Administration Building, 116 W. Jones St., Raleigh, NC

Reason for Proposed Action:

25 NCAC 01D .1401-.1402, .1501-.1504, .2401-.2404 - A review of labor market rates for some supplemental compensation policies has revealed that the current rates for some occupations are out of date. This has led us to make exceptions to these policies, particularly in the medical occupations. These include: On-Call Compensation, Emergency Callback, and Shift Pay. Thus we are proposing that the current rules be revised in order to allow the Office of State Personnel to establish the rates based on document survey data of prevailing practices in the applicable labor market.

25 NCAC 01D .0518; 01I .2005 – These Rules are proposed to be amended in order to simplify the process. The proposed revision does not change the essence of the rule, i.e. if an employee fails to come to work for three days, it can be considered a voluntary resignation. The current rule, however, has language that states that an employer should make reasonable efforts to locate the employee and find out if they are intending to return to work. That creates a lot of problems in that it leads to debate as to the extent one must go to satisfy the "reasonable efforts" requirement and whether making contact with the employee means that they can no longer be separated under this Rule. It leaves managers and HR staff wondering whether enough has been done and whether they have complied with the policy. This is especially difficult when dealing with an employee who goes to great lengths to avoid being contacted by their employer.

Procedure by which a person can object to the agency on a proposed rule: 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. Objections may be received by mail, delivery service, hand delivery or facsimile.

Comment Procedures: Comments from the public shall be directed to Ms. Peggy Oliver, 1331 Mail Service Center, Raleigh, NC 27699-1331, (919) 733-7108, fax (919) 715-9750, and email poliver@ncosp.net.

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** 25 NCAC 01D .1504
- Local**
- Substantive** (≥\$3,000,000)
- None** 25 NCAC 01D .0518, .1401-.1402, .1501-.1503, .2401-.2404; 01I.2005

CHAPTER 01 - OFFICE OF STATE PERSONNEL

SUBCHAPTER 01D – COMPENSATION

SECTION .0500 - SEPARATION

25 NCAC 01D .0518 VOLUNTARY RESIGNATION WITHOUT NOTICE

~~An employee who is absent from work and does not contact the employer for three consecutive scheduled workdays may be separated from employment as a voluntary resignation. An employee voluntarily terminates employment with the state by failing to come to work without giving written or verbal notice to the employing agency. Such a failure shall be deemed to be a voluntary resignation from employment without notice when the employee is absent without approved leave for a period of at least three consecutive, scheduled work days. Separation pursuant to this Rule should not occur until the employing agency has undertaken reasonable efforts to locate the employee and determine when or if the employee is intending to return to work. This provision also applies when the employee is absent for at least three consecutive, scheduled work days and does not report in to the appropriate supervisory personnel on a regular basis satisfactory to the employing agency. Such a separation is a voluntary separation from state employment and The separation creates no right of grievance or appeal pursuant to the State Personnel Act (G.S. Chapter 126).~~

Authority G.S. 126-4(7a).

SECTION .1400 - SHIFT PREMIUM PAY

25 NCAC 01D .1401 PURPOSE

~~The State shall provide additional compensation for non-medically related employees through salary grade 69, for all employees in the position of Ferry Captain II in salary grade 70, and for medically related employees through salary grade 75~~

~~who are regularly scheduled to work on either an evening or the second or third shift, or on a weekend shift for certain classes when determined necessary to be competitive with the labor market, as follows:~~

~~(1) An employee with a permanent, probationary, trainee or time-limited appointment, who works on a regular recurring basis in a class that is eligible approved for shift premium pay, shall receive premium pay for all hours designated as eligible, in a shift worked in which more than half of the scheduled working hours occur between 4:00 p.m. and 8:00 a.m. on a regular recurring basis.~~

~~(Exception: Employees in medically related occupations who have a regularly recurring work schedule in excess of 8 hours each day shall be paid shift premium pay for the hours actually worked between 4:00 p.m. and 8:00 a.m., but only when determined necessary for classes to be competitive with relevant labor markets.)~~

~~Interpretation: "Regularly recurring" shall be interpreted to mean a position that requires a daily schedule that is repeated at specified intervals for an indefinite period of time. In addition, an employee required to substitute in a position because of vacancy or the incumbent's absence that is eligible for shift premium shall receive such payment for time worked in that position. Shift premium pay shall not be paid to employees temporarily placed on a shift or to employees temporarily employed to work on a shift that normally receives such pay.~~

- ~~(2) Employees shall not receive shift premium pay for hours not actually worked. This exclusion includes such time periods as vacation leave, holidays, sick leave, jury duty, and military leave.~~
- ~~(3) Shift premium pay shall be granted in addition to any other premium pay to which the employee may be entitled, such as holiday pay.~~
- ~~(4) Shift premium pay is not considered as a part of annual base pay for classification and pay purposes, nor is it to be recorded in personnel records as a part of annual base salary. However, shift premium pay must be included in the calculation of the regular hourly rate of pay for the purposes of computing overtime.~~
- ~~(5) Split Shifts. An employee working a regularly recurring split shift shall receive premium pay in accordance with this Rule if more than half of the hours occur between 4:00 p.m. and 8:00 a.m. If, however, only half or less of the hours are in the stated period, the employee shall receive shift premium pay only for the actual hours worked between 4:00 p.m. and 8:00 a.m.~~

Authority G.S. 126-4; S.L. 1987, c. 738, s. 9; S.L. 1988, c. 1086, s. 100.

25 NCAC 01D .1402 CLASSES ELIGIBLE AND RATES OF SHIFT PREMIUM PAY

~~The rate of shift premium pay shall be 10 percent of the regular hourly salary rate. The State Personnel Commission, based on documented survey data of prevailing practices in the relevant labor market, shall determine:~~

- ~~(1) the classes eligible for shift premium pay;~~

- (2) the hours eligible for shift premium pay; and
- (3) the amount of shift premium pay.

Authority G.S. 126-4.

SECTION .1500 – ON-CALL/EMERGENCY CALL-BACK PAY COMPENSATION

25 NCAC 01D .1501 POLICY

(a) It is a policy of the state to provide additional compensation ~~for to~~ employees who are required to serve in on-call status and who are called back to work or who must respond from home via telephone/computer, respond to an emergency "call-back" in order to perform necessary work at a time other than during the employee's regularly scheduled hours of work. The state recognizes that such call back usually results in added travel expense and inconvenience for the employee.

(b) An employee in a position designated for emergency call-back or on-call pay and who is called in to work before or after his scheduled hours of work or on non-work days or is placed in on-call status shall be allowed compensatory time off or overtime pay, as the facts in each case would require. ~~Time on call back is determined from the time the employee is notified to return to work until the time the work is completed. Should the employee not depart immediately to report for emergency call back, management shall determine the reasonable time for travel that should be considered compensable. Employees are guaranteed compensation for a minimum of two hours for each occasion in which a call back is made after having left the regular work station. If the time on call back is more than two hours, the employee shall be compensated for the actual time on call back.~~

Authority G.S. 126-4.

25 NCAC 01D .1502 APPLICATION

It is intended that this policy apply to employees in technical, clinical and sub-professional classes. For example, these classes include ~~employees who ordinarily have regular assigned work schedules with little or no latitude on their part to vary the time of day during which they work.~~

Agency management shall select the job classes and/or individual positions that are subject to the policy and submit a list to the agency personnel director for approval. The agency personnel director will consult with the Office of State Personnel on final approval of on-call and/or emergency callback classes/positions.

Authority G.S. 126-4.

25 NCAC 01D .1503 ADMINISTRATIVE OR EXECUTIVE EMPLOYEES

The administrative or executive employee is ordinarily expected to return to work at any necessary time. In practice, an administrator is considered to be on call for possible return to work 24 hours a day. Some employees, particularly professionals, may be permitted to set their own schedules to accomplish their duties and by choice may return to work at a time other than the normal working hours. For this group of employees, the work requirements and practices were taken into consideration in establishing an appropriate base salary.

However, for this area of employment, the intent of the policy would not be violated if an agency head determined that the specific working conditions make the application of the policy justified. Any compensation would always be on a straight time basis.

Authority G.S. 126-4.

25 NCAC 01D .1504 COMPENSATORY TIME AND CASH PAYMENT: INCLUDING OVERTIME

(a) ~~If an employee is on call back 1 1/2 hours, he/she is credited with two hours. The Office of State Personnel shall determine the amount of emergency callback and on-call compensation based on documented survey data of prevailing practices in the applicable labor market. The rates shall be reported to the State Personnel Commission.~~

(b) If time on call back exceeds the minimum approved two hours, the employee shall receive compensation for the exact amount of time elapsed. Compensation may be compensatory time off or ~~overtime~~ pay on either a straight-time or time and one-half basis whichever is applicable.

(c) ~~An employee is not eligible for the two hours call back pay if it is necessary to continue work following the end of his regularly scheduled hours of work. However additional hours over 40 shall be compensated for in accordance with the overtime policy. FLSA exempt employees normally do not receive additional compensation for emergency callback. However, the agency head may determine that specific working or market conditions justify application of the policy. When recommended, the Office of State Personnel shall determine if the position is eligible and the appropriate compensation based on documented survey data of prevailing practices in the applicable labor market.~~

(d) ~~If an employee receiving call back pay is also eligible for shift or holiday pay, he shall receive such pay in addition to call-back pay.~~

(e) ~~Call-back pay is not considered as a part of annual base pay for classification and pay purposes nor is it to be recorded in personnel records as a part of annual base salary.~~

(f) ~~Should an employee separate from state service prior to receiving compensatory time off due under this policy, such accumulated time shall be paid in cash.~~

Authority G.S. 126-4.

SECTION .2400 - ON CALL COMPENSATION

25 NCAC 01D .2401 ELIGIBLE EMPLOYEES

(a) ~~Certain classes of positions are eligible for on-call compensation when the employee is required to be on call and report for work upon contact via pager or telephone in the event of an emergency. These classes are as follows:~~

- (1) ~~Employees in medical or paramedical positions.~~
- (2) ~~Employees in positions involved in the repair of facilities or mechanical equipment necessary to protect State property and prevent conditions which have an adverse effect on the health or well-being of patients, inmates, or students, such as failures in the heating~~

PROPOSED RULES

system, water supply, electricity, and other failures associated with building appendages.

- (3) ~~Employees in criminal justice positions which provide electronic house arrest immediate response services, in case of an offender's violation that jeopardizes the public's safety and may warrant emergency response by duly trained personnel.~~

(b) ~~Management is responsible for designating the individuals who are to be placed on call and submit a list of them to the agency personnel officer for approval. The provisions of this Rule shall not apply to administrative or management personnel.~~

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

25 NCAC 01D .2402 RATE OF PAY/COMPENSATORY TIME

(a) ~~The plan of compensation shown in this Paragraph shall apply.~~

On-Call Hours	Compensatory Time Earned	or	Payment Amount
8	1 hour		\$.94 per hour (\$7.52 per shift)

~~If this compensation plan is not applicable to the work schedule, the compensatory time earned or payment amount shall be computed on a pro rata basis. (Example: A 12-hour shift would be 12 hours compensatory time or \$11.28 payment. An entire week (128 hours) would be 16 hours of compensatory time or \$120.32 Payment.)~~

(b) ~~Compensatory time shall be used whenever possible. Compensatory time is not accumulative beyond a 12 month period. For this reason, an employee shall be required to take the time off as soon as possible after it is accumulated. If the time off is not taken within 12 months, or if an employee separates or transfers to another agency before it is taken, the employee shall be paid for the accumulated time.~~

(c) ~~If funds are available and cash payment is necessary, it will be paid on a special payroll. Instructions for agencies under Central Payroll will be issued by the State Controller's Office.~~

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

25 NCAC 01D .2403 EMERGENCY CALL-BACK PAY

(a) ~~If an employee is called back to work, emergency call back time provisions apply. (Reference Section .1500, Emergency Call-Back Pay, of this Subchapter.)~~

(b) ~~If emergency situations can be dealt with properly under the general provisions of emergency call back pay, the on-call provision shall not be used.~~

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

25 NCAC 01D .2404 OVERTIME

~~On-call time is not considered as working time for overtime purposes. The employee is free to engage in personal pursuits during any portion of the on-call shift. However, if a cash payment is made for being on call, it must be included in the regular hourly rate when computing overtime payments.~~

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

SUBCHAPTER 01I - SERVICE TO LOCAL GOVERNMENT

SECTION .2000 - APPOINTMENT AND SEPARATION

25 NCAC 01I .2005 SEPARATION

Separation occurs when an employee leaves the payroll for reasons indicated in this Rule or because of death. Employees who have acquired permanent status will not be subject to involuntary separation or suspension except for cause or reduction-in-force.

- (1) Resignation or Retirement. An employee may terminate his services with the agency by submitting a resignation or request for

retirement to the appointing authority at least two weeks prior to his last day of work.

- (2) Dismissal. Dismissal is involuntary separation for cause, and shall be made in accordance with the provisions of 25 NCAC 1I.2300 Disciplinary Action: Suspension, Dismissal and Appeals.
- (3) Reduction-in-Force. For reasons of curtailment of work, reorganization, or lack of funds the appointing authority may separate employees. Retention of employees in classes affected shall be based on systematic consideration of type of appointment, length of service, and relative efficiency. No permanent employee shall be separated while there are emergency, intermittent, temporary, probationary, or trainee employees in their first six months of the trainee progression serving in the same or related class, unless the permanent employee is not willing to transfer to the position held by the non-permanent employee, or the permanent employee does not have the knowledge and skills required to perform the work of the alternate position within a reasonable period of orientation and training given any new employee. A permanent employee who was separated by reduction-in-force may be reinstated at any time in the future that suitable employment becomes available. The employer may choose to offer employment with a probationary appointment. The employee must meet the current minimum education and experience

standard for the class to which he is being appointed.

- (4) Voluntary Resignation Without Notice. ~~Any~~ An employee who is absent from work and does not contact the employer for three consecutive workdays may be separated from employment as a voluntary resignation. ~~voluntarily terminates employment by failing to report to work without giving written or verbal notice to the employing agency. Such a failure shall be deemed to be a voluntary resignation from employment without notice when the employee is absent without approved leave for a period of at least three consecutive, scheduled workdays. Separation pursuant to this policy shall not occur until the employing agency has undertaken reasonable efforts, to locate the employee and determine when or if the employee is intending to return to work. This provision also applies when the employee is absent for at least three consecutive, scheduled workdays, has been instructed verbally or in writing of a specific manner of reporting by management, and does not report in to the appropriate supervisory personnel on a regular basis satisfactory to the employing agency. voluntarily terminates employment by failing to report to work without giving written or verbal notice to the employing agency. Such a failure shall be deemed to be a voluntary resignation from employment without notice when the employee is absent without approved leave for a period of at least three consecutive, scheduled workdays. Separation pursuant to this policy shall not occur until the employing agency has undertaken reasonable efforts, to locate the employee and determine when or if the employee is intending to return to work. This provision also applies when the employee is absent for at least three consecutive, scheduled workdays, has been instructed verbally or in writing of a specific manner of reporting by management, and does not report in to the appropriate supervisory personnel on a regular basis satisfactory to the employing agency. Such separations as described in this Subparagraph are voluntary separations from agency employment and as described in this Subparagraph are voluntary separations from agency employment and~~ create no right of grievance or appeal pursuant to the State Personnel Act (G.S. Chapter 126).

- (5) Separation Due to Unavailability When Leave is Exhausted. An employee may be separated

Authority G.S. 126-4.

on the basis of unavailability when the employee becomes or remains unavailable for work after all applicable leave credits and benefits have been exhausted and agency management does not grant a leave without pay for reasons deemed sufficient by the agency. Such reasons include but are not limited to, lack of suitable temporary assistance, criticality of the position, budgetary constraints. Such a separation is an involuntary separation, and not a disciplinary dismissal as described in G.S. 126-35, and may be grieved or appealed. Prior to separation the employing agency shall meet with or at least notify the employee in writing, of the proposed separation, the efforts undertaken to avoid separation and why the efforts were unsuccessful. The employee shall have the opportunity in this meeting or in writing to propose alternative methods of accommodation. If the proposed accommodations are not possible, the agency must notify the employee of that fact and the proposed date of separation. If the proposed accommodations or alternative accommodations are being reviewed, the agency must notify the employee that such accommodations are under review and give the employee a projected date for a decision on this. Involuntary separation pursuant to this policy may be grieved or appealed. The employing agency must also give the employee a letter of separation stating the specific reasons for the separation and setting forth the employee's right of appeal. The burden of proof on the agency in the event of a grievance is not just cause as that term exists in G.S. 126-35. Rather, the agency's burden is to prove that the employee was unavailable and that the agency considered the employee's proposed accommodations for his unavailability and was unable to make the proposed accommodations or other reasonable accommodations. Agencies shall make efforts to place an employee so separated pursuant to this policy Rule when the employee becomes available, if the employee desires, consistent with other employment priorities and rights. However, there is no mandatory requirement placed on an agency to secure an employee, separated under this Rule, a position in any agency.

*This Section includes the Register Notice citation to Rules approved by the Rules Review Commission (RRC) at its meeting August 21, 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	71U	.0206*	17:16 NCR
10A	NCAC	71U	.0213*	17:16 NCR
12	NCAC	09C	.0401*	17:20 NCR
12	NCAC	09E	.0103*	17:20 NCR
12	NCAC	09G	.0102	17:20 NCR
12	NCAC	09G	.0202-.0204	17:20 NCR
12	NCAC	09G	.0205-.0206*	17:20 NCR
12	NCAC	09G	.0301	17:20 NCR
12	NCAC	09G	.0302-.0304*	17:20 NCR
12	NCAC	09G	.0306*	17:20 NCR
12	NCAC	09G	.0310	17:20 NCR
12	NCAC	09G	.0315	17:20 NCR
12	NCAC	09G	.0411-.0413*	17:20 NCR
12	NCAC	09G	.0415-.0416*	17:20 NCR
12	NCAC	09G	.0504*	17:20 NCR
12	NCAC	09G	.0602*	17:20 NCR
13	NCAC	07F	.0101	not required G.S. 150B-21.5(c)
15A	NCAC	10C	.0211*	17:12 NCR
19A	NCAC	02E	.1201-.1202	17:20 NCR
19A	NCAC	02E	.1203*	17:20 NCR
19A	NCAC	02E	.1205	17:20 NCR
21	NCAC	16Q	.0402-.0403*	17:20 NCR
21	NCAC	16Q	.0501*	17:20 NCR
21	NCAC	16Q	.0503*	17:20 NCR
21	NCAC	16Q	.0602*	17:20 NCR
21	NCAC	29	.0102*	17:16 NCR
21	NCAC	29	.0202-.0204*	17:16 NCR
21	NCAC	29	.0504*	17:16 NCR

TITLE 10A - DEPARTMENT OF HEALTH & HUMAN SERVICES

10A NCAC 71U.0206 SIMPLIFIED UTILITY ALLOWANCES

(a) The Division of Social Services shall establish simplified utility allowances for use in calculating shelter costs of those households which incur utility costs separate and apart from their rent or mortgage payments. The simplified utility allowances shall be developed in conjunction with data gathered through quality control sampling and surveys of utility company rates. Once the Division gathers the sampling information and the average costs information from utilities companies, the

average amounts are calculated to determine a statewide average for each type of utility cost for standard, basic and telephone utility allowances. The standard and basic utility allowances are increased by household size. The amount of increase or decrease is calculated from the average statewide increase in utility costs per household size from the previous year.

(b) Types of utility allowances:

- (1) Standard utility allowance includes the cost of heating and cooling (air conditioning), cooking fuel, electricity, and the basic service fee for one telephone, water, sewerage, and garbage collection.
- (2) Basic utility allowance includes at least two non-heating or non-cooling utility expenses,

such as cooking fuel, electricity, and the basic service fee for one telephone, water, sewerage, and garbage collection.

- (3) Telephone utility allowance includes the basic telephone services, fees and applicable taxes.

(c) Simplified utility allowances are binding upon the household for a period of 12 months following certification (initial or recertification). If the household moves before the expiration of the 12 month period and becomes ineligible for the standard, basic, or telephone allowance, the agency shall make the appropriate change.

(d) The Division shall review the simplified utility allowances annually and adjust the allowance as necessary to reflect changes in the cost of the utilities. The annual update shall be effected on October 1 of each calendar year to coincide with annual, federal adjustments of the combined dependent care and shelter deduction. The annual update shall be based on information published by the North Carolina Department of Administration, Office of State Energy. The amount of the utility allowances shall not vary seasonally.

(e) The Division shall vary its standard and basic utility allowances by household size, e.g., a different standard amount for each household size or range of household sizes.

(f) The basic utility allowance shall be used by a household living in a public housing unit which charges the household only for excess utility costs provided the household is responsible for at least two non-heating or non-cooling utility expenses.

(g) The standard utility allowance shall be used when a household is billed for a heating or cooling component not totally paid by a vendor payment.

(h) Multiple households living in the same residence and sharing utility costs are allowed the standard or basic utility allowance for their household size.

History Note: Authority G.S. 108A-51; 143B-153; 7 C.F.R. 273.9(d)(6); 7 U.S.C. 2011-2027; P.L. 107-171; Eff. April 1, 1982; Amended Eff. March 1, 1990; July 1, 1984; Temporary Amendment Eff. February 1, 2003; Amended Eff. August 1, 2004.

10A NCAC 71U.0213 SEMI-ANNUAL REPORTING

(a) The county department shall require households with earned or unearned income that are assigned six-month certification periods to report only changes in the amount of gross monthly income that result in their gross monthly income exceeding 130 percent of the monthly poverty income guideline for their household size. The agency shall assign a certification period of six months to all households subject to semi-annual reporting requirements. The following households are excluded from semi-annual reporting requirements:

- (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 and/or SSI;
- (6) Households with no income;
- (7) Households receiving transitional Food Stamp benefits; or
- (8) Any other household not subject to semi-annual reporting requirements as determined by the United States Department of Agriculture, Food and Nutrition Services.

(b) Households with income and not excluded in Paragraph (a) of this Rule must not be required to report changes in household circumstances during the certification period for the following:

- (1) Changes in sources or amounts of gross monthly income unless the change results in the gross monthly income exceeding 130 percent of the monthly poverty income guideline for the household size;
- (2) Changes in household composition;
- (3) Changes in residence and the resulting change in shelter costs;
- (4) The acquisition of a licensed vehicle;
- (5) When cash on hand, stocks, bonds, and money in a bank account or savings institution reach or exceed a total of two thousand dollars (\$2,000); and
- (6) Changes in the legal obligation to pay child support.

(c) The county agency must act on any change reported by such households that would increase benefits. The county agency must not act on changes that would result in a decrease in benefits unless:

- (1) The household has voluntarily requested that its case be closed; or
- (2) The agency has received information about the household's circumstances from a provider who is the primary source of the information such as:
 - (A) Beneficiary Data Exchange (BENDEX), from the Social Security Administration;
 - (B) State Data Exchange (SDX), from the Social Security Administration;
 - (C) Systematic Alien Verification for Entitlements (SAVE), from the Immigration and Naturalization Service;
 - (D) Employment and Training (E&T) information, received from the Employment Security Commission; or
 - (E) Intentional Program Disqualifications (IPV's), received from county Program Integrity staff.

(d) 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.

TITLE 12 - DEPARTMENT OF JUSTICE

12 NCAC 09C .0401 ACCREDITATION OF CRIMINAL JUSTICE SCHOOLS

(a) The Commission shall establish a standing subcommittee, called the Accreditation Committee, of the Education and Training Committee for the purposes of evaluating Request for School Accreditation applications and making recommendations to the Education and Training committee on the granting of accreditation to institutions and agencies. The Accreditation Committee shall be comprised of two members appointed by the School Directors' Advisory Committee and two members who shall be commission members to include the North Carolina Department of Community Colleges' representative to the Commission. The Chairman of the Commission shall appoint the Chairman of the Accreditation Committee.

(b) Any school requesting accreditation meeting the minimum requirements contained in 12 NCAC 09B .0200 must submit a completed Request for School Accreditation application. Upon receipt of a completed Request for School Accreditation application:

- (1) The Standards Division staff shall review the application for any omissions and clarifications and conduct a site visit to tour facilities, confirm information on the application, and determine if and where deficiencies exist;
- (2) The Standards Division Staff shall contact the applying institution or agency concerning deficiencies and shall provide assistance on correcting problem areas;
- (3) The Standards Division staff shall make a recommendation to the Accreditation Committee when the accredited institution has satisfied the requirements outlined in 12 NCAC 09B .0200;
- (4) The Standards Division staff shall submit the application and staff reports to the Accreditation Committee for review;
- (5) The Accreditation Committee shall then submit a recommendation to the Education and Training Committee on the approval or denial of the application; and
- (6) The Education and Training Committee shall recommend to the full Commission at its next regularly scheduled meeting the approval or denial of accreditation for the applicant institution or agency.

(c) Accreditation of a school shall remain effective for five years from issuance unless earlier suspended or revoked for failure to maintain compliance with the requirements outlined in 12 NCAC 09B .0200, Minimum Standards for Criminal Justice Schools and Criminal Justice Training Programs or Courses of Instruction.

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

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

Upon receipt of a completed application:

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

(f) In instances where accredited schools have been found to be in compliance with 12 NCAC 09B .0200 through favorable site visit reports, Standards Division staff shall reaccredit on behalf of the Commission. Such action shall be reported to the Commission through the Accreditation Committee and the Education and Training Committee at its next scheduled meeting.

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

History Note: Authority G.S. 17C-6;

Eff. January 1, 1981;

Amended Eff. August 1, 2004, January 1, 1996.

12 NCAC 09E .0103 DEPARTMENT HEAD RESPONSIBILITIES: ANNUAL IN-SERVICE TRAINING

The Department head shall ensure that the annual in-service training is conducted according to specifications as outlined in Rules 09E .0105 and 09E .0106. In addition, the Department head or designated representative:

- (1) shall review departmental policies regarding the use of force during the agency's annual in-service training program. The Department head or designated representative shall certify that this review has been completed by submitting a Commission form to the Criminal Justice Standards Division; and
- (2) shall report to the Criminal Justice Standards Division once each calendar year a roster of all law enforcement officers who fail to successfully complete the annual in-service training and firearms qualification and shall certify that all law enforcement officers in the agency not listed did successfully complete the training. This roster shall reflect the annual in-service training and firearms qualification

status of all law enforcement officers employed by the agency as of December 31 of each calendar year and shall be received by the Criminal Justice Standards Division no later than the following January 15th; and

- (3) shall maintain in each officer's file documentation on a Commission form that the officer has completed the annual in-service training requirement; and
- (4) shall, where the officer fails to successfully qualify with any of the weapons specified in Rule 09E .0106(a) and (b), prohibit access to such weapon(s) until such time as the officer obtains qualification; and
- (5) shall, where the officer fails to successfully qualify with any of the weapons specified in Rule 09E .0106(d), prohibit the possession of such weapon(s) while on duty or when acting in the discharge of that agency's official duties, and shall deny the officer authorization to carry such weapon(s) concealed when off-duty, except when the officer is on his own premises; and
- (6) shall, where the officer has access to any specialized or tactical weapon(s) not specifically covered in Rule 09E .0106(a) and (b), use industry accepted practices and procedures to ensure that officers authorized to use such weapon(s) are qualified. Where the officer fails to qualify, the agency head or designated representative shall restrict access to such weapon(s).

History Note: Authority G.S. 17C-6; 17C-10; Eff. July 1, 1989; Amended Eff. January 1, 2005; January 1, 1995.

12 NCAC 09G .0205 PHYSICAL AND MENTAL STANDARDS

(a) Every person employed as a correctional officer, probation/parole officer, or probation/parole officer-intermediate by the North Carolina Department of Correction shall have been examined and certified by a licensed physician, physician's assistant, or nurse practitioner to meet the physical requirements to fulfill properly the officer's particular responsibilities as stated in the essential job functions.

(b) Every person employed as a correctional officer, probation/parole officer, or probation/parole officer-intermediate by the North Carolina Department of Correction shall have been administered within one year prior to employment with the North Carolina Department of Correction a psychological screening examination by a clinical psychologist or psychiatrist licensed to practice in North Carolina to determine the officer's mental and emotional suitability to fulfill properly the officer's particular responsibilities as stated in the essential job functions.

History Note: Authority G.S. 17C-6; 17C-10; Temporary Adoption Eff. January 1, 2001; Eff. August 1, 2002; Amended Eff. August 1, 2004.

12 NCAC 09G .0206 MORAL CHARACTER

Every person employed as a correctional officer, probation/parole officer, or probation/parole officer-intermediate by the North Carolina Department of Correction shall demonstrate good moral character as evidenced by, but not limited to:

- (1) not having been convicted of a felony for 10 years or the completion of any corrections supervision imposed by the courts whichever is later;
- (2) not having been convicted of a misdemeanor as defined in 12 NCAC 09G .0102(9) for three years or the completion of any corrections supervision imposed by the courts whichever is later;
- (3) having submitted to and produced a negative result on a drug test within 60 days of employment which meets the certification standards of the Department of Health and Human Services for Federal Workplace Drug Testing Programs, copies of which may be obtained from National Institute on Drug Abuse, 5600 Fisher Lane, Rockville, Maryland 20857 at no cost, to detect the illegal use of at least cannabis, cocaine, phencyclidine (PCP), opiates and amphetamines or their metabolites;
- (4) submitting to a background investigation consisting of:
 - (a) verification of age;
 - (b) verification of education;
 - (c) criminal history check of local, state, and national files;
- (5) being truthful in providing all required information as prescribed by the application process.

History Note: Authority G.S. 17C-6; 17C-10; Temporary Adoption Eff. January 1, 2001; Eff. August 1, 2002; Amended Eff. August 1, 2004.

12 NCAC 09G .0302 NOTIFICATION OF CRIMINAL CHARGES/CONVICTIONS

(a) Every person employed and certified as a correctional officer, probation/parole officer, or probation/parole officer-intermediate shall notify the Standards Division of all criminal offenses for which the officer is charged, arrested, pleads no contest, pleads guilty, or of which the officer is found guilty. Criminal offenses shall include all felony offenses and shall specifically include those misdemeanor offenses delineated in 12 NCAC 09G .0102.

(b) The notifications required under this Rule must be in writing, must specify the nature of the offense, the court in which the case was handled, the date of arrest or criminal charge, the final disposition and the date thereof. The notifications required under this Subparagraph must be received by the Standards Division within 30 days of the date the case was disposed of in court.

(c) The requirements of this Rule shall be applicable at all times during which the officer is certified by the Commission.

(d) Officers required to notify the Standards Division under this Rule shall also make the same notification to their employing or appointing executive officer within 20 days of the date the case was disposed of in court. The executive officer, provided he has knowledge of the officer's arrest(s), or criminal charge(s), and final disposition(s), shall also notify the Standards Division of all arrests or criminal convictions within 30 days of the date of the arrest and within 30 days of the date the case was disposed of in court. Receipt by the Standards Division of a single notification, from either the officer or the executive officer, is sufficient notice for compliance with this Rule.

History Note: Authority G.S. 17C-6; Temporary Adoption Eff. January 1, 2001; Eff. August 1, 2002; Amended Eff. August 1, 2004.

12 NCAC 09G .0303 PROBATIONARY CERTIFICATION

- (a) A prospective employee may commence active service as a correctional officer, probation/parole officer, or probation/parole officer-intermediate at the time of employment.
- (b) Within 90 days of appointment to a position for which the commission requires certification, the North Carolina Department of Correction shall submit a completed Report of Appointment/Application for Certification to the Standards Division.
- (c) The Commission shall certify as a probationary officer a person meeting the standards for certification when the North Carolina Department of Correction submits a completed Report of Appointment/Application for Certification to the Standards Division.
- (d) The Standards Division shall issue the person's Probationary Certification to the North Carolina Department of Correction.
- (e) The officer's Probationary Certification shall remain valid for one year from the date the certification is issued by the Standards Division unless sooner suspended or revoked pursuant to Rule .0503 of this Subchapter or the officer has attained General Certification.
- (f) Documentation of Probationary Certification shall be maintained with the officer's personnel records with the North Carolina Department of Correction and the Commission.

History Note: Authority G.S. 17C-6; 17C-10; Temporary Adoption Eff. January 1, 2001; Eff. August 1, 2002; Amended Eff. August 1, 2004.

12 NCAC 09G .0304 GENERAL CERTIFICATION

- (a) The Commission shall grant an officer General Certification when evidence is received by the Standards Division that an officer has successfully completed the training requirements of 12 NCAC 09G .0410, .0411, .0412, or .0413 within the officer's probationary period and the officer has met all other requirements for General Certification.
- (b) General Certification is continuous from the date of issuance, so long as the certified officer remains continuously employed as a correctional officer, probation/parole officer, or probation/parole officer-intermediate in good standing with the North Carolina Department of Correction and the certification has not been suspended or revoked pursuant to Rule .0503 of this Subchapter.

(c) Certified officers who, through promotional opportunities, move into non-certified positions within the Department, may have their certification reinstated without re-completion of the basic training requirements of 12 NCAC 09G .0410, .0411, .0412, or .0413, and are exempted from reverification of employment standards of 12 NCAC 09G .0202 through .0206 when returning to a position requiring certification if they have maintained continuous employment within the Department.

(d) Documentation of General Certification shall be maintained with the officer's personnel records with the North Carolina Department of Correction and the Commission.

(e) Upon transfer of a certified officer from one type of corrections officer to another, the North Carolina Department of Correction shall submit a Notice of Transfer to the Standards Division.

- (1) Upon receipt of the Notice of Transfer, the Standards Division shall cancel the officer's current General Certification and upon receipt of documentary evidence that the officer has met the requisite standards for the specified type of corrections officer certification, the Commission shall issue Probationary Certification reflecting the officer's new corrections position.
- (2) The Commission shall grant an officer General Certification as the new type of corrections officer when evidence is received by the Standards Division that an officer has successfully completed the training requirements of 12 NCAC 09G .0410, .0411, .0412, or .0413 within the officer's probationary period and the officer has met all other requirements for General Certification.

History Note: Authority G.S. 17C-2; 17C-6; 17C-10; Temporary Adoption Eff. January 1, 2001; Eff. August 1, 2002; Amended Eff. August 1, 2004.

12 NCAC 09G .0306 RETENTION OF RECORDS OF CERTIFICATION

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

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

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

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

History Note: Authority G.S. 17C-2; 17C-6; Temporary Adoption Eff. January 1, 2001; Eff. August 1, 2002; Amended Eff. August 1, 2004.

12 NCAC 09G .0411 BASIC TRAINING FOR CORRECTIONAL OFFICERS

(a) The basic training course for correctional officers shall consist of at least 160 hours of instruction, as approved by the Commission, designed to provide the trainee with the skills and knowledge to perform those tasks essential to function as a correctional officer. The instructional components of this course must be listed in the "Basic Correctional Officer Training Manual," and shall include firearms training; controls, restraints, and defensive techniques; legal issues for correctional supervision; emergency procedures; Division of Prisons operational processes such as classification, search and seizure, health services, and contemporary correctional theory.

(b) The "Basic Correctional Officer Training Manual" as published by the North Carolina Department of Correction is to be applied as the basic curriculum for delivery of correctional officer basic training courses. Copies of this publication may be inspected at the office of the agency:

The Office of Staff Development and Training
 North Carolina Department of Correction
 2211 Schieffelin Road
 Apex, North Carolina 27502
 With mailing address:
 MSC 4213

Raleigh, North Carolina 27699-4213

and may be obtained at cost from the Department of Correction.

History Note: Authority G.S. 17C-6; 17C-10; Temporary Adoption Eff. January 1, 2001; Eff. August 1, 2002; Amended Eff. August 1, 2004.

12 NCAC 09G .0412 BASIC TRAINING FOR PROBATION/PAROLE OFFICERS

(a) The basic training course for probation/parole officers shall consist of at least 160 hours of instruction, as approved by the Commission, designed to provide the trainee with the skills and knowledge to perform those tasks essential to function as a probation/parole officer. The instructional components of this

course must be listed in the "Basic Probation/Parole Officer Training Manual," and shall include controls, restraints, and defensive techniques; court processes; case processing and management; arrest procedures; basic life support; physical fitness; and contemporary correctional theory.

(b) The "Basic Probation/Parole Officer Training Manual" as published by the North Carolina Department of Correction is to be applied as the basic curriculum for delivery of probation/parole officer basic training courses. Copies of this publication may be inspected at the office of the agency:

The Office of Staff Development and Training
 North Carolina Department of Correction
 2211 Schieffelin Road
 Apex, North Carolina 27502
 With mailing address:
 MSC 4213

Raleigh, North Carolina 27699-4213

and may be obtained at cost from the Department of Correction.

History Note: Authority G.S. 17C-6; 17C-10; Temporary Adoption Eff. January 1, 2001; Eff. August 1, 2002; Amended Eff. August 1, 2004.

12 NCAC 09G .0413 BASIC TRAINING FOR PROBATION/PAROLE OFFICERS-INTERMEDIATE

(a) In addition to the requirements for Basic Training for Probation/Parole Officers contained in Rule .0412 of this Section, every probation/parole officer-intermediate shall complete a supplemental course which shall consist of at least 80 hours of instruction, as approved by the Commission, designed to provide the trainee with the skills and knowledge to perform those tasks essential to function as a probation/parole officer-intermediate. The instructional components of this course must be listed in the "Basic Probation/Parole Officer-Intermediate Training Manual," and shall include firearms training; controls, restraints, and defensive techniques; officer/offender relationships; advanced arrest, search and seizure; DCC specialized equipment operations; and administrative matters, review, and testing.

(b) The "Basic Probation/Parole Officer-Intermediate Training Manual," as published by the North Carolina Department of Correction is to be applied as the basic curriculum for delivery of probation/parole officer-intermediate basic training courses. Copies of this publication may be inspected at the office of the agency:

The Office of Staff Development and Training
 North Carolina Department of Correction
 2211 Schieffelin Road
 Apex, North Carolina 27502
 With mailing address:
 MSC 4213

Raleigh, North Carolina 27699-4213

and may be obtained at cost from the Department of Correction.

History Note: Authority G.S. 17C-6; 17C-10; Temporary Adoption Eff. January 1, 2001; Eff. August 1, 2002; Amended Eff. August 1, 2004.

12 NCAC 09G .0415 CORRECTIONS SPECIALIZED

INSTRUCTOR TRAINING - FIREARMS

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

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

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

- (1) Overview;
- (2) Legal Considerations for Firearms Instructors;
- (3) Firearms Safety;
- (4) Range Operations;
- (5) Range Medical Emergencies;
- (6) Revolver - Operation, Use, and Maintenance;
- (7) Advanced Revolver Training;
- (8) Revolver Night Firing;
- (9) Rifle Training and Qualification;
- (10) Shotgun Training and Qualification;
- (11) Maintenance and Repair of Rifles and Shotguns;
- (12) Special Techniques, Training Aids, and Methods;
- (13) Chemical Weapons;
- (14) Situational Use of Firearms;
- (15) Day and Night Practical Courses of Fire; and
- (16) Administrative Matters, Testing, and Evaluation.

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

History Note: Authority G.S. 17C-6; Temporary Adoption Eff. January 1, 2001; Eff. August 1, 2002; Amended Eff. August 1, 2004.

12 NCAC 09G .0416 CORRECTIONS SPECIALIZED INSTRUCTOR TRAINING - CONTROLS, RESTRAINTS, AND DEFENSIVE TECHNIQUES

(a) The instructor training course requirement for corrections specialized controls, restraints, and defensive techniques instructor certification shall consist of at least 80 hours of instruction presented during a continuous period of not more than two weeks.

(b) Each corrections specialized controls, restraints, and defensive techniques instructor training course shall be designed to provide the trainee with the skills and knowledge to perform the function of a corrections controls, restraints, and defensive techniques instructor in the "Basic Training-Correctional Officer" course, "Basic Training-Probation/Parole Officer" course, "Basic Training-Probation/Parole Officer-Intermediate" course, and in-service training courses for correctional officers, PERT teams, probation/parole officer-intermediate, and all

Department of Juvenile Justice and Delinquency Prevention unarmed self-defense courses.

(c) Each corrections specialized controls, restraints, and defensive techniques instructor training course shall include the following topical areas:

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

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

History Note: Authority G.S. 17C-6; Temporary Adoption Eff. January 1, 2001; Eff. August 1, 2002; Amended Eff. August 1, 2004.

12 NCAC 09G .0504 SUSPENSION: REVOCATION: OR DENIAL OF CERTIFICATION

(a) The Commission shall revoke the certification of a correctional officer, probation/parole officer, or probation/parole officer-intermediate when the Commission finds that the officer has committed or been convicted of a felony offense.

(b) The Commission may, based on the evidence for each case, suspend, revoke, or deny the certification of a corrections officer when the Commission finds that the applicant for certification or the certified officer:

- (1) has not enrolled in and satisfactorily completed the required basic training course in its entirety within prescribed time periods relevant or applicable to a specified position or job title;
- (2) fails to meet or maintain one or more of the employment standards required by 12 NCAC 09G .0200 for the category of the officer's certification or fails to meet or maintain one or more of the training standards required by 12 NCAC 09G .0400 for the category of the officer's certification;
- (3) has committed or been convicted of a misdemeanor as defined in 12 NCAC 09G .0102 after certification;
- (4) has been discharged by the North Carolina Department of Correction for:
 - (A) commission or conviction of a motor vehicle offense requiring the revocation of the officer's drivers license; or
 - (B) commission or conviction of any other offense involving moral turpitude;
- (5) has been discharged by the North Carolina Department of Correction because the officer lacks the mental or physical capabilities to

- (6) fulfill the responsibilities of a corrections officer;
- (7) has knowingly made a material misrepresentation of any information required for certification or accreditation;
- (8) has knowingly and willfully, by any means of false pretense, deception, fraud, misrepresentation or cheating whatsoever, obtained or attempted to obtain credit, training or certification from the Commission;
- (9) has knowingly and willfully, by any means of false pretense, deception, fraud, misrepresentation or cheating whatsoever, aided another person in obtaining or attempting to obtain credit, training, or certification from the Commission;
- (10) has failed to notify the Standards Division of all criminal charges or convictions as required by 12 NCAC 09G .0302;
- (11) has been removed from office by decree of the Superior Court in accord with the provisions of G.S. 128-16 or has been removed from office by sentence of the court in accord with the provisions of G.S. 14-230;
- (12) has refused to submit to an applicant drug screen as required by 12 NCAC 09G .0206;
- (13) has produced a positive result on a drug screen reported to the Commission as specified in 12 NCAC 09G .0206(c), where the positive result cannot be explained to the Commission's satisfaction; or
- (14) has been denied certification or had such certification suspended or revoked by the North Carolina Sheriffs' Education and Training Standards Commission if such certification was denied, suspended or revoked based on grounds that would constitute a violation of Subchapter 09G.

(c) Following suspension, revocation, or denial of the person's certification, the person shall not remain employed or appointed as a corrections officer and the person shall not exercise any authority of a corrections officer during a period for which the person's certification is suspended, revoked, or denied.

History Note: Authority G.S. 17C-6; 17C-10; Temporary Adoption Eff. January 1, 2001; Eff. August 1, 2002; Amended Eff. August 1, 2004.

12 NCAC 09G .0602 GENERAL PROVISIONS

(a) In order to be eligible for one or more of the professional awards, an officer shall first meet the following preliminary qualifications, except as provided for in 12 NCAC 09G .0602(a)(4):

- (1) The officer shall presently hold general corrections officer certification. A person serving under a probationary certification is not eligible for consideration.
- (2) The officer shall hold general certification with the Commission in one of the following categories:

- (A) correctional officer;
- (B) probation/parole officer; or
- (C) probation/parole officer-intermediate.
- (3) The officer shall be a permanent, full-time, paid employee of the North Carolina Department of Correction.
- (4) Permanent, paid employees of the Department of Correction who have successfully completed a Commission-accredited corrections officer basic training program and have previously held general certification as specified in 12 NCAC 09G .0602(a)(1) and 12 NCAC 09G .0602(a)(2), but are presently, by virtue of promotion or transfer, serving in positions not subject to certification are eligible to participate in the professional certificate program. Eligibility for this exception requires continuous employment with the Department of Correction from the date of promotion or transfer from a certified position to the date of application for a professional certificate.

(b) Awards are based upon a formula which combines formal education, corrections training, and actual experience as a corrections officer. Points are computed in the following manner:

- (1) each semester hour of college credit shall equal one point and each quarter hour shall equal two-thirds of a point;
- (2) 20 classroom hours of Commission-approved corrections training shall equal one point;
- (3) only experience as a permanent, paid employee of the North Carolina Department of Correction or the equivalent experience as determined by the Commission shall be acceptable of consideration.

Point requirements for each award are described in 12 NCAC 09G .0604 and .0605.

(c) Certificates shall be awarded in an officer's area of expertise only. The State Corrections Certificate is appropriate for permanent, paid corrections employees employed by the North Carolina Department of Correction.

History Note: Authority G.S. 17C-6; Temporary Adoption Eff. January 1, 2001; Eff. August 1, 2002; Amended Eff. August 1, 2004.

TITLE 13 - DEPARTMENT OF LABOR

SUBCHAPTER 07F - STANDARDS

SECTION .0100 - GENERAL INDUSTRY STANDARDS

13 NCAC 07F .0101 GENERAL INDUSTRY

The provisions for the Occupational Safety and Health Standards for General Industry, Title 29 of the Code of Federal Regulations Part 1910 promulgated as of May 24, 2001, and exclusive of subsequent amendments, are incorporated by reference except as follows:

- (1) Subpart H - Hazardous Materials, 29 CFR 1910.120, Hazardous waste operations and emergency response, 1910.120(q)(6) is amended by adding a new level of training:

"(vi) First responder operations plus level. First responders at operations plus level are individuals who respond to hydrocarbon fuel tank leaks where the leaking tanks contain a hydrocarbon fuel which is used to propel the vehicle on which the tank is located. Only those vehicles designed for highway use or those used for industrial, agricultural or construction purposes are covered. First responders at the operations plus level shall have received at least training equal to first responder operations level and, in addition, shall receive training or have had sufficient experience to objectively demonstrate competency in the following areas and the employer shall so certify:

- (A) Know how to select and use proper specialized personal protective equipment provided to the first responder at operations plus level;
- (B) Understand basic hazardous materials terms as they pertain to hydrocarbon fuels;
- (C) Understand hazard and risk assessment techniques that pertain to gasoline, diesel fuel, propane and other hydrocarbon fuels;
- (D) Be able to perform control, containment, or confinement operations for gasoline, diesel fuel, propane and other hydrocarbon fuels within the capabilities of the available resources and personal protective equipment; and
- (E) Understand and know how to implement decontamination procedures for hydrocarbon fuels."

- (2) Subpart I -- Personal Protective Equipment -- 29 CFR 1910.132, General requirements, is amended at 29 CFR 1910.132(b) to read:

"(b) *Equipment.* (1) *Employer-provided equipment.* It is the responsibility of the employer to provide, at no cost to the employee, all personal protective equipment which the employee does not wear off the jobsite for use off the job.

(2) *Employee-owned equipment.* Where employees provide their own protective equipment, the employer shall be responsible to assure its adequacy, including proper maintenance, and sanitation of such equipment."

- (3) Subpart R -- Special Industries -- incorporation by reference of final rule for 29 CFR 1910.269, Electric Power Generation, Transmission, and Distribution, including Appendices A through E, published in 59 FR

(January 31, 1994) pages 4437 - 4475, all typographical and grammatical corrections to 1910.269 as published in 59 FR (June 30, 1994) pages 33660 - 33664, and the amendment to 1910.269(g)(2)(i) as published in 59 FR (August 9, 1994) page 40729, except that 29 CFR 1910.269(g)(2)(v) is amended to read:

"(v) Fall arrest equipment, work positioning equipment, or travel restricting equipment shall be used by employees working at elevated locations more than 4 feet (1.2 m) above the ground on poles, towers or similar structures if other fall protection has not been provided. A fall protection system as defined in 29 CFR 1926, Subpart M - *Fall Protection*, is required to be used by all employees when ascending, descending or changing locations on poles, towers or similar structures. However, the use of non-locking snap hooks with any fall protection system is prohibited as of July 1, 1995. Qualified employees may free climb wood poles if the employer can ensure (1) that the employee is able to comfortably and safely grip the pole with both hands while climbing, (2) that the pole is free from attachments or any configurations of attachments that will materially impair the ability of a qualified employee to safely free climb the pole, (3) that the pole is otherwise free from impediments, contaminants or conditions of any type, including but not limited to ice, high winds or chemical treatments which materially impair the ability of a qualified employee to safely free climb the pole, and (4) that the employee is able to climb such structures without material physical impairments including over-exertion, lack of sleep or other physical stresses."

29 CFR 1910.269 as amended above is effective January 1, 1995, except that employers have until July 1, 1995, to implement the use of locking snap hooks, and employers have until January 1, 1996, to design and implement a system of fall protection for use by employees while ascending, descending or changing locations on towers. Also, 29 CFR 1910.269(a)(2) *Training* is effective January 31, 1995, and 29 CFR 1910.269(v)(11)(xii) is effective February 1, 1996.

- (4) Subpart Z -- Toxic and Hazardous Substances:

(a) 29 CFR 1910.1000 Air Contaminants:

(i) The equation in 29 CFR 1910.1000(d)(1)(i) is clarified to read as follows:

$$E = (C_a T_a + C_b T_b + \dots + C_n T_n) / 8$$

- (ii) The equation in 29 CFR 1910.1000(d)(2)(i) is clarified to read as follows:

$$E_m = (C_1/L_1) + (C_2/L_2) + \dots + (C_n/L_n)$$
- (iii) The permissible exposure limits as originally published in 54 FR (January 19, 1989) pages 2331-2983 are incorporated except as otherwise specified or noted in this Rule.
- (iv) Employee exposure to the toxic and hazardous substances listed in the following tables shall be limited to the specified values.

boat building, and (3) the same considerations of large part size, configuration interfering with air-flow control techniques, and resin usage apply. Examples of operations comparable to boat building would include the manufacture of large above-ground or below-ground storage tanks, large parts for recreational vehicles, and large duct work. Because it is impossible to define in advance every manual layup and sprayup process for which compliance may not be feasible solely through engineering and work practice controls, some guidelines concerning part size and configuration issues are necessary. The primary question for manual layup and sprayup operations is whether the part=s size and configuration interfere with normal air-flow techniques. For operations making parts (such as tubs and vanities) that do not meet the guidelines described, beginning April 1, 1996, the hierarchy of controls specified in 29 CFR 1910.1000(e) shall apply to reduce styrene exposures to the new 50 ppm TWA and 100 ppm STEL. In consequence, the burden of proof shall be on the employer to show that engineering and work practice controls are not feasible for specific operations. However, with respect to boat-building operations the burden of proof shall be on OSHNC to prove that the level could be attained solely through engineering and work practice controls.

PERMISSIBLE EXPOSURE LIMITS FOR AIR CONTAMINANTS

Footnote (1) Regarding Styrene Only: OSHNC recognizes that the permissible exposure limits for styrene may not be achievable solely through engineering and work practice controls for boat-building and operations comparable to boat building. Comparable operations are those that (1) employ the manual layup and sprayup process, (2) the manufactured items that utilize the same equipment and technology as that found in

Footnote (2) Regarding Acrylamide, Carbon Dioxide and Silica only: The federal standards at 29 CFR 1910.1000 are adopted.

Footnote (3) Regarding Subtilisins only: PELs for this substance are not adopted.

Footnote (4) 29 CFR 1910.1000, Tables Z-2 and Z-3 are applicable only to the extent that they are referenced below.

TABLE Z-1 -- PERMISSIBLE EXPOSURE LIMITS (PELs) FOR AIR CONTAMINANTS

Substance	CAS #	TWA		STEL		Ceiling		Skin designation
		ppm	mg/m ³	ppm	mg/m ³	ppm	mg/m ³	
Acetaldehyde	75-07-0	100	180	150	270	--	--	--
Acetic acid	64-19-7	see 1910.1000, Table Z-1						
Acetic anhydride	108-24-7	--	--	--	--	5	20	--
Acetone	67-64-1	750	1800	1000	2400	--	--	--
Acetonitrile	75-05-8	40	70	60	105	--	--	--
2-Acetylaminofluorene	53-96-3	see 1910.1014						
Acetylene dichloride; see 1,2-Dichloroethylene								
Acetylene tetrabromide	79-27-6	see 1910.1000, Table Z-1						
Acetylsalicylic acid (Aspirin)	50-78-2	--	5	--	--	--	--	--
Acrolein	107-02-8	0.1	0.25	0.3	0.8	--	--	--
Acrylamide	79-06-1	see 1910.1000, Table Z-1						
Acrylic acid	79-10-7	10	30	--	--	--	--	X
Acrylonitrile	107-13-1	see 1910.1045						
Aldrin	309-00-2	see 1910.1000, Table Z-1						
Allyl alcohol	107-18-6	2	5	4	10	--	--	X
Allyl chloride	107-05-1	1	3	2	6	--	--	--
Allyl glycidyl ether (AGE)	106-92-3	5	22	10	44	--	--	--
Allyl propyl disulfide	2179-59-1	2	12	3	18	--	--	--

APPROVED RULES

Substance	CAS #	TWA		STEL		Ceiling		Skin designation
		ppm	mg/m ³	ppm	mg/m ³	ppm	mg/m ³	
<i>alpha</i> -Alumina	1344-28-1							
Total dust		--	10	--	--	--	--	--
Respirable fraction		--	5	--	--	--	--	--
Aluminum metal (as Al)	7429-90-5							
Metal								
Total dust				see 1910.1000, Table Z-1				
Respirable fraction				see 1910.1000, Table Z-1				
Aluminum metal (as Al)	7429-90-5							
Pyro powders		--	5	--	--	--	--	--
Welding fumes		--	5	--	--	--	--	--
Soluble salts		--	2	--	--	--	--	--
Alkyls		--	2	--	--	--	--	--
4-Aminodiphenyl	92-67-1			see 1910.1011				
2-Aminoethanol; see Ethanolamine								
2-Aminopyridine	504-29-0			see 1910.1000, Table Z-1				
Amitrole	61-82-5	--	0.2	--	--	--	--	--
Ammonia	7664-41-7	--	--	35	27	--	--	--
Ammonium chloride, Fume	12125-02-9	--	10	--	20	--	--	--
Ammonium sulfamate	7773-06-0							
Total dust		--	10	--	--	--	--	--
Respirable fraction		--	5	--	--	--	--	--
<i>n</i> -Amyl acetate	628-63-7			see 1910.1000, Table Z-1				
<i>sec</i> -Amyl acetate	626-38-0			see 1910.1000, Table Z-1				
Aniline and homologs	62-53-3	2	8	--	--	--	--	X
Anisidine (<i>o</i> -, <i>p</i> -isomers)	29191-52-4			see 1910.1000, Table Z-1				
Antimony and compounds (as Sb)	7440-36-0			see 1910.1000, Table Z-1				
ANTU (<i>alpha</i> -Naphthylthiourea)	86-88-4			see 1910.1000, Table Z-1				
Arsenic, inorganic cmpds (as As)	Varies with compound			see 1910.1018				
Arsenic, organic cmpds (as As)	7440-38-2			see 1910.1000, Table Z-1				
Arsine	7784-42-1			see 1910.1000, Table Z-1				
Asbestos				see 1910.1001				
Atrazine	1912-24-9	--	5	--	--	--	--	--
Azinphos-methyl	86-50-0			see 1910.1000, Table Z-1				
Barium, soluble compounds (as Ba);	7440-39-3			see 1910.1000, Table Z-1				
Barium sulfate	7727-43-7							
Total dust		--	10	--	--	--	--	--
Respirable fraction		--	5	--	--	--	--	--
Benomyl	17804-35-2							

APPROVED RULES

Substance	CAS #	TWA		STEL		Ceiling		Skin designation
		ppm	mg/m ³	ppm	mg/m ³	ppm	mg/m ³	
Total dust		--	10	--	--	--	--	--
Respirable fraction		--	5	--	--	--	--	--
Benzene	71-43-2	See 1910.1028 See 1910.1000 Table Z-2 for limits applicable in the operations or sectors excluded in 1910.1028						
Benzidine	92-87-5	see 1910.1010						
<i>p</i> -Benzoquinone; see Quinone								
Benzo(a)pyrene; see Coal tar pitch volatiles								
Benzoyl peroxide	94-36-0	see 1910.1000, Table Z-1						
Benzyl chloride	100-44-7	see 1910.1000, Table Z-1						
Beryllium and beryllium compounds (as Be);	7440-41-7	--	0.002	--	0.005 (30 min)	--	0.025	--
Biphenyl; see Diphenyl								
Bismuth telluride	1304-82-1							
Se-doped		--	5	--	--	--	--	--
Bismuth telluride	1304-82-1							
Undoped								
Total dust		see 1910.1000, Table Z-1						
Respirable fraction		see 1910.1000, Table Z-1						
Borates, tetra, sodium salts								
Anhydrous	1330-43-4	--	10	--	--	--	--	--
Decahydrate	1303-96-4	--	10	--	--	--	--	--
Pentahydrate	12179-04-3	--	10	--	--	--	--	--
Boron oxide	1303-86-2							
Total dust		--	10	--	--	--	--	--
Respirable fraction		--	5	--	--	--	--	--
Boron tribromide	10294-33-4	--	--	--	--	1	10	--
Boron trifluoride	7637-07-2	see 1910.1000, Table Z-1						
Bromacil	314-40-9	1	10	--	--	--	--	--
Bromine	7726-95-6	0.1	0.7	0.3	2	--	--	--
Bromine pentafluoride	7789-30-2	0.1	0.7	--	--	--	--	--
Bromoform	75-25-2	see 1910.1000, Table Z-1						
Butadiene (1,3-Butadiene)	106-99-0	see 1910.1051; 1910.19(1)						
Butane	106-97-8	800	1900	--	--	--	--	--
Butanethiol; see Butyl mercaptan								
2-Butanone (Methyl ethyl ketone)	78-93-3	200	590	300	885	--	--	--
2-Butoxyethanol	111-76-2	25	120	--	--	--	--	X
<i>n</i> -Butyl acetate	123-86-4	150	710	200	950	--	--	--
<i>sec</i> -Butyl acetate	105-46-4	see 1910.1000, Table Z-1						
<i>tert</i> -Butyl acetate	540-88-5	see 1910.1000, Table Z-1						

APPROVED RULES

Substance	CAS #	TWA		STEL		Ceiling		Skin designation
		ppm	mg/m ³	ppm	mg/m ³	ppm	mg/m ³	
Butyl acrylate	141-32-2	10	55	--	--	--	--	--
<i>n</i> -Butyl alcohol	71-36-3	--	--	--	--	50	150	X
<i>sec</i> -Butyl alcohol	78-92-2	100	305	--	--	--	--	--
<i>tert</i> -Butyl alcohol	75-65-0	100	300	150	450	--	--	--
Butylamine	109-73-9	see 1910.1000, Table Z-1						
<i>tert</i> -Butyl chromate (as CrO ₃)	1189-85-1	see 1910.1000, Table Z-1						
<i>n</i> -Butyl glycidyl ether (BGE)	2426-08-6	25	135	--	--	--	--	--
<i>n</i> -Butyl lactate	138-22-7	5	25	--	--	--	--	--
Butyl mercaptan (Butanethiol)	109-79-5	0.5	1.5	--	--	--	--	--
<i>o-sec</i> -Butylphenol	89-72-5	5	30	--	--	--	--	X
<i>p-tert</i> -Butyltoluene	98-51-1	10	60	20	120	--	--	--
Cadmium, fume and dust (as Cd)	7440-43-9	see 1910.1027						
Calcium carbonate	1317-65-3							
Total dust		see 1910.1000, Table Z-1						
Respirable fraction		see 1910.1000, Table Z-1						
Calcium cyanamide	156-62-7	--	0.5	--	--	--	--	--
Calcium hydroxide	1305-62-0	--	5	--	--	--	--	--
Calcium oxide	1305-78-8	see 1910.1000, Table Z-1						
Calcium silicate	1344-95-2							
Total dust		see 1910.1000, Table Z-1						
Respirable fraction		see 1910.1000, Table Z-1						
Calcium sulfate	7778-18-9							
Total dust		see 1910.1000, Table Z-1						
Respirable fraction		see 1910.1000, Table Z-1						
Camphor, synthetic	76-22-2	see 1910.1000, Table Z-1						
Caprolactam	105-60-2							
Dust		--	1	--	3	--	--	--
Vapor		5	20	10	40	--	--	--
Captafol (Difolatan 7)	2425-06-1	--	0.1	--	--	--	--	--
Captan	133-06-2	--	5	--	--	--	--	--
Carbaryl (Sevin 7)	63-25-2	see 1910.1000, Table Z-1						
Carbofuran (Furadan 7)	1563-66-2	--	0.1	--	--	--	--	--
Carbon black	1333-86-4	see 1910.1000, Table Z-1						
Carbon dioxide	124-38-9	see 1910.1000, Table Z-1						
Carbon disulfide	75-15-0	4	12	12	36	--	--	X
Carbon monoxide	630-08-0	35	40	--	--	200	229	--
Carbon tetrabromide	558-13-4	0.1	1.4	0.3	4	--	--	--
Carbon tetrachloride	56-23-5	2	12.6	--	--	--	--	--
Carbonyl fluoride	353-50-4	2	5	5	15	--	--	--
Catechol (Pyrocatechol)	120-80-9	5	20	--	--	--	--	X
Cellulose	9004-34-6							
Total dust		see 1910.1000, Table Z-1						

APPROVED RULES

Substance	CAS #	TWA		STEL		Ceiling		Skin designation
		ppm	mg/m ³	ppm	mg/m ³	ppm	mg/m ³	
Respirable fraction				see 1910.1000, Table Z-1				
Cesium hydroxide	21351-79-1	--	2	--	--	--	--	--
Chlordane	57-74-9			see 1910.1000, Table Z-1				
Chlorinated camphene	8001-35-2	--	0.5	--	1	--	--	X
Chlorinated diphenyl oxide	55720-99-5			see 1910.1000, Table Z-1				
Chlorine	7782-50-5	0.5	1.5	1	3	--	--	--
Chlorine dioxide	10049-04-4	0.1	0.3	0.3	0.9	--	--	--
Chlorine trifluoride	7790-91-2			see 1910.1000, Table Z-1				
Chloroacetaldehyde	107-20-0			see 1910.1000, Table Z-1				
a-Chloroacetophenone (Phenacyl chloride)	532-27-4			see 1910.1000, Table Z-1				
Chloroacetyl chloride	79-04-9	0.05	0.2	--	--	--	--	--
Chlorobenzene	108-90-7			see 1910.1000, Table Z-1				
o-Chlorobenzylidene malononitrile	2698-41-1	--	--	--	--	0.05	0.4	X
Chlorobromomethane	74-97-5			see 1910.1000, Table Z-1				
2-Chloro-1,3-butadiene; see <i>beta</i> -Chloroprene								
Chlorodifluoromethane	75-45-6	1000	3500	--	--	--	--	--
Chlorodiphenyl (42% Chlorine) (PCB)	53469-21-9			see 1910.1000, Table Z-1				
Chlorodiphenyl (54% Chlorine) (PCB)	11097-69-1			see 1910.1000, Table Z-1				
1-Chloro-2,3-epoxypropane; see Epichlorohydrin								
2-Chloroethanol; see Ethylene chlorohydrin								
Chloroethylene; see Vinyl chloride								
Chloroform (Trichloromethane)	67-66-3	2	9.78	--	--	--	--	--
bis(Chloromethyl) ether	542-88-1			see 1910.1008				
Chloromethyl methyl ether	107-30-2			see 1910.1006				
1-Chloro-1-nitropropane	600-25-9	2	10	--	--	--	--	--
Chloropentafluoroethane	76-15-3	1000	6320	--	--	--	--	--
Chloropicrin	76-06-2			see 1910.1000, Table Z-1				
<i>beta</i> -Chloroprene	126-99-8	10	35	--	--	--	--	X
o-Chlorostyrene	2039-87-4	50	285	75	430	--	--	--
o-Chlorotoluene	95-49-8	50	250	--	--	--	--	--
2-Chloro-6-trichloromethyl pyridine	1929-82-4							
Total dust				see 1910.1000, Table Z-1				
Respirable fraction				see 1910.1000, Table Z-1				
Chlorpyrifos	2921-88-2	--	0.2	--	--	--	--	X
Chromic acid and chromates	Varies with	--	--	--	--	--	0.1	--

APPROVED RULES

Substance	CAS #	TWA		STEL		Ceiling		Skin designation
		ppm	mg/m ³	ppm	mg/m ³	ppm	mg/m ³	
(as CrO ₃)	compound							
Chromium (II) compounds (as Cr)	Varies with compound			see 1910.1000, Table Z-1				
Chromium (III) compounds (as Cr)	Varies with compound			see 1910.1000, Table Z-1				
Chromium metal and insoluble salts (as Cr)	7440-47-3			see 1910.1000, Table Z-1				
Chrysene; see Coal tar pitch volatiles	218-01-9							
Clopidol	2971-90-6							
Total dust				see 1910.1000, Table Z-1				
Respirable fraction				see 1910.1000, Table Z-1				
Coal dust (less than 5% SiO ₂), Respirable quartz fraction				see 1910.1000, Table Z-3				
Coal dust (greater than or equal to 5% SiO ₂), Respirable quartz fraction				see 1910.1000, Table Z-3				
Coal tar Pitch volatiles (benzene soluble fraction), anthracene, BaP, phenanthrene, acridine, chrysene, pyrene	8007-45-2			see 1910.1000, Table Z-1				
Cobalt metal, dust, and fume (as Co)	7440-48-4	--	0.05	--	--	--	--	--
Cobalt carbonyl (as Co)	10210-68-1	--	0.1	--	--	--	--	--
Cobalt hydrocarbonyl (as Co)	16842-03-8	--	0.1	--	--	--	--	--
Coke oven emissions				see 1910.1029				
Copper	7440-50-8							
Fume (as Cu)				see 1910.1000, Table Z-1				
Dusts and mists (as Cu)				see 1910.1000, Table Z-1				
Cotton dust (raw)	--			see 1910.1043; 1910.1000, Table Z-1				
Crag herbicide (Sesone),	136-78-7							
Total dust		--	10	--	--	--	--	--
Respirable fraction		--	5	--	--	--	--	--
Cresol, all isomers	1319-77-3 95-48-7 108-39-4 106-44-5			see 1910.1000, Table Z-1 see 1910.1000, Table Z-1 see 1910.1000, Table Z-1 see 1910.1000, Table Z-1				
Crotonaldehyde	123-73-9 4170-30-3			see 1910.1000, Table Z-1 see 1910.1000, Table Z-1				
Crufomate	299-86-5	--	5	--	--	--	--	--
Cumene	98-82-8			see 1910.1000, Table Z-1				
Cyanamide	420-04-2	--	2	--	--	--	--	--
Cyanides (as CN)	Varies with compound	--	5	--	--	--	--	X

APPROVED RULES

Substance	CAS #	TWA		STEL		Ceiling		Skin designation
		ppm	mg/m ³	ppm	mg/m ³	ppm	mg/m ³	
Cyanogen	460-19-5	10	20	--	--	--	--	--
Cyanogen chloride	506-77-4	--	--	--	--	0.3	0.6	--
Cyclohexane	110-82-7	see 1910.1000, Table Z-1						
Cyclohexanol	108-93-0	50	200	--	--	--	--	X
Cyclohexanone	108-94-1	25	100	--	--	--	--	X
Cyclohexene	110-83-8	see 1910.1000, Table Z-1						
Cyclohexylamine	108-91-8	10	40	--	--	--	--	--
Cyclonite (RDX)	121-82-4	--	1.5	--	--	--	--	X
Cyclopentadiene	542-92-7	see 1910.1000, Table Z-1						
Cyclopentane	287-92-3	600	1720	--	--	--	--	--
Cyhexatin	13121-70-5	--	5	--	--	--	--	--
2,4-D (Dichlorophenoxyacetic acid)	94-75-7	see 1910.1000, Table Z-1						
Decaborane	17702-41-9	0.05	0.3	0.15	0.9	--	--	X
Demeton (Systox7)	8065-48-3	see 1910.1000, Table Z-1						
DDT; see Dichlorodiphenyl-trichloroethane								
DDVP; see Dichlorvos								
Diacetone alcohol (4-Hydroxy-4-methyl-2-pentanone)	123-42-2	see 1910.1000, Table Z-1						
1,2-Diaminoethane; see Ethylenediamine								
Diazinon	333-41-5	--	0.1	--	--	--	--	X
Diazomethane	334-88-3	see 1910.1000, Table Z-1						
Diborane	19287-45-7	see 1910.1000, Table Z-1						
1,2-Dibromo-3-chloropropane (DBCP)	96-12-8	see 1910.1044						
1,2-Dibromoethane; see Ethylene dibromide								
2-N-Dibutylaminoethanol	102-81-8	2	14	--	--	--	--	--
Dibutyl phosphate	107-66-4	1	5	2	10	--	--	--
Dibutyl phthalate	84-74-2	see 1910.1000, Table Z-1						
Dichloroacetylene	7572-29-4	--	--	--	--	0.1	0.4	--
<i>o</i> -Dichlorobenzene	95-50-1	see 1910.1000, Table Z-1						
<i>p</i> -Dichlorobenzene	106-46-7	75	450	110	675	--	--	--
3,3'-Dichlorobenzidine	91-94-1	see 1910.1007						
Dichlorodifluoromethane	75-71-8	see 1910.1000, Table Z-1						
1,3-Dichloro-5,5-dimethyl hydantoin	118-52-5	--	0.2	--	0.4	--	--	--
Dichlorodiphenyltrichloroethane (DDT)	50-29-3	see 1910.1000, Table Z-1						
1,1-Dichloroethane	75-34-3	see 1910.1000, Table Z-1						
1,2-Dichloroethane; see Ethylene dichloride								

APPROVED RULES

Substance	CAS #	TWA		STEL		Ceiling		Skin designation
		ppm	mg/m ³	ppm	mg/m ³	ppm	mg/m ³	
1,2-Dichloroethylene	540-59-0			see 1910.1000, Table Z-1				
Dichloroethyl ether	111-44-4	5	30	10	60	--	--	X
Dichloromethane; see Methylene chloride								
Dichloromonofluoromethane	75-43-4	10	40	--	--	--	--	--
1,1-Dichloro-1-nitroethane	594-72-9	2	10	--	--	--	--	--
1,2-Dichloropropane; see Propylene dichloride								
1,3-Dichloropropene	542-75-6	1	5	--	--	--	--	X
2,2-Dichloropropionic acid	75-99-0	1	6	--	--	--	--	--
Dichlorotetrafluoroethane	76-14-2			see 1910.1000, Table Z-1				
Dichlorvos (DDVP)	62-73-7			see 1910.1000, Table Z-1				
Dicrotophos	141-66-2	--	0.25	--	--	--	--	X
Dicyclopentadiene	77-73-6	5	30	--	--	--	--	--
Dicyclopentadienyl iron	102-54-5							
Total dust		--	10	--	--	--	--	--
Respirable fraction		--	5	--	--	--	--	--
Dieldrin	60-57-1			see 1910.1000, Table Z-1				
Diethanolamine	111-42-2	3	15	--	--	--	--	--
Diethylamine	109-89-7	10	30	25	75	--	--	--
2-Diethylaminoethanol	100-37-8			see 1910.1000, Table Z-1				
Diethylene triamine	111-40-0	1	4	--	--	--	--	--
Diethyl ether; see Ethyl ether								
Diethyl ketone	96-22-0	200	705	--	--	--	--	--
Diethyl phthalate	84-66-2	--	5	--	--	--	--	--
Difluorodibromomethane	75-61-6			see 1910.1000, Table Z-1				
Diglycidyl ether (DGE)	2238-07-5	0.1	0.5	--	--	--	--	--
Dihydroxybenzene; see Hydroquinone								
Diisobutyl ketone	108-83-8	25	150	--	--	--	--	--
Diisopropylamine	108-18-9			see 1910.1000, Table Z-1				
4-Dimethylaminoazobenzene	60-11-7			see 1910.1015				
Dimethoxymethane; see Methylal								
Dimethylacetamide	127-19-5			see 1910.1000, Table Z-1				
Dimethylamine	124-40-3			see 1910.1000, Table Z-1				
Dimethylaminobenzene; see Xylidine								
Dimethylaniline (<i>N,N</i> -Dimethylaniline)	121-69-7	5	25	10	50	--	--	X
Dimethylbenzene; see Xylene								
Dimethyl-1,2-dibromo -2,2- dichloroethyl phosphate	300-76-5	--	3	--	--	--	--	X

APPROVED RULES

Substance	CAS #	TWA		STEL		Ceiling		Skin designation
		ppm	mg/m ³	ppm	mg/m ³	ppm	mg/m ³	
Dimethylformamide	68-12-2			see 1910.1000, Table Z-1				
2,6-Dimethyl-4-heptanone; see Diisobutyl ketone								
1,1-Dimethylhydrazine	57-14-7			see 1910.1000, Table Z-1				
Dimethylphthalate	131-11-3			see 1910.1000, Table Z-1				
Dimethyl sulfate	77-78-1	0.1	0.5	--	--	--	--	X
Dinitolmide (3,5-Dinitro- <i>o</i> -toluamide)	148-01-6	--	5	--	--	--	--	--
Dinitrobenzene (all isomers);								
<i>ortho</i>	528-29-0			see 1910.1000, Table Z-1				
<i>meta</i>	99-65-0			see 1910.1000, Table Z-1				
<i>para</i>	100-25-4			see 1910.1000, Table Z-1				
Dinitro- <i>o</i> -cresol	534-52-1			see 1910.1000, Table Z-1				
Dinitrotoluene	121-14-2			see 1910.1000, Table Z-1				
Dioxane (Diethylene dioxide)	123-91-1	25	90	--	--	--	--	X
Dioxathion (Delnav7)	78-34-2	--	0.2	--	--	--	--	X
Diphenyl (Biphenyl)	92-52-4			see 1910.1000, Table Z-1				
Diphenylamine	122-39-4	--	10	--	--	--	--	--
Diphenylmethane diisocyanate;								
see Methylene bisphenyl isocyanate								
Dipropyl ketone	123-19-3	50	235	--	--	--	--	--
Dipropylene glycol methyl ether	34590-94-8	100	600	150	900	--	--	X
Diquat	85-00-7	--	0.5	--	--	--	--	--
Di- <i>sec</i> -octyl phthalate (Di-(2-ethylhexyl) phthalate)	117-81-7	--	5	--	10	--	--	--
Disulfiram (Antabuse ⁷)	97-77-8	--	2	--	--	--	--	--
Disulfoton	298-04-4	--	0.1	--	--	--	--	X
2,6-Di- <i>tert</i> -butyl- <i>p</i> -cresol	128-37-0	--	10	--	--	--	--	--
Diuron	330-54-1	--	10	--	--	--	--	--
Divinyl benzene	108-57-6	10	50	--	--	--	--	--
Emery	12415-34-8							
Total dust		--	10	--	--	--	--	--
Respirable fraction			5	--	--	--	--	--
Endosulfan	115-29-7			see 1910.1000, Table Z-1				
Endrin	72-20-8			see 1910.1000, Table Z-1				
Epichlorohydrin	106-89-8	2	8	--	--	--	--	X
EPN	2104-64-5			see 1910.1000, Table Z-1				
1,2-Epoxypropane; see Propylene oxide								
2,3-Epoxy-1-propanol; see Glycidol								

APPROVED RULES

Substance	CAS #	TWA		STEL		Ceiling		Skin designation
		ppm	mg/m ³	ppm	mg/m ³	ppm	mg/m ³	
Ethanethiol; see Ethyl mercaptan								
Ethanolamine	141-43-5	3	8	6	15	--	--	--
Ethion	563-12-2	--	0.4	--	--	--	--	X
2-Ethoxyethanol (Cellosolve)	110-80-5			see 1910.1000, Table Z-1				
2-Ethoxyethyl acetate (Cellosolve acetate)	111-15-9			see 1910.1000, Table Z-1				
Ethyl acetate	141-78-6			see 1910.1000, Table Z-1				
Ethyl acrylate	140-88-5	5	20	25	100	--	--	X
Ethyl alcohol (Ethanol)	64-17-5			see 1910.1000, Table Z-1				
Ethylamine	75-04-7			see 1910.1000, Table Z-1				
Ethyl amyl ketone (5-Methyl-3-heptanone)	106-68-3			see 1910.1000, Table Z-1				
Ethyl benzene	100-41-4	100	435	125	545	--	--	--
Ethyl bromide	74-96-4	200	890	250	1110	--	--	--
Ethyl butyl ketone (3-Heptanone)	106-35-4			see 1910.1000, Table Z-1				
Ethyl chloride	75-00-3			see 1910.1000, Table Z-1				
Ethyl ether	60-29-7	400	1200	500	1500	--	--	--
Ethyl formate	109-94-4			see 1910.1000, Table Z-1				
Ethyl mercaptan (Ethanethiol)	75-08-1	0.5	1	--	--	--	--	--
Ethyl silicate	78-10-4	10	85	--	--	--	--	--
Ethylene chlorohydrin	107-07-3	--	--	--	--	1	3	X
Ethylenediamine	107-15-3			see 1910.1000, Table Z-1				
Ethylene dibromide	106-93-4			see 1910.1000, Table Z-2				
Ethylene dichloride (1,2-Dichloroethane)	107-06-2	1	4	2	8	--	--	--
Ethylene glycol	107-21-1	--	--	--	--	50	125	--
Ethylene glycol dinitrate	628-96-6	--	--	--	0.1	--	--	X
Ethylene glycol methyl acetate; see Methyl cellosolve acetate								
Ethyleneimine	151-56-4			see 1910.1012				
Ethylene oxide	75-21-8			see 1910.1047				
Ethylidene chloride; see 1,1-Dichloroethane								
Ethylidene norbornene	16219-75-3	--	--	--	--	5	25	--
N-Ethylmorpholine	100-74-3	5	23	--	--	--	--	X
Fenamiphos	22224-92-6	--	0.1	--	--	--	--	X
Fensulfothion (Dasanit 7)	115-90-2	--	0.1	--	--	--	--	--
Fenthion	55-38-9	--	0.2	--	--	--	--	X
Ferbam	14484-64-1							
Total dust		--	10	--	--	--	--	--

APPROVED RULES

Substance	CAS #	TWA		STEL		Ceiling		Skin designation
		ppm	mg/m ³	ppm	mg/m ³	ppm	mg/m ³	
Respirable fraction		--	5	--	--	--	--	--
Ferrovandium dust	12604-58-9	--	1	--	3	--	--	--
Fluorides (as F)	Varies with compound	see 1910.1000, Table Z-2						
Fluorine	7782-41-4	see 1910.1000, Table Z-1						
Fluorotrichloromethane (Trichlorofluoromethane)	75-69-4	--	--	--	--	1000	5600	--
Fonofos	944-22-9	--	0.1	--	--	--	--	X
Formaldehyde	50-00-0	see 1910.1048						
Formamide	75-12-7	20	30	30	45	--	--	--
Formic acid	64-18-6	see 1910.1000, Table Z-1						
Furfural	98-01-1	2	8	--	--	--	--	X
Furfuryl alcohol	98-00-0	10	40	15	60	--	--	X
Gasoline	8006-61-9	300	900	500	1500	--	--	--
Germanium tetrahydride	7782-65-2	0.2	0.6	--	--	--	--	--
Glutaraldehyde	111-30-8	--	--	--	--	0.2	0.8	--
Glycerin (mist)	56-81-5							
Total dust		--	10	--	--	--	--	--
Respirable fraction		--	5	--	--	--	--	--
Glycidol	556-52-5	25	75	--	--	--	--	--
Glycol monoethyl ether; see 2-Ethoxyethanol								
Grain dust (oat, wheat, barley)	--	see 1910.1000, Table Z-1						
Graphite, natural respirable dust	7782-42-5	--	2.5	--	--	--	--	--
Graphite, synthetic	--							
Total dust		--	10	--	--	--	--	--
Respirable fraction		--	5	--	--	--	--	--
Guthion7; see Azinphos methyl								
Gypsum	7778-18-9							
Total dust		see 1910.1000, Table Z-1						
Respirable fraction		see 1910.1000, Table Z-1						
Hafnium	7440-58-6	see 1910.1000, Table Z-1						
Heptachlor	76-44-8	see 1910.1000, Table Z-1						
Heptane (n-Heptane)	142-82-5	400	1600	500	2000	--	--	--
Hexachlorobutadiene	87-68-3	0.02	0.24	--	--	--	--	--
Hexachlorocyclopentadiene	77-47-4	0.01	0.1	--	--	--	--	--
Hexachloroethane	67-72-1	see 1910.1000, Table Z-1						
Hexachloronaphthalene	1335-87-1	see 1910.1000, Table Z-1						
Hexafluoroacetone	684-16-2	0.1	0.7	--	--	--	--	X
n-Hexane	110-54-3	50	180	--	--	--	--	--
Hexane isomers	Varies with compound	500	1800	1000	3600	--	--	--

APPROVED RULES

Substance	CAS #	TWA		STEL		Ceiling		Skin designation
		ppm	mg/m ³	ppm	mg/m ³	ppm	mg/m ³	
2-Hexanone (Methyl <i>n</i> -butyl ketone)	591-78-6	5	20	--	--	--	--	--
Hexone (Methyl isobutyl ketone)	108-10-1	50	205	75	300	--	--	--
<i>sec</i> -Hexyl acetate	108-84-9	see 1910.1000, Table Z-1						
Hexylene glycol	107-41-5	--	--	--	--	25	125	--
Hydrazine	302-01-2	0.1	0.1	--	--	--	--	X
Hydrogen bromide	10035-10-6	--	--	--	--	3	10	--
Hydrogen chloride	7647-01-0	see 1910.1000, Table Z-1						
Hydrogen cyanide	74-90-8	--	--	4.7	5	--	--	X
Hydrogen fluoride (as F)	7664-39-3	3	--	6	--	--	--	--
Hydrogen peroxide	7722-84-1	see 1910.1000, Table Z-1						
Hydrogen selenide (as Se)	7783-07-5	see 1910.1000, Table Z-1						
Hydrogen sulfide	7783-06-4	10	14	15	21	--	--	--
Hydrogenated terphenyls	61788-32-7	0.5	5	--	--	--	--	--
Hydroquinone	123-31-9	see 1910.1000, Table Z-1						
2-Hydroxypropyl acrylate	999-61-1	0.5	3	--	--	--	--	X
Indene	95-13-6	10	45	--	--	--	--	--
Indium and compounds (as In)	7440-74-6	--	0.1	--	--	--	--	--
Iodine	7553-56-2	see 1910.1000, Table Z-1						
Iodoform	75-47-8	0.6	10	--	--	--	--	--
Iron oxide, dust and fume (as Fe)	1309-37-1	see 1910.1000, Table Z-1						
Total particulate		see 1910.1000, Table Z-1						
Iron pentacarbonyl (as Fe)	13463-40-6	0.1	0.8	0.2	1.6	--	--	--
Iron salts (soluble) (as Fe)	Varies with compound	--	1	--	--	--	--	--
Isoamyl acetate	123-92-2	see 1910.1000, Table Z-1						
Isoamyl alcohol (Primary and secondary)	123-51-3	100	360	125	450	--	--	--
Isobutyl acetate	110-19-0	see 1910.1000, Table Z-1						
Isobutyl alcohol	78-83-1	50	150	--	--	--	--	--
Isooctyl alcohol	26952-21-6	50	270	--	--	--	--	X
Isophorone	78-59-1	4	23	--	--	--	--	--
Isophorone diisocyanate	4098-71-9	0.005	--	0.02	--	--	--	X
2-Isopropoxyethanol	109-59-1	25	105	--	--	--	--	--
Isopropyl acetate	108-21-4	250	950	310	1185	--	--	--
Isopropyl alcohol	67-63-0	400	980	500	1225	--	--	--
Isopropylamine	75-31-0	5	12	10	24	--	--	--
<i>N</i> -Isopropylaniline	768-52-5	2	10	--	--	--	--	X
Isopropyl ether	108-20-3	see 1910.1000, Table Z-1						
Isopropyl glycidyl ether (IGE)	4016-14-2	50	240	75	360	--	--	--
Kaolin	1332-58-7	see 1910.1000, Table Z-1						
Total dust		--	10	--	--	--	--	--

APPROVED RULES

Substance	CAS #	TWA		STEL		Ceiling		Skin designation
		ppm	mg/m ³	ppm	mg/m ³	ppm	mg/m ³	
Respirable fraction		--	5	--	--	--	--	--
Ketene	463-51-4	0.5	0.9	1.5	3	--	--	--
Lead, inorganic (as Pb)	7439-92-1	see 1910.1025						
Limestone	1317-65-3							
Total dust		see 1910.1000, Table Z-1						
Respirable		see 1910.1000, Table Z-1						
Lindane	58-89-9	see 1910.1000, Table Z-1						
Lithium hydride;	7580-67-8	see 1910.1000, Table Z-1						
L.P.G. (Liquified petroleum gas)	68476-85-7	see 1910.1000, Table Z-1						
Magnesite	546-93-0							
Total dust		see 1910.1000, Table Z-1						
Respirable fraction		see 1910.1000, Table Z-1						
Magnesium oxide fume	1309-48-4							
Total dust		--	10	--	--	--	--	--
Respirable fraction		--	5	--	--	--	--	--
Malathion	121-75-5							
Total dust		--	10	--	--	--	--	X
Respirable fraction		--	5	--	--	--	--	X
Maleic anhydride	108-31-6	see 1910.1000, Table Z-1						
Manganese	7439-96-5							
Compounds (as Mn)		see 1910.1000, Table Z-1						
Manganese	7439-96-5							
Fume (as Mn)		--	1	--	3	--	--	--
Manganese cyclopentadienyl tricarbonyl (as Mn)	12079-65-1	--	0.1	--	--	--	--	X
Manganese tetroxide (as Mn)	1317-35-7	--	1	--	--	--	--	--
Marble	1317-65-3							
Total dust		see 1910.1000, Table Z-1						
Respirable fraction		see 1910.1000, Table Z-1						
Mercury (aryl and inorganic) (as Hg)	7439-97-6	--	--	--	--	--	0.1	X
Mercury (organo) alkyl compounds (as Hg)	7439-97-6	--	0.01	--	0.03	--	--	X
Mercury (vapor) (as Hg)	7439-97-6	--	0.05	--	--	--	--	X
Mesityl oxide	141-79-7	15	60	25	100	--	--	--
Methacrylic acid	79-41-4	20	70	--	--	--	--	X
Methanethiol; see Methyl mercaptan								
Methomyl (Lannate 7)	16752-77-5	--	2.5	--	--	--	--	--
Methoxychlor	72-43-5							
Total dust		--	10	--	--	--	--	--
Respirable fraction		--	5	--	--	--	--	--
2-Methoxyethanol;								

APPROVED RULES

Substance	CAS #	TWA		STEL		Ceiling		Skin designation
		ppm	mg/m ³	ppm	mg/m ³	ppm	mg/m ³	
see Methyl Cellosolve7								
2-Methoxyethyl acetate; see Methyl Cellosolve7 acetate								
4-Methoxyphenol	150-76-5	--	5	--	--	--	--	--
Methyl acetate	79-20-9	200	610	250	760	--	--	--
Methyl acetylene (Propyne)	74-99-7			see 1910.1000, Table Z-1				
Methyl acetylene-propadiene mixture (MAPP)	--	1000	1800	1250	2250	--	--	--
Methyl acrylate	96-33-3			see 1910.1000, Table Z-1				
Methylacrylonitrile	126-98-7	1	3	--	--	--	--	X
Methylal (Dimethoxymethane)	109-87-5			see 1910.1000, Table Z-1				
Methyl alcohol (Methanol)	67-56-1	200	260	250	310	--	--	X
Methylamine	74-89-5			see 1910.1000, Table Z-1				
Methyl amyl alcohol; see Methyl isobutyl carbinol								
Methyl <i>n</i> -amyl ketone	110-43-0			see 1910.1000, Table Z-1				
Methyl bromide	74-83-9	5	20	--	--	--	--	X
Methyl butyl ketone; see 2-Hexanone								
Methyl Cellosolve7 (2-Methoxyethanol)	109-86-4			see 1910.1000, Table Z-1				
Methyl Cellosolve7 acetate (2-Methoxyethyl acetate)	110-49-6			see 1910.1000, Table Z-1				
Methyl chloride	74-87-3	50	105	100	205	--	--	--
Methyl chloroform (1,1,1-Trichloroethane)	71-55-6	350	1900	450	2450	--	--	--
Methyl 2-cyanoacrylate	137-05-3	2	8	4	16	--	--	--
Methylcyclohexane	108-87-2	400	1600	--	--	--	--	--
Methylcyclohexanol	25639-42-3	50	235	--	--	--	--	--
<i>o</i> -Methylcyclohexanone	583-60-8	50	230	75	345	--	--	X
Methylcyclopentadienyl manganese tricarbonyl (as Mn)	12108-13-3	--	0.2	--	--	--	--	X
Methyl demeton	8022-00-2	--	0.5	--	--	--	--	X
4,4'-Methylene bis(2-chloro-aniline) (MBOCA)	101-14-4	0.02	0.22	--	--	--	--	X
Methylene bis(4-cyclohexylisocyanate)	5124-30-1	--	--	--	--	0.01	0.11	--
Methylene chloride	75-09-2			see 1910.1052				
Methylenedianiline (4,4'-Methylenedianiline)	101-77-9			see 1910.1050; 1926.60				
Methyl ethyl ketone (MEK); see 2-Butanone								
Methyl ethyl ketone peroxide (MEKP)	1338-23-4	--	--	--	--	0.7	5	--

APPROVED RULES

Substance	CAS #	TWA		STEL		Ceiling		Skin designation
		ppm	mg/m ³	ppm	mg/m ³	ppm	mg/m ³	
Methyl formate	107-31-3	100	250	150	375	--	--	--
Methyl hydrazine (Monomethyl hydrazine)	60-34-4			see 1910.1000, Table Z-1				
Methyl iodide	74-88-4	2	10	--	--	--	--	X
Methyl isoamyl ketone	110-12-3	50	240	--	--	--	--	--
Methyl isobutyl carbinol	108-11-2	25	100	40	165	--	--	X
Methyl isobutyl ketone; see Hexone								
Methyl isocyanate	624-83-9			see 1910.1000, Table Z-1				
Methyl isopropyl ketone	563-80-4	200	705	--	--	--	--	--
Methyl mercaptan	74-93-1	0.5	1	--	--	--	--	--
Methyl methacrylate	80-62-6			see 1910.1000, Table Z-1				
Methyl parathion	298-00-0	--	0.2	--	--	--	--	X
Methyl propyl ketone; see 2-Pentanone								
Methyl silicate	681-84-5	1	6	--	--	--	--	--
<i>alpha</i> -Methyl styrene	98-83-9	50	240	100	485	--	--	--
Methylene bisphenyl isocyanate (MDI)	101-68-8			see 1910.1000, Table Z-1				
Metribuzin	21087-64-9	--	5	--	--	--	--	--
Mica; see Silicates								
Molybdenum (as Mo)	7439-98-7							
Soluble compounds				see 1910.1000, Table Z-1				
Molybdenum (as Mo)	7439-98-7							
Insoluble compounds								
Total dust		--	10	--	--	--	--	--
Respirable fraction		--	5	--	--	--	--	--
Monocrotophos (Azodrin 7)	6923-22-4	--	0.25	--	--	--	--	--
Monomethyl aniline	100-61-8	0.5	2	--	--	--	--	X
Monomethyl hydrazine; see Methyl hydrazine								
Morpholine	110-91-8	20	70	30	105	--	--	X
Naphtha (Coal tar)	8030-30-6			see 1910.1000, Table Z-1				
Naphthalene	91-20-3	10	50	15	75	--	--	--
<i>alpha</i> -Naphthylamine	134-32-7			see 1910.1004				
<i>beta</i> -Naphthylamine	91-59-8			see 1910.1009				
Nickel carbonyl (as Ni)	13463-39-3			see 1910.1000, Table Z-1				
Nickel	7440-02-0							
Metal and insoluble compounds (as Ni)				see 1910.1000, Table Z-1				
Nickel	7440-02-0							
Soluble compounds (as Ni)		--	0.1	--	--	--	--	--
Nicotine	54-11-5			see 1910.1000, Table Z-1				

APPROVED RULES

Substance	CAS #	TWA		STEL		Ceiling		Skin designation
		ppm	mg/m ³	ppm	mg/m ³	ppm	mg/m ³	
Nitric acid	7697-37-2	2	5	4	10	--	--	--
Nitric oxide	10102-43-9			see 1910.1000, Table Z-1				
<i>p</i> -Nitroaniline	100-01-6	--	3	--	--	--	--	X
Nitrobenzene	98-95-3			see 1910.1000, Table Z-1				
<i>p</i> -Nitrochlorobenzene	100-00-5			see 1910.1000, Table Z-1				
4-Nitrodiphenyl	92-93-3			see 1910.1003				
Nitroethane	79-24-3			see 1910.1000, Table Z-1				
Nitrogen dioxide	10102-44-0	--	--	1	1.8	--	--	--
Nitrogen trifluoride	7783-54-2			see 1910.1000, Table Z-1				
Nitroglycerin	55-63-0	--	--	--	0.1	--	--	X
Nitromethane	75-52-5			see 1910.1000, Table Z-1				
1-Nitropropane	108-03-2			see 1910.1000, Table Z-1				
2-Nitropropane	79-46-9	10	35	--	--	--	--	--
<i>N</i> -Nitrosodimethylamine	62-75-9			see 1910.1016				
Nitrotoluene (all isomers)								
<i>o</i> -isomer	88-72-2	2	11	--	--	--	--	X
<i>m</i> -isomer	99-08-1	2	11	--	--	--	--	X
<i>p</i> -isomer	99-99-0	2	11	--	--	--	--	X
Nitrotrichloromethane; see Chloropicrin								
Nonane	111-84-2	200	1050	--	--	--	--	--
Octachloronaphthalene	2234-13-1	--	0.1	--	0.3	--	--	X
Octane	111-65-9	300	1450	375	1800	--	--	--
Oil mist, mineral	8012-95-1			see 1910.1000, Table Z-1				
Osmium tetroxide (as Os)	20816-12-0	0.0002	0.002	0.0006	0.006	--	--	--
Oxalic acid	144-62-7	--	1	--	2	--	--	--
Oxygen difluoride	7783-41-7	--	--	--	--	0.05	0.01	--
Ozone	10028-15-6	0.1	0.2	0.3	0.6	--	--	--
Paraffin wax fume	8002-74-2	--	2	--	--	--	--	--
Paraquat, respirable dust	4685-14-7	--	0.1	--	--	--	--	X
Parathion	56-38-2			see 1910.1000, Table Z-1				
Particulates not otherwise regulated	--							
Total dust				see 1910.1000, Table Z-1				
Respirable dust				see 1910.1000, Table Z-1				
PCB; see Chlorodiphenyl (42% and 54% chlorine)								
Pentaborane	19624-22-7	0.005	0.01	0.015	0.03	--	--	--
Pentachloronaphthalene	1321-64-8			see 1910.1000, Table Z-1				
Pentachlorophenol	87-86-5			see 1910.1000, Table Z-1				
Pentaerythritol	115-77-5							
Total dust		--	10	--	--	--	--	--
Respirable fraction		--	5	--	--	--	--	--

APPROVED RULES

Substance	CAS #	TWA		STEL		Ceiling		Skin designation
		ppm	mg/m ³	ppm	mg/m ³	ppm	mg/m ³	
Pentane	109-66-0	600	1800	750	2250	--	--	--
2-Pentanone (Methyl propyl ketone)	107-87-9	200	700	250	875	--	--	--
Perchloroethylene (Tetrachloroethylene)	127-18-4	25	170	--	--	--	--	--
Perchloromethyl mercaptan	594-42-3			see 1910.1000, Table Z-1				
Perchloryl fluoride	7616-94-6	3	14	6	28	--	--	--
Perlite	93763-70-3							
Total dust				see 1910.1000, Table Z-1				
Respirable fraction				see 1910.1000, Table Z-1				
Petroleum distillates (Naphtha)	8002-05-9	400	1600	--	--	--	--	--
Phenol	108-95-2			see 1910.1000, Table Z-1				
Phenothiazine	92-84-2	--	5	--	--	--	--	X
<i>p</i> -Phenylene diamine	106-50-3			see 1910.1000, Table Z-1				
Phenyl ether, Vapor	101-84-8			see 1910.1000, Table Z-1				
Phenyl ether - biphenyl mixture, Vapor	--			see 1910.1000, Table Z-1				
Phenylethylene; see Styrene								
Phenyl glycidyl ether (PGE)	122-60-1	1	6	--	--	--	--	--
Phenylhydrazine	100-63-0	5	20	10	45	--	--	X
Phenyl mercaptan	108-98-5	0.5	2	--	--	--	--	--
Phenylphosphine	638-21-1	--	--	--	--	0.05	0.25	--
Phorate	298-02-2	--	0.05	--	0.2	--	--	X
Phosdrin 7 (Mevinphos)	7786-34-7	0.01	0.1	0.03	0.3	--	--	X
Phosgene (Carbonyl chloride)	75-44-5			see 1910.1000, Table Z-1				
Phosphine	7803-51-2	0.3	0.4	1	1	--	--	--
Phosphoric acid	7664-38-2	--	1	--	3	--	--	--
Phosphorus (yellow)	7723-14-0			see 1910.1000, Table Z-1				
Phosphorus oxychloride	10025-87-3	0.1	0.6	--	--	--	--	--
Phosphorus pentachloride	10026-13-8			see 1910.1000, Table Z-1				
Phosphorus pentasulfide	1314-80-3	--	1	--	3	--	--	--
Phosphorus trichloride	7719-12-2	0.2	1.5	0.5	3	--	--	--
Phthalic anhydride	85-44-9	1	6	--	--	--	--	--
<i>m</i> -Phthalodinitrile	626-17-5	--	5	--	--	--	--	--
Picloram	1918-02-1							
Total dust		--	10	--	--	--	--	--
Respirable fraction		--	5	--	--	--	--	--
Picric acid (2,4,6-Trinitrophenol)	88-89-1			see 1910.1000, Table Z-1				
Pindone (2-Pivalyl-1,3-indandione)	83-26-1			see 1910.1000, Table Z-1				
Piperazine dihydrochloride	142-64-3	--	5	--	--	--	--	--

APPROVED RULES

Substance	CAS #	TWA		STEL		Ceiling		Skin designation
		ppm	mg/m ³	ppm	mg/m ³	ppm	mg/m ³	
Plaster of Paris	7778-18-9							
Total dust				see 1910.1000, Table Z-1				
Respirable fraction				see 1910.1000, Table Z-1				
Platinum (as Pt)	7440-06-4							
Metal		--	1	--	--	--	--	--
Platinum (as Pt)	7440-06-4							
Soluble salts				see 1910.1000, Table Z-1				
Portland cement	65997-15-1							
Total dust		--	10	--	--	--	--	--
Respirable fraction		--	5	--	--	--	--	--
Potassium hydroxide	1310-58-3	--	--	--	--	--	2	--
Propane	74-98-6			see 1910.1000, Table Z-1				
Propargyl alcohol	107-19-7	1	2	--	--	--	--	X
<i>beta</i> -Propiolactone	57-57-8			see 1910.1013				
Propionic acid	79-09-4	10	30	--	--	--	--	--
Propoxur (Baygon7)	114-26-1	--	0.5	--	--	--	--	--
<i>n</i> -Propyl acetate	109-60-4	200	840	250	1050	--	--	--
<i>n</i> -Propyl alcohol	71-23-8	200	500	250	625	--	--	--
<i>n</i> -Propyl nitrate	627-13-4	25	105	40	170	--	--	--
Propylene dichloride	78-87-5	75	350	110	510	--	--	--
Propylene glycol dinitrate	6423-43-4	0.05	0.3	--	--	--	--	--
Propylene glycol monomethyl ether	107-98-2	100	360	150	540	--	--	--
Propylene imine	75-55-8			see 1910.1000, Table Z-1				
Propylene oxide	75-56-9	20	50	--	--	--	--	--
Propyne; see Methyl acetylene								
Pyrethrum	8003-34-7			see 1910.1000, Table Z-1				
Pyridine	110-86-1			see 1910.1000, Table Z-1				
Quinone	106-51-4			see 1910.1000, Table Z-1				
RDX; see Cyclonite								
Resorcinol	108-46-3	10	45	20	90	--	--	--
Rhodium (as Rh), Metal fume and insoluble compounds	7440-16-6			see 1910.1000, Table Z-1				
Rhodium (as Rh), Soluble compounds	7440-16-6			see 1910.1000, Table Z-1				
Ronnel	299-84-3	--	10	--	--	--	--	--
Rosin core solder pyrolysis products, as formaldehyde	--	--	0.1	--	--	--	--	--
Rotenone	83-79-4			see 1910.1000, Table Z-1				
Rouge	--							
Total dust		--	10	--	--	--	--	--
Respirable fraction		--	5	--	--	--	--	--
Selenium compounds (as Se)	7782-49-2			see 1910.1000, Table Z-1				

APPROVED RULES

Substance	CAS #	TWA		STEL		Ceiling		Skin designation
		ppm	mg/m ³	ppm	mg/m ³	ppm	mg/m ³	
Selenium hexafluoride (as Se)	7783-79-1			see 1910.1000, Table Z-1				
Silica, amorphous, precipitated and gel	--			see 1910.1000, Table Z-3				
Silica, amorphous, diatomaceous earth, containing less than 1% crystalline silica	68855-54-9			see 1910.1000, Table Z-3				
Silica, crystalline cristobalite (as quartz), respirable dust	14464-46-1			see 1910.1000, Table Z-3				
Silica, crystalline quartz (as quartz), respirable dust	14808-60-7			see 1910.1000, Table Z-3				
Silica, crystalline tripoli (as quartz), respirable dust	1317-95-9	see 1910.1000, Table Z-3 (respirable crystalline quartz)						
Silica, crystalline tridymite (as quartz), respirable dust	15468-32-3			see 1910.1000, Table Z-3				
Silica, fused, respirable dust	60676-86-0			see 1910.1000, Table Z-3				
Silicates (less than 1% crystalline silica)								
Mica (respirable dust)	12001-26-2	--	3	--	--	--	--	--
Soapstone	--							
Total dust		--	6	--	--	--	--	--
Respirable dust		--	3	--	--	--	--	--
Talc (containing asbestos)				see 1910.1001				
Talc (not containing asbestos), less than 1% quartz, respirable dust	14807-96-6	--	2	--	--	--	--	--
Tremolite	--			see 1910.1001				
Silicon								
Total dust	7440-21-3	--	10	--	--	--	--	--
Respirable fraction		--	5	--	--	--	--	--
Silicon carbide								
Total dust	409-21-2	--	10	--	--	--	--	--
Respirable fraction		--	5	--	--	--	--	--
Silicon tetrahydride	7803-62-5	5	7	--	--	--	--	--
Silver, metal, dust and fume (as Ag)	7440-22-4			see 1910.1000, Table Z-1				
Soapstone; see Silicates								
Sodium azide	26628-22-8							
(as HN ₃)		--	--	--	--	0.1	--	X
(as NaN ₃)		--	--	--	--	--	0.3	X
Sodium bisulfite	7631-90-5	--	5	--	--	--	--	--
Sodium fluoroacetate	62-74-8	--	0.05	--	0.15	--	--	X
Sodium hydroxide	1310-73-2	--	--	--	--	--	2	--
Sodium metabisulfite	7681-57-4	--	5	--	--	--	--	--

APPROVED RULES

Substance	CAS #	TWA		STEL		Ceiling		Skin designation
		ppm	mg/m ³	ppm	mg/m ³	ppm	mg/m ³	
Starch	9005-25-8							
Total dust				see 1910.1000, Table Z-1				
Respirable fraction				see 1910.1000, Table Z-1				
Stibine	7803-52-3			see 1910.1000, Table Z-1				
Stoddard solvent	8052-41-3	100	525	--	--	--	--	--
Strychnine	57-24-9			see 1910.1000, Table Z-1				
Styrene (Vinyl benzene); see Footnote (1)	100-42-5	50	215	100	425	--	--	--
Subtilisins (Proteolytic enzymes); see Footnote (3)								
Sucrose	57-50-1							
Total dust				see 1910.1000, Table Z-1				
Respirable fraction				see 1910.1000, Table Z-1				
Sulfur dioxide	7446-09-5	2	5	5	10	--	--	--
Sulfur hexafluoride	2551-62-4			see 1910.1000, Table Z-1				
Sulfuric acid	7664-93-9			see 1910.1000, Table Z-1				
Sulfur monochloride	10025-67-9	--	--	--	--	1	6	--
Sulfur pentafluoride	5714-22-7	--	--	--	--	0.01	0.1	--
Sulfur tetrafluoride	7783-60-0	--	--	--	--	0.1	0.4	--
Sulfuryl fluoride	2699-79-8	5	20	10	40	--	--	--
Sulprofos	35400-43-2	--	1	--	--	--	--	--
Systox7 (see Demeton)								
2,4,5-T (2,4,5-Trichloro- phenoxyacetic acid)	93-76-5			see 1910.1000, Table Z-1				
Talc; see Silicates								
Tantalum metal and oxide dust	7440-25-7			see 1910.1000, Table Z-1				
TEDP (Sulfotep)	3689-24-5			see 1910.1000, Table Z-1				
Tellurium and compounds (as Te)	13494-80-9			see 1910.1000, Table Z-1				
Tellurium hexafluoride (as Te)	7783-80-4			see 1910.1000, Table Z-1				
Temephos	3383-96-8							
Total dust		--	10	--	--	--	--	--
Respirable fraction		--	5	--	--	--	--	--
TEPP (Tetraethyl pyrophosphate)	107-49-3			see 1910.1000, Table Z-1				
Terphenyls	26140-60-3	--	--	--	--	0.5	5	--
1,1,1,2-Tetrachloro- 2,2-difluoroethane	76-11-9			see 1910.1000, Table Z-1				
1,1,2,2-Tetrachloro- 1,2-difluoroethane	76-12-0			see 1910.1000, Table Z-1				
1,1,2,2-Tetrachloroethane	79-34-5	1	7	--	--	--	--	X
Tetrachloroethylene; see Perchloroethylene								

APPROVED RULES

Substance	CAS #	TWA		STEL		Ceiling		Skin designation
		ppm	mg/m ³	ppm	mg/m ³	ppm	mg/m ³	
Tetrachloromethane; see Carbon tetrachloride								
Tetrachloronaphthalene	1335-88-2			see 1910.1000, Table Z-1				
Tetraethyl lead (as Pb)	78-00-2			see 1910.1000, Table Z-1				
Tetrahydrofuran	109-99-9	200	590	250	735	--	--	--
Tetramethyl lead (as Pb)	75-74-1			see 1910.1000, Table Z-1				
Tetramethyl succinonitrile	3333-52-6			see 1910.1000, Table Z-1				
Tetranitromethane	509-14-8			see 1910.1000, Table Z-1				
Tetrasodium pyrophosphate	7722-88-5	--	5	--	--	--	--	--
Tetryl (2,4,6-Trinitrophenyl methyl nitramine)	479-45-8	--	0.1	--	--	--	--	X
Thallium, soluble compounds (as Tl)	7440-28-0			see 1910.1000, Table Z-1				
4,4'-Thiobis(6- <i>tert</i> -butyl- <i>m</i> -cresol)	96-69-5							
Total dust		--	10	--	--	--	--	--
Respirable fraction		--	5	--	--	--	--	--
Thioglycolic acid	68-11-1	1	4	--	--	--	--	X
Thionyl chloride	7719-09-7	--	--	--	--	1	5	--
Thiram	137-26-8			see 1910.1000, Table Z-1				
Tin, inorganic compounds (except oxides) (as Sn)	7440-31-5			see 1910.1000, Table Z-1				
Tin, organic compounds (as Sn)	7440-31-5	--	0.1	--	--	--	--	X
Tin oxide (as Sn)	7440-31-5	--	2	--	--	--	--	--
Titanium dioxide	<u>13463-67-7</u>							
Total dust		--	10	--	--	--	--	--
Respirable fraction		--	5	--	--	--	--	--
Toluene	108-88-3	100	375	150	560	--	--	--
Toluene-2,4-diisocyanate (TDI)	584-84-9	0.005	0.04	0.02	0.15	--	--	--
<i>m</i> -Toluidine	108-44-1	2	9	--	--	--	--	X
<i>o</i> -Toluidine	95-53-4			see 1910.1000, Table Z-1				
<i>p</i> -Toluidine	106-49-0	2	9	--	--	--	--	X
Toxaphene; see Chlorinated camphene								
Tremolites; see Silicates								
Tributyl phosphate	126-73-8	0.2	2.5	--	--	--	--	--
Trichloroacetic acid	76-03-9	1	7	--	--	--	--	--
1,2,4-Trichlorobenzene	120-82-1	--	--	--	--	5	40	--
1,1,1-Trichloroethane; see Methyl chloroform								
1,1,2-Trichloroethane	79-00-5			see 1910.1000, Table Z-1				
Trichloroethylene	79-01-6	50	270	200	1080	--	--	--

APPROVED RULES

Substance	CAS #	TWA		STEL		Ceiling		Skin designation
		ppm	mg/m ³	ppm	mg/m ³	ppm	mg/m ³	
Trichloromethane; see Chloroform								
Trichloronaphthalene	1321-65-9			see 1910.1000, Table Z-1				
1,2,3-Trichloropropane	96-18-4	10	60	--	--	--	--	--
1,1,2-Trichloro-1,2,2-trifluoroethane	76-13-1	1000	7600	1250	9500	--	--	--
Triethylamine	121-44-8	10	40	15	60	--	--	--
Trifluorobromomethane	75-63-8			see 1910.1000, Table Z-1				
Trimellitic anhydride	552-30-7	0.005	0.04	--	--	--	--	--
Trimethylamine	75-50-3	10	24	15	36	--	--	--
Trimethyl benzene	25551-13-7	25	125	--	--	--	--	--
Trimethyl phosphite	121-45-9	2	10	--	--	--	--	--
2,4,6-Trinitrophenol; see Picric acid								
2,4,6-Trinitrophenylmethyl nitramine; see Tetryl								
2,4,6-Trinitrotoluene (TNT)	118-96-7	--	0.5	--	--	--	--	X
Tri-ortho-cresyl phosphate	78-30-8	--	0.1	--	--	--	--	X
Triphenyl amine	603-34-9	--	5	--	--	--	--	--
Triphenyl phosphate	115-86-6			see 1910.1000, Table Z-1				
Tungsten (as W)	7440-33-7							
Insoluble compounds		--	5	--	10	--	--	--
Soluble compounds		--	1	--	3	--	--	--
Turpentine	8006-64-2			see 1910.1000, Table Z-1				
Uranium (as U)	7440-61-1							
Soluble compounds				see 1910.1000, Table Z-1				
Uranium (as U)	7440-61-1							
Insoluble compounds		--	0.2	--	0.6	--	--	--
<i>n</i> -Valeraldehyde	110-62-3	50	175	--	--	--	--	--
Vanadium	1314-62-1							
Respirable dust (as V ₂ O ₅)		--	0.05	--	--	--	--	--
Fume (as V ₂ O ₅)		--	0.05	--	--	--	--	--
Vegetable oil mist	--							
Total dust				see 1910.1000, Table Z-1				
Respirable dust				see 1910.1000, Table Z-1				
Vinyl acetate	108-05-4	10	30	20	60	--	--	--
Vinyl benzene; see Styrene								
Vinyl bromide	593-60-2	5	20	--	--	--	--	--
Vinyl chloride				see 1910.1017				
Vinyl cyanide; see Acrylonitrile								
Vinyl cyclohexene dioxide	106-87-6	10	60	--	--	--	--	X

APPROVED RULES

Substance	CAS #	TWA		STEL		Ceiling		Skin designation
		ppm	mg/m ³	ppm	mg/m ³	ppm	mg/m ³	
Vinylidene chloride (1,1-Dichloroethylene)	75-35-4	1	4	--	--	--	--	--
Vinyl toluene	25013-15-4			see 1910.1000, Table Z-1				
V M & P Naphtha	8032-32-4	300	1350	400	1800	--	--	--
Warfarin	81-81-2			see 1910.1000, Table Z-1				
Welding fumes (total particulate, breathing zone)	--	--	5	--	--	--	--	--
Wood dust, all soft and hard woods, except Western Red Cedar	--	--	5	--	10	--	--	--
Wood dust, Western red cedar	--	--	2.5	--	--	--	--	--
Xylenes (<i>o</i> -, <i>m</i> -, <i>p</i> - isomers)	1330-20-7	100	435	150	655	--	--	--
<i>m</i> -Xylene- <i>alpha</i> , <i>alpha'</i> -diamine	1477-55-0	--	--	--	--	--	0.1	X
Xylidine	1300-73-8	2	10	--	--	--	--	X
Yttrium	7440-65-5			see 1910.1000, Table Z-1				
Zinc chloride fume	7646-85-7	--	1	--	2	--	--	--
Zinc chromate (as CrO ₃)	Varies with compound	--	--	--	--	--	0.1	--
Zinc oxide fume	1314-13-2	--	5	--	10	--	--	--
Zinc oxide	1314-13-2							
Total dust		--	10	--	--	--	--	--
Respirable fraction		--	5	--	--	--	--	--
Zinc stearate	557-05-1							
Total dust		--	10	--	--	--	--	--
Respirable fraction		--	5	--	--	--	--	--
Zirconium compounds (as Zr)	7440-67-7	--	5	--	10	--	--	--

History Note: Authority G.S. 95-131; 95-133; 150B-21.6; Eff. August 2, 1993;
Temporary Amendment Eff. August 16, 1993, for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Amended Eff. April 1, 1996; January 1, 1996; September 6, 1995; April 1, 1995;
Temporary Amendment Eff. April 1, 1996;
Amended Eff. September 1, 1996; June 3, 1996;
Temporary Amendment Expired January 26, 1997;
Amended Eff. July 1, 2003; October 1, 2001; November 14, 2000; September 3, 1999; February 22, 1999; October 8, 1998; July 1, 1998; April 8, 1998; October 15, 1997; March 7, 1997; February 28, 1997; February 11, 1997.

It is unlawful to transport, purchase, possess, or sell any live individuals of piranha, "walking catfish" (*Clarias batrachus*), snakehead fish (from the Family Channidae, formerly Ophiocephalidae), black carp (*Mylopharyngodon piceus*), white amur or "grass carp" (*Ctenopharyngodon idella*), swamp or "rice" eel (*Monopterus albus*), or red shiner (*Cyprinella lutrensis*) or to stock any of them in the public or private waters of North Carolina, except that the triploid grass carp certified to be sterile by genetic testing at a federal, state, or university laboratory may be bought, possessed and stocked locally for control of aquatic vegetation under a permit issued by the Executive Director.

History Note: Authority G.S. 113-134; 113-292; Eff. February 1, 1976;
Amended Eff. September 1, 1984;
Temporary Amendment Eff. July 1, 2001;
Amended Eff. July 18, 2002;
Temporary Amendment Eff. September 1, 2002;
Amended Eff. August 1, 2004.

**TITLE 15A - DEPARTMENT OF ENVIRONMENT
& NATURAL RESOURCES**

15A NCAC 10C .0211 POSSESSION OF CERTAIN FISHES

TITLE 19A - DEPARTMENT OF TRANSPORTATION

19A NCAC 02E .1203 PARTICIPATION

- (a) The Division Engineer or his designee shall acknowledge receipt and registration of applications from participants applying to participate in designating a Public Vehicular Area.
- (b) By certified check or money order, each participant shall pay a one time non-refundable fee of two hundred dollars (\$200.00) for each registration. If the property is sold, the PVA registration shall transfer to the new owner unless the new owner chooses to amend or modify the agreement. This registration fee shall cover the cost of one certified copy of the registration of the Public Vehicular Area. Requests for additional certified copies shall be submitted to the Division Engineer in writing along with a check or money order for five dollars (\$5.00) per copy.
- (c) All applications shall be submitted on a form furnished by the Department.

History Note: Authority G.S. 20-4.01(32); 20-219.4; 143B-346; 143B-348; 143B-350(f); Temporary Adoption Eff. January 1, 2003; Eff. August 1, 2004.

TITLE 21 - OCCUPATIONAL LICENSING BOARDS

CHAPTER 16 - BOARD OF DENTAL EXAMINERS

21 NCAC 16Q .0402 PERMIT REQUIREMENTS, CLINICAL PROVISIONS AND EQUIPMENT

- (a) Enteral conscious sedation is indicated for use only for conscious sedation as defined in Rule .0101(9) of this Subchapter (relating to Definitions). Enteral conscious sedation is not indicated for use to achieve deep sedation.
- (b) An enteral conscious sedation permit is not required for minor psychosedatives used for anxiolysis prescribed for administration outside of the dental office when pre-procedure instructions are likely to be followed. Medication administered for the purpose of enteral conscious sedation shall not exceed the maximum doses recommended by the drug manufacturer, sedation textbooks, or juried sedation journals. When medications for enteral conscious sedation are used in combination, the total sedation dose shall not exceed recommended dosages for medications used in combination. During longer periods of enteral conscious sedation, in which the amount of time of the procedures exceeds the effective duration of the sedative effect of the drug(s) used, the incremental doses of the sedative(s) shall not exceed total safe dosage levels based on the effective half-life of the drugs used.
- (c) Each dentist shall:
 - (1) adhere to the clinical requirements as detailed in Paragraph (e) of this Rule;
 - (2) maintain under continuous direct supervision any auxiliary personnel who shall be capable of assisting in procedures, problems, and emergencies incident to the use of enteral conscious sedation or secondary to an unexpected medical complication;
 - (3) utilize sufficient auxiliary personnel for each procedure performed who shall document

- (4) annual successful completion of basic life support training; and
 - (4) not allow an enteral conscious sedation procedure to be performed in his or her office by a Certified Registered Nurse Anesthetist (CRNA) unless the dentist holds a permit issued by the Board for the procedure being performed. This provision addresses dentists and is not intended to address the scope of practice of persons licensed by any other agency.
- (d) Each dentist shall meet the following requirements:
 - (1) Patient Evaluation. Patients who are administered enteral conscious sedation must be suitably evaluated prior to the start of any sedative procedure. In healthy or medically stable individuals Physical Status I, II (ASA I, II, as defined by the American Society of Anesthesiologists). An evaluation is a review of the patient's current medical history and medication use. However, with individuals who are not medically stable or who have a significant health disability Physical Status III (ASA III, as defined by the American Society of Anesthesiologists) consultation with their primary care physician or consulting medical specialist regarding potential procedure risk is required.
 - (2) Pre-procedure preparation, informed consent:
 - (A) The patient or guardian must be advised of the procedure associated with the delivery of the enteral conscious sedation.
 - (B) Equipment must be evaluated and maintained for proper operation.
 - (C) Baseline vital signs shall be obtained at the
 - (D) discretion of the operator depending on the medical status of the patient and the nature of the procedure to be performed.
 - (E) Dentists administering enteral conscious sedation shall use sedative agents that he/she is competent to administer and shall administer such agents in a manner that is within the standard of care.
- (e) Patient monitoring:
 - (1) Patients who have been administered enteral conscious sedation shall be monitored during waiting periods prior to operative procedures. An adult who has accepted responsibility for the patient and been given written pre-procedural instruction may provide such monitoring. The patient shall be monitored for alertness, responsiveness, breathing and skin coloration.
 - (2) Dentists administering enteral conscious sedation shall maintain direct supervision of the patient during the operative procedure and for such a period of time necessary to establish

pharmacologic and physiologic vital sign stability.

- (A) Oxygenation. Color of mucosa, skin or blood shall be continually evaluated. Oxygen saturation shall be evaluated continuously by pulse oximetry, except as provided in Paragraph (e)(4) of this Rule.
- (B) Ventilation. Shall perform observation of chest excursions or auscultation of breath sounds or both.
- (C) Circulation. Shall take and record an initial blood pressure and pulse and thereafter as appropriate except as provided in Paragraph (e)(4) of this Rule.

- (3) An appropriate time oriented anesthetic record of vital signs shall be maintained in the permanent record including documentation of individual administering the drug(s) and showing the name(s) of drug(s) and dosage(s) used.
- (4) If the dentist responsible for administering enteral conscious sedation must deviate from the requirements set out in this Rule, he or she shall document the occurrence of such deviation and the reasons for such deviation.

(f) Post-operative procedures:

- (1) Following the operative procedure, positive pressure oxygen and suction equipment shall be immediately available in the recovery area or operatory.
- (2) Vital signs shall be continuously monitored when the sedation is no longer being administered and the patient shall have direct continuous supervision until oxygenation and circulation are stable and the patient is sufficiently responsive for discharge from the office.
- (3) Patients who have adverse reactions to enteral conscious sedation shall be assisted and monitored either in an operatory chair or recovery area until stable for discharge.
- (4) Recovery from enteral conscious sedation shall include:
 - (A) cardiovascular function stable;
 - (B) airway patency uncompromised;
 - (C) patient easily arousable and protective reflexes intact;
 - (D) state of hydration within normal limits;
 - (E) patient can talk, if applicable;
 - (F) patient can sit unaided, if applicable;
 - (G) patient can ambulate, if applicable, with minimal assistance; and
 - (H) for the child who is very young or disabled, and incapable of the usually expected responses, the pre-sedation level of responsiveness or the level as close as possible for that child shall be achieved.

(5) Prior to allowing the patient to leave the office, the dentist shall determine that the patient has met the recovery criteria set out in Paragraph (f)(4) of this Rule and the following discharge criteria:

- (A) oxygenation, circulation, activity, skin color and level of consciousness are sufficient and stable and
- (B) have been documented;
- (C) explanation and documentation of written postoperative instructions have been provided to the patient or a responsible adult at time of discharge;
- (D) responsible individual is available for the patient to transport the patient after discharge;
- (E) for a patient who must use a child restraint system designed for use in a motor vehicle, a vested adult is available to transport the patient after discharge and an additional responsible individual is available to attend to the patient.

(i) The dentist, personnel and facility shall be prepared to treat emergencies that may arise from the administration of enteral conscious sedation, and shall have the ability to provide positive pressure ventilation with 100% oxygen with an age appropriate device.

History Note: Authority G.S. 90-28; 90-30.1; Temporary Adoption Eff. December 11, 2002; Eff. August 1, 2004.

21 NCAC 16Q .0403 TEMPORARY APPROVAL PRIOR TO SITE INSPECTION

- (a) If a dentist meets the requirements of Rule .0401 of this Section, he or she shall be granted temporary approval to administer enteral conscious sedation until a permit can be issued. Temporary approval may be granted based solely on credentials until all processing and investigation has been completed. Temporary approval may not exceed three months.
- (b) Temporary approval shall not be granted to a provisional licensee.

History Note: Authority G.S. 90-28; 90-30.1; Temporary Adoption Eff. December 11, 2002; Eff. August 1, 2004.

SECTION .0500 - RENEWAL OF PERMITS

21 NCAC 16Q .0501 ANNUAL RENEWAL REQUIRED

- (a) General anesthesia, parenteral conscious sedation, and enteral conscious sedation permits shall be renewed by the Board on an annual basis. Such renewal shall be accomplished in conjunction with the license renewal process, and applications for permits shall be made at the same time as applications for renewal of licenses.
- (b) Anesthesia, parenteral conscious sedation, and enteral conscious sedation permits shall be subject to the same renewal deadlines as are dental practice licenses, in accordance with G.S. 90-31. If the permit renewal application is not received by the

date specified in G.S. 90-31, continued administration of anesthesia, parenteral conscious sedation, or enteral conscious sedation shall be unlawful and shall subject the dentist to the penalties prescribed by Section .0700 of this Subchapter.

(c) As a condition for renewal of the general anesthesia permit, the permit holder shall ensure that the requirements of 21 NCAC 16Q .0202 are met and document current, successful completion of advanced cardiac life support

(ACLS) training, or its age-specific equivalent or other equivalent course, and auxiliary personnel shall document annual, successful completion of basic life support (BLS) training.

(d) As a condition for renewal of the parenteral conscious sedation permit, the permit holder shall ensure that the requirements of 21 NCAC 16Q .0302 are met and also meet one of the following criteria:

- (1) document current, successful completion of advanced cardiac life support (ACLS) training or its age-specific equivalent, or other equivalent course; or
- (2) document annual, successful completion of basic life support (BLS) training and obtain three hours of continuing education each year in one or more of the following areas, which may be counted toward fulfillment of the continuing education required; or
- (3) each calendar year for license renewal:
 - (A) sedation;
 - (B) medical emergencies;
 - (C) monitoring IV sedation and the use of monitoring equipment;
 - (D) pharmacology of drugs and agents used in IV sedation;
 - (E) physical evaluation, risk assessment, or behavioral management; or
 - (F) audit ACLS/PALS courses.

(e) As a condition for renewal of the enteral conscious sedation permit, the permit holder shall ensure that the requirements of 16Q .0402 are met and shall document annual, successful completion of basic life support (BLS) training and obtain six hours of continuing education every two years in one or more of the following areas, which may be counted toward fulfillment of the continuing education required each calendar year for license renewal:

- (1) pediatric or adult sedation;
- (2) medical emergencies;
- (3) monitoring sedation and the use of monitoring equipment;
- (4) pharmacology of drugs and agents used in sedation;
- (5) physical evaluation, risk assessment, or behavioral management; or
- (6) audit ACLS/PALS courses.

History Note: Authority G.S. 90-28; 90-30.1; 90-48;

Eff. February 1, 1990;

Amended Eff. August 1, 2002;

Transferred and Recodified from 16Q .0401 to 16Q .0501;

Temporary Amendment Eff. December 11, 2002;

Amended Eff. August 1, 2004.

21 NCAC 16Q .0503 INSPECTION AUTHORIZED

Incident to the renewal of an anesthesia or sedation permit, for cause or routinely at reasonable time intervals in order to ensure compliance, the Board may require an on-site inspection of the dentist's facility, equipment, personnel and procedures. Such inspection shall be conducted in accordance with Rules .0204, .0205, .0303, and .0401 of this Subchapter.

History Note: Authority G.S. 90-28; 90-30.1;

Eff. February 1, 1990;

Amended Eff. January 1, 1994;

Transferred and Recodified from 16Q .0403 to 16Q .0503;

Temporary Amendment Eff. December 11, 2002;

Amended Eff. August 1, 2004.

21 NCAC 16Q .0602 FAILURE TO REPORT

If a dentist fails to report any incident as required by these Rules, the dentist shall be subject to discipline in accordance with Section .0700 of this Subchapter.

History Note: Authority G.S. 90-28; 90-30.1; 90-41;

Eff. February 1, 1990;

Transferred and Recodified from 16Q .0502 to 16Q .0602;

Temporary Amendment Eff. December 11, 2002;

Amended Eff. August 1, 2004.

CHAPTER 29 - LOCKSMITH LICENSING BOARD

21 NCAC 29 .0102 MEETINGS

(a) Frequency. The Board shall meet on the second Mondays of January and August and at other times agreed upon by the Board.

(b) Notice. Notification of the time and place of all meetings shall be published on the North Carolina Locksmith Licensing Board website not less than 15 days prior to the meeting.

History Note: Authority G.S. 74F-5;

Temporary Adoption Eff. August 13, 2002;

Eff. August 1, 2004.

21 NCAC 29 .0202 APPLICATION REQUIREMENTS

Applicants must register for an examination on the form prescribed by the Board. The application must be submitted to the Board's office at least 15 days before the requested examination date.

History Note: Authority G.S. 74F-6; 74F-7;

Temporary Adoption Eff. November 13, 2002;

Eff. August 1, 2004.

21 NCAC 29 .0203 MINIMUM PASSING SCORE

The passing score for the Locksmith Licensing Examination shall be 70 percent.

History Note: Authority G.S. 74F-6; 74F-7;

Temporary Adoption Eff. November 13, 2002;

Eff. August 1, 2004.

21 NCAC 29 .0204 REQUIREMENTS OF EXAMINEES

Applicants appearing at an examination session shall present a valid government-issued photo ID to the examination proctor before the beginning of the examination session. The applicant

shall not bring books, calculators or other items deemed inappropriate by the proctor into the examination room. Pagers and cell phones must be turned off during the examination. Applicants shall not speak with others during the examination session. Applicants must obey instructions from the proctor regarding when to begin and cease work on the examination. Applicants shall be excused from the room during the examination only with permission from the proctor. Failure to abide by any of these standards shall result in invalidation of the applicant's examination results.

*History Note: Authority G.S.74F-6; 74F-7;
Temporary Adoption Eff. November 13, 2002;
Eff. August 1, 2004.*

21 NCAC 29 .0504 TECHNICAL INTEGRITY

- (a) Locksmiths shall always endeavor to service and install security devices in a manner that maintains the highest level of security afforded by the manufacturer of the product.
- (b) Locksmiths shall inform clients of the dangers of introducing new keys into a master keyed system without reference to the original bitting array. Locksmiths shall not introduce random keys into a master keyed system without obtaining the signature of the client on a written warning notice.
- (c) Locksmiths shall inform clients of the dangers inherent in keying a mechanical lock to operate on several keys in a fashion

that requires multiple chambers to be left empty or stacked with more than two master wafers in any chamber (maison keying). Locksmiths shall not key mechanical lock cylinders in this fashion without obtaining the signature of the client on a written warning notice.

(d) Locksmiths shall follow industry and manufacturer standards and insure random and complete recombination of cylinders and combination locks for optimal security maintenance. Examples of violations include, but are not limited to the following:

- (1) The repeated use of a standard key or combination for multiple customers or job sites.
- (2) Filing the plug on a mechanical lock cylinder as a means to enlarge the shear line.
- (3) Leaving multiple chambers of a mechanical lock empty.

(e) Locksmiths shall honor manufacturer recommendations for the proper installation of locking devices and shall not omit or disable any security feature, such as a safe relocking assembly or deadlatch, to the detriment of the client's safety and security.

*History Note: Authority G.S. 74F-6;
Temporary Adoption Eff. August 13, 2002;
Eff. August 1, 2004.*

RULES REVIEW COMMISSION

This Section contains information for the meeting of the Rules Review Commission on Thursday, October 16, 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, October 10, 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

Jim R. Funderburke - 1st Vice Chair
David Twiddy - 2nd Vice Chair
Thomas Hilliard, III
Robert Saunders

Appointed by House

Jennie J. Hayman - Chairman
Graham Bell
Dr. Walter Futch
Dr. John Tart

RULES REVIEW COMMISSION MEETING DATES

October 16, 2003
November 20, 2003 December 18, 2003

RULES REVIEW COMMISSION September 26, 2003 MINUTES

The Rules Review Commission met on Friday morning, September 26, 2003, in the Assembly Room of the Methodist Building, 1307 Glenwood Avenue, Raleigh, North Carolina. Commissioners present were: Walter Futch, Jennie Hayman, Robert Saunders, and John Tart.

Staff members present were: Joseph DeLuca, Staff Director; Bobby Bryan, Rules Review Specialist; and Lisa Johnson.

The following people attended:

Torrey McLean	DHHS/Commission for Health Services
Sheila Green	DENR/Coastal
Michael Lopazanski	DENR/Coastal Management
Tancred Miller	DENR/DWQ
Elizabeth Kountis	DENR/DWQ
Jeff Manning	DENR/DWQ
Tom Reeder	DENR/DWQ
Emily Lee	Department of Transportation
Amy Yonowitz	NC Medical Board
Grady McCallie	NC Conservation Network
Dedra Alston	DENR
David McLeod	Department of Agriculture
Fred Kirkland	Department of Agriculture
Lisa Martin	NC Home Builders Association

APPROVAL OF MINUTES

The meeting was called to order at 10:06 a.m. with Commissioner Hayman presiding. Chairman Hayman asked for any discussion, comments, or corrections concerning the minutes of the August 21, 2003, meeting. The minutes were approved with changes concerning the presiding officer and action taken on 15A NCAC 2B .0244.

FOLLOW-UP MATTERS

2 NCAC 52B .0204: Department of Agriculture – The members present voted to recommend to the full commission at its next meeting to approve the rewritten rule contingent upon technical changes being made. The changes were subsequently made.

RULES REVIEW COMMISSION

19A NCAC 2E .1204: Department of Transportation – The members present voted to recommend to the full commission at its next meeting to approve the rewritten rule submitted by the agency.

LOG OF FILINGS

Chairman Hayman presided over the review of the log. There were four commissioners present so final action will not be taken until the next meeting. The commissioners present reviewed the rules and made motions to recommend approval, except as set out below, to the full commission at the next meeting.

10 NCAC 43F .1203: Commission for Health Services - The members recommended objecting to the rule due to ambiguity. While this Rule mandates physiological screening in each ear for infants born in North Carolina, it nowhere tells who is responsible for ensuring that it is done. It is not clear who has ultimate responsibility. In (a)(i), it is not clear what is meant by “birth discharge.” It is not clear if it is the same as the “discharge home” in (ii). In (a)(iii), it is not clear what is meant by “primary care provider.” There are also technical changes which need to be made to this rule.

11 NCAC 8 .0702: Department of Insurance – This rule was withdrawn by the agency and refiled for next month.

11 NCAC 8 .0706: Department of Insurance – This rule was withdrawn by the agency and refiled for next month.

15A NCAC 7H .1402: DENR/Coastal Resources Commission – The members recommended objecting to the rule due to ambiguity. In (b)(2), it is not clear what standards the DCM staff is to use in determining that comments “are worthy of more in-depth review.” This recommendation applies to existing language in this rule.

15A NCAC 7H .1404: DENR/Coastal Resources Commission - The members recommended objecting to the rule due to ambiguity. In (c), it is not clear what would constitute “significant” interference. This recommendation applies to existing language.

18 NCAC 6 .1401: Secretary of State - The members recommended objecting to the rule due to ambiguity. In (a)(5), it is not clear what other information the Administration requires on the application. This recommendation applies to existing language.

LOG OF FILINGS TEMPORARY RULES

Chairman Hayman presided over the review of the log of temporary rules and all rules were approved unanimously.

COMMISSION PROCEDURES AND OTHER BUSINESS

The meeting adjourned at 11:19 a.m.

The next meeting of the Commission is Thursday, October 16, 2003 at 9:00 a.m.

Respectfully submitted,
Lisa Johnson

RULES REVIEW COMMISSION
Commission Review/Administrative Rules
Log of Filings (Log #202)
August 21, 2003 through September 20, 2003

DEPARTMENT OF AGRICULTURE

Notification for Disconnection of Service 02 NCAC 38 .0705 Adopt
Reportable Diseases 02 NCAC 52C .0603 Adopt

MEDICAL CARE COMMISSION

Information Required of Applicant 10A NCAC 14C .1101 Amend
Definitions 10A NCAC 14C .1501 Amend
Information Required of Applicant 10A NCAC 14C .1502 Amend
Performance Standards 10A NCAC 14C .1503 Amend
Information Required of Applicant 10A NCAC 14C .2202 Amend
Performance Standards 10A NCAC 14C .2203 Amend
Performance Standards 10A NCAC 14C .2403 Amend
Definitions 10A NCAC 14C .2701 Amend
Information Required of Applicant 10A NCAC 14C .2702 Amend
Performance Standards 10A NCAC 14C .2703 Amend
Performance Standards 10A NCAC 14C .3603 Amend
Definitions 10A NCAC 14C .3701 Amend
Performance Standards 10A NCAC 14C .3703 Amend

RULES REVIEW COMMISSION

SOCIAL SERVICES COMMISSION

Definitions	10A NCAC 70E .0301	Amend
Revocation or Denial	10A NCAC 70E .0506	Amend
Licensure	10A NCAC 70F .0102	Amend
Responsibility to Licensing Authority	10A NCAC 70F .0205	Amend
Licensing Actions	10A NCAC 70I .0101	Amend
Definitions	10A NCAC 70I .0201	Amend
Responsibility to Division of Social Services	10A NCAC 70I .0202	Amend

DEPARTMENT OF INSURANCE/CODE OFFICIALS QUALIFICATION BOARD

Nature of Standard Certificate	11 NCAC 08 .0702	Amend
Required Qualifications Types and Levels	11 NCAC 08 .0706	Amend

DENR/MARINE FISHERIES COMMISSION

Maps and Marking	15A NCAC 03H .0104	Amend
Military Danger Zones and Restricted Areas	15A NCAC 03I .0110	Amend
Gill Nets, Seines, Identification, Restrictions	15A NCAC 03J .0103	Amend
Trawl Nets	15A NCAC 03J .0104	Amend
Pound Net Sets	15A NCAC 03J .0107	Amend
Long-Haul Fishing Operations Identification	15A NCAC 03J .0109	Amend
Atlantic Ocean	15A NCAC 03J .0202	Amend
Southport Boat Harbor	15A NCAC 03J .0206	Amend
New River	15A NCAC 03J .0208	Amend
Pots	15A NCAC 03J .0301	Amend
Fishing Gear Restrictions	15A NCAC 03J .0402	Amend
Dredges/Mechanical Methods	15A NCAC 03K .0204	Amend
Prohibited (Polluted) Area Permit	15A NCAC 03K .0401	Amend
Size and Harvest Limits	15A NCAC 03K .0402	Amend
Disposition of Meats	15A NCAC 03K .0403	Amend
Dredges/Mechanical Methods	15A NCAC 03K .0404	Adopt
Oysters, Mussels, Hard Clams	15A NCAC 03K .0405	Adopt
Weekend Shrimping Prohibited	15A NCAC 03L .0102	Amend
Crab Trawling	15A NCAC 03L .0202	Amend
Nursery Area Boundaries	15A NCAC 03N .0103	Amend
Prohibited Gear, Secondary Nursery Areas	15A NCAC 03N .0105	Amend
Procedure and Requirements to Obtain Licenses	15A NCAC 03O .0101	Amend
Bail and Mussel Dealers	15A NCAC 03O .0105	Amend
Permit Conditions Specific	15A NCAC 03O .0503	Amend
Specific Classification of Waters	15A NCAC 03Q .0201	Amend
Descriptive Boundaries For Coastal-Joint-Inland	15A NCAC 03Q .0202	Amend
Sea Turtle Sanctuary	15A NCAC 03R .0101	Amend
Military Danger Zones and Restricted Areas	15A NCAC 03R .0102	Amend
Primary Nursery Areas	15A NCAC 03R .0103	Amend
Permanent Secondary Nursery Areas	15A NCAC 03R .0104	Amend
Special Secondary Nursery Areas	15A NCAC 03R .0105	Amend
Trawl Nets Prohibited	15A NCAC 03R .0106	Amend
Taking Crabs with Dredges	15A NCAC 03R .0109	Amend
Crab Spawning Sanctuaries	15A NCAC 03R .0110	Amend
Purse Seines Prohibited	15A NCAC 03R .0111	Amend
Attened Gill Net Area	15A NCAC 03R .0112	Adopt
Pound Net Sets Prohibited Areas	15A NCAC 03R .0113	Adopt

DEPARTMENT OF TRANSPORTATION/DIVISION OF HIGHWAYS

Tourist Oriented Directional Sign (TODS) Program	19A NCAC 02E .1101	Adopt
Definitions	19A NCAC 02E .1102	Adopt
Location of TODS	19A NCAC 02E .1103	Adopt
Eligibility For Program	19A NCAC 02E .1104	Adopt
Composition of Signs	19A NCAC 02E .1105	Adopt
Fees	19A NCAC 02E .1106	Adopt
Contracts With The Department	19A NCAC 02E .1107	Adopt
Appeal of Decision	19A NCAC 02E .1108	Amend
Civil Penalty Schedule For Non-Licensed Motor Vehicle	19A NCAC 03D .0232	Adopt
Civil Penalty Schedule For Licensed Motor Vehicle	19A NCAC 03D .0233	Adopt
Type I Or Serious Violations	19A NCAC 03D .0234	Adopt

RULES REVIEW COMMISSION

Type II Moderate or Less Serious Violations	19A NCAC 03D .0235	Adopt
Type III Minor Violations	19A NCAC 03D .0236	Adopt
NC BOARD OF PHARMACY		
Office of the Board	21 NCAC 46 .1204	Amend
STATE PERSONNEL COMMISSION		
Purpose	25 NCAC 01J .1001	Repeal
Policy	25 NCAC 01J .1002	Repeal
Organization of Program	25 NCAC 01J .1003	Repeal
Services Offered to Agencies Universities and	25 NCAC 01J .1004	Repeal
Eligibility For Services	25 NCAC 01J .1005	Repeal
Self Referral	25 NCAC 01J .1006	Repeal
Supervisory Referral	25 NCAC 01J .1007	Repeal
Management Directed Referral	25 NCAC 01J .1008	Repeal
Confidentiality	25 NCAC 01J .1009	Repeal
Responsibilities of the Employee Assistance Program	25 NCAC 01J .1010	Repeal
Responsibilities of Agencies/Universities	25 NCAC 01J .1011	Repeal
Purpose	25 NCAC 01J .1012	Adopt

**AGENDA
RULES REVIEW COMMISSION
October 16, 2003**

- I. Call to Order and Opening Remarks
- II. Review of minutes of last meeting
- III. Follow Up Matters
 - A. Department of Agriculture – 2 NCAC 52B .0204 (Bryan)
 - B. Department of Transportation – 19A NCAC 2E .1204 (Bryan)
 - C. Board of Pharmacy – 21 NCAC 46 .1812; .2502 (DeLuca)
 - D. Environmental Management Commission – 15A NCAC 2B .0243; .0244 (DeLuca)
 - E. Environmental Management Commission – 15A NCAC 2H .0126; .1014 (DeLuca)
 - F. Environmental Management Commission – 15A NCAC 2I .0601; .0602; .0603
 - G. Locksmith Licensing Board - 21 NCAC 29 .0401; .0402; .0502; .0503 (Bryan)
 - Department of Administration – 1 NCAC 30H .0102; .0201-.0205; .0301; .0303; .0305; .0404; .0701; .0801; .1001 (DeLuca)
 - Department of Administration – 1 NCAC 35 .0101; .0103; .0201-.0205; .0301; .0302; .0304-.0306; .0308; .0309 (DeLuca)
 - Cultural Resources Commission – 7 NCAC 4S .0104 (DeLuca)
 - Board of Elections – 8 NCAC Chapter 1-12 (DeLuca)
 - Dental Board Examiners – 21 NCAC 16Q .0101; .0201; .0301; .0302; .0303; .0401 (DeLuca)
- IV. Review of rules (Log Report #202)
- V. 2003 State Medical Facilities Plan
- VI. Commission Business
- VII. Next meeting: November 20, 2003

CONTESTED CASE DECISIONS

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

OFFICE OF ADMINISTRATIVE HEARINGS

Chief Administrative Law Judge

JULIAN MANN, III

Senior Administrative Law Judge

FRED G. MORRISON JR.

ADMINISTRATIVE LAW JUDGES

Sammie Chess Jr.

Beecher R. Gray

Melissa Owens Lassiter

James L. Conner, II

Beryl E. Wade

A. B. Elkins II

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<u>ALCOHOLIC BEVERAGE CONTROL COMMISSION</u>				
Carolina Sports Arena LLC T/A NC Sports Arena v ABC Comm.	02 ABC 1491	Conner	09/11/03	
NC ABC v. Fast Fare Inc, T/A Fast Fare NC 576	02 ABC 1882	Gray	09/22/03	
Ki Young Kim v. Ann H. Johnson, ABC Commission in Raleigh	03 ABC 0177	Mann	06/17/03	
<u>AGRICULTURE</u>				
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
<u>CRIME CONTROL AND PUBLIC SAFETY</u>				
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	
Michael L Pompey v. Crime Control & Public Safety, Div. of Victim Compensation Services	03 CPS 0828	Gray	09/03/03	
<u>HEALTH AND HUMAN SERVICES</u>				
A list of Child Support Decisions may be obtained by accessing the OAH Website: www.ncoah.com/decisions .				
Guilford Co Comm Action Program Inc v. DHHS	00 DHR 0984	Gray	09/08/03	
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	
Juli A Murphy, Murphy's Munchkin Land Daycare ID 54000197 v. Div. of Child Development	02 DHR 1555	Lassiter	09/05/03	
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	
Oncology Svcs Corp & Mountainside Holdings LLC v. DHHS, Div of Fac Svcs, Cert of Need Section & Scotland Mem Hospital, Inc.	02 DHR 1983	Wade	08/13/03	18:06 NCR 439
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	
Gloria Howard v. DHHS	02 DHR 2256	Gray	09/04/03	
Latrese Sherell Harris v. Nurse Aide Registry	02 DHR 2290	Chess	06/16/03	
Wanda S Hudson v. Wake County Public School System	02 DHR 2305	Wade	09/22/03	
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	
Aaron Atwater v. DHHS, Div. of Medical Assistance	03 DHR 0262	Chess	08/18/03	

CONTESTED CASE DECISIONS

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	
Rachel Peek, Yancey Co. DSS v. DHHS	03 DHR 0330	Chess	07/24/03	
Lisa Mendez v. Health Care Personnel Registry	03 DHR 0351	Gary	06/27/03	
Twan Fields v. DHHS, Div. of Facility Services	03 DHR 0355	Morrison	09/10/03	
Kevin Douglas Heglar v. DHHS, Dorothea Dix Hospital	03 DHR 0357	Gray	09/17/03	
Yolanda Covington v. RHA Health Svcs, DHS	03 DHR 0360	Lassiter	07/17/03	
Constance Basnigh 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	
Janitta Brown v. DHHS, Dorothea Dix Hospital	03 DHR 0461	Lassiter	09/15/03	
Gerry Dwayne Cashwell v. DHHS	03 DHR 0469	Gray	07/28/03	
Gregory Lewis Berry v. Burke Co. Dept of Social Services	03 DHR 0514	Wade	08/19/03	
Donna Kay Kirkland v. DHHS, Broughton Hospital	03 DHR 0547	Wade	08/29/03	
Sabrina Regina Betts v. DHHS, Div. of Facility Services	03 DHR 0595	Gray	09/12/03	
Andrea Ford v DHHS, Div. of Facility Services	03 DHR 0609	Morrison	06/04/03	
Wallace C Levi v. Div. of Medical Assistance	03 DHR 0633	Wade	08/12/03	
Timothy Batts v. DHHS, Div. of Facility Services	03 DHR 0640	Gray	09/12/03	
Bestway Food's, Osama M Dari v. DOH WIC, Cory Menees, Unit Super.	03 DHR 0662	Morrison	07/28/03	
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 of North Carolina, LLC	03 DHR 0676	Gray	07/07/03	
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	
Veronica Williams v. Div. of Med. Assistance, Dana Harris, Super.	03 DHR 0737	Mann	08/28/03	
Patti L Cain Small Fries by Patti v. Nutrition Services	03 DHR 0768	Morrison	07/31/03	
Brian Keith Heilig v. DHHS, Div. of Medical Assistance	03 DHR 0779	Mann	07/17/03	
Mrs Soon Ja An v. DHHS	03 DHR 0780	Morrison	07/28/03	
Kimberly Donyelle Miles v. DHHS, Div. of Facility Services	03 DHR 0795	Lassiter	09/11/03	
Kimberly Roberts v. DHHS, Div. of Facility Services	03 DHR 0927	Gray	08/15/03	
Michael Hillis v. Department of Revenue	03 DHR 0935	Conner	07/28/03	
Alvin Paulk v. DHHS, Div. of Child Development	03 DHR 0971	Conner	07/25/03	
Doris Froneberger v. DHHS, Div. of Facility Services	03 DHR 1081	Gray	09/12/03	
Lisa Dupree v. NC State Veterans Nursing Home	03 DHR 1306	Lassiter	09/15/03	
Albert Brower v. DHHS	03 DHR 1153	Wade	09/04/03	

JUSTICE

Alarm Systems Licensing Board

Gregory L Swicegood, Jr. v. Alarm System Licensing Board	03 DOJ 0503	Morrison	05/16/03	
Alan Bradford Foehner v. Alarm System Licensing Board	03 DOJ 0709	Morrison	08/05/03	

Private Protective Services Board

Anthony Lamont Henderson v. Private Protective Services Board	03 DOJ 0502	Morrison	07/08/03	
John Lee Powell v. Private Protective Services Board	03 DOJ 0694	Morrison	07/09/03	
Howard Leon Fisher v. Private Protective Services Board	03 DOJ 0898	Morrison	08/14/03	18:06 NCR 444
William Houston King Jr v. Private Protective Services Board	03 DOJ 0899	Morrison	07/11/03	
Derrick Lee McDonald v. Private Protective Services Board	03 DOJ 0946	Morrison	08/05/03	

Sheriffs' Education & Training Standards Commission

Harvey Clinton Blanton v. Sheriffs' Educ. & Trng. Stds. Comm.	02 DOJ 1202	Gray	06/05/03	18:03 NCR 222
Jonathan Mims v. Sheriffs' Education & Training Standards. Comm.	02 DOJ 1263	Gray	06/03/03	18:03 NCR 229
Laura Dawn Watts v. Sheriffs' Education & Training Standards Comm.	02 DOJ 1926	Lassiter	05/22/03	
Allen Wilson York v. Sheriffs' Education & Training Standards Comm.	02 DOJ 2042	Elkins	05/16/03	
Fred Hines, Jr v. Criminal Justice Educ. & Trng. Stds. Comm.	03 DOJ 0428	Conner	07/29/03	
Harvey Levale Cook v. Criminal Justice Educ & Trng Stds. Comm.	03 DOJ 0515	Lassiter	07/09/03	
Cynthia Darlene Harris v. Criminal Justice Educ. & Trng. Stds. Comm.	03 DOJ 0516	Lassiter	06/06/03	
Mary Katherine McVey v. Criminal Justice Educ. & Trng. Stds. Comm.	03 DOJ 0517	Wade	08/11/03	

DEPARTMENT OF TRANSPORTATION

Chris Azar v. Department of Transportation	03/DOT 1345	Morrison	09/08/03	
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DEPARTMENT OF STATE TREASURER

Shirlyn D. Brickhouse v. Dept. of St. Treasurer, Ret. Sys. Div.	02 DST 2315	Chess	06/03/03	
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DEPARTMENT OF PUBLIC INSTRUCTION

Robert Andrew Bartlett Sr. v. Dept. of Public Instruction	00 EDC 1306	Gray	08/04/03	
Charles Eugene Smith v. Department of Public Instruction	02 EDC 1082	Mann	05/26/03	

ENVIRONMENT AND NATURAL RESOURCES

Larry E. Sadler v. DENR	00 EHR 1322	Gray	07/02/03	
Lester Hill v. Person Co. Health Dept., DENR	00 EHR 1392	Gray	05/29/03	
John Burr v. Health Department, Mecklenburg County	01 EHR 1204	Gray	05/28/03	
Richard S Pacula v. CAMA-Coastal Area Mgmt. Assoc.	01 EHR 2269 ¹	Chess	05/14/03	
Rosa & Eddie Brame v. DENR	02 EHR 0319	Wade	06/27/03	
Trafalgar Properties LLC v. County of Durham	03 EHR 0630	Wade	07/18/03	
Gerald Max Toney and Lynn N. Toney v. DENR (McDowell Co.)	02 EHR 0887	Mann	05/28/03	
Forest Sound Homeowners Assoc, James P Hynes, Pres. V. DENR,	02 EHR 1078	Wade	06/09/03	

CONTESTED CASE DECISIONS

Div. of Coastal Management				
Richard S Pacula v. CAMA-Coastal Area Mgmt. Assoc.	02 EHR 1119 ¹	Chess	05/14/03	
Former Center Mart, Joe Fred Ledbetter v. DENR, Div. of Waste Mgmt.	02 EHR 1302	Conner	05/29/03	
Lee Roy Smyre v. DENR, Div. of Water Quality	02 EHR 1509	Wade	09/05/03	
Murphy's All Land Dev Inc d/b/a Emerald Cove Town homes at Wells Lake v. DENR	02 EHR 1735	Conner	07/22/03	
Glenn Sasser v. DENR, Division of Coastal Management	02 EHR 1794	Morrison	08/28/03	18:07 NCR 485
Michael E Hendrix v. Caldwell Co. Dept. of Environmental Health	03 EHR 0006	Gray	07/02/03	
Lawndale Service Ctr, Inc. C Valley v. DENR	03 EHR 0016	Lassiter	06/05/03	
Daniel W Bulla III v. Env. Health Section Stokes Co Health Dept.	03 EHR 0156	Conner	09/11/03	
Robert Calvin Wyatt Jr, Calvin Wyatt v. DENR	03 EHR 0535	Wade	07/31/03	
Pacemaker Leasing Co v. DENR	03 EHR 0711	Conner	09/10/03	
Curtis Carney v. Pitt Co Health Dept., Env. Health Div.	03 EHR 0766	Conner	07/25/03	
Danny L Ottaway v. DENR, Div. of Air Quality	03 EHR 0948	Gray	08/15/03	
Robert L Shepard v. Alamance Co. Health Board	03 EHR 0949	Gray	07/30/03	
Megan Powell v. DENR	03 EHR 1071	Lassiter	08/18/03	
Redditt Alexander, Ida L Alexander v. Co. of Durham, Eng. Dept.	03 EHR 1074	Morrison	07/31/03	

HUMAN RELATIONS FAIR HOUSING

Sara E. Parker v. Human Relations Fair Housing	02 HRC 0621	Gray	05/16/03
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TEACHERS' & STATE EMPLOYEES COMP. MAJOR MED PLAN

Alma Louise Triplett v. Teachers' & St Emp Comp Maj Med Plan	02 INS 0268	Gray	07/15/03	18:04 NCR 338
Shawna J Talley v. Teachers' & St. Emp. Comp. Maj. Med. Plan	02 INS 1257	Conner	08/06/03	18:05 NCR 405
Bertha Reeves by her husband Laconya Reeves v. Teachers' & St. Emp. Comp Maj. Med. Plan	02 INS 1285	Chess	08/26/03	
JEL Company, Leonard Jackson v. DOI & Diane G Miller, Asst Atty.	03 INS 0811	Mann	08/28/03	

OFFICE OF STATE PERSONNEL

Dorris D Wright v. Cabarrus Co. Dept. of Social Services	00 OSP 1506	Gray	04/22/03	
Robert Banks Hinceman v. DHHS/Broughton Hospital	01 OSP 0827	Elkins	05/01/03	18:01 NCR 45
Robin Ritzheimer Austin v. Jim Jones, Hlth Dir, Judie DeMuth, Admin Asst & the County of Stanly	01 OSP 0888 ⁴	Lassiter	09/08/03	
Edward Allen Hughes, Jr v. Department of Correction	01 OSP 1011	Gray	08/01/03	
Wanda Gore v. Department of Correction	01 OSP 1286	Gray	05/16/03	
James F Pridgen Jr v. A&T State University	01 OSP 2182	Gray	08/08/03	
Jerry Thomas Ferrell v. Department of Correction	02 OSP 0375	Conner	09/15/03	
Carolyn Davis v. Durham MH/DD/SA Area Authority d/b/a The Durham Ctr	02 OSP 1001	Lassiter	08/06/03	18:05 NCR 410
Carolyn Davis v. Durham MH/DD/SA Area Authority d/b/a The Durham Ctr	02 OSP 1001	Lassiter	08/06/03	18:07 NCR 494
Terence G Westry v. A&T State University	02 OSP 1019	Conner	06/30/03	
Robert L. Swinney v. Department of Transportation	02 OSP 1109	Gray	05/07/03	
Robin Ritzheimer Austin v. Jim Jones Hlth Dir Stanly County	02 OSP 1166 ⁴	Lassiter	09/08/03	
Cynthia Michelle Guess-Godwin v. Winston Salem State Univ	02 OSP 1255	Gray	09/04/03	
Norman Burton v. Chatham County	02 OSP 1483 ²	Gray	05/12/03	
Jonah Uduagbomen v. Department of Transportation	02 OSP 1597	Gray	06/19/03	
Charles M Alexander v. ESC of NC	02 OSP 1613	Chess	07/01/03	
Gregory M Lewis v. DMV, Enforcement Section	02 OSP 1624 ³	Gray	07/23/03	
Norman Burton v. Chatham County	02 OSP 1625 ²	Gray	05/12/03	
Edward K Royal v. Dept. of Crime Control & Public Safety, Div. of State Highway Patrol	02 OSP 1631	Lassiter	06/25/03	
Gregory M Lewis v. DMV, Enforcement Section	02 OSP 1695 ³	Gray	07/23/03	
Patricia A Mabry v. Department of Corrections	02 OSP 1774	Chess	06/27/03	
Chester Michael Martin v. Cumberland Co. Dept. of Social Services	02 OSP 1797	Conner	05/09/03	
Linda H Boyle v. Wayne Co. Mental Health Area Board	02 OSP 1951	Wade	08/13/03	
Patricia Doggett v. Trend Mental Health	02 OSP 2128	Conner	07/08/03	
Sharon F Greene v. Weldon Freeman, Crime Control & Public Safety	02 OSP 2144	Chess	08/29/03	
William Michael McDuffie v. Wake Co Juvenile Detention Center	03 OSP 0013	Wade	08/11/03	
Steven Wayne McCartney v. Lumberton Correctional Institution	03 OSP 0026	Conner	05/29/03	
Walter D Giese v. George O'Daniel Onslow Co Health Dept.	03 OSP 1017	Morrison	09/08/03	
Eric M Petree v. Department of Corrections	03 OSP 0116	Lassiter	06/24/03	
Monica Lynn Johnson v. NC School of the Arts	03 OSP 0180	Conner	07/29/03	
Jeffrey W Byrd v. Fayetteville State University	03 OSP 0204	Chess	06/04/03	
Tina Marie Walker v. Buncombe Co Dept of Social Services	03 OSP 0429	Chess	08/18/03	
Lisa C Banks v. Craven Co Child Support Enforcement Office	03 OSP 0268	Conner	07/31/03	
Beverly M Jennings v. Juv Justice, Swananoa Valley Youth Dev Center	03 OSP 0408	Chess	08/11/03	
Maranda Sharpe v. Department of Transportation	03 OSP 0412	Chess	06/03/03	
James E. Sharpe v. Department of Transportation, Div. 14 (Graham Co.)	03 OSP 0413	Chess	06/03/03	
Larry S Height v. NC Utilities Commission	03 OSP 0507	Conner	07/17/03	
Gary Melvin Moore v. Western Piedmont Community College	03 OSP 0548	Wade	07/29/03	
Joan Milligan, Patricia Flanigan, Paultetta Highsmith, Edna Cummings v. Fayetteville State University	03 OSP 0562	Conner	06/06/03	
Lisa D Barrett v. East Carolina University	03 OSP 0597	Mann	08/05/03	
Wrenete Oladoye v Whitaker School	03 OSP 0620	Conner	08/15/03	
Melinda O Wiggins v. Moore Co Health Department	03 OSP 0632	Morrison	09/17/03	
William Harold Maready Jr v. DOC, Pasquotank Correctional Inst.	03 OSP 0644	Conner	08/01/03	
Henry Earl Stewart v. Department of Transportation	03 OSP 0645	Lassiter	08/26/03	
Derwin D Johnson v. Department of Correction	03 OSP 0660	Lassiter	06/24/03	
Wanda Steward-Medley v. Department of Corrections, Div. of Prisons	03 OSP 0656	Conner	06/20/03	
Priscilla Sledge v. Department of Correction	03 OSP 0675	Conner	08/13/03	
Jerry B Davis v. Dorothea Dix Hospital/DHHS	03 OSP 0678	Gray	07/14/03	
Cathy S Carson v. NC School for the Deaf	03 OSP 0715	Wade	07/22/03	

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Edwin E Kirton III v. DOC, Warren Correctional	03 OSP 0769	Conner	07/17/03
David L McMurray Jr. v. Highway Patrol	03 OSP 0801	Lassiter	06/19/03
Harold Lorenzo Person v. E. Reg. Off. DOC, Div. of Prisons	03 OSP 0805	Conner	08/21/03
LaWanda J Abeguunrin v. Franklin Correctional Center	03 OSP 0825	Gray	06/18/03
Lazona Gale Spears v. Employment Security Commission	03 OSP 0859	Lassiter	06/26/03
Wanda Steward-Medley v Dept of Corrections, Div of Prisons	03 OSP 0873	Morrison	08/12/03
Jeffrey J Medley v. Department of Correction	03 OSP 0879	Gray	06/30/03
Comatha B Johnson v. DHHS, Cherry Hospital	03 OSP 0942	Chess	08/19/03
Monica Dockery v. DOC, Div. of Prisons	03 OSP 1016	Mann	07/18/03
Leon C Rogers v. John Umstead Hospital	03 OSP 1152	Morrison	09/11/03
Sharon D Wallace v. Department of Corrections	03 OSP 1231	Wade	09/17/03
Dennis D Foster v. Durham Co Sheriff's Department	03 OSP 1353	Morrison	09/12/03

UNIVERSITY OF NORTH CAROLINA HOSPITALS

Donald R. Smith v. UNC Hospitals	02 UNC 1361	Conner	06/05/03
Martin B Strickland v. UNC Hospitals, Patient Accounts Services	02 UNC 1620	Wade	08/29/03
Mary Dieudone Frantz v. UNC Hospitals	03 UNC 0409	Mann	08/07/03
Susan Kay Fryar v. UNC Hospitals	03 UNC 0410	Mann	08/07/03
Kendall Adams v. UNC Hospitals	03 UNC 0536	Gray	08/11/03
Janice Block v. UNC Hospitals	03 UNC 0720	Gray	09/04/03
Alfred Tilden Ward, Jr. v. UNC Hospitals & UNC Physicians & Assoc.	03 UNC 0723	Gray	06/23/03
Ieshia Marlina Baskett v. UNC Hospitals, Patient Account Services	03 UNC 0894	Gray	09/04/03

- 1 Combined Cases
- 2 Combined Cases
- 3 Combined Cases
- 4 Combined Cases